

**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
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

**REPLY COMMENTS  
of  
UNITED STATES CELLULAR CORPORATION**

Grant B. Spellmeyer  
Senior Director - Legislative &  
Regulatory Affairs

David A. LaFuria  
John Cimko

UNITED STATES CELLULAR CORPORATION  
8410 West Bryn Mawr  
Chicago, Illinois 60631  
(773) 399-4280

LUKAS, NACE, GUTIERREZ & SACHS, LLP  
8300 Greensboro Drive, Suite 1200  
McLean, Virginia 22102  
(703) 584-8678

May 23, 2011

## TABLE OF CONTENTS

SUMMARY .....	iii
I. INTRODUCTION .....	2
II. DISCUSSION .....	4
A. The Communications Act Limits the Manner and Circumstances in Which the Commission May Treat Broadband as a Supported Service. ....	4
B. The Record Confirms the Growing Importance of Mobile Broadband and Also Reflects Concern That the Commission’s Proposals Would Fail To Provide Sufficient Support for the Deployment and Ongoing Operations of Mobile Broadband Networks. ....	8
C. The Commission Should Design and Administer the Connect America Fund Based on Its Competitive Neutrality Principle and Pro-Competitive Policies, But Certain Commission Proposals Fail To Do So. ....	12
1. The Commission’s Connect America Fund Reforms Will Likely Founder If the Commission Leaves Its Pro-Competitive Policies Behind. ....	13
2. The Record Supports U.S. Cellular’s View That the Commission’s Right-of-First-Refusal Proposal Is Not Competitively Neutral. ....	16
3. Various Commenters Agree That the Commission Should Establish an Explicit Funding Mechanism for Mobile Broadband Services. ....	19
D. The Commission’s Connect America Fund Mechanisms Should Take Into Account the Importance of Mobile Wireless Broadband Networks for Public Safety. ....	23
E. Numerous Commenters Are Critical of the Commission’s Reverse Auction Proposal, and the Record Also Reflects Support for Using a Cost Model To Disburse Ongoing Connect America Fund Support. ....	28
1. Commenters Suggest That the Commission’s Reverse Auction Proposal Is Not Consistent with the Commission’s Statutory Mandate. ....	29
2. The Record Presents a Strong Case That Reverse Auctions Should Not Be Used as a Mechanism for Disbursing Connect America Fund Support. ....	31
3. Various Commenters Agree with U.S. Cellular That the Commission Should Rely on a Forward-Looking Economic Cost Model To Disburse Ongoing Connect America Fund Support. ....	45
F. Many Parties Agree That the Commission Should Provide Ongoing Support for More Than One Provider in Each Geographic Area Eligible for Support. ....	48

G.	The Commission’s Transition from Legacy High-Cost Support Mechanisms to Connect America Fund Mechanisms Should Be Carried Out in a Competitively Neutral Manner, Should Ensure Continued Availability of Mobile Broadband Services, and Should Provide for the Gradual Transition of Interstate Access Support.....	53
1.	Numerous Parties Question the Commission’s Transition Proposals Because They Are Not Competitively Neutral. ....	53
2.	There Is Strong Support for Transition Policies That Ensure That Current Support Is Not Phased Down Prematurely as the Commission Develops and Implements Successor Funding Mechanisms.....	56
3.	The Record Supports a Gradual Transition of Interstate Access Support to the Commission’s New Universal Service Funding Mechanisms. ....	65
H.	Numerous Parties Urge the Commission Not To Impose a Cap on the Level of Ongoing Connect America Fund Support. ....	68
I.	There Is Support in the Record for U.S. Cellular’s Position That the Commission Should Not Change the Treatment of Wireless Family Plans for Purposes of Support Calculations.....	83
J.	An Initial Broadband Speed Target of 4 Mbps (Download) and 1 Mbps (Upload) Has significant Support in the Record.....	86
K.	The Commission Should Be Skeptical of Proposals To Eliminate Universal Service Funding in Areas Purportedly Served by Carriers Not Receiving Support.....	90
III.	CONCLUSION.....	92

## SUMMARY

The consensus among many commenters responding to the Commission's Connect America Fund rulemaking notice is that many of the Commission's proposals, while rooted in the laudable goal of expanding the reach of high-speed broadband to more Americans, may do more harm than good on a number of critical fronts.

Commenters question the Commission's legal authority, the short shrift given to mobile wireless broadband, the Commission's evident abandonment of its competitive neutrality principle, the reliance on single-winner reverse auctions to distribute CAF support, the proposal to limit support to only one provider in each service area, the shortcomings in the Commission's transition proposals, and the proposed imposition of an overall cap on CAF funding. These and other issues are summarized in the following paragraphs.

### LEGAL AUTHORITY

There is agreement in the record with U.S. Cellular's view that the Commission has no authority to treat broadband as a supported service unless and until it receives a recommended decision to that effect from the Federal-State Joint Board on Universal Service. Numerous commenters also explain that the Commission's statutory authority to provide universal service for broadband extends *only* to broadband that is provided as a telecommunications service by telecommunications common carriers.

### MOBILE WIRELESS BROADBAND

The record provides extensive documentation that, as the State Members of the Joint Board indicate, consumers across the country today depend on mobile services for basic, essential communications. This is particularly true with respect to public safety—mobile wireless networks have become critically important to public safety agencies, first responders, and people

who rely on wireless communications in emergencies, especially in rural and remote areas. Many commenters are surprised that, given the increasing importance and popularity of mobile broadband, the *Notice* fails to fashion proposals that would effectively promote mobile broadband deployment and support ongoing mobile broadband operations.

### **COMPETITIVE NEUTRALITY**

Numerous commenters question the Commission's apparent rejection of competitive neutrality as a core principle, arguing that the Communications Act of 1934 requires policies that promote both universal service and competition, and that competitive and technological neutrality promotes entry, boosts competition, and provides incentives for the efficient deployment of broadband facilities. Commenters also point out that CAF mechanisms that promote competition would help in meeting consumer demand for broadband services, especially wireless and mobile broadband.

Several commenters also agree with U.S. Cellular that adopting separate CAF mechanisms for fixed and mobile broadband, and allocating funding between the funds so that a sufficient level of support is provided for both fixed and mobile broadband deployment, would effectively serve the competitive neutrality principle.

### **SINGLE-WINNER REVERSE AUCTIONS**

Several commenters conclude that the proposed reverse auction mechanism would not be consistent with statutory mandates and requirements, arguing, for example, that the proposal would not be competitively neutral because it would restrict rather than promote competition in the marketplace.

There also is exceptionally strong and widespread opposition to the reverse auction proposal on policy grounds. This opposition, which is voiced across a range of different classes of

stakeholders, focuses on a litany of problems and issues with reverse auctions, with one commenter observing that substantial evidence demonstrating the harm to rural consumers (and to carriers serving them) that would be caused by reverse auctions has been presented to the Commission in numerous proceedings over the past decade.

Several commenters agree with U.S. Cellular that a cost model should be used, instead of a reverse auction mechanism, to set efficient support levels and then to enable all service providers to compete for customers. Such an approach would be competitively neutral, and would make funding fully portable, thus easing pressure on the size of CAF support mechanisms while providing the obvious benefits of competition.

#### **LIMITING SUPPORT TO A SINGLE PROVIDER**

The Commission's proposal that only one carrier would receive CAF support in each service area is roundly criticized in the record. Commenters indicate that the proposal is not competitively neutral on its face, would restrict market entry, would deprive rural consumers of competitive choices, would fail to provide universal broadband, and would guarantee that a subset of rural communities would not have any access to mobile wireless broadband.

The U.S. Department of Health and Human Services points to another problem that could result from the Commission's proposal—a single carrier in a service area may not be able to meet the broadband needs of health care providers, such as larger hospitals and health care facilities that require dedicated Internet access. Several commenters argue that, at a minimum, the Commission should provide support for *both* fixed and mobile service providers in each service area.

## **THE TRANSITION TO CAF MECHANISMS**

Commenters focus on two central problems with the Commission's proposed transition mechanisms. First, the transition mechanisms are not competitively neutral, in part because, as USA Coalition points out, the Commission is proposing a five-year phase-down of competitive carriers' support (which in reality is only four years since support will reach zero at the end of the fourth year under the proposal), but support for incumbent carriers would be phased down over a longer timeline, if at all. The record supports U.S. Cellular's position that there is no policy basis for handicapping wireless carriers, who should be enabled by even-handed transition policies to continue bringing mobile broadband to rural consumers in the future.

And, second, there is strong support for the argument that phasing down existing support should be done at a pace that is coordinated with the Commission's activation of new funding mechanisms. Several commenters express concern that the Commission's transition proposal would move too rapidly in diverting existing support from carriers that are currently deploying broadband networks, while taking too long to begin distributing long-term CAF support.

## **CAPPING LONG-TERM CAF SUPPORT**

The record reflects widespread concern that the Commission's proposed overall cap on CAF support, at 2010 funding levels, flies in the face of the agency's expressed desire to ensure ubiquitous broadband deployment. The Commission's task, as AT&T explains, is to ensure that CAF funding mechanisms are large enough to enable carriers to deploy broadband service to *all* Americans. An up-front cap would undercut the Commission's ability to meet this task.

In seeking an explanation for the Commission's approach, many commenters agree with U.S. Cellular that the Commission's disproportionate attention to fiscal responsibility has led to a blind spot regarding the level of funding necessary to accomplish its broadband objectives. The

Commission need not sacrifice one to achieve the other. A fund can and should be fashioned that is both fiscally responsible and which will meet the Nation's goals for broadband deployment.

#### **WIRELESS FAMILY PLANS**

Several commenters agree with U.S. Cellular that, notwithstanding the Commission's aggressive efforts to shift funds from legacy support mechanisms to CAF as quickly as possible, it should stop short of changing the treatment of wireless family plans (by treating them as single lines) as a means of accelerating the "repurposing" of competitive carriers' support.

It would be imprudent for the Commission to take such a step because, as CTIA points out, the current provision of support for wireless family plans is virtually the same as the Commission's treatment of incumbent carriers' access lines, shifting the treatment of wireless family plans would contradict the Commission's policy of avoiding any flash cuts in high-cost support during the transition to new support mechanisms, and reclassifying wireless plans would violate statutory prohibitions against restricting universal service support to a primary line.

#### **THE BROADBAND SPEED TARGET**

A number of commenters support U.S. Cellular's view that the Commission should establish a broadband speed target of 4 Mbps (download) and 1 Mbps (upload) because this would best serve the Commission's objectives for providing all Americans with access to advanced broadband services. U.S. Cellular also agrees with commenters suggesting that these speeds should be an *initial* broadband target, with the Commission being prepared to make subsequent adjustments.

U.S. Cellular's proposal that the Commission should develop speed measurement criteria that account for the unique characteristics of mobile broadband also receives strong support in the record. Sprint, for example, argues that setting a "rigid measure" of speed as a basis for CAF

eligibility would be problematic because it would likely discriminate in favor of fixed networks at the expense of mobile broadband networks.

#### **ELIMINATING SUPPORT IN AREAS SERVED BY UNSUBSIDIZED CARRIERS**

Several commenters agree with U.S. Cellular that, while stripping out support in portions of incumbent carriers' study areas where unsubsidized carriers operate sounds like a promising idea, it would be difficult to execute in a fair and effective manner. In order to take such an approach, the Commission would need to solve the problem that these "competitive" portions of an incumbent's service area are not severable, in any practical sense, from remaining portions of the incumbent's service area. Therefore, any attempt to eliminate support received by the incumbent that is associated with the competitive portion of its service area is likely to have adverse consequences for consumers in the remaining portions of the service area.

**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
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

**REPLY COMMENTS  
of  
UNITED STATES CELLULAR CORPORATION**

United States Cellular Corporation (“U.S. Cellular”), by counsel, hereby submits these Reply Comments, pursuant to the Commission’s Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup>

---

<sup>1</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 Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, 2011 WL 466775 (rel. Feb. 9, 2011) (“*Notice*”). The due date for reply comments on sections of the *Notice* addressed in these Comments is May 23, 2011. *See Comment and*

## I. INTRODUCTION.

The Commission recently reiterated the challenge it faces as it pursues the important goal of bringing broadband to all Americans. The Commission observed that “[t]he fact remains . . . that too many Americans remain unable to fully participate in our economy and society because they lack broadband. Although this is a nationwide concern, the situation is particularly bleak for Americans in rural and Tribal areas.”<sup>2</sup>

Comments responding to the *Notice*, however, make clear that no consensus has emerged that the Commission is on the right track with its proposals to reform its existing universal service mechanisms in order to achieve its broadband goals. In fact, there is considerable opposition to some of the key policies and premises that are driving the Commission’s proposals. The record reflects concerns regarding the following issues:

While the Commission appears to understand the importance of mobile wireless broadband—an importance that is reflected, for example, by the rising consumer demand for mobile broadband services and the unique ways in which mobile broadband has the potential to aid public safety agencies, first responders, and people in emergencies—several of the Commission’s proposals would more likely serve as roadblocks rather than pathways to deploying mobile broadband networks in rural America.

---

*Reply Comment Dates Established for Comprehensive Universal Service Fund and Intercarrier Compensation Reform Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, 01-92, WC Docket Nos. 03-109, 05-337, 07-135, 10-90, and GN Docket No. 09-51, Public Notice, DA 11-411 (rel. Mar. 2, 2011) at 1.

<sup>2</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, Seventh Broadband Progress Report and Order on Reconsideration, FCC 11-78 (rel. May 20, 2011) (“*Seventh Broadband Report*”), at para. 4 (footnotes omitted).

Many of the Commission's proposals are at odds with its own pro-competitive policies and the principle of competitive neutrality. The Commission's proposals would unmoor its universal service mechanisms from the Commission's longstanding competitive policies,<sup>3</sup> a step that not only would be outside the bounds of the Commission's statutory mandates<sup>4</sup> but would also compromise the Commission's universal service reform efforts and broadband goals, and veer away from the course the Commission committed to follow in making adjustments to its universal service mechanisms.<sup>5</sup>

If the Commission appears estranged from its longstanding commitment to pro-competitive universal service policies, the same cannot be said for its more recent dedication to

---

<sup>3</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8781-82 (para. 4) (1997) (“*First Report and Order*”) (subsequent history omitted) (footnotes omitted) (quoting Joint Explanatory Statement of the Committee of the Conference (H.R. Rep. No. 458, 104th Cong., 2d Sess.), at 1) (indicating that “[t]his proceeding is part of a trilogy of actions that are focused on achieving Congress’s goal of establishing a ‘pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening up all telecommunications markets to competition.’ The other components of the trilogy are the local competition and access reform rulemakings. Pursuant to the mandate of the 1996 Act, these three proceedings are collectively intended to encourage the development of competition in all telecommunications markets.”).

<sup>4</sup> The Commission has explicitly acknowledged the mandates encompassed in the Communications Act, indicating that, “[w]hen it enacted section 254 of the Communications Act, Congress set forth the principles to guide universal service reform. It placed on the Commission the duty to implement these principles in a manner consistent with the pro-competition purposes of the Act.” *Id.* at 8783 (para. 7).

<sup>5</sup> In the *First Report and Order*, the Commission anticipated that:

Over time, it will be necessary to adjust the universal service support system to respond to competitive pressures and state decisions so that the support mechanisms are sustainable, efficient, explicit, and promote competitive entry. We expect to use both prescriptive (i.e., regulatory) and more permissive (i.e., market-based) approaches to complete this task. We expect that reform of both the universal service and access charge systems in accordance with Congress’s direction and the principles set forth in the Act and this Order will achieve [several] results[, including that] universal service will be sustainable in a competitive environment; this means both that the system of support must be competitively neutral and permanent, and that all support must be targeted as well as portable among eligible telecommunications carriers . . . .

*Id.* at 8787-88 (para. 19).

fiscal responsibility. While there is understandably strong support in the record for the Commission's principle that universal service reforms should be fiscally responsible, there is also sharp opposition to the Commission's placing disproportionate weight on this principle, which has resulted in proposals that would fail to ensure that rural Americans seeking access to broadband networks will not be left behind.

## **II. DISCUSSION.**

Many commenters have joined U.S. Cellular in criticizing several of the key elements of the Commission's universal service reforms, including proposals to rely on a reverse auction mechanism to distribute Connect America Fund ("CAF") support, to limit CAF funds to only one service provider in a service area, to accelerate the phase down of legacy support before replacement CAF mechanisms are adopted and operational, and to impose an upfront cap on CAF funding levels.

These and other issues are examined in the following sections. First, however, U.S. Cellular discusses the position taken by numerous commenters that the Communications Act of 1934 ("Communications Act" or "Act") constrains the Commission's authority to treat broadband as a supported service.

### **A. The Communications Act Limits the Manner and Circumstances in Which the Commission May Treat Broadband as a Supported Service.**

U.S. Cellular has demonstrated in its Comments that the Commission cannot adopt a rule treating broadband as a supported service without first having received a recommended decision from the Federal-State Joint Board on Universal Service ("Joint Board") addressing such an ac-

tion.<sup>6</sup> If the Commission attempts to move forward without such a Joint Board recommended decision, any treatment of broadband as a supported service would be subject to legal challenge.

Cellular South agrees with U.S. Cellular’s analysis, stating that “[t]o put broadband services on the list of supported services, the Joint Board must first recommend that the Commission do so ‘consider[ing] the extent to which such telecommunication services’ are, *inter alia*, ‘being deployed in public telecommunications networks by telecommunications carriers.’”<sup>7</sup>

USA Coalition expresses the same view, observing that “the Act mandates that the Joint Board and Commission work together to establish and update the list of supported services.”<sup>8</sup>

USA Coalition explains that:

[T]he Commission cannot unilaterally modify the list of supported services based on goals set forth in the NBP [National Broadband Plan] or on a claim that the modification is consistent with past Joint Board findings that were made years earlier before the writing of the NBP and significant developments in the market. Both the Joint Board and the Commission must [work] together to establish and modify the list of supported services . . . .<sup>9</sup>

The State Members of the Federal-State Joint Board on Universal Service (“State Members”) indicate that “[t]he Joint Board has explicit authority to recommend, ‘from time to time,’ modification of the definition of supported services, a responsibility that extends indefinitely into the future[,]”<sup>10</sup> and that “the Joint Board has a continuing statutory responsibility to ensure that federal universal service policies are based on a list of articulated principles.”<sup>11</sup>

---

<sup>6</sup> U.S. Cellular Comments at 28-29.

<sup>7</sup> Cellular South, Inc. (“Cellular South”), Comments at 12 (footnote omitted) (quoting 47 U.S.C. § 254(c)(1)).

<sup>8</sup> Universal Service for America Coalition (“USA Coalition”) Comments at 5 (footnote omitted).

<sup>9</sup> *Id.* (footnote omitted).

<sup>10</sup> State Members Comments at 18 (footnote omitted) (citing 47 U.S.C. §§ 254(c)(1)(C), 254(c)(2)).

<sup>11</sup> *Id.* (footnote omitted) (citing 47 U.S.C. § 254(b)). The State Members recommend in their comments that the Commission should revise the current definition of supported services to include broadband In-

There can hardly be any disagreement that Section 254(c) of the Communications Act<sup>12</sup> requires the Joint Board to first recommend that a particular service should be treated as a supported service, before the Commission may act to add the service to the list of supported services. Nor can there be any claim that the Commission has satisfied this statutory requirement, and, therefore, is now free to act in this proceeding to add broadband to the list of supported services.

It is true, as the Massachusetts DTC observes, that the Joint Board has recently recommended to the Commission that universal service support should be directed where possible to networks that provide advanced services, as well as voice services.<sup>13</sup> The Joint Board's recommendation, however, cannot serve as a basis for the Commission's adding broadband to the list of supported services, because the Joint Board did not purport to recommend that such an action be taken, nor did the Joint Board undertake the considerations required by Section 254(c)(1) as a prerequisite to listing a service as a supported service.<sup>14</sup>

NASUCA explains, moreover, that the Joint Board's recommendation in the *Lifeline Recommended Decision* cannot serve as a basis for the Commission's providing universal service support to broadband services if the Commission lacks authority to do so:

---

ternet access service, *id.* at 22, but this is not a formal recommended decision for purposes of the Section 254(c) requirements because the recommendation is not a recommended decision of the full Federal-State Joint Board on Universal Service ("Joint Board"), but rather is a suggestion being made by the state members of the Joint Board.

<sup>12</sup> 47 U.S.C. § 254(c).

<sup>13</sup> Massachusetts Department of Telecommunications and Cable ("Massachusetts DTC") Comments at 4 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No. 03-109, Recommended Decision, 25 FCC Rcd 15598 (J.B. 2010) ("*Lifeline Recommended Decision*"). See Notice at paras. 55-56.

<sup>14</sup> Section 254(c)(1) requires the Joint Board and the Commission, before adding a telecommunications service to the list of supported services, to consider the extent to which the telecommunications service (1) is essential to education, public health, or public safety; (2) has (through the operation of market choices by customers) been subscribed to by a substantial majority of residential customers; (3) is being

[T]he key here is that the adoption of such a principle does not really advance the broadband ball much. As the Tenth Circuit noted, the principles in § 254(b) are all ones the FCC is required to consider in its deliberations, but the individual principles—including ones adopted by the Joint Board and the Commission—are only aspirational. And as the D.C. Circuit held last year in *Comcast*, the Commission’s authority must be found in more specific provisions of the Act that grant such authority, rather than those that merely set forth policy aspirations. So the adoption of another principle will not allow the FCC to spend consumers’ dollars on supporting broadband unless there is a separate grant of authority for such spending.<sup>15</sup>

U.S. Cellular also notes that, in addition to the fact that the Commission is barred in the present proceeding from declaring broadband to be a supported service because it has not adhered to the requirements of Section 254(c)(1) regarding its receipt of a recommendation from the Joint Board, numerous commenters have demonstrated that, even if such a recommendation had been made by the Joint Board, the Commission would have statutory authority to provide universal service for broadband *only* to the extent that broadband is provided as a telecommunications service by telecommunications common carriers.<sup>16</sup> U.S. Cellular supports the position taken by these commenters.<sup>17</sup>

---

deployed in public telecommunications networks by telecommunications carriers; and (4) is consistent with the public interest, convenience, and necessity.

<sup>15</sup> National Association of State Utility Consumer Advocates (“NASUCA”) Comments at 29-30 (footnotes omitted) (citing *Comcast Corp. v. FCC*, 600 F.3d 642, 654-55 (D.C. Cir. 2010)).

<sup>16</sup> Cellular South, for example, explains that:

If the Commission wants to bestow Title II benefits (USF support) on broadband service providers, it can do so only in accordance with Title II and only if the broadband service is provided as a telecommunications service and meets the criteria of § 254(c)(1)(A)-(D) for inclusion on the Commission’s list of services supported by the USF.

Cellular South Comments at 5. *See* Blooston Rural Carriers Comments at 18-23; CompTel Comments at 26-30; National Association of Regulatory Utility Commissioners (“NARUC”) Comments at 6 (emphasis in original) (explaining that “the FCC should require carriers that want to provide standalone broadband (without any voice service), as a condition of getting the subsidy, to offer it as a *telecommunications service*”); NASUCA Comments at 28 (footnote omitted) (pointing out that “universal service is telecommunications service, and universal service support goes to telecommunications carriers, and comes from telecommunications carriers and providers of telecommunications. The statutory description of universal service does not mention advanced service.”); National Exchange Carrier Association, Inc., National Tel-

**B. The Record Confirms the Growing Importance of Mobile Broadband and Also Reflects Concern That the Commission’s Proposals Would Fail To Provide Sufficient Support for the Deployment and Ongoing Operations of Mobile Broadband Networks.**

The record has further confirmed the unassailable fact that, as the Broadband Plan acknowledged, “[t]he use of wireless broadband is growing rapidly, primarily in the area of mobile connectivity . . . .”<sup>18</sup> There also is support in the record for U.S. Cellular’s view that the Commission should take care to construct CAF mechanisms that take this astonishing growth of mobile broadband into account, and that ensure that consumers in rural and high-cost areas will be enabled to reap the diverse benefits provided by mobile broadband.

U.S. Cellular has stressed in its Comments that mobile broadband is “becoming an increasingly important part of American life.”<sup>19</sup> Numerous parties agree. The State Members, for example, indicate that “[t]elecommunications services have evolved since the enactment of the Act, and mobile services have grown dramatically. Consumers throughout the nation today depend on those services for basic, essential communications that are no longer limited by the loca-

---

communications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, Western Telecommunications Alliance, and Concurring Associations (“Rural Associations”) Comments at 81-82.

<sup>17</sup> See Ex Parte Letter from Grant B. Spellmeyer, Senior Director – Legislative and Regulatory Affairs, U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket Nos. 05-25, 05-337, ET Docket No. 10-236, WT Docket No. 11-65, CC Docket No. 96-45, RM No. 11592 (Jan. 28, 2010) (“Spellmeyer Letter”), at 2 (indicating that “given the USF program’s statutory grounding under Title II of the Communications Act, any carrier seeking to draw universal service support under the Connect America Fund or the Mobility Fund, must adhere to all applicable provisions of Title II”).

<sup>18</sup> Omnibus Broadband Initiative (“OBI”), FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010) (“Broadband Plan” or “NBP”) at 76. The Commission recently indicated that “[w]e recognize that the mobile broadband industry has grown significantly and that mobility provides tremendous benefits to consumers, including benefits in rural areas.” *Seventh Broadband Report* at para. 16, n.87.

<sup>19</sup> U.S. Cellular Comments at 3.

tion of their wireline telephones.”<sup>20</sup> CTIA observes that “[c]onsumers place enormous and ever-increasing value on the flexibility of using data and voice services wherever they are, and are embracing mobile broadband faster than any other broadband platform[,]”<sup>21</sup> and that “the benefits of mobility are perhaps most pronounced in rural areas, where distance creates unique challenges for family life, economic development, safety, and public health.”<sup>22</sup>

Mobile broadband networks are occupying center stage in the roll-out of broadband services, thanks to the tremendous consumer demand for advanced mobile broadband services and functionalities. As Sprint explains:

[T]he dramatic increase in “smart” wireless devices demonstrates that tens of millions of consumers need and want *mobile* broadband, in conjunction with, or even in place of, fixed broadband connections. For users on the move, the advantages

---

<sup>20</sup> State Members Comments at 25-26.

<sup>21</sup> CTIA–The Wireless Association<sup>®</sup> (“CTIA”) Comments at 4. *See* Ex Parte Letter from David A. LaFuria, Counsel for N.E. Colorado Cellular, Inc., d/b/a Viero Wireless (“Viero Wireless”), to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket Nos. 05-337, 10-90 (filed Apr. 21, 2011), Enclosure, “USF Reform: The Connect America Fund and the Mobility Fund,” at 8 (unpaginated) (displaying a chart reflecting data and an analysis prepared by Morgan Stanley Research that shows that the number of mobile Internet users will surpass the number of desktop Internet users by 2014).

<sup>22</sup> CTIA Comments at 9. *See* Ad Hoc Telecommunications Users Committee (“Ad Hoc”) Comments at 5 (footnote omitted) (noting that “[w]hile conventional switched access lines declined, subscribership to . . . wireless service increased. . . . While conventional wireline connections barely increased from 1998 to 2008, wireless subscribers jumped from about 69 million to over 270 million.”); AT&T Services, Inc. (“AT&T”), Comments at 86 (footnote omitted) (stating that “mobile communications services offer many unique benefits to consumers”); Kansas Corporation Commission (“Kansas CC”) Comments at 33-34 (explaining that wireless carriers have helped Kansas move toward the achievement of widespread deployment of advanced broadband networks); Mobile Future Comments at 2-8; MTPCS, LLC, d/b/a Cellular One, and its affiliates, and Viero Wireless (“MTPCS and Viero Wireless”) Comments at 2 (stating that “[f]unding mobile broadband deployment in rural America will benefit consumers, rural communities and institutions, public safety organizations operating in these rural communities, businesses serving rural areas, and the national economy as a whole”); Rural Independent Competitive Alliance (“RICA”) Comments at 17 (indicating that “[m]obility is a crucial capability in areas where communities, [and] service and public safety establishments are separated by large distances”); Rural Telecommunications Group, Inc. (“RTG”), Comments at 5 (footnote omitted) (stating that “[f]uture projections demonstrate that by the year 2013, monthly data usage on wireless networks will exceed 416,000 terabytes, an 800 percent increase over 2010 figures”); T-Mobile USA, Inc. (“T-Mobile”), Comments at 5; XO Communications, LLC (“XO”), Comments at 45.

of mobility often outweigh the benefits of higher speeds available with many fixed broadband connections.<sup>23</sup>

Given this consumer demand, and given the finding that wireless would be the least-costly technology to serve 90 percent of the unserved households in the country,<sup>24</sup> U.S. Cellular agrees with T-Mobile that “[t]he Commission should explicitly prioritize support for the expansion of mobile voice and broadband throughout the country.”<sup>25</sup>

Chairman Genachowski, speaking two months ago, gave some indication that the Commission might choose to follow such a course in fashioning its CAF proposals, predicting that “[o]ur [universal service] reforms will be technology neutral, and we expect that wireless providers will be active participants in the Connect America Fund.”<sup>26</sup>

Deficiencies in proposals made by the Commission in the *Notice*, enumerated by U.S. Cellular in its Comments,<sup>27</sup> have reduced the likelihood that Chairman Genachowski’s predictions will prove to be accurate. CTIA shares U.S. Cellular’s concern that the Commission’s proposals to reshape universal service will not meet the stated goal of promoting mobile broadband deployment. According to CTIA, “[i]t is concerning that, at the same time that the President and the FCC have identified ubiquitous mobile broadband as a central national priority, there is no

---

<sup>23</sup> Sprint Nextel Corporation (“Sprint”) Comments at 40 (footnote omitted) (emphasis in original).

<sup>24</sup> OBI, THE BROADBAND AVAILABILITY GAP: OBI TECHNICAL PAPER NO. 1 (“*Broadband Availability Gap Paper*”), at 13 (Exhibit 1-J), *cited in* T-Mobile Comments at 5-6.

<sup>25</sup> T-Mobile Comments at 6.

<sup>26</sup> FCC Chairman Julius Genachowski, Remarks as Prepared for Delivery, CTIA Wireless 2011 (Mar. 22, 2011) at 3, *quoted in* U.S. Cellular Comments at 11.

<sup>27</sup> *See* U.S. Cellular Comments at 7-9 (indicating that the Commission has made several proposals that conflict with the goal of promoting mobile broadband deployment in rural and high-cost areas).

definitive framework for supporting mobile broadband in unserved areas and areas that would not receive service but for support.”<sup>28</sup> CTIA also observes that:

Unfortunately, the Commission has undertaken no analysis in the NPRM to define the amount of support that will be necessary for the goal of ubiquitous mobile broadband. To the extent that the Commission decides to rely on a funding mechanism in the CAF that is dedicated to mobility, it must develop the record further to determine the amount of support required to bridge the private investment gap and clarify how the Mobility Fund and CAF will be coordinated to ensure that mobile broadband services are available ubiquitously.<sup>29</sup>

The short shrift that the Commission has given in the *Notice* to ensuring adequate funding levels to support mobile broadband deployment is particularly troubling in light of the fact that wireless carriers currently make the lion’s share of contributions into the Universal Service Fund (“Fund” or “USF”). According to the most recent data available (for 2008), revenues of wireless service providers comprise 39.7 percent of the USF contribution base, compared to 26.0 percent for interexchange carriers, 24.3 percent for fixed local service providers, and 10.0 percent for all other service providers (*e.g.*, satellite service providers, operator service providers, toll resellers).<sup>30</sup> In contrast, in 2008, incumbent local exchange carriers (“LECs”) received 70.9 percent of high-cost support mechanism payments, while competitive eligible telecommunications carriers (“ETCs”) received 29.1 percent of high-cost fund payments.<sup>31</sup>

---

<sup>28</sup> CTIA Comments at 10.

<sup>29</sup> *Id.* at 11 (footnote omitted).

<sup>30</sup> UNIVERSAL SERVICE MONITORING REPORT, CC Docket No. 98-202 (2010) (*Monitoring Report*), Table 1.8 (“Revenues by Type of Carrier: 2008”).

<sup>31</sup> *Id.*, Table 3.2 (“High-Cost Support Fund Payment History—ILECs and CETCs”). The percentage of high-cost disbursements received by competitive ETCs currently is likely even lower, compared to 2008, because of the agreement by both Sprint and Verizon to phase down their receipt of high-cost funding as part of their negotiations with the Commission related to the Commission’s review of the merger transactions proposed by each of the companies. *See Notice* at para. 244. *See also 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, 25 FCC Rcd 18146 (2010); *High-Cost Universal Service Support, Federal-State Joint*

Various proposals made in the *Notice*—*e.g.*, accelerating the phase-down of competitive ETCs’ legacy support (compared to phase-down rules applicable to incumbent LECs); accelerating the competitive ETC phase-down even further by treating wireless family plans as single lines for purposes of calculating high-cost support; limiting the provision of CAF support to a single provider in a service area; giving rural incumbent LECs a right of first refusal (“ROFR”) to be the sole recipients of CAF support in their service areas; permitting rural incumbent LECs to continue receiving support based on their embedded costs—would likely continue (or even make worse) the disparity between USF contributions made by wireless carriers and the level of support they receive from the Fund.

Numerous commenters agree that it would be short sighted for the Commission to walk away from its competitive neutrality principle and pro-competitive policies in the design of the CAF funding mechanisms. These issues are examined in the following section.

**C. The Commission Should Design and Administer the Connect America Fund Based on Its Competitive Neutrality Principle and Pro-Competitive Policies, But Certain Commission Proposals Fail To Do So.**

U.S. Cellular has argued that the Commission should return in this proceeding to its principle of competitive neutrality and embrace pro-competitive policies, because shaping transition plans and new support mechanisms consistent with this approach will better ensure sufficient mobile broadband deployment. The Commission should design CAF mechanisms that work within the evolving competitive marketplace and empower consumers, should avoid mechanisms that carve out protections that insulate any class of service providers from the shift away from legacy support mechanisms, and should adopt U.S. Cellular’s proposal for separate fixed and

mobile CAF support mechanisms.<sup>32</sup> As discussed in the following sections, numerous other parties have made similar suggestions regarding the course the Commission should take in its universal service reforms.

**1. The Commission’s Connect America Fund Reforms Will Likely Founder If the Commission Leaves Its Pro-Competitive Policies Behind.**

Taking its cue from the pro-competitive policies of the Telecommunications Act of 1996,<sup>33</sup> the Commission previously has sought to design and administer universal service policies and programs intended to capitalize on the consumer benefits produced by competitive markets. Unfortunately, the *Notice* reflects a significant departure from these Commission policies, even as the Commission claims in passing that its proposals are competitively neutral.<sup>34</sup> Numerous parties share U.S. Cellular’s view that the Commission’s CAF reforms would be better served if they are grounded in competitive policies, as mandated by the 1996 Act.<sup>35</sup>

---

Proposed Rulemaking, 25 FCC Rcd 12854 (2010).

<sup>32</sup> See, e.g., U.S. Cellular Comments at 9-11, 20. See also *First Report and Order*, 12 FCC Rcd at 8802 (para. 48) (stating that “[w]e conclude that competitively neutral rules will ensure that such disparities are minimized so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers”).

<sup>33</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996) (“1996 Act”). As the Commission itself has acknowledged, “[i]n the 1996 Act, Congress established principles for the preservation and advancement of universal service in a *competitive telecommunications environment*.” *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11252 (para. 14) (2001) (emphasis added).

<sup>34</sup> See *Notice* at para. 82.

<sup>35</sup> “The FCC must see to it that *both* universal service and local competition are realized; one cannot be sacrificed in favor of the other.” *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 615-16 (5th Cir. 2000) (emphasis in original), *quoted in* CompTel Comments at 37.

In later sections, U.S. Cellular will review the support in the record for its concerns that specific Commission proposals reflect the agency’s apparent unwillingness to continue its adherence to the twin goals of universal service and competitive telecommunications markets.<sup>36</sup> First, however, U.S. Cellular will focus on the confirmation displayed in the comments that competitive policies should be given a prominent role in the Commission’s universal service reforms.

Adhering to competitive policies would ensure that universal service funds will be used efficiently, and that the Commission’s new CAF mechanisms will be designed in a manner that is responsive to consumer demand. U.S. Cellular agrees with Leap Wireless that “[t]he central focus of high-cost support should be on promoting the deployment of high-quality services to high-cost areas in the most efficient way.”<sup>37</sup>

Leap Wireless explains that “[c]ompetitive and technological neutrality promotes entry, increases competition, and incentivizes efficient deployment of facilities by rewarding carriers that can deliver services at lower costs per ‘line[,]’”<sup>38</sup> and that:

Wireless carriers, which often have lower cost structures, in many situations will be able to provide the most efficient broadband deployment solutions. Any reform effort that is genuinely grounded in a market-based approach and that seeks to promote competition and efficiency cannot exclude or disadvantage a class of providers that may be best positioned to reach unserved and under-served consumers at the lowest cost.<sup>39</sup>

Competition drives efficiency, and competitive neutrality ensures that universal service policies will have an opportunity to harness this efficiency, thereby optimizing the likelihood that univer-

---

<sup>36</sup> See *infra* Section II.C.2 (the ROFR proposal); Section II.E (the reverse auction proposal); Section II.F (the proposal to limit support to one service provider in each service area); Section II.G (the proposed transition mechanisms); Section II.H (the proposed cap on CAF funding).

<sup>37</sup> Leap Wireless International, Inc., and Cricket Communications, Inc. (“Leap Wireless”) Comments at 11.

<sup>38</sup> *Id.*

sal service funds are utilized in a fiscally responsible manner.<sup>40</sup> The Commission should take note of the OBI finding referenced earlier, that wireless broadband networks would be the least-costly technology to serve 90 percent of the unserved households throughout the Nation, and should design funding mechanisms capable of capturing these efficiencies. As U.S. Cellular will discuss, however, there is serious concern among commenters that the Commission’s proposals fail to move in this direction.

Designing CAF mechanisms that are competitively neutral, and that seek to promote competition, would also ensure that broadband networks will be deployed and broadband services will be provided in a manner that is responsive to consumer demand. CTIA explains that “funding should go to the services used by high-cost customers, which increasingly are wireless and mobile broadband services[,]”<sup>41</sup> and that “[t]he importance of neutrality is underscored by consumers’ increasing demand for wireless and mobile broadband services and declining use of legacy wireline services.”<sup>42</sup> U.S. Cellular also agrees with T-Mobile that “[c]ompetitive and

---

<sup>39</sup> *Id.* at 11-12.

<sup>40</sup> *See, e.g., First Report and Order*, 12 FCC Rcd at 8877 (para. 181) (footnotes omitted) (concluding that “the optimal approach to minimizing misuse of universal service support is to adopt mechanisms that will set universal support so that it reflects the costs of providing universal service efficiently. We . . . will adopt the Joint Board’s recommended approach to minimizing the misuse of support by taking steps to implement forward-looking high cost support mechanisms and implementing the rules set forth in our accompanying Access Charge Reform Order. We also agree with the Joint Board that competitive markets, which we anticipate will develop over time, will minimize the incentives and opportunities to misuse funds.”).

<sup>41</sup> CTIA Comments at 24.

<sup>42</sup> *Id. See Cox Communications, Inc. (“Cox”), Comments at 3* (arguing that “[n]ew regulations should not give any segment of the industry an advantage or disadvantage in the competitive marketplace, but should empower consumers to make their own decisions about what service provider or technology they prefer”).

technological neutrality are even more important now, due to the explosive growth in wireless and mobile broadband services and their unique appeal to consumers.”<sup>43</sup>

The thrust of these comments is that the importance of competitive neutrality and pro-competitive policies is not merely speculative or theoretical—they engender real benefits for consumers and promote the efficient and fiscally responsible use of universal service support. In the next section, however, U.S. Cellular discusses the first of several examples of how the Commission’s proposals would risk failing to capture these benefits and efficiencies.

## **2. The Record Supports U.S. Cellular’s View That the Commission’s Right-of-First-Refusal Proposal Is Not Competitively Neutral.**

U.S. Cellular has criticized the proposal to give rural incumbent LECs an ROFR to be exclusively-funded providers of voice and broadband services in areas in which these carriers operate as “carriers of last resort” (“COLRs”), because the proposal would have adverse competitive consequences.<sup>44</sup> There is substantial support for this view in the record.

CTIA gets to the nub of the problem with the Commission’s ROFR proposal, explaining that “[t]he bedrock USF principle of competitive neutrality *requires the rejection of the proposed ILEC ‘right of first refusal’* to become the long-term CAF recipient in its service area.”<sup>45</sup> CTIA argues that the ROFR option “would flatly contradict the policies of competitive and technological neutrality[,]”<sup>46</sup> and asks: “How can a mechanism be competitively neutral if only one compa-

---

<sup>43</sup> T-Mobile Comments at 6.

<sup>44</sup> U.S. Cellular Comments at 8.

<sup>45</sup> CTIA Comments at 24 (emphasis in original) (footnote omitted).

<sup>46</sup> *Id.*

ny can participate? How can a mechanism be technologically neutral if only one provider is entitled to participate?”<sup>47</sup>

The short answer, of course, is that the ROFR mechanism is neither competitively nor technologically neutral. In fact, “[s]uch a built-in preference would unjustifiably skew subsidies in favor of incumbent carriers, whether or not they have demonstrated a need for funding or shown that they are the most efficient provider[,]”<sup>48</sup> and “would simply cement the legacy inefficiencies . . . without examining whether alternative carriers or platforms would make better use of scarce funds.”<sup>49</sup> U.S. Cellular agrees with Verizon that “[p]roviding ILECs with a special opportunity to turn down funding . . . could fail to take into account the potential benefits of new competition from intermodal providers and legitimate consumer preferences for different technologies, particularly in unserved areas.”<sup>50</sup> These ideas are hardly new. Some fourteen years ago, this Commission properly concluded that “allowing only the ILEC to receive support for the construction of the facilities used to provide universal service would, however, discourage new entrants from constructing additional facilities in high cost areas, thereby discouraging facilities-based competition, in contravention of Congress’s explicit goals.”<sup>51</sup>

Proponents of the Commission’s ROFR proposal generally congregate around one point, namely, that, in their view, “it will be more cost effective for the CAF to support an ILEC’s upgrade of its network to provide broadband services in a given geographic area than to fund the

---

<sup>47</sup> *Id.*

<sup>48</sup> Leap Wireless Comments at 12.

<sup>49</sup> *Id.* See RICA Comments at 15; Rural Cellular Association (“RCA”) Comments at 12; T-Mobile Comments at 9 (arguing that the ROFR “preference would result in a fund that is larger than the current federal high-cost USF (as well as violate the principles of competitive and technological neutrality)”); *id.* at 16.

<sup>50</sup> Verizon and Verizon Wireless (“Verizon”) Comments at 65 (footnote omitted).

<sup>51</sup> *First Report and Order*, 12 FCC Rcd at 8902 (para. 231).

construction of a new network.”<sup>52</sup> This point is not persuasive, however, especially in light of concerns expressed by the Commission regarding the efficiencies of incumbent LECs’ operations.<sup>53</sup> In any event, if such cost effectiveness does exist, it would enable incumbent LECs to compete for CAF support disbursed through the use of a forward-looking economic cost model or a reverse auction mechanism. Speculative claims regarding cost effectiveness, which do not address or dispel concerns relating to the efficiency of incumbent LECs’ operations, are not a sufficient basis for giving incumbent LECs preemptive access to CAF funding.<sup>54</sup>

Finally, it should be emphasized that the Commission’s ROFR proposal, in addition to deviating from the agency’s own principle of competitive neutrality, has very real consequences for people living in rural and remote areas. Put simply, “[o]ffering the current voice carrier of last resort—presumably a wireline ILEC—a right of first refusal for single-provider CAF funding . . . would harm public safety.”<sup>55</sup> The Commission’s ROFR proposal presumes that, “if only one broadband network is to be funded, it should be the wireline network.”<sup>56</sup> Such an approach would raise serious public safety issues.

---

<sup>52</sup> CenturyLink Comments at 38. *See* AT&T Comments at 99; Independent Telephone and Telecommunications Alliance (“ITTA”) Comments at 25.

<sup>53</sup> *See Notice* at para. 178.

<sup>54</sup> Fairpoint Communications, Inc. (“Fairpoint”), argues in favor of the ROFR proposal because the COLR carrier “is accustomed to meeting legal obligations to serve all at rates deemed affordable.” Fairpoint Comments at 20. Any funding recipient, however, would be subject to identical or similar legal obligations, and the fact that COLR carriers, in Fairpoint’s view, have had practice in meeting such obligations is not a sound basis for giving them exclusive access to CAF funding in their service areas. *See, e.g.*, Mississippi Public Service Commission (“Mississippi PSC”) Comments at 5 (indicating that “the MPSC takes seriously its authority under the Act to scrutinize diligently the application made by each common carrier seeking ETC status. This obligation is reflected in the stringent requirements that the MPSC has assigned to all designated ETCs. These requirements have been clearly delineated in MPSC Orders and checklists associated with such Orders.”); Missouri Public Service Commission Comments at 5, 8-9.

<sup>55</sup> General Communication Inc. (“GCI”) Comments at 37.

<sup>56</sup> *Id.* at 39.

GCI explains that “[t]here is no debating that rural wireless service is critical to public safety. While a landline connection can place an emergency call only from a single location, a mobile wireless service allows that emergency call to be made from anywhere the emergency might be occurring.”<sup>57</sup> GCI concludes that “it is better to support both wired and wireline networks” in Alaska,<sup>58</sup> and U.S. Cellular’s view is that this conclusion applies to rural and remote areas throughout the Nation.

### **3. Various Commenters Agree That the Commission Should Establish an Explicit Funding Mechanism for Mobile Broadband Services.**

U.S. Cellular has argued that one means of ensuring that CAF support mechanisms are competitively neutral would be for the Commission to adopt separate CAF mechanisms for fixed broadband and mobile broadband, and to allocate disbursements between the funds so that a sufficient level of funding is achieved for both fixed and mobile broadband deployment.<sup>59</sup>

CTIA expresses the view that “any new long-term support mechanism must . . . ensure access to ‘reasonably comparable’ mobile broadband services that consumers demand.”<sup>60</sup> T-Mobile stresses that “[h]owever the long-term CAF is structured, it must provide explicit support

---

<sup>57</sup> *Id.* at 37.

<sup>58</sup> *Id.* at 39. GCI also explains that, “[i]n rural Alaska, if support were limited to only one network, public safety concerns would favor a wireless network, which gives the consumer the ability to summon assistance from anywhere within range of a wireless tower, not just from a fixed site.” GCI Comments at 5. GCI concludes that, “[c]learly, the far better alternative would be to recognize that in extremely hard to serve areas, support should be directed to both wired and wireline networks, including both capital and operating costs.” *Id.* at 5-6.

<sup>59</sup> U.S. Cellular Comments at 20.

<sup>60</sup> CTIA Comments 21-22 (footnote omitted). *See id.* at 22 (footnote omitted) (noting that “any reformed mechanism should provide support to both incumbents and competitors based on the most efficient technology and the most efficient use of scarce public funds. Because . . . wireless is often the most efficient technology, mobility must play a key role in the CAF.”).

for mobile networks.”<sup>61</sup> T-Mobile points out that “the Commission’s proposed Mobility Fund is not intended to provide crucial ongoing support for ubiquitous mobile broadband networks and is likely inadequate even for its limited intended purpose of providing necessary start-up support[.]”<sup>62</sup> and that “[t]he long-term CAF should therefore 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>63</sup>

U.S. Cellular’s proposal for two separate funds would achieve the result advocated by CTIA and T-Mobile since it would make funding available directly and explicitly for the deployment and operation of mobile broadband networks, and it would provide a means for ensuring sufficient levels of funding for these purposes. Moreover, whereas Leap Wireless is concerned that wireless competitive ETCs could be disadvantaged if they are “cordoned off and limited to a separate funding mechanism[.]”<sup>64</sup> these concerns would be ameliorated by U.S. Cellular’s proposal that support for the fixed and mobile broadband funds should be structured “in a manner that would adjust the current imbalance in funding for fixed and mobile networks.”<sup>65</sup>

---

<sup>61</sup> T-Mobile Comments at 16 (footnote omitted). *See* American Cable Association (“ACA”) Comments at 5 (indicating that “[f]ixed and mobile broadband services are sufficiently different in nature and price—and their availability in the market is sufficiently different—that the Commission needs to develop separate support programs for each within the CAF”); *id.* at 13-14. ACA also suggests that funding for mobile broadband service should be limited to the Mobility Fund previously proposed by the Commission. *Id.* at 14 (citing *Universal Service Reform, Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716 (2010)). U.S. Cellular opposes such an approach, because the level of funding proposed by the Commission for the Mobility Fund is inadequate, and would be restricted to support for capital expenditures. *See* Mobile Future Comments at 9-10; T-Mobile Comments at 16.

<sup>62</sup> T-Mobile Comments at 16 (footnote omitted).

<sup>63</sup> *Id.* (footnote omitted).

<sup>64</sup> Leap Wireless Comments at 12.

<sup>65</sup> U.S. Cellular Comments at 20. In addition, U.S. Cellular agrees with Blooston Rural Carriers that “the very different sizes, financial resources and investment incentives of RLECs and price cap carriers, as well as the different characteristics and uses of wireless mobile broadband service, require that they have separate HCF support mechanisms[.]” Blooston Rural Carriers Comments at 9, so long as the two funds

Finally, the State Members renew a proposal made by the Joint Board four years ago,<sup>66</sup> arguing that the Commission should refashion its proposed CAF structure into three separate funds—a Provider of Last Resort (“POLR”) Fund, a Mobility Fund, and a Wireline Broadband Fund. U.S. Cellular does not believe the Commission should move in the direction suggested by the State Members, for several reasons.

Unlike U.S. Cellular’s proposal for a separate Mobility Fund, the State Members would restrict their proposed Mobility Fund to grants that would be awarded by state regulatory commissions<sup>67</sup> and that would fund a portion of capital expenditures related to cellular tower construction.<sup>68</sup> Thus, the State Members are not suggesting that any ongoing dedicated portion of overall high-cost funding be set aside to support mobile broadband deployment and operations.

Instead, the State Members’ proposal would deposit the bulk of universal service support in the POLR Fund.<sup>69</sup> Although wireless mobile broadband providers would be eligible to receive POLR support,<sup>70</sup> the funding mechanisms, as proposed by the State Members, would appear to make it unlikely that any substantial portion of POLR Fund support would actually be allocated

---

are structured and funded in a manner that does not disadvantage mobile broadband service providers and their customers.

<sup>66</sup> *High-Cost Universal Service*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477, 20480-83 (paras. 11-23) (J.B. 2007).

<sup>67</sup> State Members Comments at 68.

<sup>68</sup> *Id.* at 68, 71-72. The fund would be capped at \$500 million per year. Funds would be drawn from the reallocation of high-cost support currently disbursed to competitive ETCs. “The program will begin gradually with awards of \$50 million in the year one, \$100 million in the year two, and then increase by \$100 million per year until it reaches the \$500 million final budget in year six.” *Id.* at 68.

<sup>69</sup> *Id.* at 12 (noting that “[f]unding for the two grant programs, Mobility and Wireline Broadband, should not be so large as to prevent sufficient funding for the POLR Fund, on which we place primary reliance to prevent loss of continued voice service and to encourage new broadband investment using private capital”).

<sup>70</sup> *See id.* at 72 (indicating that “Mobility Fund support would affect any POLR support to which the same carrier is entitled. The support would be treated as supplemental revenue [for POLR purposes].”).

to wireless carriers, despite the fact that our citizenry is increasingly dependent upon mobile wireless technology as their service of last resort, *in areas where service quality is sufficient to provide dependable access.*

The State Members indicate, for example, that if the Commission adopts its proposal that only a single ETC per service area should receive support (which the State Members do not oppose), then the State Members recommend that state regulatory commissions “should initially re-designate the incumbent LEC and should confirm that the LEC’s study area remains its service area for universal service purposes.”<sup>71</sup> The State Members note that, “[i]n a very few cases where a CETC has overbuilt [ILEC] facilities over a wide area, the State commission should, on petition, conduct a fact-specific proceeding to determine whether the ILEC or the CETC should be designated as the single supported carrier.”<sup>72</sup>

Thus, the State Members’ proposal would stack the deck against competitive ETCs by preemptively selecting the incumbent LEC as the sole funding recipient in its study area. The manner in which funding recipients would be determined for POLR Fund support does not appear to be competitively neutral, since incumbent LECs would be given preferential treatment with regard to qualifying for receipt of POLR Fund support.

---

<sup>71</sup> *Id.* at 139.

<sup>72</sup> *Id.* The State Members also indicate that:

In the future, a provider using a different technology (such as a wireless carrier or a cable voice provider) might want to be designated as the single supported ETC, thereby disqualifying the ILEC from further support in some or all of its existing service area. On receiving such a petition, the State commission should conduct a fact-specific proceeding to determine whether the ILEC should be disqualified and replaced as the supported ETC. If the challenger is given the sole designation, the State might consider providing funding from a State universal service fund which would similarly be determined in a fact-specific proceeding.

*Id.*

**D. The Commission’s Connect America Fund Mechanisms Should Take Into Account the Importance of Mobile Wireless Broadband Networks for Public Safety.**

One particularly problematic consequence of any failure by the Commission to develop universal service reforms that are competitively neutral, that serve to promote competition in rural and high-cost markets, and that take account of the substantial consumer demand for mobile services, is that the capability of mobile wireless broadband networks to play a key role in meeting public safety needs could be compromised.

The increasingly prominent role that wireless has assumed in meeting the communications needs of Americans<sup>73</sup> has paralleled the increasing importance of 911 services in bringing assistance to people in emergencies.<sup>74</sup> It is widely recognized that mobile wireless networks have become critically important to public safety agencies, first responders, and people who rely on wireless devices in emergencies. For example, 70 percent of all 911 calls—460,000 calls each

---

<sup>73</sup> See Section II.B., *supra*. See, e.g., Stephen J. Blumberg and Julian V. Luke, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January-June 2010*, National Center for Health Statistics, Centers for Disease Control (Dec. 21, 2010), at 1, accessed at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201012.pdf>, cited in *Notice* at para. 8 (indicating that “[m]ore than one of every four American homes (26.6%) had only wireless telephones . . . during the first half of 2010—an increase of 2.1 percentage points since the second half of 2009. In addition, nearly one of every six American homes (15.9%) received all or almost all calls on wireless telephones despite having a landline.”).

<sup>74</sup> See *Framework for Next Generation 911 Deployment*, PS Docket No. 10-255, Notice of Inquiry, 25 FCC Rcd 17869, 17870 (para. 2) (2010) (“*NG911 Notice*”) (citing National Emergency Number Association (“NENA”), 9-1-1 Statistics, accessed at <http://www.nena.org/911-statistics>) (based on data compiled as of December 2008) (indicating that “some form of 911 service is available to 99 percent of the population in 96 percent of the counties in the United States, and 240 million calls are made to 911 in the United States each year”). The Commission has explained that:

“911” is as well known as any popular brand, and is what we routinely teach to children as the way to summon help from police, fire, and ambulance services. In more recent times, 911 has become increasingly important for homeland security, as the means for ordinary citizens—in some ways the true “first responders”—to report suspicious activity or summon emergency assistance for themselves and others in times of natural or man-made disasters.

*Id.*

day—are made from mobile phones.<sup>75</sup> As Chairman Genachowski observed earlier this month, “[c]ommunications technology—and in particular mobile broadband—has the potential to revolutionize emergency response and save lives.”<sup>76</sup> And, in rural and remote areas, medical assistance, police protection—even survival—in emergency situations can depend on the number of signal strength bars on your cellular device.

The Commission, having recognized that mobile broadband networks can play a central role in expanding and improving the capabilities of communications facilities in emergencies, is working diligently to promote and facilitate the development of Next Generation 911.<sup>77</sup> The agency also has acknowledged the importance of cellular towers in maintaining and enhancing the ability of mobile wireless networks—including wireless broadband networks—to meet public safety needs in emergencies, finding that “the deployment of facilities without unreasonable delay is vital to promote public safety, including the availability of wireless 911, throughout the nation. The importance of wireless communications for public safety is critical, especially as consumers increasingly rely upon their personal wireless service devices as their primary method of communication.”<sup>78</sup>

---

<sup>75</sup> See FCC Fact Sheet, *21st Century 9-1-1*, accessed at <http://www.fcc.gov/pshs/services/911-services/>. In the *Notice*, the Commission estimated that approximately 50 percent of all 911 calls are made from mobile handsets. *Notice* at para. 4. Even taking this lower estimate into account, approximately 330,000 mobile 911 calls are made each day.

<sup>76</sup> FCC Chairman Julius Genachowski, Prepared Remarks, Personal Localized Alerting Network Launch Event, New York, N.Y. (May 10, 2011), at 1.

<sup>77</sup> Next Generation 911 “relies on IP-based architecture rather than the PSTN-based architecture of legacy 911 to provide an expanded array of emergency communications services that encompasses both the core functionalities of legacy E911 and additional functionalities that take advantage of the enhanced capabilities of IP-based devices and networks.” *NG911 Notice*, 25 FCC Rcd at 17877 (para. 18).

<sup>78</sup> *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165, Declaratory Ruling, 24 FCC Rcd 13994, 14008 (para. 36) (2009).

The Commission also has expressed its agreement with NENA’s conclusions regarding the importance of cellular towers to public safety:

Calls must be able to be made from as many locations as possible and dropped calls must be prevented. This is especially true for wireless 9-1-1 calls which must get through to the right Public Safety Answering Point . . . and must be as accurate as technically possible to ensure an effective response. Increased availability and reliability of commercial and public safety wireless service, along with improved 9-1-1 location accuracy, *all depend on the presence of sufficient wireless towers.*<sup>79</sup>

Given the costs involved in constructing and maintaining cellular towers,<sup>80</sup> it continues to be important for the Commission to fashion universal service policies that facilitate the deployment of cellular towers in rural and high-cost areas—and this importance is heightened by the dependence of public safety agencies and first responders on the sufficient deployment of towers, and by the role that mobile wireless broadband can play with respect to public safety.<sup>81</sup>

---

<sup>79</sup> *Id.* (quoting NENA Comments, WT Docket No. 08-165, (filed Sept. 29, 2008), at 1-2)) (emphasis added).

<sup>80</sup> *See, e.g.*, Ex Parte Letter from Brian M. Josef, Assistant Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245 (filed Mar. 17, 2011), Attachment, Charles L. Jackson, “Observations on Pole Access for Wireless Carriers,” (Mar. 17, 2011) at 1 (indicating that “[c]reating new cell sites brings with it several problems. First, cell sites are expensive facilities requiring installation of electronics, purchase of real estate or payment of rent to a landlord, and a backhaul connection to the carrier’s network. Second, complying with and obtaining the necessary federal, state, local, environmental and land-use approvals and building the facilities require a significant expenditure of time, effort and money.”).

<sup>81</sup> *See* RTG Comments at 7 (footnote omitted) (pointing out that “[t]he Commission must not lose sight of the demonstrated public safety benefits of basic mobile service and E911 location technology. 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. Rural wireless carriers will play a critical role in supporting rural public safety officials.”); State Members Comments at 26 (emphasis added) (explaining that “[t]he demands for mobile services, including demands for wireless broadband, have grown sufficiently that mobile services are today *essential to the . . . public safety of this nation*. Wireless telecommunications services are no longer a luxury in our society, but are a complementary necessity for an overwhelming majority of consumers for public health [and] safety . . . .”); Letter from Representative Harry Klock, Chairman, Federal Relations, Energy and Telecommunications Committee, Montana House of Representatives, to Chairman Julius Genachowski, FCC (filed Apr. 27, 2011) (“Representative Klock Letter”), at 1

The Commission’s universal service and public safety policies currently have an opportunity to meet at an important crossroads. As the Commission pursues universal service reform, President Obama has undertaken an initiative to deploy a nationwide wireless public safety network,<sup>82</sup> the Commission has designated Long Term Evolution (“LTE”) as the data standard for the network,<sup>83</sup> and there is a possibility “that Congress could allocate 10 MHz of spectrum on the 700 MHz band to public safety agencies by the end of the year.”<sup>84</sup>

The Commission’s new CAF mechanisms should be designed in a manner that meshes with the goal of establishing a nationwide mobile public safety network. In order to ensure that all rural, remote, and high-cost areas are provided sufficient access to this network, universal service policies should facilitate the continued deployment and maintenance of cellular towers. Aiding cellular tower construction and operation through the distribution of CAF funding would be cost effective, because the utilization of these towers by public safety agencies will be an efficient way to accomplish ubiquitous deployment of the public safety network. Access to existing towers in rural areas will greatly stretch available public funds needed to expand a nationwide mobile broadband public safety network to the greatest possible area throughout the Nation. On the other hand, if universal service policies fall short in providing sufficient support for cellular

---

<sup>82</sup> See President Barack Obama, Remarks by the President on the National Wireless Initiative in Marquette, Mich., (Feb. 10, 2011), at 9-10 (unpaginated) (emphasis added) (indicating that “[w]e want to invest in the next generation of high-speed wireless coverage for 98 percent of Americans. . . . We’re going to accelerate breakthroughs in health and education and transportation, and deploy *a new nationwide, interoperable wireless network for first responders*—making sure they’ve got the funding and the frequencies that they were promised and that they need to keep us safe.”).

<sup>83</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 26 FCC Rcd 733 (2011).

<sup>84</sup> Brad Reed, “LTE-Based Public Safety Network Could Finally Become Reality,” NETWORK WORLD, May 10, 2011, accessed at <http://www.networkworld.com/news/2011/051011-psa-dblock.html?hpg1=bn>.

tower construction, it could become considerably more difficult and costly to realize President Obama's initiative.

The inter-relationship between mobile wireless broadband and public safety underscores the importance of establishing universal service transition rules, as well as new support mechanisms, that facilitate rather than impair the continuing deployment of mobile wireless broadband in rural America. As U.S. Cellular has detailed in its Comments, and, as numerous other commenters have illustrated, several critical aspects of the Commission's proposals are not optimum choices with respect to mobile wireless broadband deployment, with potentially dire consequences for public safety.<sup>85</sup> U.S. Cellular urges the Commission to consider adjustments to these proposals that will better serve the Commission's and the Nation's universal service and public safety goals.

Finally, it should be emphasized that President Obama has called for a nationwide, *interoperable* wireless network for first responders. U.S. Cellular is concerned that universal service policies tailored to effectively enable the deployment of cellular towers in rural areas, and thus contribute to the President's initiative for a nationwide public safety network (if the initiative moves forward based upon enabling legislation enacted by Congress), could be thwarted if the

---

<sup>85</sup> GCI has explained that:

ILEC right of first refusal and other proposals to limit high cost support to only one provider would . . . jeopardize public safety in rural Alaska. . . . GCI's deployment of rural digital wireless service has greatly improved public safety—allowing rural villagers to reach emergency assistance from when they are away from their wireline phones. A one-supported-network rule—which in rural Alaska would likely mean only one network—combined with an ILEC right of first refusal would ensure that rural Alaska permanently lacks modern wireless service and would limit the ability of rural Alaskans to summon help from wherever they need it.

GCI Comments at 5. The problems outlined by GCI are not unique to Alaska. Universal service policies and mechanisms adopted by the Commission that hinder or eliminate access to mobile wireless broadband

Commission fails to ensure the establishment of an interoperable broadband capability for public safety. A key to interoperability is the development of full-spectrum devices that work in the 700 MHz band and that can be utilized by public safety users.

The Broadband Plan recommended a blueprint for achieving this result,<sup>86</sup> and U.S. Cellular argued, more than a year ago, that, “[i]f the Commission is truly committed to advancing public safety, then assuring that all mobile devices have the capability to operate across the entire broadband portion of the 700 MHz band is a critical step that must be taken now.”<sup>87</sup> Now—a year later—U.S. Cellular renews its call for action, believing that steps the Commission takes in this proceeding, coupled with actions in the pending RM No. 11592 rulemaking proceeding to prevent any interference with implementation of an interoperable broadband public safety network, will be instrumental in achieving the President’s and the Commission’s public safety goals.

**E. Numerous Commenters Are Critical of the Commission’s Reverse Auction Proposal, and the Record Also Reflects Support for Using a Cost Model To Disburse Ongoing Connect America Fund Support.**

Commenters question whether the Commission has statutory authority to adopt its proposed single-winner reverse auction mechanism, and also argue that the proposal is not consistent with statutory mandates and requirements. Numerous commenters also contend that, even if the Commission were found to have authority under the Communications Act to use reverse auctions to distribute Fund support, the Commission should abandon its proposal for a myriad of policy reasons. There also is support in the record for U.S. Cellular’s proposal that the Commis-

---

infrastructure and services would adversely affect the ability of residents in rural and high-cost areas throughout the Nation to make 911 emergency calls.

<sup>86</sup> See NBP at 315-16.

<sup>87</sup> U.S. Cellular Comments, RM No. 11592 (filed Mar. 31, 2010), at 13.

sion instead should develop and rely upon a forward-looking economic cost model as the basis for distributing support.

**1. Commenters Suggest That the Commission’s Reverse Auction Proposal Is Not Consistent with the Commission’s Statutory Mandate.**

U.S. Cellular has presented various arguments in support of its position that the Commission lacks any statutory authority to adopt a single-winner reverse auction mechanism.<sup>88</sup> Several commenters have taken similar positions, demonstrating that the Commission’s proposal is not consistent with the Communications Act or the 1996 Act.

RCA, for example, cautions that “the Commission should seek express authority from Congress before distributing USF support based on a reverse-auction mechanism”<sup>89</sup> because “where Congress intended for the Commission to rely on competitive bidding mechanisms, it has provided the Commission with explicit auction authority.”<sup>90</sup> RCA argues that Section 214 the Act provides state regulatory commissions with a role in “designat[ing] eligible telecommunications carriers to receive USF support based on their satisfaction of enumerated criteria and a more general public interest analysis[,]”<sup>91</sup> creating the need for congressional action to supplant the Section 214 process with a reverse auction mechanism.

MTPCS and Viaero Wireless point out that, since a reverse auction mechanism would bar all ETCs, other than the auction winners, from receiving any universal service support, this would lead to a situation in which non-winning ETCs would still be required to make contributions to fund the Commission’s universal service mechanisms even though they would be shut

---

<sup>88</sup> U.S. Cellular Comments at 21-27.

<sup>89</sup> RCA Comments at 9.

<sup>90</sup> *Id.* (footnote omitted).

<sup>91</sup> *Id.* (footnote omitted).

off from receiving support. MTPCS and Viaero Wireless conclude this would be an inequitable and discriminatory contribution scheme in violation of Section 254(d) of the Act.<sup>92</sup>

U.S. Cellular agrees with NASUCA's concern that the proposed reverse auction mechanism is not competitively neutral. NASUCA notes that the Commission defends its proposal as being competitively neutral because, in the Commission's view, it would not unfairly advantage one provider over another or one technology over another,<sup>93</sup> but NASUCA explains that "[e]nsuring that the broadband program is competitively neutral goes beyond establishing a selection process for determining which eligible applicants or bidders receive funding."<sup>94</sup>

NASUCA is correct: The Commission's funding mechanism, in order to be considered competitively neutral, must promote, rather than cut off, competition *in the marketplace*. A bidding process that purportedly is competitively neutral is not a substitute for marketplace competition. As GVNW explains, the reverse auction mechanism is anti-competitive, under the terms of the 1996 Act, "at least with respect to a customer's access to competitive alternatives."<sup>95</sup> GVNW explains that, under the Commission's proposed reverse auction mechanism, "carriers are only on an equal basis once every bidding cycle. If an existing rural wireline carrier were to be unsuccessful in a reverse auction proceeding, it is unclear as to how the Commission would intend to address confiscation issues."<sup>96</sup>

---

<sup>92</sup> MTPCS and Viaero Wireless Comments at 38 (citing Cellular South, Inc., N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, RCA, Westlink Communications, LLC, Comments, WT Docket No. 10-208 (filed Dec. 16, 2010), at 17).

<sup>93</sup> NASUCA Comments at 36 (citing *Notice* at para. 82).

<sup>94</sup> *Id.*

<sup>95</sup> GVNW Consulting, Inc. ("GVNW"), Comments at 18.

<sup>96</sup> *Id.* at 18-19 (footnote omitted).

U.S. Cellular cannot agree with the Florida PSC’s argument that competitive neutrality should be interpreted to require only “that all eligible carriers have an equal opportunity to compete for support” in a reverse auction.<sup>97</sup> Single-winner reverse auctions are inconsistent with this Commission’s well considered finding that universal service and *marketplace* competition are not mutually exclusive:

Commenters who express concern about the principle of competitive neutrality contend that Congress recognized that, in certain rural areas, competition may not always serve the public interest and that promoting competition in these areas must be considered, if at all, secondary to the advancement of universal service. We believe these commenters present a false choice between competition and universal service. *A principal purpose of section 254 is to create mechanisms that will sustain universal service as competition emerges.*<sup>98</sup>

These legal issues surrounding the reverse auction mechanism should give the Commission reason to be cautious as it weighs the merits of proceeding with its proposal. In any event, as U.S. Cellular discusses in the next section, the record presents the Commission with a daunting list of policy reasons supporting the conclusion that the Commission’s reverse auction mechanism should be abandoned.

**2. The Record Presents a Strong Case That Reverse Auctions Should Not Be Used as a Mechanism for Disbursing Connect America Fund Support.**

The Commission may be convinced that the auction mechanism will slice back the level of distributed universal service support, and will also do a creditable job of advancing the Commission’s stated principle of “[m]oderniz[ing] and refocus[ing] USF . . . to make affordable

---

<sup>97</sup> Florida Public Service Commission (“Florida PSC”) Comments at 11.

<sup>98</sup> *First Report and Order*, 12 FCC Rcd at \8802-03 (para. 50) (footnote omitted) (emphasis added).

broadband available to all Americans”<sup>99</sup> and of making sure that “[u]nserved communities across the nation [are not] left behind.”<sup>100</sup>

But now that the Commission appears to be in the home stretch of its deliberations regarding the most suitable CAF mechanisms, it should pause to take a closer look at the soundness of its assumptions concerning reverse auctions. The record demonstrates convincingly that the proposed reverse auction mechanism is riddled with policy problems. There is a strong basis for concluding that, if the Commission is committed to bringing affordable broadband to all Americans, it should be betting on a different horse.

As a threshold matter, the Rural Associations remind the Commission in their comments that, “[o]ver the past decade, substantial evidence has been provided in the record of this and other proceedings demonstrating the harm that would accrue to rural consumers and the carriers that serve them if reverse auctions were implemented.”<sup>101</sup> NASUCA puts the matter succinctly: “[R]everse auctions are fundamentally flawed . . . .”<sup>102</sup> In the following paragraphs, U.S. Cellular summarizes some of “the pitfalls and concerns regarding reverse auctions”<sup>103</sup> that are presented by commenters responding to the *Notice*..

*First*, reverse auctions are untested. As TDS explains, “[o]rienting the USF to an explicit focus on broadband presents a significant challenge in itself. The Commission should not make

---

<sup>99</sup> *Notice* at para. 10.

<sup>100</sup> *Id.*

<sup>101</sup> Rural Associations Comments at 76.

<sup>102</sup> NASUCA Comments at 84.

<sup>103</sup> Rural Associations Comments at 76.

that challenge greater yet by experimenting in untested forms of regulation for the carriers that today serve as providers of last resort in rural and other high-cost areas.”<sup>104</sup>

In addition, MTPCS and Viaero Wireless explain that the use of reverse auctions in other countries has little relevance with respect to the Commission’s proposed use of the mechanism in the context of distributing universal service support, and U.S. Cellular agrees with their observation that “[t]he Commission has not presented any analysis in the *Notice*, nor is there any credible record in prior proceedings, demonstrating that reverse auctions can be made to work effectively, fairly, and efficiently as a means of disbursing CAF support and facilitating broadband deployment[,]”<sup>105</sup> and with their conclusion that “the Commission’s proposal appears to be nothing more than a roll of the dice.”<sup>106</sup>

*Second*, according to the State Members, there is a likelihood that no bids would be made for many service areas that would be subject to the auction mechanism. Among the reasons given by the State Members in support of this view is that the Commission proposes to set a reserve price “above which no bid would be accepted[,]”<sup>107</sup> and auction winners would be required to make long-term commitments to adhere to comprehensive COLR requirements.<sup>108</sup>

*Third*, the reverse auction mechanism, as proposed by the Commission, would not channel sufficient support to areas with the highest costs.<sup>109</sup> As ITTA explains, the Commission’s

---

<sup>104</sup> TDS Telecommunications Corp. (“TDS”) Comments at 3-4.

<sup>105</sup> MTPCS and Viaero Wireless Comments at 31.

<sup>106</sup> *Id.*

<sup>107</sup> State Members Comments at 78 (footnote omitted) (citing *Notice* at para. 343).

<sup>108</sup> *Id.* (citing *Notice* at para. 313).

<sup>109</sup> The Commission indicates that its proposed Phase I reverse auctions would be designed to “identify and target funding to those unserved areas that could be served *at the lowest cost* (i.e., the lowest level of public support).” *Notice* at para. 267 (emphasis added). CenturyLink emphasizes the importance of this issue:

proposed auction design virtually guarantees that support for broadband deployment will be funneled to areas with the *lowest* costs. “Under the Commission’s proposed auction mechanism, only carriers with the *lowest per-unit bids* would receive funding. As a result, funding would be diverted to lower-cost areas in the country, leaving higher-cost carriers unable to continue building out their networks, and further delaying overall broadband deployment.”<sup>110</sup>

*Fourth*, even though the Commission assumes that reverse auctions would help to slash the size of the USF,<sup>111</sup> there is a risk that the mechanism would in fact result in inefficient use of CAF support. NASUCA explains the problem:

[T]his auction approach [proposed by the Commission] is not an “auction” at all. Rather, the method simply groups projects in different geographic areas from least to most expensive, and will draw a cut-off line based on the amount of funds that are available. As a result, *the relationship between the outcome and economic efficiency is unknown*. It is possible that “low cost” but economically inefficient projects will trump “high cost” but economically efficient projects. Because there is no bidding competition on any specific geographic area, the Commission will

---

[R]emote areas of the country that cannot economically sustain broadband service should receive sufficient CAF support to make it economically sustainable. Providing such an opportunity is also essential to create a financial environment that will attract the billions of dollars in private investment capital necessary to construct networks capable of providing the broadband services the Commission seeks.

CenturyLink Comments at 20 (footnote omitted).

<sup>110</sup> ITTA Comments at 17 (emphasis in original) (footnote omitted). *See* NASUCA Comments at 66 (arguing that “the bidding process envisioned in the NPRM will only result in the ‘low hanging fruit’ being targeted for support. From a public policy perspective, this is exactly backward. It is reasonable to expect that the lower cost areas will be more likely to eventually generate interest from either ILECs or cable companies that decide the time is finally ripe to upgrade or expand their networks, or from some other source of supply that does not require government support.”); RICA Comments at 13 (explaining that “the proposal to auction the one time support on a nationwide basis necessarily means that the lowest cost to serve locations will win the auction and the areas least likely to receive broadband service without USF support will be even further behind the eight ball”).

<sup>111</sup> *See Notice* at para. 284 (footnote omitted) (indicating that a reverse auction mechanism “should allow the market to identify the lowest level of public support needed to deploy broadband in areas unserved by broadband today”); Irene S. Wu, *Maximum Impact for Minimum Subsidy: Reverse Auctions for Universal Access in Chile and India*, FCC Staff Working Paper 2 (Oct. 2010) at 1 (explaining that the objective of a reverse auction mechanism “is to use competitive forces to minimize the government subsidy required to achieve public objectives”).

be left taking the applicant's word that [its] project is a good one relative to other projects.<sup>112</sup>

The *Notice* makes no attempt to address, or even identify, this problem. If the Commission opts to use a reverse auction mechanism, it should explain how the principles of Section 254 of the Act would be served by directing funding to inefficient carrier operations in low-cost areas, while withholding funding from efficient carrier operations in high-cost areas.

*Fifth*, an additional reason that the proposed auction mechanism is not competitively neutral<sup>113</sup> is that the auction rules could (either accidentally or intentionally)<sup>114</sup> eliminate participation by certain service providers. "The likelihood that this will occur . . . is significantly increased by using inter-modal bidding and by allowing bidders to aggregate service areas."<sup>115</sup>

*Sixth*, consumers would be harmed by the use of a reverse auction mechanism to disburse CAF support. The Commission cannot escape the fact that, if its top priority is shrinking the size of the USF, then consumers in rural America will be worse off than they would be otherwise. U.S. Cellular agrees with USA Coalition's assessment that "[s]ingle winner reverse auctions represent a prime example of a measure that focuses on controlling fund size at the ultimate expense of consumers in rural and high cost areas as well as . . . several of the Act's universal service provisions."<sup>116</sup>

In addition, by proposing to use *single-winner* reverse auctions, the Commission would ensure that further harm will be visited upon rural consumers. As NASUCA explains, with "only

---

<sup>112</sup> NASUCA Comments at 59 (emphasis added).

<sup>113</sup> See Section E.1., *supra*, for a further discussion of competitive neutrality and the reverse auction proposal.

<sup>114</sup> State Members Comments at 79.

<sup>115</sup> *Id.*

<sup>116</sup> USA Coalition Comments at 8 (footnote omitted).

one supported service provider in each geographic area, the supported service will be provided on a monopoly basis.”<sup>117</sup> The result would be that “retail prices are not likely to reflect an economically efficient level, and the objectives of the Act and the National Broadband Plan with regard to affordability are not likely to be supported.”<sup>118</sup>

*Seventh*, the Commission’s proposed mechanism would produce competitive harms. This should not come as a surprise, since a single-winner reverse auction mechanism, on its face, is not designed to promote competitive forces in local telecommunications markets. USA Coalition does not exaggerate in concluding that “single winner reverse auctions would destroy not only existing competition in supported areas, but also limit the possibility of competitive entry to challenge the *de facto* monopolist, thereby denying the area’s consumers the benefits of a competitive marketplace for the supported services.”<sup>119</sup>

A further competitive harm that would result from single-winner reverse auctions is that they would likely produce even further telecommunications industry consolidation. RTG explains one way in which this would likely occur: “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.”<sup>120</sup>

---

<sup>117</sup> NASUCA Comments at 64. See Section II.F., *infra*, for a further discussion of the single-winner auction issue.

<sup>118</sup> NASUCA Comments at 64. See RCA Comments at 17 (observing that “[t]he fact that the monopoly would be government-created would not obviate the characteristic harms that arise from monopoly power, including decreased innovation, higher prices, and lower quality”); USA Coalition Comments at 12 (indicating that “[t]he award of support through a reverse auction . . . most likely would result in higher retail prices for consumers in rural areas than they would experience if multiple ETCs were permitted to compete for ‘portable’ support on an ongoing basis”).

<sup>119</sup> USA Coalition Comments at 10. See MTPCS and Viaero Wireless Comments at 33 (warning that “[p]roviding the single [auction] winner with a dominant position in the marketplace would suppress competitive entry, undermine pricing discipline that is a product of competitive markets, and reduce incentives for technological innovation”).

<sup>120</sup> RTG Comments at 14. Several commenters express concern that the proposed single-winner auction mechanism would encourage “low-ball” bidding, with attendant anti-competitive effects. See, e.g.,

RTG concludes that this “will result in further concentration of the wireless industry and less and less choice for consumers, which in turn will result in fewer checks on the prices small market consumers pay for wireless services.”<sup>121</sup>

In addition, the large national carriers could gain further competitive advantage if the Commission were to permit combinatorial bidding in its reverse auctions. The Indiana URC explains that “this [proposed] process may result in skewing the bidding process against many of the smaller RLECs that today depend on USF to provide affordable telephone service, as well as smaller, midsize, or regional wireless providers, in favor of large wireless providers, which are rapidly consolidating market share.”<sup>122</sup>

*Eighth*, the Commission would likely find it difficult to guard against these various anti-competitive effects that would be produced by its reverse auction mechanism. MTPCS and Viaero Wireless point out that, while “[a] possible way to offset these likely harms to competition—and to consumers—would be for the Commission to get back into the regulation business[.]”<sup>123</sup> the Commission, “[t]o counteract the incentives of auction winners who have been given a dominant market position in their service areas, . . . would need to police rates, service quality, dis-

---

MTPCS and Viaero Wireless Comments at 33; RCA Comments at 17; USA Coalition Comments at 8-9. *See also* Ex Parte Letter from Steven K. Berry, RCA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket No. 01-92 (filed May 16, 2011) at 1 (expressing “concerns that ‘zero-bids’ by larger carriers [in CAF reverse auctions] could effectively wipe out competition”).

<sup>121</sup> RTG Comments at 14. *See* USA Coalition Comments at 14 (arguing that “[a]s a smaller and smaller group of carriers are able to consolidate more and more market share through acquisition, any mechanism that makes it far easier for larger carriers to gain an even greater competitive advantage—like single-winner reverse auctions—should be rejected outright”).

<sup>122</sup> Indiana Utility Regulatory Commission (“Indiana URC”) Comments at 6.

<sup>123</sup> MTPCS and Viaero Wireless Comments at 33.

criminary pricing, interconnection, resale, and other practices that otherwise would be regulated by the forces of competitive markets.”<sup>124</sup>

*Ninth*, the State Members argue that, contrary to the Commission’s apparent assumptions, winning bids would “not necessarily be based on the winning bidder’s costs[,]”<sup>125</sup> and point out that “[t]he *Broadband Availability Gap* paper candidly admitted that auction bid prices are likely to be the ‘second lowest’ price in an area. This single change increased the national ‘broadband availability gap’ from \$8.0 billion to \$23.5 billion.”<sup>126</sup>

*Tenth*, the reverse auction mechanism would likely make private investment arrangements more difficult to obtain for broadband networks in rural areas. The Rural Associations explain the problem:

A reverse auction undermines the normal incentives for investment in high-cost, sparsely populated areas because there is no assurance that the provider will have a reasonable opportunity to recover initial or on-going costs. A provider in such a situation would be loath to make investments necessary to enable evolving services, especially if the auction term is near its end.<sup>127</sup>

MTPCS and Viero Wireless amplify the concerns expressed by the Rural Associations, arguing that “[p]otential investors, who otherwise would be willing to invest in carriers’ operations because those operations would also be funded in part through CAF mechanisms, would view their investments as more risky in a reverse auction regime because of the funding uncertainties that reverse auctions would introduce.”<sup>128</sup>

---

<sup>124</sup> *Id.* (footnote omitted). See GVNW Comments at 21 (indicating that the enforcement of service quality standards could be a difficult task for the Commission, and asking how the Commission could effectively monitor an auction winner’s performance).

<sup>125</sup> State Members Comments at 80.

<sup>126</sup> *Id.* at 80-81 (footnote omitted) (citing *Broadband Availability Gap Paper* at 1, 38).

<sup>127</sup> Rural Associations Comments at 77 (footnote omitted). See ITTA Comments at 23.

<sup>128</sup> MTPCS and Viero Wireless Comments at 32. See GVNW Comments at 20:

*Eleventh*, bidders' uncertainty regarding the "business case" for participating in the reverse auctions (caused by, *e.g.*, "future debt cost, take-rates, . . . average revenue per unit[,] . . . [and] signal propagation"<sup>129</sup> (in the case of wireless providers)) would lead a rational bidder "either to add a risk premium to its bid or refrain from bidding altogether."<sup>130</sup> Either result—inflated bids or reduced auction participation—would cripple the effectiveness of the Commission's reverse auction mechanism.

And, *twelfth*, as RTG points out, "reverse auctions will result in second-class service for wireless consumers in high-cost, rural areas."<sup>131</sup> The Rural Associations explain that "[r]everse auctions reward bidders who offer to provide service at the lowest cost[,] "<sup>132</sup> resulting in "a 'race to the bottom' [that] neither serves notions of efficiency nor the statutory principles of universal service."<sup>133</sup> The Nebraska PSC points out that "the competitive bid process will lock consumers into receiving a certain level of service throughout the bid period with no incentive to improve

---

Auction winners will have the incentive to restrict deployment of new technology to minimize costs. This is especially true where auctions are conducted only once per area, and where only [capital expenditures are] funded, as in the interim CAF proposal. Where multiple periodic auctions are contemplated, such as in the permanent CAF program, deliberate underinvestment may emerge toward the end of an auction term, when the supported provider is faced with the prospect of either losing ongoing support and thus stranding investment or transferring assets to a new auction "winner." This risk of stranded investment would affect not only providers, but also investors, whose willingness to support a long-term rural business model would be compromised, driving up the costs of capital and deployment.

<sup>129</sup> State Members Comments at 82.

<sup>130</sup> *Id.*

<sup>131</sup> RTG Comments at 14. *See* USA Coalition Comments at 10 (suggesting that, in the absence of competition, there would be a significant incentive for bidding parties to take a less-is-better approach with respect to service offerings and service quality).

<sup>132</sup> Rural Associations Comments at 76.

<sup>133</sup> *Id.*

network quality or service beyond the minimum expectations.”<sup>134</sup> The Rural Associations express concern that “overzealous and unscrupulous bidders may be motivated to submit bids that are far lower than what is actually needed to provide sustainable, affordable services for the long-term. At best, quality of service deteriorates and end-user rates increase; at worst, service disappears.”<sup>135</sup>

Proponents of the Commission’s reverse auction proposal do little to illustrate or explain the potential advantages of the proposal. XO Communications, for example, trumpets its view that “[t]here is a growing swell of support for using a competitive bidding process . . . to distribute High Cost funds[,]”<sup>136</sup> but it provides no basis for this claim. It may be more accurate to say that the swell is in the opposite direction.

Commenters favoring the proposal find its potential for controlling the size of CAF support mechanisms to be its most attractive characteristic. Verizon, for example, supports the proposal because it would “break[ ] high cost funding from the unsustainable cycle of providing ever-increasing support to make rural carriers whole as their per-line costs increase—a trend that is irreversible as these carriers lose lines.”<sup>137</sup>

In U.S. Cellular’s view, this is not a sufficient reason for adopting a reverse auction mechanism, especially in light of its substantial disadvantages. Further, there are other means of ad-

---

<sup>134</sup> Nebraska Public Service Commission (“Nebraska PSC”) Comments at 24.

<sup>135</sup> Rural Associations Comments at 76-77 (footnote omitted).

<sup>136</sup> XO Comments at 43.

<sup>137</sup> Verizon Comments at 59. *See* New York Public Service Commission (“New York PSC”) Comments at 6 (arguing that “[t]he use of a competitive bidding mechanism for awarding USF high cost support may result in cost reduction: the risk of excessive administrative costs in conducting competitive bidding is outweighed by the need to make every effort to reduce subsidies to the lowest rate that will support continued universal service”); NTCH Comments at 3; Ohio Public Utilities Commission (“Ohio PUC”) Comments at 43 (expressing the view that “a competitive bidding process to determine recipients of ongoing CAF support is appropriate and would lead to a reduction in the size of the CAF”).

addressing the level of support that should be available to rural incumbent LECs during and after the transition to CAF, which would address the issues raised by Verizon while avoiding the need to adopt a reverse auction mechanism. The Commission, for example, in presenting its ROFR proposal in the *Notice*, seeks comment on whether to use a cost model to determine the level of ongoing support for those rural LECs that decide to exercise the ROFR option and become the sole recipients of CAF support in their service areas.<sup>138</sup>

Verizon makes the general assertion that “there is no reason a properly structured competitive bidding mechanism cannot work well to produce better results in the universal service context[,]”<sup>139</sup> and other commenters make similar claims. The California PUC, for example, states its general support for the Commission’s “market-based approach,”<sup>140</sup> CompTel claims that “using a competitive bidding process to select that provider would help ensure that the funding would go to the most efficient provider[,]”<sup>141</sup> and NCTA encourages the Commission to “adopt its proposal to distribute Connect America Fund support through a competitive bidding process.”<sup>142</sup> None of these parties, however, presents any support for its assertions regarding the benefits that reverse auctions would bring to the Commission’s universal service program.

Finally, XO makes a number of assertions in support of the reverse auction proposal, all of which are notable for their lack of relevance or persuasiveness. XO claims, first, that the auction mechanism is the most efficient means of fixing the lowest support amount and identifying

---

<sup>138</sup> See *Notice* at para. 432.

<sup>139</sup> Verizon Comments at 59.

<sup>140</sup> California Public Utilities Commission (“California PUC”) Comments at 3.

<sup>141</sup> CompTel Comments at 31. See *Ad Hoc Comments* at 7.

<sup>142</sup> National Cable and Telecommunications Association (“NCTA”) Comments at 9.

“the most deserving recipient.”<sup>143</sup> If XO equates the most “deserving” recipient with the recipient that can operate most efficiently in using CAF support to deploy and operate a broadband network, then NASUCA has suggested (as discussed above) that such a claim may not be credible. If the Commission provides support to an auction winner operating in a service area with relatively lower costs (and the Commission’s auction mechanism is designed to promote this result), then there is no way of determining the extent to which the auction winner’s low bid reflects its ability to operate efficiently, whether it merely reflects its plan to operate in a lower cost area, or whether it has an anti-competitive motive to drive out competition.

XO’s claim that the reverse auction mechanism would be effective in determining the lowest support amount should not be treated as a dispositive basis for adopting the mechanism. It cannot be plausibly suggested that it would be responsible public policy to select the reverse auction mechanism because of its potential for reducing CAF distribution levels, without also ensuring that it has other attributes that will advance universal service policies, and that it does not have attributes that would be detrimental to these policies.

XO attempts to support its argument regarding the ability of the reverse auction mechanism “to identify the provider that will support the program at the lowest cost”<sup>144</sup> by positing a scenario in which carriers would compete against each other for support in the same service area, thus producing a “market” that would generate a lowest-cost bid.<sup>145</sup> This scenario may not be relevant, however, because the auction design proposed by the Commission makes it possible for

---

<sup>143</sup> XO Comments at 43-44. XO also notes that “most importantly, when programs are awarded to the lowest bidder, the burden on other consumers is minimized.” *Id.* at 44.

<sup>144</sup> *Id.* at 44.

<sup>145</sup> *Id.*

participants in the same auction to bid for support in different geographic areas. The Commission explains that:

All bids, across all areas, would be compared against all other bids, and would be ordered from lowest-price-per-unit bid to highest. . . . Support would be allocated first to the bidder making the lowest (adjusted) per-unit bid, and then to bidders with the next lowest per-unit bids in turn, until the running sum of support funds for the winning bidders exhausted the money available in the CAF.<sup>146</sup>

As NASUCA has explained, in such an auction it would be impossible to determine whether the winning bid to serve a particular service area reflects the most efficient level of support for that area.<sup>147</sup> In addition, Fairpoint argues that the Commission should take the opposite approach by targeting “the earliest available funding at those areas that currently are hardest to serve, even with current levels of funding intact.”<sup>148</sup> Fairpoint explains that, “[i]n this way, the Commission could promote availability and adoption of broadband where the market is least likely to do so, rather than devoting scarce resources to areas where the market is more likely to provide a solution.”<sup>149</sup>

XO’s second claim is that “reverse auctions can encourage new competitors to enter a service market, potentially increasing competition overall in the nation’s marketplace and spurring innovation.”<sup>150</sup> This assertion warrants an explanation, which XO does not provide. It is

---

<sup>146</sup> *Notice* at para. 286 (footnote omitted).

<sup>147</sup> Cox favors use of a funding mechanism in which “providers will not just be bidding against competitors in the areas they choose to serve, but against all providers that are seeking funding. This way, the most efficient proposals will be funded, which is the best way to maximize the benefits derived from a limited fund.” Cox Comments at 7. Cox, however, does not provide any explanation that could counter NASUCA’s analysis that the Commission’s proposed auction mechanism would make it extremely difficult to determine whether funds are being awarded to the most efficient service provider.

<sup>148</sup> Fairpoint Comments at 16.

<sup>149</sup> *Id.*

<sup>150</sup> XO Comments at 44.

more reasonable to conclude that a single-winner reverse auction would erect a substantial barrier to market entry.

XO's next argument is that reverse auctions would be more transparent than current disbursement processes, because "the competitive bid process itself . . . is plain for the public and all participants to see."<sup>151</sup> Although XO does not directly criticize the level of transparency in the manner in which high-cost disbursements currently are made to ETCs by the Universal Service Administrative Company ("USAC"), U.S. Cellular would agree that USAC's methodologies and procedures for making disbursements can sometimes be opaque, and that a more complete explanation of the inner workings of USAC's disbursement processes would benefit both the public and fund recipients. But these are issues that the Commission can address outside the framework of deciding upon the most effective mechanism for disbursing CAF support.<sup>152</sup>

XO's fourth contention is that "reverse auctions can lead to the delivery of universal service funds more quickly than other methods, once the governmental agency responsible for distribution identifies the service area and the requisite services."<sup>153</sup> XO does not provide any support for this claim, nor is it clear why this would be the case. One of the problems with the current distribution of high-cost support is that, since rural incumbent LECs' support is based on their estimated embedded costs, support levels are subject to adjustments and true-ups that can alter—sometimes unexpectedly and significantly—the level of a carrier's support. A reverse auc-

---

<sup>151</sup> *Id.*

<sup>152</sup> "USAC administers the USF in accordance with the Commission's rules and orders. The Commission provides USAC with oral and written guidance, as well as regulation through its rulemaking process." *Universal Service Reform, Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716, 14738 (para. 77) (2010). Thus, the Commission, through its rules, orders, and oral and written guidance, can ensure a suitable level of transparency in USAC's USF disbursement processes.

<sup>153</sup> XO Comments at 44.

tion would likely eliminate this problem, but the same would be true if a cost model were used to distribute support.

U.S. Cellular has indicated in its Comments that, while there is persuasive evidence that single-winner reverse auctions would not be effective in furthering universal service goals, “[t]he Commission thus far has neither addressed this record evidence nor put forward any reasoned case explaining why it would be prudent or advisable to gamble on reverse auctions when other reasonable options for the disbursement of CAF support are available.”<sup>154</sup> The record in this proceeding has added to that evidence, and U.S. Cellular restates its view that, based on the weight of the evidence, the Commission should decide against adopting a reverse auction mechanism for the distribution of CAF support.

**3. Various Commenters Agree with U.S. Cellular That the Commission Should Rely on a Forward-Looking Economic Cost Model To Disburse Ongoing Connect America Fund Support.**

U.S. Cellular has long advocated the use of a cost model as the mechanism for distributing high-cost support, most recently in its Comments in this proceeding.<sup>155</sup> The Commission also has been a strong advocate of the use of cost models as a basis for disbursing USF support, indicating, for example, that “a forward-looking economic cost model that estimates the costs of various technologies would enable the Commission to identify the least-cost, most-efficient technology currently being deployed, and thereby, provide only as much support as needed to achieve the Commission’s goals for universal service.”<sup>156</sup> The Commission has found that:

---

<sup>154</sup> U.S. Cellular Comments at 30.

<sup>155</sup> *See id.* at 39-41.

<sup>156</sup> *Connect America Fund*, 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, 6668 (para. 25) (2010), *quoted in* RCA Comments at 11.

[T]he use of such a forward-looking economic cost methodology could bring greater economic opportunities to rural areas by encouraging competitive entry and the provision of new services as well as supporting the provision of designated services. Because support will be calculated and then distributed in predictable and consistent amounts, such a forward-looking economic cost methodology would compel carriers to be more disciplined in planning their investment decisions.<sup>157</sup>

The record in this proceeding lends further support for U.S. Cellular’s position that a cost model would work more effectively than a reverse auction mechanism in ensuring the efficient use of CAF support and in advancing the Commission’s overall goals for broadband deployment in rural and high-cost areas throughout the country.

Leap Wireless, for example, argues that “[t]he Commission should consider developing a cost model to determine efficient support levels and then allow any carrier (whether wireline or wireless) to compete for customers and any associated per-line support, thus making subsidies truly portable.”<sup>158</sup> RCA agrees, asserting that “[t]he time has come to award high-cost funding based on a cost model to rural and non-rural providers, and wireline and wireless carriers, alike[,]”<sup>159</sup> because “[a] forward-looking cost model will force providers in high-cost areas to become more efficient by awarding support based on the cost structures that would prevail in a competitive marketplace.”<sup>160</sup>

In addition, although Ad Hoc generally supports reverse auctions as a means of disbursing CAF support (so long as the Commission is able to establish its authority to distribute such

---

<sup>157</sup> *First Report and Order*, 12 FCC Rcd at 8936 (para. 293) (footnote omitted).

<sup>158</sup> Leap Wireless Comments at 12. *See* Nebraska PSC Comments at 22 (indicating its support for “the use of a cost model for determining high-cost support for the long-term”).

<sup>159</sup> RCA Comments at 11.

<sup>160</sup> *Id.*

support to entities that provide services other than telecommunications services),<sup>161</sup> Ad Hoc also has reached the conclusion that the use of forward-looking costs is workable for high-cost support:

Arguments have been made in the past that developing a forward-looking economic cost (FLEC) model isn't workable for high cost carriers because of the unique characteristics of their size or terrain. Those arguments, however, should not be persuasive. A model capable of properly estimating what it should cost an efficient provider to provide service in High Cost Fund study areas may, or may not, need to be somewhat more complicated than the High Cost Model used to develop price cap carrier costs. It may require some additional variables, the input costs may vary some . . . , but overall the process should be about the same.<sup>162</sup>

USA Coalition expresses reservations regarding the use of a forward-looking cost model to determine per-line CAF support, in part because “the calculation of support on a per-line basis requires the use of an assumed line count[,]”<sup>163</sup> which would be inefficient because, it argues, a given carrier’s level of support may be understated or overstated depending upon the relationship between its actual line count and the line count assumed for purposes of the cost model calculation. Notwithstanding USA Coalition’s concerns, any discrepancies between modeled line counts and actual line counts is an issue that can be resolved. “This is an input issue that can be addressed by carriers participating in the process and providing actual company line data.”<sup>164</sup> Moreover, USA Coalition agrees that the Commission could minimize “the harms that can arise from the inherent limitations of modeling” by keeping its cost model up to date.<sup>165</sup>

---

<sup>161</sup> Ad Hoc Comments at ii.

<sup>162</sup> *Id.* at 25.

<sup>163</sup> USA Coalition Comments at 24.

<sup>164</sup> CostQuest Associates Comments, CC Docket Nos. 96-45, 96-98, 99-68, 99-200, 01-92, WC Docket Nos. 03- 109, 04-36, 05-337, 06-122 (filed Nov. 26, 2008), Attachment, James W. Stegeman, Dr. Steve Parsons, Mike Wilson, *The Advanced Services Model: Proposal for a Competitive and Efficient Universal Service High-Cost Approach for a Broadband World*, at 21.

<sup>165</sup> USA Coalition Comments at 24.

**F. Many Parties Agree That the Commission Should Provide Ongoing Support for More Than One Provider in Each Geographic Area Eligible for Support.**

In its Comments, U.S. Cellular has demonstrated that restricting CAF support to a single provider in each service area is not competitively neutral, that the restriction cannot be squared with the requirements of the Communications Act, and that the restriction is not necessary to further the Commission's universal service goals.<sup>166</sup> These views find support in comments filed by numerous other parties in response to the *Notice*.

Although the Commission has tentatively concluded that the Act does not bar it from limiting support to only one provider in a service area,<sup>167</sup> MTPCS and Viaero Wireless demonstrate that such a restriction cannot be reconciled with the authority given by Section 214(e) of the Act to state regulatory commissions, empowering them to designate more than one ETC in a given service area.<sup>168</sup>

The record underscores the fact that the Commission's proposal to limit funding to a single recipient represents a complete abandonment of any effort to meld universal service and competitive policies for the benefit of consumers in rural and high-cost areas. USA Coalition suggests that the Commission's proposal to reduce or limit market entry is particularly problematic "in this age of industry consolidation where the top carriers are acquiring an ever greater market share through acquisitions."<sup>169</sup> USA Coalition also criticizes the Commission for its "willing[ness] to permanently sacrifice the potential for competition in favor of a world in which

---

<sup>166</sup> See U.S. Cellular Comments at 75-78.

<sup>167</sup> See *Notice* at para. 264.

<sup>168</sup> MTPCS and Viaero Wireless Comments at 39. U.S. Cellular also has explained in its Comments that the proposal to limit support to one service provider in a service area would not comply with the Act because the proposal would prevent CAF funding from being portable among ETCs in the service area. U.S. Cellular Comments at 75-76.

consumers in rural, insular and high cost areas will never have more than one choice for broadband services.”<sup>170</sup> U.S. Cellular agrees with USA Coalition’s conclusion that “[t]he long-lasting harm that the proposals would cause if adopted—particularly in light of continued consolidation within the industry—would impact all users of telecommunications and information services, not just those who live and work in rural, insular and high cost areas.”<sup>171</sup>

USA Coalition’s reference to the proposal’s limiting consumers to only one choice for broadband service raises a dilemma posed by the *Notice*: How can the Commission “recognize the important role that mobility can play in improving everyday lives of Americans as well as contributing to our public safety, national economy and competitiveness”<sup>172</sup> while the Commission at the same time proposes a funding mechanism that virtually guarantees that some percentage of rural consumers will not have any access to mobile broadband service?<sup>173</sup>

Numerous commenters are critical of the proposed approach. RICA, for example, favors providing support to both fixed and mobile service providers in each service area because “the unique characteristics of each technology are both needed in rural America if it is to have service

---

<sup>169</sup> USA Coalition Comments at 7.

<sup>170</sup> *Id.* at 3.

<sup>171</sup> *Id.*

<sup>172</sup> *Notice* at para. 80.

<sup>173</sup> *See Ex Parte Letter from Clyde C. Holloway, Commissioner (District IV), Louisiana Public Service Commission, to Chairman Julius Genachowski, Commissioner Michael Copps, Commissioner Robert McDowell, Commissioner Mignon Clyburn & Commissioner Meredith Baker, FCC (filed Apr. 22, 2011), at 1 (opposing the proposal to limit support to not more than one carrier in a service area, and observing that “[t]he best path to broadband is to preserve the ability to deploy it as an efficient incremental investment on existing networks. Many small and mid-sized wireless companies have already built cell sites providing the only reasonable coverage of rural areas. Those sites should be maintained as a platform for broadband, particularly in rural areas where mobility is critical for public safety, agriculture and travel. Without them, we’ll have less broadband in rural areas.”).*

reasonably comparable to that available to citizens in urban areas.”<sup>174</sup> MTPCS and Viaero Wireless argue that “[m]aking CAF support available to more than one service provider would better meet consumer and business needs by providing more options in local markets, and the possibility of even more options in the future.”<sup>175</sup> TDS supports funding one fixed and one mobile broadband network in each service area, explaining that:

While the proposal [to limit support to one provider in a service area] may involve lower upfront costs, it would fail to provide “universal broadband” because it would risk leaving households and businesses without access to the tools necessary for a robust, 21st century broadband experience. Such an approach would be akin to an “efficient” plan for educating rural high school students that provides every school with teachers of either science or mathematics, but not both.<sup>176</sup>

The U.S. Department of Health and Human Services (“HHS”) points to other problems that could be caused by the Commission’s proposal, explaining that a lone carrier in a service area may not be able to meet the telecommunications needs of health care providers, “such as larger hospitals that require dedicated internet access.”<sup>177</sup> HHS also observes that a single carrier

---

<sup>174</sup> RICA Comments at 17 (footnote omitted). The Mississippi PSC explains the potential real-world consequences of the Commission’s proposal:

Were the CAF initiative to be implemented as currently conceived, *all* Mississippi wireless ETCs (i.e., Competitive ETCs) could potentially lose 100% of high cost funding after a five-year phase down—assuming no Mississippi wireless ETC were selected under a reverse auction. While it is true that the FCC’s selected broadband service provider will provide Mississippians in unserved and underserved areas access to Internet, unfortunately, our state’s efficient, effective wireless ETCs will bear the financial hardship burden from lost USF support.

Mississippi PSC Comments at 9 (emphasis in original). *See* Mobile Future Comments at 8 (arguing that “if Americans in rural communities only have access to fixed broadband, they will miss out on the substantial benefits created by the wireless ecosystem”).

<sup>175</sup> MTPCS and Viaero Wireless Comments at 13.

<sup>176</sup> TDS Comments at 15. *See* Rural Associations Comments at 83-85 (observing that “[g]iven that most households and businesses in urban areas have access to affordable fixed and mobile broadband services, the Rural Associations believe that the ‘reasonable comparability’ requirement of section 254 warrants establishment of high-cost support mechanisms for both a fixed broadband network and a mobile wireless broadband network in each qualifying high-cost service area”); RTG Comments at 21.

<sup>177</sup> HHS Comments at 5.

may not afford a region sufficient redundancy, for rural health care purposes, and “may leave the entire community vulnerable to total lapses in connectivity due to weather extremes and geographic conditions.”<sup>178</sup>

Commenters favoring the Commission’s proposal advance various arguments, none of which is persuasive. Two main contentions of the Commission’s supporters are that it would not make sense to fund duplicative networks because this would waste CAF resources and unnecessarily increase the size of the overall USF,<sup>179</sup> and that limiting support to one provider would better ensure that consumers throughout the country would receive access to broadband service, provided through either a fixed or mobile broadband network.<sup>180</sup>

The first argument overlooks the fact that the Commission could make CAF funding available to multiple service providers in a given area, without risking any upward pressure on

---

<sup>178</sup> *Id.*

<sup>179</sup> See Comcast Corporation (“Comcast”) Comments at 17; ITTA Comments at 30; Ohio PUC Comments at 41 (arguing that “limiting support to one provider per high-cost area will ultimately result in reducing the total amount of funding required through the CAF, which, in turn, will place less of a financial burden on consumers”); Verizon Comments at 61-62. The Nebraska PSC makes a related argument, namely, that “[h]igh-cost support should not be used to create artificial competition in areas where there is no business case to support competitive networks.” Nebraska PCS Comments at 18. See New Jersey Board of Public Utilities (“New Jersey BPU”) Comments at 3. In fact, however, the Commission, pursuant to a statutory mandate and its own competitive neutrality principle, has, for more than a decade, been promoting competition in rural markets through the distribution of high-cost support, and, by doing so, has helped make it possible for rural consumers to have access to affordable services that are comparable to those available in urban areas. This promotion of real (not “artificial”) competition should not now be abandoned in a “fiscally responsible” attempt to constrict the size of CAF support mechanisms.

<sup>180</sup> See NCTA Comments at 9; XO Comments at 46. An additional argument is advanced by CenturyLink, namely, that CAF funding should be targeted to provide support *only* “to *fixed* providers, whether wireline or wireless.” CenturyLink Comments at 35 (emphasis added); see Fairpoint Comments at 17 (arguing that Phase I CAF support should be limited to COLR providers). Walling off providers of mobile wireless broadband services from the entirety of CAF funding would be out of step with the Commission’s principles of competitive and technological neutrality, and would undermine the Commission’s proposed principle of “accelerat[ing] the transition from circuit-switched to IP networks, with voice ultimately one of many applications running over fixed *and mobile* broadband networks.” *Notice* at para. 10 (emphasis added).

the size of CAF support mechanisms, by requiring that funding would be portable.<sup>181</sup> Thus, each service provider would receive CAF funding only for those lines that are served by that provider. If a supported carrier in a service area were to lose a customer to another supported carrier, then CAF support would be ported with that customer to the customer's new carrier. The portability requirement would eliminate the risk of duplicative funding, while at the same time encouraging competitive entry, which would bring with it all the consumer and competitive benefits that are foreclosed by the Commission's proposal to limit support to only one service provider.

The second argument is equally unavailing. First, it may not be correct to assume that restricting support to one carrier would accelerate broadband deployment to a greater number of consumers. As ITTA has pointed out, the Commission's proposed auction mechanism could actually delay broadband deployment in higher-cost areas.<sup>182</sup> Second, even if the assumption were accurate, the "trade-off" involved in the Commission's proposal—all rural areas would (eventually) have either fixed or mobile broadband, but *no rural area* would have both fixed and mobile broadband—would not be consistent with the comparability principle established in Section 254(b)(3) of the Act.<sup>183</sup> It is not clear how the Commission could defend a funding mechanism that, on its face, could *never* meet the statute's comparability test.

---

<sup>181</sup> See Spellmeyer Letter at 2 (indicating that distributed CAF support should be "targeted to specific geographic areas and [should] be portable amongst all ETCs serving the area. This would have the benefit of continuing competition among providers in the marketplace and would be consistent with the pro-competitive aspects of the 96 Act.").

<sup>182</sup> ITTA Comments at 17 (discussed in Section II.E.2., *supra*).

<sup>183</sup> 47 U.S.C. § 254(b)(3).

**G. The Commission’s Transition from Legacy High-Cost Support Mechanisms to Connect America Fund Mechanisms Should Be Carried Out in a Competitively Neutral Manner, Should Ensure Continued Availability of Mobile Broadband Services, and Should Provide for the Gradual Transition of Interstate Access Support.**

Considerable concern is expressed in the record regarding whether the Commission’s transition proposals would successfully “refocus USF . . . to make affordable broadband available to all Americans”<sup>184</sup> and “[t]ransition to market-driven and incentive-based policies that encourage technologies and services that maximize the . . . benefits to all consumers.”<sup>185</sup> Numerous parties criticize the Commission’s transition plan because it is not competitively neutral and it pays little attention to the importance of making its new CAF funding mechanisms operational before existing levels of support are withdrawn. These issues are discussed in the following sections.

**1. Numerous Parties Question the Commission’s Transition Proposals Because They Are Not Competitively Neutral.**

There is considerable agreement in the record with the straightforward proposition that, as U.S. Cellular has stated, “all support provided under existing mechanisms should be phased down on identical time lines.”<sup>186</sup> The Massachusetts DTC, for example, opposes any phase-down of competitive ETC support over a multi-year period if it is carried out in a manner that provides an unfair competitive advantage to incumbent LECs in rural areas.<sup>187</sup> AT&T agrees, arguing that any transition “should be identical for *all* legacy high-cost support, regardless of the mechanism

---

<sup>184</sup> *Notice* at para. 10.

<sup>185</sup> *Id.* (footnote omitted).

<sup>186</sup> U.S. Cellular Comments at 60.

<sup>187</sup> *See* Massachusetts DTC Comments at 13 & n.64.

and regardless of the type of carrier (*e.g.*, ILEC, wireless).<sup>188</sup> RCA contends that “if the Commission seeks to redirect funding to a newly created CAF . . . it at least should do so on equal terms for *all* carriers—*i.e.*, by transitioning *all* high-cost support . . . over an equal time frame for wireless and wireline providers alike.”<sup>189</sup> Cox also offers strong support for a competitively neutral transition:

This transition should be the same for all carriers that are affected by it, and should reduce their funding over a specified period. This means that every affected carrier should transition at the same time and in the same manner. The Commission should not design different frameworks based on whether a carrier is subject to rate of return or price caps, whether the carrier is in the NECA pool or is an average schedule carrier or whether the carrier is rural or non-rural. Similarly, the transition should apply in the same way to competitive LECs as to incumbent LECs, so that legacy voice support for all carriers serving the same area will be reduced at the same time and at the same rate.<sup>190</sup>

The problem with the Commission’s proposal, as USA Coalition points out, is that the Commission is proposing a five-year phase-down of existing competitive ETC support, but support for incumbent LECs “would be phased-out over a longer timeline, if at all.”<sup>191</sup> U.S. Cellular agrees with USA Coalition’s conclusion that “[i]t is difficult to imagine any scenario in which a five-year transition period for CETCs would be appropriate when a longer transition period is being considered for other carrier types, especially in light of the Act’s technological and competitive neutrality mandates.”<sup>192</sup>

---

<sup>188</sup> AT&T Comments at 109 (emphasis in original).

<sup>189</sup> RCA Comments at 15 (emphasis in original). *See* RICA Comments at 12 (footnote omitted) (arguing that “[e]liminating support for CETCs while maintaining support for ILECs or transitioning their support on a much faster schedule is unjust and unreasonable”); RTG Comments at 8-9.

<sup>190</sup> Cox Comments at 10.

<sup>191</sup> USA Coalition Comments at 14 (footnote omitted).

<sup>192</sup> *Id.* at 14-15 (footnote omitted).

The Commission's apparent view that there is no need to equalize as much as possible the transition paths for incumbent carriers and competitive ETCs is another example of the agency's disregard for the role that competitive markets should play in effecting the Commission's objectives for the deployment of broadband networks and the availability of affordable broadband services for all Americans. Even apart from the fact that the Commission's proposed approach would not be consistent with statutory mandates,<sup>193</sup> it simply does not make any policy sense to handicap a class of carriers that has made great strides in bringing mobile broadband networks to rural consumers, and that should be enabled by even-handed universal service policies to continue to do so in the future.

Without endorsing the five-year phase down proposed by the Commission,<sup>194</sup> it bears mentioning that the Commission's proposal, if adopted as framed in the *Notice*, would not actually span five years because the level of support would reach zero at the end of the *fourth* year. A true five-year phase down would keep funding at the current level for the first year and reach zero at the end of the fifth year. Whatever phase down is ultimately adopted, it is important that funding remain at the existing level for the first year since carriers would already have taken ir-

---

<sup>193</sup> As USA Coalition explains:

The Commission must weigh the mandate of competitive neutrality—as a statutory principle adopted by the Commission under Section 254(b)(7) of the Act—against the other statutory universal service principles when formulating policy. As the United States Circuit Court of Appeals has made abundantly clear, the Commission may *balance* the principles enumerated and adopted under Section 254(b), but may not depart from any of the principles altogether in order to achieve some other goal. The radically different treatment proposed for CETCs and ILECs could not be more inconsistent with the mandate that universal service support not unfairly advantage one provider over another or one technology over another.

*Id.* at 15 (footnote omitted) (emphasis in original) (citing *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1102-03 (D.C. Cir. 2009); *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001)).

<sup>194</sup> See *Notice* at para. 160.

revocable steps in meeting their build plan commitments (cellular towers typically take from 12 to 18 months to construct and place in service).

**2. There Is Strong Support for Transition Policies That Ensure That Current Support Is Not Phased Down Prematurely as the Commission Develops and Implements Successor Funding Mechanisms.**

In its Comments, U.S. Cellular stressed an issue that it has raised repeatedly, namely, that the Commission must “ensure that a phase down of competitive ETCs’ existing high-cost support is not commenced until replacement funding mechanisms have been adopted and have been made operational.”<sup>195</sup>

Several parties echo this view, arguing that phasing down existing high-cost support for any class of service providers should not outrun the Commission’s activation of new funding mechanisms. CenturyLink sums up the problem:

A big concern with the Commission’s USF proposal is that it moves too quickly on diverting existing support away from networks that are deploying broadband while taking too long to develop and begin distributing the long-run CAF support that has the potential to promote the construction and operation of robust broadband networks that meet the Commission’s objectives.<sup>196</sup>

TDS shares this concern, arguing that “[i]t would be sadly ironic if the path chosen by the Commission to ‘reform’ USF were to undermine the rate at which broadband is deployed in rural and other high-cost areas during the pendency of longer term funding modifications.”<sup>197</sup> TDS concludes that many of the Commission’s proposals “would do just that by dismantling the current

---

<sup>195</sup> U.S. Cellular Comments at 59.

<sup>196</sup> CenturyLink Comments at 5. *See* ACA Comments at 24, n.49.

<sup>197</sup> TDS Comments at 3.

mechanism without providing a discernable picture of the Connect America Fund . . . that would replace it.”<sup>198</sup>

Commenters also make the case that the failure to design a reasonable transition of legacy support to the new CAF support mechanisms would undercut the Commission’s broadband goals. CTIA, for example, explains that “[e]liminating support without a plan to safeguard against backsliding would be in tension with the FCC’s goals, the National Broadband Plan, and the President’s Wireless Initiative[,]”<sup>199</sup> and that “[s]uch an approach would also be inconsistent with consumer demand. Indeed, more and more consumers are subscribing to wireless lines (whether voice or broadband) and many Americans rely on wireless for the majority of their calls.”<sup>200</sup>

MTPCS and Viaero Wireless express the same concern, warning that “[f]ailure to synchronize this timing [of the transition] carefully would increasingly stymie the maintenance and buildout of systems that are uniquely positioned to provide the only broadband in many areas.”<sup>201</sup> CenturyLink warns that, in some cases, “elimination or significant reduction of existing high-cost support prior to the implementation of Phase II of the CAF could potentially create a funding gap in rural areas that currently rely on existing support for affordable high-quality services, a result contrary to the goals of universal service policy.”<sup>202</sup>

---

<sup>198</sup> *Id.* See ITTA Comments at 12-13 (suggesting that any significant gap between the elimination of existing support and the replacement of that support with CAF funding may have constitutional due process implications); USA Coalition Comments at 16 (arguing that “[t]o begin phasing down CETC support on an aggressive timeline based upon the mere assumption that CETCs may remain viable without such support is the antithesis of reasoned rulemaking and should be rejected outright”).

<sup>199</sup> CTIA Comments at 19.

<sup>200</sup> *Id.* (footnote omitted).

<sup>201</sup> MTPCS and Viaero Wireless Comments at 7.

<sup>202</sup> CenturyLink Comments at 19.

The Rural Associations point to the same problem, acknowledging the Commission’s “desire to avoid disruptions in support that could result in rate shocks, degraded service quality, or worse[.]”<sup>203</sup> but noting that rural incumbent LECs “have made significant investments pursuant to current rules, putting at risk private capital that is often backed or leveraged by loans from private entities and federal agencies[.]”<sup>204</sup> and that a reasonable transition plan is needed to ensure that the Commission’s CAF reforms “do not prevent RLECs from recovering this past investment and repaying government and private sector loans.”<sup>205</sup>

U.S. Cellular agrees with USA Coalition’s assessment that the Commission, in proposing a five-year phase-down of existing competitive ETC support, “has completely failed to analyze whether stripping away existing support will result in funding being sufficient to preserve existing networks, as required by the Act.”<sup>206</sup> Even worse, the Commission is simply passing the

---

<sup>203</sup> Rural Associations Comments at 62.

<sup>204</sup> *Id.* See Mississippi PSC Comments at 12 (noting that an “unintended consequence of the FCC’s initiatives will be the creation of potential financial hardships for those rural ETCs who have entered into promissory loan arrangements with private financial institutions, as well as the Rural Utilities Services, in these ETCs’ efforts to meet customer demands”).

<sup>205</sup> Rural Associations Comments at 62. See Accipiter Communications Inc. Comments at 1 (urging the Commission not to undermine investment-backed commitments made by rural carriers, and to accommodate the need for these carriers to recover their investments and repay loans made to promote rural telecommunications deployment). In addition, Albion Telephone Company (“Albion”) explains that carriers with COLR responsibilities find it difficult to reduce capital investments. Albion Comments at 7 (pointing out that “[i]f a customer requests service, we must build the facilities to that customer, pursuant to state and federal tariffs. In order to meet the expectations of our customers that we provide services that are reasonably comparable to those available in urban areas, we must continually maintain and upgrade our network.”). The same would be true for competitive ETCs that have made infrastructure build-out commitments to state regulation commissions.

<sup>206</sup> USA Coalition at 20. The Mississippi PSC provides an example of progress currently being made by wireless competitive ETCs (the continuation of which would be placed in jeopardy by the Commission’s proposed transition plans):

Mississippi’s ETCs include six wireless carriers that are investing in cellular sites, 3G radio equipment, radio transmission cabinets and switching office equipment upgrades to expand broadband data transmission. These wireless carriers are making Internet access a reality for thousands of Mississippians in rural areas. All USF high cost support allocated

buck. “Rather than wrestle with this reality, the Commission merely notes that such an outcome [*i.e.*, the insufficiency of funding] is possible, but places the responsibility of developing alternative strategies to counter this likely outcome squarely upon industry.”<sup>207</sup>

Numerous parties agree with U.S. Cellular<sup>208</sup> that the solution to these transition issues is to lengthen the period of the transition or to take other steps to ensure that a funding gap is not created as the Commission moves toward the implementation of new CAF mechanisms. The

---

to these wireless ETCs is used solely for the provision, maintenance and upgrading of services and facilities for which the support was intended. . . . [H]igh cost funding currently directed to Mississippi’s wireless ETCs must continue unabated.

Mississippi PSC Comments at 8-9. *See* Mobile Future Comments at 2 (noting that “[w]ireless service providers are investing tens of billions of dollars each year, to extend the coverage of next generation wireless networks across the United States and bring the promise of mobile broadband to nearly 300 million Americans, and enormous progress is being made. At the same time, on-going support from the CAF will be needed to help even more Americans fully realize the benefits of mobile broadband.”); Ex Parte Letter from Kenneth C. Johnson, Counsel for Panhandle Telecommunications Systems, Inc. (“PTSI”), to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, CC Docket No. 96-45, GN Docket No. 09-51 (filed May 17, 2011), at 2 (indicating that “high-cost support enables PTSI to provide vital mobile services in the Oklahoma Panhandle that local industries rely upon to stay efficient. PTSI’s wireless network is used for monitoring devices on sprinkler systems in the Agriculture industry and for in-the-field communications. Mobile wireless is used to monitor hog farms that are located in remote areas. The gas and oil industry, as well as the wind energy industry, also rely upon wireless monitoring and mobile communications for their employees in the field. High-cost support makes these crucial businesses more efficient due to PTSI’s wireless network and allows PTSI to provide service where it would otherwise be economically inefficient.”); Representative Klock Letter at 1 (stating that “[t]he support that the current cell phone systems receive from the Universal Services Fund are critical to maintaining and, hopefully, expanding that service coverage. Without such support, it is likely that service will diminish in rural Montana as the population levels do not justify the installation, operation, and maintenance of the necessary infrastructure. From a public safety standpoint, such loss would be harmful to the citizens of Montana. I therefore encourage you to maintain use of the Universal Service Fund at levels adequate to continue the existing infrastructure and the addition of the additional infrastructure in rural Montana.”).

<sup>207</sup> USA Coalition at 20.

<sup>208</sup> U.S. Cellular has advocated “the adoption of a ten-year phase-down of wireless competitive ETCs’ high-cost support, with comparable phase-down periods applied for purposes of transitioning rural incumbent LECs to the Commission’s new USF mechanisms[,]” U.S. Cellular Comments at 61-62 (footnote omitted), and has also argued “in the alternative for a more graduated and back-loaded phasedown over a 7 to 10 year period.” Ex Parte Letter from Grant B. Spellmeyer, Senior Director – Legislative and Regulatory Affairs, U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket Nos. 05-25, 05-337, RM No. 11592, ET Docket No. 10-236, WT Docket No. 11-65, CC Docket No. 96-45 (filed May 3, 2011), at 2.

California PUC, for example, concludes that “a ten-year migration time-frame seems a prudent interval to bring about the reforms to . . . Universal Service high-cost support . . . the FCC seeks[,]”<sup>209</sup> and the Utah PSC concludes that “a longer, better-conceived transition is needed if the Commission is to achieve its broadband goals without undoing past successes. Any transition period should continue to provide some level of support for investments made in reliance on the availability of federal support.”<sup>210</sup>

MTPCS and Viaero Wireless draw the blueprint the Commission should follow to avoid disruptions in carriers’ infrastructure deployment and provision of service during the transition, suggesting that the transition should “provide that the proposed Phase II CAF mechanism for providing ongoing support for broadband deployment will be fully implemented and operational pursuant to a timeline synchronized with the proposed phase-down of competitive and incumbent ETCs’ support.”<sup>211</sup>

In U.S. Cellular’s view, the Commission’s proposal for a five-year transition (in effect, only a four-year transition) for competitive ETCs’ existing support is driven by one consideration: The Commission wants to take funding away from competitive ETCs, and move it into the new CAF mechanisms, as quickly as possible. The record shows, however, that this blinkered approach would likely have adverse consequences for the ongoing provision of service, and for the deployment of broadband, in rural and high-cost areas. U.S. Cellular urges the Commission

---

<sup>209</sup> California PUC Comments at 2. RTG also favors a transition of at least 10 years for the phase-down of competitive ETCs’ support, to enable an adequate opportunity for the recovery of investments already made. RTG Comments at 4, 10. *See* USA Coalition Comments at 21 (favoring “a level glide path from the current levels of support to the new level of support available under the replacement fund over a ten-year period”).

<sup>210</sup> Utah Public Service Commission and Utah Division of Public Utilities (“Utah PSC”) Comments at 3 (unpaginated).

<sup>211</sup> MTPCS and Viaero Wireless Comments at 7 (footnote omitted).

to consider a more balanced transition that avoids disruption and cost-recovery issues while still enabling a successful pursuit of the Commission's broadband goals.

The Commission's proposal for a so-called five-year phase-down of competitive ETCs' support does draw some support in the record (with some parties suggesting even more accelerated schedules), but these commenters provide no basis to conclude that the proposal has any merit. The Iowa UB, for example, supports the proposed five-year transition because it would be consistent with the length of other phase-down periods the Commission has used in the context of universal service funding.<sup>212</sup> This comparative approach to the selection of an appropriate phase-down of competitive ETC support is inapt, however, because it fails to address the issue that the five-year transition would not be competitively neutral, and the issue that there would likely be a gap in funding because new CAF funding mechanisms would not be fully implemented.

NCTA argues that competitive ETCs' support should be phased down over three years, beginning in 2012.<sup>213</sup> This approach, of course, would exacerbate the competitive neutrality problem with the Commission's proposal. NCTA also argues that accelerating the phase-down even more than the Commission's proposal would load the funds into the new CAF mechanisms more quickly,<sup>214</sup> but this purported advantage of an accelerated phase-down is more than offset

---

<sup>212</sup> Iowa Utilities Board ("Iowa UB") Comments at 10. The Iowa UB refers to the five-year transitional interstate access and universal service reform plan adopted in the *CALLS Order*. See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262, 94-1, Sixth Report and Order, *Low-Volume Long-Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962, 13046-49 (paras. 201-205) (2000) ("*CALLS Order*") (adopting a "\$650 million interstate access universal service support mechanism"), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel et al. v. FCC*, 265 F.3d 313 (5th Cir. 2001) (subsequent history omitted).

<sup>213</sup> NCTA Comments at 5-6.

<sup>214</sup> *Id.*

by the fact that a three-year phase-down would heighten the risk of funding shortfalls (with attendant harms to consumers and competitive ETCs serving them) before the CAF mechanisms are operational and disbursing support.

Sprint suggests that existing support received by both incumbent LECs and by competitive ETCs should be phased down by the end of 2014, or three years after the Commission adopts an order requiring the phase-downs, whichever occurs later.<sup>215</sup> Sprint advances three arguments in support of this accelerated phase-down. First, Sprint points out that Sprint and Verizon Wireless have committed to phasing down their existing high-cost support by 2013.<sup>216</sup> Sprint gives no explanation as to why this should be considered relevant. Conditions that are, in effect, negotiated by individual carriers seeking Commission approval of proposed mergers or other acquisitions should not be given dispositive weight in developing policies affecting the entire industry. The issue in this proceeding involves establishing a transition period that will serve the Commission's broadband deployment goals while avoiding negative impacts on carriers receiving legacy high-cost support. Deals made by Sprint or Verizon with the Commission should not have a controlling effect on the examination and resolution of this issue.

Next, Sprint opines that “[a] prompt phase-out of ETC support would ease the financial burden on USF contributors and consumers . . . .”<sup>217</sup> This argument seems to assume that the Commission would use the phased-down support to reduce the size of the overall USF (instead of transferring the phased-down funds into new CAF mechanisms), which, in U.S. Cellular's view, is a distinctly remote possibility, in light of the Commission's overweening interest in us-

---

<sup>215</sup> Sprint Comments at 34.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

ing phased-down funds to fuel these new mechanisms. Even assuming *arguendo* that Sprint’s assumption could be correct, it would be a more prudent policy to spread this purported consumer benefit over a greater number of years because a longer transition period would avoid the adverse consequences for ETCs and their customers that would result from a shorter transition period.

And, third, Sprint argues that a prompt phase-down would “promote competitive parity by eliminating the inequities that result from continuing to support some but not all service providers.”<sup>218</sup> If Sprint is suggesting that a competitive imparity was created at the time Sprint and Verizon agreed to forego high-cost support, as part of their deals with the Commission in their respective merger proceedings, then this argument is not persuasive, for the reasons previously discussed.

Finally, Verizon argues that there is no time like the present for eliminating remaining competitive ETC support, insisting that “[t]here is no cause for delay,”<sup>219</sup> urging “[t]he Commission [to] include final rules for this necessary step in its next universal service and/or intercarrier compensation reform item[,]”<sup>220</sup> and assuring the Commission that “[a]ll the pieces are in place, and there are no impediments to begin eliminating this legacy voice support immediately.”<sup>221</sup> Verizon contends that issues related to “repurposing CETC support” have been fully aired in prior proceedings and in *ex parte* filings,<sup>222</sup> seeming to imply that the Commission’s seeking comment on the phase-down issue in the *Notice* is merely a *pro forma* exercise.

---

<sup>218</sup> *Id.*

<sup>219</sup> Verizon Comments at 47.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* at 48.

<sup>222</sup> *Id.*

Continuing in this vein, Verizon advises that “the Commission adopted detailed, workable procedures to phase out Verizon Wireless and Sprint support pursuant to merger conditions, which can now be applied industry-wide[,]”<sup>223</sup> and that the Commission has already “cleared the last operational hurdle” by finding that, if a carrier relinquishes its ETC status in a state “funding will now be freed up for new USF priorities instead of being redistributed under existing voice support programs to other CETCs in the state.”<sup>224</sup> Verizon concludes by suggesting that the Commission should eliminate 40 percent of legacy competitive ETC funding before the end of 2011, with the remaining 60 percent being eliminated over the next few years.<sup>225</sup>

There are several problems with Verizon’s suggestions. Verizon does not provide any support or rationale for its proposal that the Commission should rely on the procedures developed in the Sprint and Verizon merger proceedings as a basis for an industry-wide phase-down. At a minimum, if the Commission were inclined to take such an approach, it should issue a further notice of proposed rulemaking in this proceeding, so that all members of the industry, especially carriers that would be directly affected by the phase-down proposals, as well as other interested parties, would have an opportunity to review and comment on the proposed procedures.

In addition, in making its suggestion that the Commission should immediately adopt a significantly accelerated phase-down schedule (as compared to the Commission’s own proposal), Verizon does not address any of the significant policy arguments that the Commission must resolve. Verizon does not explain, for example, how its proposal would be consistent with the

---

<sup>223</sup> *Id.*

<sup>224</sup> *Id.* at 49 (footnote omitted) (citing *High-Cost Universal Service Support; Federal-State Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 25 FCC Rcd 18146, 18147-48 (para. 5) (2010)).

<sup>225</sup> *Id.*

Commission’s principle of competitive neutrality, nor does it present any information or arguments regarding whether competitive ETCs and their rural customers would be harmed by an accelerated phase-down, particularly if new CAF support mechanisms are not adopted and made operational in a timely manner.

Verizon merely states that its proposed phase-down “would be consistent with the Commission’s implementing procedures for the Verizon Wireless and Sprint reductions[,]”<sup>226</sup> without explaining why the Commission should consider that assertion to be relevant. Verizon also attempts to defend its proposal by suggesting that, if the Commission accelerates the phase-down, then “the Commission would free up more funding more quickly for broadband and/or intercarrier compensation reform.”<sup>227</sup> As U.S. Cellular has discussed in these Reply Comments, it would be prudent for the Commission to undertake a more deliberate analysis of the advisability of accelerating or extending the competitive ETCs’ funding phase-down. Verizon seems to imply that the only issue is how to “repurpose” as much money as possible, as fast as possible. A better course for the Commission would be to follow its own advice by “acknowledging the benefits of measured transitions that enable stakeholders to adapt to changing circumstances and minimize disruption.”<sup>228</sup>

**3. The Record Supports a Gradual Transition of Interstate Access Support to the Commission’s New Universal Service Funding Mechanisms.**

U.S. Cellular has advocated a gradual transition of Interstate Access Support (“IAS”) funding to the Commission’s new CAF mechanisms, “in order to minimize disruption to the op-

---

<sup>226</sup> *Id.* at 49-50.

<sup>227</sup> *Id.* at 50.

<sup>228</sup> *Notice* at para. 12.

erations of service providers.”<sup>229</sup> Other parties agree. The Kansas CC, for example, recommends that “the FCC should transition modifications to . . . [IAS] in a manner that allows carriers to make financial adjustments[,]”<sup>230</sup> and ITTA argues that IAS should not be phased down until permanent CAF mechanisms are established and implemented.<sup>231</sup>

There are several reasons indicating that the Commission’s proposed two-year transition for the phase-down of IAS<sup>232</sup> would not be sufficient. From the perspective of competitive ETCs, IAS support in several states constitutes a substantial percentage of all universal service support received by these carriers.<sup>233</sup> While a two-year transition would not quite constitute a “flash cut” reduction of support that the Commission seeks to avoid,<sup>234</sup> it would still cut back funding at a pace that would likely cause disruption in carriers’ operations and network investment, given the typical planning and construction horizon for new cellular sites. In many states, carriers have submitted build-out plans showing infrastructure deployment as far as five years out.

Further, U.S. Cellular agrees with CenturyLink that “IAS is necessary to provide good-quality voice services at affordable and reasonably comparable rates . . . .”<sup>235</sup> CenturyLink also explains that it “continues to use IAS to offset the high costs to provide services in the wire centers for which it receives that support and to keep basic service rates in those wire centers afford-

---

<sup>229</sup> U.S. Cellular Comments at 64.

<sup>230</sup> Kansas CC Comments at 29.

<sup>231</sup> ITTA Comments at 9-11.

<sup>232</sup> *Notice* at para. 228.

<sup>233</sup> U.S. Cellular Comments at 64.

<sup>234</sup> *Notice* at para. 17 (indicating that any “[c]hange to USF . . . policies need not and should not be sudden or overly disruptive, but change must begin so that our country can reach its broadband goals in an efficient and accountable way”). *See* CenturyLink Comments at 28-29.

<sup>235</sup> CenturyLink Comments at 27. *See* Fairpoint Comments at 13.

able[.]”<sup>236</sup> and that “[r]emoving IAS will put further pressure on CenturyLink’s ability to maintain quality service at affordable rates in these high-cost areas, and in turn hinder CenturyLink’s efforts to aid the Commission in its goal of ubiquitous service.”<sup>237</sup>

While several parties argue that IAS should be eliminated and transitioned to CAF mechanisms as quickly as possible,<sup>238</sup> and even more rapidly than the Commission’s proposed two-year transition,<sup>239</sup> U.S. Cellular agrees with CenturyLink and other commenters that a gradual

---

<sup>236</sup> CenturyLink Comments at 27. *See* Fairpoint Comments at 15 (arguing that “[f]or certain carriers, continued IAS revenue will be necessary to avoid undermining the ILEC’s ability to maintain current operations and earn a reasonable return on investment, let alone convert their networks to meet future needs”).

<sup>237</sup> CenturyLink Comments at 27.

<sup>238</sup> The Florida PSC favors eliminating the IAS program and using the funds to reduce the size of the overall CAF funding mechanism. Florida PSC Comments at 9-10. U.S. Cellular generally opposes any efforts to reduce the overall size of USF, unless a case can be made that doing so is necessary to avoid demonstrable consumer harms, and that Fund reductions would not jeopardize the sufficiency of CAF support. *See* Section II.H., *infra*.

<sup>239</sup> *See* Ad Hoc Comments at 32-33; Comcast Comments at 14-15; NASUCA Comments at 45-46; NCTA Comments at 6; Sprint Comments at 33; XO Comments at 38 (arguing that “[i]t is highly questionable whether the large price-cap ILECs that primarily benefit from the program ever needed or were deserving of this subsidy flow”). Ad Hoc argues that “[t]here is also no evidence or reason to expect that the IAS funds are or will be used by the recipients to fund deployment of broadband services to unserved areas.” Ad Hoc Comments at 33. U.S. Cellular, however, agrees with CenturyLink’s view that IAS “promotes broadband deployment. In the quintessential public-private partnership, IAS supports quality voice services in high-cost areas and enables private investment to extend broadband service where a business case can be made.” CenturyLink Comments at 28. CenturyLink explains that it:

has made significant progress in deploying broadband service including in the wire centers for which it receives IAS. Even so, more remains to be done to extend broadband service in high-cost areas. But, rapidly eliminating IAS (the public side of the public-private partnership) will materially reduce the business case for deploying broadband anywhere.

*Id.* *See* Frontier Communications Corporation (“Frontier”) Comments at 12 (stating that “[t]o cut this [IAS] funding so quickly would disproportionately affect Frontier’s ability to continue its track record of broadband deployments”). NASUCA argues that it would be “absurd . . . to use a similar [IAS] phase-out period for CETCs, given that the CETCs—mostly wireless carriers—never charged the access charges that the IAS was designed to replace.” NASUCA Comments at 45-46 (footnote omitted). The issue is not whether competitive ETCs have assessed access charges, as NASUCA suggests, but rather whether the IAS transition treats all carriers alike. The Commission proposes to transition IAS for competitive ETCs on the same schedule adopted for incumbent price cap carriers, *Notice* at para. 237, and U.S. Cellular supports that approach, since it “would avoid imposing any competitive advantage or disadvantage on any class of carrier.” U.S. Cellular Comments at 65 (footnote omitted).

glide path is more prudent because IAS support is being used to bring benefits to consumers, and because an accelerated phase-down would hamper the prospects for network investment.<sup>240</sup>

**H. Numerous Parties Urge the Commission Not To Impose a Cap on the Level of Ongoing Connect America Fund Support.**

In its Comments, U.S. Cellular has argued that the Commission should not cap ongoing CAF support, stating, *inter alia*, that the Commission has not shown a need for the proposed cap, that other reforms proposed by the Commission could be effective in limiting the size of CAF mechanisms, and that a cap would have serious negative implications regarding the Commission's ability to adhere to the statutory sufficiency principle. Instead of imposing a cap, U.S. Cellular has suggested that the Commission should pursue universal service contribution reform and should rely on its overall reform proposals to control costs and thereby control the contribution burden borne by consumers.<sup>241</sup> There is considerable support for U.S. Cellular's view in the record.

The extensive opposition to the Commission's cap proposal stems from the fact that it cannot be reconciled with the stated goals for the program to provide ubiquitous broadband deployment to all Americans. And, as the Rural Associations explain, the proposal is a product of

---

<sup>240</sup> The Mississippi PSC explains that IAS:

provides funding to price cap carriers. It is important to carriers because it has historically supported a portion of the local loop; the facility to the end user that delivers both interstate and intrastate services. IAS acts to reduce the amount of revenues that price cap carriers need to recover from end users and other carriers to meet allowable interstate revenues.

Mississippi PSC Comments at 11.

<sup>241</sup> U.S. Cellular Comments at 78-83.

the Commission's refusal to face facts: "[T]he Commission seems unwilling even to recognize that existing funding levels may not be sufficient to meet these goals."<sup>242</sup>

The Commission deserves to be commended for its dedicated efforts in advancing the Broadband Plan recommendations as a means of ensuring that all Americans have access to both fixed and mobile advanced broadband networks and services. The Broadband Plan reflects an impressive and sustained effort on the Commission's part to take into account and balance the interests and concerns of a wide range of diverse stakeholders, while at the same time endeavoring to propose a set of principles intended to illumine a path for policy choices that will best advance broadband goals and serve the public interest.

It appears to be a basis for criticizing the Commission, however, for its apparent inability or unwillingness to come to grips with a fundamental problem lying at the center of its efforts to reshape the universal service program to serve the objectives of broadband deployment. As broadband goals are defined, the CAF mechanisms need to be sized to meet these goals. Put simply, "[t]he CAF should be large enough to enable providers to deploy broadband service to *all* Americans."<sup>243</sup>

Numerous parties agree with this assessment, expressing perplexity regarding the mismatch between the Commission's broadband objectives and its proposals for funding them. If the CAF support mechanisms are set at artificially low levels, it will be extremely difficult to meet the Commission's mandated broadband requirements. "In particular, the Commission cannot im-

---

<sup>242</sup> Rural Associations Comments at 90.

<sup>243</sup> AT&T Comments at 85 (emphasis in original). AT&T observes that "adequate funding is required by sections 254(b)(5) and 254(e) [of the Act], which provide that support must be 'sufficient' to preserve and advance universal service." *Id.*

pose new broadband deployment goals without providing an opportunity to obtain sufficient funding to support such deployment for areas that are uneconomic to serve.”<sup>244</sup>

The State Members sum up the dilemma presented by the Commission’s proposals in the

*Notice:*

It is difficult to understand how the current USF financial structure will be adequate to support [the Commission’s] expanded [broadband] objectives when the chief funding source applied to the task will be the repurposing of the current \$4.2 billion of high-cost funding. The goal of universal broadband within the United States by itself may require a national funding commitment that goes well beyond the existing size of the federal USF. Yet the NPRM seems to suggest in some places that the Commission is prepared to restructure high cost mechanisms whether or not funds are sufficient.<sup>245</sup>

The fact is that the proposed cap is out of step—on a grand scale—with the need to match resources with the Commission’s defined broadband goals and objectives. In one sense, the Commission’s proposal to cap ongoing CAF support mechanisms at 2010 high-cost support funding levels seems to imply that the Commission believes that this level of funding will be sufficient. But, as NASUCA points out, there is no basis for such an assumption. “The FCC has no idea of how much money is needed to ensure universal availability of broadband . . . or to ensure reasonably comparable broadband rates).”<sup>246</sup> Neither does the Commission have any “idea of

---

<sup>244</sup> ITTA Comments at 6-7. *See* CenturyLink Comments at 4 (observing that “[s]ubstantial private investment is required to build new broadband, upgrade existing broadband, and maintain and operate all of it. This cannot be achieved through unfunded mandates. Rather, sufficient explicit support will be required to overcome the high costs that make it uneconomic to deploy and operate broadband networks in areas with low population densities.”); USA Coalition Comments at 19.

<sup>245</sup> State Members Comments at 15. The State Members, somewhat inexplicably, do conclude that, “[o]n balance, [we] agree that, at least initially, the total current fund size for high cost support should be limited to \$4.2 billion per year.” *Id.* at 11. Notwithstanding this view, the State Members present several arguments that serve as a strong indictment against the advisability of such a funding cap.

<sup>246</sup> NASUCA Comments at 9.

how much money is needed to ensure universal availability of mobility (whether broadband or not) . . . .”<sup>247</sup>

Numerous parties find the Commission’s approach implausible. The Indiana URC, for example, is “very skeptical of the FCC’s claims that it can repurpose existing high-cost support—and perhaps even the entire universal service regime—without an increase in fund size.”<sup>248</sup>

Similarly, the Blooston Rural Carriers argue that:

It makes no sense for the Commission to hold steady or decrease the size of federal high-cost support mechanisms at a time when it has recognized that substantial additional investment is needed by RLECs, price cap carriers, wireless mobile

---

<sup>247</sup> *Id.* NASUCA nonetheless favors imposition of a funding cap. *Id.* at 10. U.S. Cellular suggests, however, that imposition of a cap runs counter to NASUCA’s persuasive observation that the Commission cannot know the level of funding needed to ensure affordable and comparable broadband rates and services. In such circumstances, the more prudent public policy would be to permit funding levels to increase, to the extent necessary, so that funding is sufficient to achieve affordability and comparability. Indeed, Section 254 of the Act requires such a policy.

<sup>248</sup> Indiana URC Comments at 9. It should be noted that ACA expresses a different view, optimistically concluding that “even with a hard cap, the year-end 2010 level of funding for CAF will be sufficient to transition from the current support mechanisms and meet the Commission’s universal broadband objective . . . .” ACA Comments at 11. It bases its view on its claims that savings can be realized by administering high-cost mechanisms more efficiently; that certain support mechanisms were intended only to be temporary; that, in areas where competition has developed, funding can be eliminated or more effectively targeted; and that the telecommunications and broadband industries are declining cost industries with economies of scope and scale and rapid technological innovation. *Id.* at 11-12. None of these assertions provides grounds for imposition of an upfront, across-the-board, permanent cap. Providing for more efficient and less wasteful funding mechanisms is one way to *avoid* the need for a cap, rather than a justification for imposing one. IAS, the temporary high-cost mechanism referenced by ACA, *id.* at 11, n.15, would be phased out over a period of a few years pursuant to the Commission’s proposal. *Notice* at para. 21. Again, phasing out an existing support mechanism would not seem to justify imposition of an across-the-board cap. Although U.S. Cellular and other commenters are concerned about proposals suggesting to eliminate universal service funding in areas supposedly subject to competition, see Section II.K., *infra*, ACA’s notion that eliminating this funding justifies a “hard” cap is not persuasive. The argument seems to imply that \$4.2 billion (or less) will be sufficient to meet the Commission’s broadband goals because the cost of these goals will be reduced by eliminating funding in “competitive” areas. If this and other reductions discussed by ACA are in fact sufficient to meet the Commission’s goals (as ACA seems to contend), then the cap is irrelevant and therefore should not be imposed. *See Notice* at para. 487; MTPSC and Viaero Wireless Comments at 11. If, however, these reductions are not sufficient, then the cap would have the direct effect of preventing the Commission from meeting its broadband goals.

broadband carriers and other carriers to deploy broadband facilities and services in unserved and underserved rural areas.<sup>249</sup>

The record reflects a legitimate and well-grounded concern that the Commission's proposals are laser focused on being fiscally responsible, but the Commission has neglected to develop any realistic options for funding its aggressive broadband deployment objectives. The Rural Associations explain that "[a] key assumption underlying virtually all the proposals in the NPRM appears to be that the nation's broadband goals must be constrained to those that can be accomplished with current high-cost support levels."<sup>250</sup> The Rural Associations tellingly observe that "[t]here is, however, a fundamental inconsistency between the directives in the Act and the [Commission's] insistence that the size of the USF cannot increase."<sup>251</sup> U.S. Cellular agrees with the Rural Associations' conclusion regarding where the Commission's proposals would take universal service if they are not modified:

Tomorrow's broadband networks cannot be built on a crumbling foundation of today's narrowband revenues. At some point, the Commission must confront the fact that high-cost support at current levels will not provide sufficient funding to accomplish the nation's broadband goals. Rather than balance competing goals, the scale is presently tipped, such that concerns over fund constraints far outweigh overarching national deployment goals and very clear legislative directives regarding what the USF is expected to achieve.<sup>252</sup>

Other commenters amplify U.S. Cellular's and the Rural Associations' concerns regarding the mismatch between funding levels and broadband goals. The State Members, for example, warn that "[i]f the Commission does not have enough funds to achieve its goals, but it does nev-

---

<sup>249</sup> Blooston Rural Carriers at 8.

<sup>250</sup> Rural Associations Comments at 89. Alternatively, as the State Members indicate, the *Notice* can be read as suggesting that the Commission will attempt to restructure high-cost mechanisms regardless of whether it has sufficient funds to do so. State Members Comments at 15.

<sup>251</sup> Rural Associations Comments at 89.

<sup>252</sup> *Id.* at 90.

ertheless take the actions proposed in the NPRM, the net result could be actual harm to universal service.”<sup>253</sup> The State Members paint an alarming picture of what could result if the Commission’s actions lead to the underfunding of universal service programs:

For carriers now receiving support, reductions could translate into an inability to pay existing debts that were incurred for past network improvements, notably deploying broadband. Reductions could also induce defensive responses by carriers such as reducing capital expenditures, cutting back on customer service, and deferring maintenance. Over the next decade, customers in some rural areas could simply lose telecommunications service altogether or find that their provider’s facilities are so poorly maintained and so unreliable as to make their telecommunications service almost worthless.<sup>254</sup>

CenturyLink provides an example regarding the impact that an overall, upfront funding cap on ongoing CAF distributions would have on carriers’ operations, explaining that “[a]ny negative change to the Commission’s regulatory structure including significant reductions in CenturyLink’s current federal high-cost support will undermine the already dubious business case for broadband deployment in . . . areas [served by CenturyLink].”<sup>255</sup> CenturyLink is further concerned that the proposed cap “will also jeopardize CenturyLink’s ability to maintain and upgrade its existing network to keep up with burgeoning demand.”<sup>256</sup>

There are also fears that the Commission’s proposed cap would have an adverse effect on state universal service programs. The Iowa UB explains that “[t]he Commission’s intention of

---

<sup>253</sup> State Members Comments at 15.

<sup>254</sup> *Id.* at 15-16. *See* CenturyLink Comments at 36 (contending that “underfunding the CAF will deprive rural consumers of access to critical broadband service and threaten the statutory requirement of reasonably comparable rates and services in urban and rural areas”).

<sup>255</sup> CenturyLink Comments at 19. CenturyLink’s concern regarding reductions in support refers to the Commission’s proposal “to set an overall budget for the CAF such that the sum of the CAF and any existing high-cost programs (*however modified in the future*) in a given year are equal to the size of the current high-cost program in 2010.” *Notice* at para. 414 (emphasis added). The *Notice* makes numerous proposals that could result in reductions in the level of high-cost support received by existing ETCs.

<sup>256</sup> CenturyLink Comments at 19.

holding USF funding to 2010 levels, while expanding broadband deployment and reducing ICC [intercarrier compensation], has the potential to put serious financial strain on state universal service programs.”<sup>257</sup>

Commenters that are worried about the likely effects of the Commission’s proposed funding cap also suggest that the Commission’s accomplishment of fiscally responsible reforms is not dependent upon the imposition of an overall cap on ongoing CAF funding. MTPSC and Viaero Wireless, for example, argue that the Commission itself has suggested that its proposed reforms will be effective in managing the size of the CAF funding mechanisms, and that the Commission should trust its own expectations regarding the predicted effects of these reforms.<sup>258</sup> In addition, RCA contends that “[t]he Commission can significantly reduce funding needs while promoting competition and efficiency by expressly tying support payments to a carrier’s success in capturing the customer[.]”<sup>259</sup> and notes that the Joint Board has found that funding portability would protect the sustainability of universal service funding mechanisms.<sup>260</sup>

Several commenters also point to another route the Commission could follow to bypass any need for a funding cap, namely, contribution reform. For example, the Blooston Rural Carriers advocate that “the high-cost support ‘pie’ should be enlarged, rather than sliced into smaller and increasingly insufficient pieces.”<sup>261</sup> They argue that “[t]his can be accomplished by early

---

<sup>257</sup> Iowa UB Comments at 6.

<sup>258</sup> MTPSC and Viaero Wireless Comments at 11. The Commission has indicated that “[w]e believe that our proposals to rationalize investment in modern communications networks, to better target support, and to employ market-based mechanisms will control costs and thereby control the contribution burden borne by consumers.” *Notice* at para. 487.

<sup>259</sup> RCA Comments at 13.

<sup>260</sup> *Id.* at 13-14 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257, 4279-80, 4285-86 (paras. 56, 67) (2004)).

<sup>261</sup> Blooston Rural Carriers Comments at 8.

reform of the existing universal service contribution mechanisms to expand the base of contributors to encompass all service providers that use the existing multiple-use network and that will use the National Broadband Network.”<sup>262</sup>

Commenters endorsing the Commission’s proposed funding cap do not provide any plausible basis for the Commission to go forward with its proposal. Ad Hoc, for example, suggests that the imposition of a funding cap is a necessary prerequisite for enabling a rational harmonizing of statutory universal service priorities, arguing that “[b]alancing priorities with limited

---

<sup>262</sup> *Id.* See Cbeyond, Inc., Integra Telecom, Inc., tw telecom inc., Comments at 18-19 (arguing that the contribution base should be expanded to include broadband Internet access service revenues); Century-Link Comments at 36 (supporting expansion of the contribution base); ITTA Comments at 14-16 (arguing that the size of USF is best controlled through rational collection and allocation policies, not through imposition of arbitrary funding caps). Numerous parties generally express their support for contribution reform. *See, e.g.*, Ad Hoc Comments at 10-11 (footnote omitted) (arguing that “[t]he current methodology for assessing USF contributions will make the USF and successor CAF unsustainable. . . . The current Commission can do what recent previous Commissions failed to do, i.e., reform the USF and the successor CAF in a way that requires equitable contributions from providers of telecommunications and broadband and that provides a specific, predictable and sufficient funding source for supported services.”); CompTel Comments at 15-17; ITTA Comments at 19-21 (noting that the Commission’s failure to address the assessment of contributions in the *Notice* is a fundamental error); Mississippi PSC Comments at 12; MTPCS and Viaero Wireless Comments at 13 (arguing that “the Commission could avoid any need for an up-front, permanent cap on the ongoing support mechanism that would be implemented in the second phase of CAF, by acting on universal service contribution reform. One step to consider would be to spread the contribution burden across all users of the networks that will benefit by USF investments.”); Nebraska PSC Comments at 9 (recommending that the Commission should “ensure that all providers are contributing to universal service on an equitable basis. This particular proceeding does not focus on expanding the contribution base; however, we think it is important that the Commission consider it in order to balance the objectives of universal service in a broadband supported environment.”); *id.* at 21 (arguing that the Commission should expand the base of contributors to include all broadband providers because “[t]echnology-specific loopholes increase the assessment base borne by consumers of the providers that remain subject to the assessment, skew the competitive playing field, and erode the funding source for universal service by driving consumers to the favored providers”); New Jersey BPU at 5; RICA Comments at 8 (criticizing the Commission for “put[ting] off to the indefinite future consideration of what the contribution rules should be in the new environment”); RTG Comments at 24; Rural Associations Comments at 91 (arguing that “the Commission should also take immediate action to sustain the USF by broadening the base of USF contributors”); State Members Comments at 117-21 (recommending that “the Commission expeditiously evaluate fundamental changes to the current contribution mechanism”).

funds will require the Commission to make difficult choices, but making such choices is precisely the obligation that Section 254 of the Act imposes on the Commission.”<sup>263</sup>

If the Commission adopts its cap proposal, a more likely outcome is that the funding cap would leave the agency *without any choices* for carrying out the mandates in Section 254. The Commission attempts in the *Notice* to define universal service policies that will result in providing rural consumers with access to affordable and comparable advanced broadband services, while also maintaining access to voice services. As numerous commenters have observed, it is very unlikely that these goals can be met with CAF mechanisms funded at approximately \$4.2 billion annually. It is therefore difficult to escape the conclusion that the Commission will have little opportunity to deliver on its promises regarding ubiquitous, affordable broadband for all Americans, if it imposes a funding cap.

ACA contends that a “hard cap” would help eliminate “excesses and inefficiencies” and would help ensure “that going-forward funds are allocated precisely to only those areas that truly require support.”<sup>264</sup> Neither of these claims is persuasive. The Commission does not need to impose an overall cap in order to reduce or eliminate inefficient operations, or to accurately target funding. Under ACA’s approach, an across-the-board cap would penalize *every* ETC and its cus-

---

<sup>263</sup> Ad Hoc Comments at 41. NCTA makes a similar claim, arguing that capping overall USF funds at 2010 levels “would provide a generous level of funding to achieve the goals of universal service[,]” and, coupled with reforms proposed in the *Notice*, “will provide sufficient and predictable funding to deploy broadband in areas where it currently is unavailable and to ensure that consumers in high-cost areas continue to receive supported services.” NCTA Comments at 4. NCTA does not provide any explanation for its optimism. Common sense and the record suggest otherwise: A funding cap, coupled with an unexpanded contribution base, would not likely give the Commission the resources it needs to ensure the availability of affordable and comparable broadband services in rural areas, as envisioned by the Broadband Plan and the Commission’s broadband goals.

<sup>264</sup> ACA Comments at 9.

tomers through a broad-gauged pursuit of policies that could be better achieved through other means.

ACA also argues that an overall cap is necessary because the high-cost fund has “grown enormously” over the past 15 years. As ACA concedes, however, much of this growth occurred “as a result of new entities drawing from the fund and incumbents receiving increased High-Cost support, as intercarrier compensation rates have decreased.”<sup>265</sup> Thus, the growth, which was anticipated by the Commission, was a product of Commission policies promoting competition and providing explicit funding to carriers that were losing implicit subsidies. Moreover, competitive ETCs have been subject to a cap since 2008, but this has not slowed growth in the high-cost support mechanism, suggesting that other factors (such as the continuation of support to rural incumbent LECs even as their loss of access lines accelerates, and the Commission’s failure to carry out contribution reforms) have had an effect on the size of the contribution factor.<sup>266</sup>

A further claim made by ACA is that a cap is justified because the contribution factor has risen to unreasonable levels, imposing costs that are directly borne by consumers.<sup>267</sup> While ACA presents no analysis or data regarding the extent of the consumer burdens that ACA claims justify an across-the-board upfront cap on ongoing CAF funding, it is instructive to undertake such an examination.<sup>268</sup> Looking at this issue from the perspective of consumers subscribing to wireless services, a typical wireless customer with a \$50.00 monthly bill currently contributes ap-

---

<sup>265</sup> *Id.*

<sup>266</sup> *See* U.S. Cellular Comments at 38-39 & n.100.

<sup>267</sup> ACA Comments at 10-11. *See* Comcast Comments at 12; New York PCS Comments at 6 (arguing that “[s]ubstantial universal service fund payments cause additional economic drag and impose burdens on consumers”).

<sup>268</sup> The following discussion in the text amplifies and updates a discussion appearing in U.S. Cellular and RCA Comments, WC Docket No. 05-377, CC Docket No. 96-45 (filed June 6, 2007).

proximately \$1.86 to the USF (3.7 percent),<sup>269</sup> of which only 38 cents (or 0.75 percent of the total bill) goes to competitive ETCs' high-cost support.<sup>270</sup>

All the available evidence demonstrates that an overall cap on the size of CAF support mechanisms is not necessary because the overall size of CAF is not a critical pocketbook issue for consumers.<sup>271</sup> For example, Consumer Price Index ("CPI") data shows that, from 2000 through 2009, the annual rate of change for all goods and services averaged 2.54 percent, while the annual rate of change for all telephone services averaged 0.21 percent. In 2009, CPI for all goods and services rose 2.7 percent, while the increase for all telephone services was only 1.0 percent.<sup>272</sup>

In addition, consumers are spending only slightly more today for telephone services than they were before enactment of the 1996 Act and the growth of competition. Spending for all types of telephone service in 1996 (including local, long distance, and wireless service) amounted to 1.8 percent of spending for all consumer goods and services. In 2009, consumer

---

<sup>269</sup> \$50.00 x 25 percent x 14.9 percent contribution factor = \$1.86. *See Carrier Revenue Report* (Industry Analysis & Technology Div., WCB, Sept. 2010) at Table 8 (showing 24.6 percent of wireless carrier revenues reported as interstate/international for 2008, the most recent year reported); *Proposed Second Quarter 2011 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 11-473 (Mar. 10, 2011) ("*Contribution Factor Notice*").

<sup>270</sup> Total 2010 competitive ETC support of \$1,695,200,000 made up 20.2 percent of the \$8.39 billion USF. *See Monitoring Report*, Table 3.2; *Contribution Factor Notice* at 2. Of the \$1.86 USF surcharge set forth above in the text, 20.2 percent is \$0.38.

<sup>271</sup> The New Jersey BPU argues that the Fund not only should be capped, but also should be cut back, because "[i]t is time to reduce the burden on net contributor states, including New Jersey and its ratepayers, many of whom struggle to pay for their own services, without having to subsidize voice, and now broadband service for rural consumers." New Jersey BPU Comments at 2. *See* New York PSC Comments at 3. While U.S. Cellular is not unsympathetic to the concerns of contributor states such as New Jersey and New York, a system that creates contributor states and recipient states, based upon the location of rural and high-cost areas across the country, cannot be criticized as being inherently unfair, since the statutory purpose of the system is to bring universal service to these rural and high-cost areas. The relevant question is whether *individual consumers* in *all* states would face overly burdensome USF surcharges unless CAF mechanisms are capped. The evidence demonstrates that they would not.

spending for these same telephone services accounted for 2.1 percent of overall consumer spending.<sup>273</sup>

Other telephone pricing trends also demonstrate that consumers are not likely to suffer any severe adverse effect from any growth in the size of CAF mechanisms. In recent years, average wireline residential local and interstate/international long distance telephone bills have been steadily declining, even taking into account access charges and the USF surcharge. Specifically, average monthly combined charges for local and interstate/international long distance telephone service, which amounted to approximately \$32 in 1998, declined to approximately \$27.41 in 2007 (the most recent year for which average bills can be calculated).<sup>274</sup> The local portion of these monthly bills remained approximately the same over this 10-year period, while the long distance portion shrank from \$5.92 per month to \$0.80 per month.

In addition, the following trends occurred between December 2004 and December 2009 (using December 1997 as the base period with an index of 100): (1) CPI for all goods and services increased from 118.0 to 133.9; (2) CPI for all telephone services increased from 94.8 to 102.7 (an average annual increase of only 1.4 percent); (3) CPI for wireless services decreased from 65.6 to 63.6; and (4) CPI for landline local services increased from 125.5 to 146.4.<sup>275</sup>

---

<sup>272</sup> *Monitoring Report*, Table 7.2.

<sup>273</sup> FCC, TRENDS IN TELEPHONE SERVICE, Table 3.3 (Sept. 2010) (“*Trends Report*”).

<sup>274</sup> Average monthly charges for residential local service were taken from the *Trends Report* at Table 13.3 (Average Rate for a Residential Access Line). Average monthly charges for residential interstate and international long distance service were calculated by multiplying average revenue per minute in a given year by the average monthly interstate and international long distance minutes of use for that year. See *Trends Report*, Tables 13.4 (Average Revenue Per Minute), 14.2 (Average Residential Wireline Monthly Toll Minutes).

<sup>275</sup> *Monitoring Report*, Table 7.4.

Prices for wireless services in particular show that any upward pricing pressure on consumer costs that may be caused by increases in the size of CAF support mechanisms is more than offset by the effects of a competitive marketplace. Wireless prices (reflected by average cost per minute) have dropped by 76.8 percent from 1998 to 2008. Average monthly bills for wireless services decreased by 18.6 percent from 1993 through 2008.<sup>276</sup>

With the exception of landline local services (which historically have been provided on a monopoly basis), telephone services generally, and wireless services in particular, have declined with the growth of competition. This compelling evidence illustrates that any increases in the size of CAF mechanisms are not likely to cause consumer impacts that would warrant an up-front overall cap.

ACA also claims, without any documentation, that “as the size of the contribution rate grows, . . . consumers . . . consume less of the service than they would otherwise.”<sup>277</sup> An examination of consumers’ use of wireless services contradicts this claim. From 1993 through 2008, minutes of use per wireless customer per month have increased from 140 to 708, a jump of 405.7 percent.<sup>278</sup> From the second quarter of 2000 to the second quarter of 2011, the contribution factor has grown from 5.7 percent<sup>279</sup> to 14.9 percent, an increase of 161.4 percent.

An additional argument advanced by ACA is that, unless a hard cap on funding is imposed, “the possibility of the [USF] program rapidly inflating, producing increased contribution

---

<sup>276</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, 25 FCC Rcd 11407, 11532 (Table 19) (2010) (“*Fourteenth Report*”).

<sup>277</sup> ACA Comments at 10-11.

<sup>278</sup> *Fourteenth Report*, 25 FCC Rcd at 11532 (Table 19).

rates, is a very real concern . . . .”<sup>280</sup> As discussed above, the Commission has ample means to take steps to regulate the size of CAF mechanisms (*e.g.*, requirements that will increase efficiency and curtail any waste of USF funds) without the need for an across-the-board cap. In addition, it should be kept in mind that the Commission must be responsive to a statutory mandate that the Fund be sufficient to ensure that consumers in rural and high-cost areas have access to affordable services that are also comparable to services available in urban areas. ACA’s argument does not take into account the fact that an overall cap could very likely interfere with the Commission’s ability to comply with this statutory mandate.

The Massachusetts DTC argues that the Commission should impose an immediate freeze on all high-cost support because this would provide the agency “with the opportunity to better evaluate the ultimate needs of the final CAF based upon a fixed budget (capped support) and the data resulting from the Phase I disbursements.”<sup>281</sup> In U.S. Cellular’s view, the Massachusetts DTC has it backwards. Imposing a cap, and then subsequently figuring out what ultimate funding needs are, would risk disruptions in the provision of support, and also would risk denying consumers access to advanced broadband services, because capped funding likely would not be sufficient (as required by the Act) to prevent these results. These risks could be avoided if the Commission refrains from imposing a funding cap.

---

<sup>279</sup> *Proposed Second Quarter 2000 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 00-517 (Mar. 7, 2000).

<sup>280</sup> ACA Comments at 11.

<sup>281</sup> Massachusetts DTC Comments at 10 (footnote omitted).

NTCH argues that a funding cap is appropriate and workable because the Commission has imposed a funding cap on competitive ETCs,<sup>282</sup> “[y]et somehow most CETCs have managed to continue providing service as they did before.”<sup>283</sup> A more realistic assessment of the effects of the interim cap imposed by the Commission in 2008 is that many competitive ETCs have been forced to curtail or abandon network upgrades and expansions, and have found their sources of investment capital placed in jeopardy, because of the unexpected and significant disruption in their receipt of universal service support. Competitive ETCs subject to the cap have also encountered difficulties in maintaining their previous levels of service quality because of the curtailment of funding resources used for operational and maintenance expenses.

New Hampshire provides an example. U.S. Cellular has previously indicated that, as a result of the imposition of the interim cap, New Hampshire will lose 83 percent of its high cost support.<sup>284</sup> As a result of this cap, U.S. Cellular received \$55,606 in high cost support for the first quarter of 2011 (resulting in a projected annualized amount of \$222,424 for 2011). In the absence of a cap, U.S. Cellular would have received \$460,650 in high cost support per quarter in that state (approximately \$1.8 million annualized).<sup>285</sup> It is implausible to maintain that this reduction in high cost support could not adversely affect U.S. Cellular’s network expansion and provision of service in New Hampshire.

---

<sup>282</sup> See *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008), *aff’d*, *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

<sup>283</sup> NTCH Comments at 4.

<sup>284</sup> U.S. Cellular Reply Comments, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337 (filed Aug. 11, 2010), at 18.

<sup>285</sup> These figures are drawn from USAC High Cost Disbursement Data, accessed at <http://www.usac.org/hc/tools/disbursements/results.aspx>.

The fact is that universal service support plays an important role—indeed, this is the purpose of the support—in enabling ETCs to bring affordable and comparable services to rural consumers. In deciding whether to impose a funding cap on CAF mechanisms, the Commission should take into account the likely impact of the cap: It is simply common sense that, at a minimum, capping funding at 2010 levels would curtail the ability of competitive ETCs to deploy infrastructure in rural and high-cost areas.<sup>286</sup> The Commission should not ignore this trade-off.

**I. There Is Support in the Record for U.S. Cellular’s Position That the Commission Should Not Change the Treatment of Wireless Family Plans for Purposes of Support Calculations.**

The Broadband Plan, in an apparent effort to seek any means of funneling as much legacy support into the new CAF programs as quickly as possible, recommended that wireless family plans should be treated as single lines for purposes of high-cost support calculations, which would have the effect of immediately reducing the level of support received by many competitive ETCs.<sup>287</sup> U.S. Cellular has opposed such an approach,<sup>288</sup> and other commenters have joined in this opposition.

CTIA argues, for example, that the current provision of support for wireless family plan arrangements is virtually the same as the Commission’s treatment of incumbent LECs, which receive high-cost support for multiple lines per household or business.<sup>289</sup> CTIA also observes that the Commission’s acceptance of the Broadband Plan recommendation would result in an immediate reduction in competitive ETCs’ support, thus contradicting the Commission’s pledge

---

<sup>286</sup> As U.S. Cellular and other commenters have discussed, one effect of this would be to leave consumers in some rural and high-cost areas without adequate access to assistance in emergencies. See Section II.D., *supra*.

<sup>287</sup> See *Notice* at para. 257 (citing NBP at 148).

<sup>288</sup> U.S. Cellular Comments at 62-64.

to avoid any flash cuts in its universal service policies.<sup>290</sup> CTIA argues that “[s]upporting only one handset in wireless family plans would not only violate the statutory principle of competitive neutrality, it would run afoul of the Congressional prohibition on restricting universal service support to a primary line.”<sup>291</sup>

MTPCS and Viaero Wireless agree with CTIA and U.S. Cellular that treating wireless family plans as single lines, in order to accelerate the reduction of competitive ETCs’ legacy high-cost support, would not be competitively neutral “because it would treat high-cost support currently received by competitive ETCs and by rural incumbent LECs differently, without having any reasonable basis for doing so.”<sup>292</sup> MTPCS and Viaero Wireless explain that each wireless handset in a family plan “is the fair equivalent to a separate ‘line’ for which service must be ubiquitously available[,]”<sup>293</sup> and therefore should continue to be eligible for high-cost support.

Proponents of the Broadband Plan recommendation, to the extent they do more than merely endorse the recommendation in their comments, make arguments that misconceive the nature of wireless family plans. According to NCTA, “the wireless segment of competitive ETC support is where the likelihood of unnecessary payments is greatest because . . . consumers often purchase multiple supported lines per household.”<sup>294</sup> NCTA does not discuss why it believes these consumer purchases produce unnecessary high-cost support distributions.

---

<sup>289</sup> CTIA Comments at 19.

<sup>290</sup> *Id.* at 19-20 (citing *Notice* at para. 12).

<sup>291</sup> *Id.* at 19 (footnote omitted).

<sup>292</sup> MTPCS and Viaero Wireless Comments at 9-10.

<sup>293</sup> *Id.* at 10.

<sup>294</sup> NCTA Comments at 7 (footnote omitted).

MTPSC and Viera Wireless, however, explain that each handset in a family plan warrants USF support because each handset imposes requirements on the wireless carrier's network. "[B]ecause each wireless handset in a family plan provides a *mobile* service, infrastructure that supports the use of *each* of the handsets *anywhere* in a competitive ETC's service area must be built and maintained. Moreover, sufficient spectrum must be acquired and coordinated to enable the use of each handset."<sup>295</sup>

The Massachusetts DTC "opposes payout of duplicative support that subsidizes multiple phones in many households"<sup>296</sup> because these payments "unnecessarily increase the burden placed on Massachusetts consumers who contribute to the Fund, and who realize . . . little benefit from [this practice]."<sup>297</sup> Given the fact that there is no basis for concluding that support for handsets provided by wireless family plans is "duplicative" (and the Massachusetts DTC does not attempt to provide any such basis),<sup>298</sup> there are no grounds for concluding that whatever burdens that may be placed on consumers indirectly contributing to USF are unjustified.

In any event, these concerns, however legitimate they may be, cannot provide a unilateral and exclusive basis for flash cutting high-cost support for wireless family plans. The Commission must conclude that treating wireless family plans as a single "line" would be competitively

---

<sup>295</sup> MTPCS and Viera Wireless Comments at 10 (emphasis in original).

<sup>296</sup> Massachusetts DTC Comments at 13-14.

<sup>297</sup> *Id.* at 14.

<sup>298</sup> Verizon makes a similar argument, contending that "[s]ince these family plans are billed to a single account and share capacity (minutes) it is reasonable that they not receive duplicative support." Verizon Comments at 49. Billing arrangements and shared capacity (in the case of family plans that provide for shared capacity) are not relevant to the issue of whether providing high-cost support for each line is "duplicative." The issue is whether each handset generates unique network costs. Current Commission policy reflects the fact that, as MTPCS and Viera Wireless have demonstrated, such network costs are associated with each handset, which validates the continued availability of high-cost support for each handset in a family plan.

neutral, would be reasonable because treating each handset as a separate line results in “duplicative” support, would not cause disruptions to consumers or interfere with the ability of stakeholders to adapt to changing circumstances,<sup>299</sup> and would not conflict with laws enacted by Congress. The Commission does not have any basis for reaching any of these conclusions.

**J. An Initial Broadband Speed Target of 4 Mbps (Download) and 1 Mbps (Upload) Has Significant Support in the Record.**

U.S. Cellular has argued that defining broadband for purposes of universal service support by using an initial target of 4 Mbps (download) and 1 Mbps (upload) would best serve the Commission’s objectives for providing all Americans with access to advanced broadband, and that the Commission also should develop speed measurement criteria that account for the unique characteristics of mobile broadband.<sup>300</sup> There is considerable support for each of these recommendations in the record.

U.S. Cellular agrees with several commenters who argue that setting speeds of 4 Mbps (download) and 1 Mbps (upload) as an *initial* broadband target is appropriate, but that the Commission should be prepared to adjust the target upward. TDS, for example, points out that “[t]he Internet continues to evolve and consumers’ reliance upon and expectations about broadband service continue to expand. New applications and programs that involve full motion video, collaborative educational applications, telecommuting, telemedicine and other next-generation services require increasingly higher levels of bandwidth and network sophistication to function properly.”<sup>301</sup>

---

<sup>299</sup> See CTIA Comments at 19-20.

<sup>300</sup> U.S. Cellular Comments at 43-46, 47-49.

<sup>301</sup> TDS Comments at 12. See ACA Comments at 22; Cox Comments at 4-5; Google Comments at 16 (footnote omitted) (arguing that “the FCC should mandate these actual [4 Mbps/1 Mbps] speeds as a floor, and also commit to revisit this criterion every three years to ascertain whether a higher actual

Setting a lower broadband speed threshold, or not providing for review and upward adjustment of an initial 4 Mbps/1 Mbps threshold, would be problematic because, as the Rural Broadband Alliance explains, “[t]o consign rural communities to ‘low-speed’ not only would be contrary to the explicit Universal Service principles set forth in the Act, but would also deprive those communities of the lifeblood and vitality they require for economic development and job creation.”<sup>302</sup>

Commenters also demonstrate that the Commission should design metrics for defining broadband that take into account the unique characteristics of wireless mobile broadband. CTIA makes the general point that “mobile wireless broadband is particularly susceptible to factors that may affect speed, and that are not present in wireline networks[,]”<sup>303</sup> and Sprint provides specific examples of factors that can cause fluctuations in mobile broadband speeds:

[I]t is difficult to maintain consistent mobile broadband speeds, as available bandwidth can vary for many reasons beyond the carrier’s control, *e.g.*, the amount of traffic on a tower at any given time, environmental factors such as weather or foliage, the extent to which the user is on the move (and thus is being transferred from cell site to cell site) or remains in one location, the user’s distance from the cell site, the type of handset or device used, and the type of activity being conducted (large versus small file transfers).<sup>304</sup>

---

broadband service speed should be a condition of broadband funding”); Frontier Comments at 23-24 (supporting adoption of the 4 Mbps/1 Mbps speed threshold, and noting that “the Commission has based its premise of the amount of Americans that are currently ‘unserved’ on the 4/1 threshold, so utilizing a different threshold at this point would lead to fundamental questions about what the Commission seeks to achieve”).

<sup>302</sup> Rural Broadband Alliance Comments at 6. *See* NASUCA Comments at 77 (arguing that “whatever funds are expended on broadband deployment, the network created with those funds must be ‘scalable,’ that is, capable of speed upgrades with a minimum of effort and expense. A focus on 4/1 appears to cement rural and high cost areas into a minimum performance standard that is well outside of what can reasonably be projected to be the norm in urban areas by 2014.”).

<sup>303</sup> CTIA Comments at 34 (footnote omitted). *See id.* at 33 (arguing that “any proposed speed targets . . . must not arbitrarily exclude mobile wireless broadband services”); ACA Comments at 14.

<sup>304</sup> Sprint Comments at 40-41.

These factors lead Sprint to conclude that establishing a “rigid measure” of speed as a basis for eligibility for CAF support would be inadvisable because doing so “would likely discriminate heavily in favor of fixed networks at the expense of mobile broadband carriers.”<sup>305</sup> AT&T expresses reservations regarding using 4 Mbps/1 Mbps as the threshold broadband speed, one of which is that such a threshold would be overly ambitious with regard to throughput.<sup>306</sup> U.S. Cellular does not disagree with AT&T’s observation, and has suggested in its Comments that one means of addressing this issue “would be for the Commission to rely on average sector throughput as a means of qualifying any strict application of specific [speed] requirements for supported mobile broadband services.”<sup>307</sup>

Some commenters suggest that, if specific speed targets are used to define advanced broadband services for purposes of CAF eligibility, then the Broadband Plan’s recommendation of a 4 Mbps/1 Mbps speed threshold should be adjusted, either upward<sup>308</sup> or downward.<sup>309</sup> U.S. Cellular, however, believes that the Broadband Plan makes a convincing case that a 4 Mbps/1 Mbps initial speed threshold would provide a sufficient speed for a basic set of Internet applica-

---

<sup>305</sup> *Id.* at 41. *See* T-Mobile Comments at 9 (footnote omitted):

The speed of mobile networks may vary at different points in time, as the capacity per user is largely dependent upon the number of other users in a given sector, as well as other factors. Therefore, and as required by statute, the Commission should define “broadband” for USF purposes in a competitively neutral way that does not explicitly or implicitly discount the inherent characteristics, value, and benefits of different network platforms.

<sup>306</sup> AT&T Comments at 93-94.

<sup>307</sup> U.S. Cellular Comments at 48.

<sup>308</sup> *See* Kansas CC Comments at 25.

<sup>309</sup> *See* CenturyLink Comments at 22; Florida PSC Comments at 5-6; RCA Comments at 19.

tions, and that the recommended initial speed target reflects what typical broadband users currently use.<sup>310</sup>

Frontier argues that, “[r]egarding mobile broadband, . . . which views itself as a direct competitor to wireline broadband, it would be unfair to hold it to a lesser standard simply because of its mobile attribute.”<sup>311</sup> U.S. Cellular does not disagree that any metrics established by the Commission to define advanced broadband should apply in a competitively and technologically neutral manner. The suggestion made by U.S. Cellular and other commenters that the unique characteristics of mobile wireless networks should be taken into account in applying a broadband speed threshold is consistent with such a policy. Neither U.S. Cellular nor other commenters are advocating a *lesser* standard for mobile wireless broadband, but rather a standard that recognizes the real-world operations of mobile wireless networks and therefore that does not apply in a manner that would disadvantage these networks.

Finally, USA Coalition is critical of the proposal to adopt a 4 Mbps/1 Mbps speed target for broadband services, because “nowhere in the NPRM does the Commission undertake an analysis of whether such services have been sufficiently adopted to even qualify as a supported service.”<sup>312</sup> U.S. Cellular agrees that the Commission should carry out such an analysis, but also notes that previous “FCC analysis shows that the median actual speed consumers experienced in

---

<sup>310</sup> See NBP at 135, cited in U.S. Cellular Comments at 44. Fairpoint argues persuasively that the Commission should not adopt a “subpar” broadband standard because doing so would perpetuate the “rural-rural divide.” Fairpoint Comments at 17.

<sup>311</sup> Frontier Comments at 22-23 (footnotes omitted).

<sup>312</sup> USA Coalition Comments at 6.

the first half of 2009 was roughly 3 Mbps, while the average (mean) actual speed was approximately 4 Mbps.”<sup>313</sup>

**K. The Commission Should Be Skeptical of Proposals To Eliminate Universal Service Funding in Areas Purportedly Served by Carriers Not Receiving Support.**

U.S. Cellular has opposed proposals to carve out of incumbent LECs’ study areas any portions that purportedly do not need support due to the presence of unsubsidized competition, arguing that such an approach “would fail to advance universal service and competitive goals in numerous respects, including the fact that it would threaten the delivery of service in the highest-cost portions of study areas.”<sup>314</sup> Several commenters support this view.

CenturyLink, for example, agrees with the approach discussed in the *Notice* in principle, but argues that, if the Commission were to adopt such an approach, “sufficient CAF support must be provided for those customers who would not have access to high-quality voice and broadband services absent [the] support [being provided to existing fund recipients].”<sup>315</sup> ITTA explains the risks associated with the proposal, arguing that, if the Commission were to remove support provided to the incumbent service provider, based on service provided by an unsubsidized competitor in only a part of the incumbent’s service area, this “would harm the remaining customers that are served only by the supported ILEC. Without the support that made the initial

---

<sup>313</sup> OBI, BROADBAND PERFORMANCE: OBI TECHNICAL PAPER NO. 4, at 12.

<sup>314</sup> U.S. Cellular Comments at 74 (footnote omitted).

<sup>315</sup> CenturyLink Comments at 33. CenturyLink indicates that, if an unsubsidized carrier is providing service to 95 percent of the customers in the service area involved, then “the Commission must ensure that CAF support is provided, if necessary, to enable the availability of these services to the remaining five percent of customers in that area.” *Id.*

investment feasible, the ILEC could eventually be forced to cease providing service to the remaining customers.”<sup>316</sup>

The problem identified by these commenters is that portions of an incumbent’s service area in which an unsubsidized competitor is operating are not severable, in any practical sense, from remaining portions of the service area, and attempting to eliminate support received by the incumbent that is associated with the “competitive” portion of its service area is likely to have adverse consequences for consumers in the remaining portions of the service area.

Commenters favoring the proposal argue that continuing to provide support to incumbents in areas that are also served by unsubsidized carriers is not competitively neutral and discourages competitive entry,<sup>317</sup> that support is not necessary in areas in which service can be provided without any support,<sup>318</sup> and that the continued provision of support would have the detrimental effect of increasing the size of the CAF mechanisms.<sup>319</sup>

While U.S. Cellular is not unsympathetic to these arguments, it remains concerned that providing or eliminating support to incumbents based upon the absence or presence of unsubsidized competitors could inadvertently handicap the capability of incumbents to provide service

---

<sup>316</sup> ITTA Comments at 30-31. *See* RTG Comments at 23-24. The Rural Associations raise another aspect of the problems that could be caused by adoption of the proposal. If the Commission were to decide to eliminate all support received by the incumbent provider in those portions of its service area that are also served by an unsubsidized competitor, then this would necessitate the Commission’s permitting the incumbent “to disaggregate its costs and recalibrate its support for the other areas it serves . . . even though that may likely lead to an *increased* need for high-cost support . . . .” Rural Associations Comments at 54 (emphasis in original).

<sup>317</sup> *See* NTCH Comments at 3; Sprint Comments at 35; Verizon Comments at 62.

<sup>318</sup> *See* Ad Hoc Comments at 8; ACA Comments at 17; CTIA Comments at 26-27; Free Press Comments at 2 (unpaginated); Massachusetts DTC Comments at 13-14; NTCH Comments at 2-3.

<sup>319</sup> *See* Ohio PUC Comments at 42-43. The Ohio PUC also indicates that, “[n]onetheless, [it] does not believe that the existence of unsubsidized broadband service today serves as any reliable indicator that future funding will not be necessary.” *Id.* at 43 (footnote omitted).

in areas with the highest costs. Rather than focusing on whether unsubsidized competitors are offering service in some subset of the incumbent's service area, a more prudent and effective approach would be to focus on disaggregation within study areas, and the re-sizing of study areas, as a means of targeting support to areas with the highest costs.

### **III. CONCLUSION.**

The record in this proceeding identifies numerous problems with the path to universal service reform proposed by the Commission in the *Notice*. As a threshold matter, the record casts doubt on the Commission's statutory authority to adopt a rule treating broadband as a supported service, since the Joint Board has not recommended the adoption of such a rule and the Communications Act requires such a recommendation before action can be taken by the Commission.

In addition, numerous commenters argue persuasively that many of the Commission's key proposals would not be effective in advancing the agency's universal service goals and objectives. For example, although the Commission recognizes the important role of mobile wireless broadband in rural and high-cost areas, as well as the unprecedented level of consumer demand for mobile broadband services, the Commission's proposals fail to craft new CAF support mechanisms that would effectively enable wireless broadband to continue playing this role.

Concerns regarding fiscal responsibility permeate the *Notice*, leading to tentative policy choices that crowd out sufficient consideration of other principles that should guide universal service reform. The most glaring example is the principle of competitive neutrality, which is virtually ignored in the *Notice* even though the Communications Act mandates the fusion of pro-competitive and universal service policies, and the Commission itself established the principle as an effective means of attaining universal service goals.

The Commission's fixation with fiscal responsibility is also reflected in its proposal to impose an up-front cap on ongoing CAF support, which many commenters criticize because a cap is not necessary and would hamstring the Commission's efforts to achieve its broadband deployment goals.

One of the central components of the Commission's proposed reforms—the single-winner reverse auction mechanism—has been greeted by widespread criticism in the comments, on the grounds that the Commission lacks authority to adopt such a mechanism, that the proposal is not consistent with the Commission's principle of competitive neutrality, and that there are a host of policy reasons that should convince the Commission to steer a different course.

A critical aspect of universal service reform is managing the transition from legacy to new support mechanisms, and the record reflects considerable skepticism regarding whether the Commission is proposing an equitable and efficient transition. Criticism focuses principally on concerns that competitive carriers would be treated more harshly than incumbents, and that the Commission has failed to propose a nexus between the phase-down of legacy support and the start-up of CAF support that would sufficiently protect consumers in rural and high-cost areas, and the carriers currently serving these consumers.

For all these reasons, and for the additional reasons that U.S. Cellular has discussed in these Comments, U.S. Cellular respectfully urges the Commission not to move forward with the core universal service proposals made in the *Notice*. The Commission instead should fashion modified proposals that take into account the criticisms and concerns reflected in the record, and

that will better serve statutory mandates and the Commission's goals for universal service and broadband deployment.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION



By: \_\_\_\_\_

David A. LaFuria  
John Cimko

LUKAS, NACE, GUTIERREZ & SACHS, LLP  
8300 Greensboro Drive, Suite 1200  
McLean, Virginia 22102  
(703) 584-8678

Grant B. Spellmeyer  
Senior Director - Legislative &  
Regulatory Affairs  
UNITED STATES CELLULAR CORPORATION  
8410 West Bryn Mawr  
Chicago, Illinois 60631  
(773) 399-4280

May 23, 2011