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
N.E. COLORADO CELLULAR, INC. d/b/a VIAERO WIRELESS

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SUMMARY

Two important verdicts are rendered in the comments. First, if the Commission intends to review the advisability of using a forward-looking economic cost model to award Connect America Fund support, it must devise as soon as possible a process that enables all interested parties a sufficient opportunity to review, test, and comment upon cost models that are under consideration by the Commission. And, second, the wireline incumbents have put a number of key proposals on the table that should be rejected out of hand by the Commission.

- **Developing and Implementing a Cost Model.**—Numerous parties express discontent with the Price Cap Carriers' and the Commission's having failed to provide them with any opportunity to analyze, test, and provide informed comment on the CostQuest Broadband Analysis Tool being considered by the Commission. The sharp criticism of the procedural deficiencies associated with the Commission's review of CQBAT lends more weight to Viaero Wireless's proposal in its Comments for the Commission to undertake a three-phase process to develop, adopt, and implement a cost model.

- **Ending Reliance on Rate-of-Return and Embedded Cost Mechanisms.**—There is considerable support in the record for using a cost model to disburse *all* CAF support, thus ending the checkered history of the Commission's reliance on rate-of-return and embedded cost mechanisms to provide support to small rural incumbents. Numerous commenters urge that the time is past due for the Commission to act on its own reservations regarding these flawed mechanisms, and to transform its universal regime in a manner that leaves these mechanisms behind.

- **Wireline and Wireless Budget Allocations.**—The judgment of many commenters is that the wireline incumbents have overreached in proposing CAF budgets that would dramatically increase their own support disbursements, lock in these funding increases for at least ten years, and sharply reduce funding for wireless competitive eligible telecommunications carriers well below their current capped level of funding. There is wide agreement among commenters that these proposals are alien to responsible public policy and should be given short shrift by the Commission.

- **Right of First Refusal.**—Emblematic of the wireline incumbents' unabashed pursuit of their own interests is their proposal in the ABC Plan to give themselves a right of first refusal, whereby they would be entitled to lock in all the support in their service areas, foreclosing any CAF disbursements to competing carriers. Viaero Wireless's opposition of this proposal in its Comments has been joined by numerous other commenters who argue that a right of first refusal would make incumbents' interests paramount, at the expense of consumers, competition, and the efficient use of CAF support.

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N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, ("Viaero Wireless"), by counsel, hereby submits these Reply Comments, pursuant to the Public Notice issued by the Wireline Competition Bureau in the above-captioned proceeding.[1] The *Public Notice* seeks comment on the

[1] *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, Public Notice, DA 11-1348 (rel. Aug. 3, 2011), 76 Fed. Reg. 49401 (Aug. 10, 2011) ("*Public Notice*" or "*Notice*"), Erratum (rel. Aug. 8, 2011). The due date for reply comments in response to the *Public Notice* is September 6, 2011. *See 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*

America's Broadband Connectivity Plan ("ABC Plan"),[2] the RLEC Plan,[3] the Joint Letter,[4] and the State Member Plan,[5] as well as certain other proposals. The ABC Plan, RLEC Plan, and Joint Letter are referred to collectively in these Comments as the "Wireline Proposals".

I. INTRODUCTION.

In its Comments, Viaero Wireless has recommended that the Commission proceed with the transformation of its universal service regime by following three phases. In the first phase, the Commission would adopt near-term reforms to promote the efficient use of universal service funds, and would advise interested parties that the Commission intends to examine the use of a forward-looking economic cost model as a means of disbursing universal service support. In the second phase, the Commission would begin a further rulemaking in this proceeding to evaluate

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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, Order, DA 11-1471 (rel. Aug. 29, 2011) (granting in part and denying in part motions for extension of the deadline for reply comments).

[2] Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream ("Price Cap Carriers"), to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al*. (filed July 29, 2011).

[3] Comments of National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association ("NTCA"), Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"), and Western Telecommunications Alliance ("WTA") (the "Rural Associations"), WC Docket No. 10-90 *et al*. (filed Apr. 18, 2011) ("RLEC Plan").

[4] Letter from Walter B. McCormick, Jr., United States Telecom Association, Robert W. Quinn, Jr., AT&T, Melissa Newman, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, Michael D. Rhoda, Windstream, Shirley Bloomfield, NTCA, John Rose, OPASTCO, and Kelly Worthington, WTA, to Chairman Julius Genachowski, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, Commissioner Mignon Clyburn, FCC, WC Docket No. 10-90 *et al*. (filed July 29, 2011) ("Joint Letter").

[5] Comments by the State Members of the Federal-State Joint Board on Universal Service ("State Members"), WC Docket No. 10-90 *et al*. (filed May 2, 2011) ("State Member Plan").

and select a forward-looking cost model. And, in the third phase, the Commission would phase in its use of the selected cost model for disbursing Connect America Fund ("CAF") support.[6]

Viaero Wireless's proposal is based in part on its view that the Commission should rely on forward-looking costs as the basis for determining the disbursement of all support under the new CAF regime, and that developing a cost model for this purpose is a complex undertaking that requires a deliberative process in which interested parties have an opportunity to participate. Designing a cost model that achieves the Commission's objectives for the efficient use of CAF support, and for reliance on competitive mechanisms to spur the deployment of broadband networks in rural areas, is a difficult task that is achievable only though the commitment of sufficient time and effort.

Viaero Wireless's proposal for the use of measured phases to evaluate, select, and implement a cost model for the disbursement of support to all recipients has gained considerable impetus from numerous comments filed in response to the *Public Notice*. There also is widespread agreement with Viaero Wireless's position that the Wireline Proposals and the State Member Plan are flawed by their adherence to a *status quo* that disproportionately benefits wireline incumbents at the expense of consumers and businesses in rural areas that are seeking expanded access to advanced mobile wireless broadband networks and services.

There is substantial support for the use of a cost model as the best means of ensuring the efficient use of CAF support while also promoting competition in rural telecommunications markets, but at the same time there is an outcry over the approach being taken by the Commission to consider the use of cost models as part of its universal service transformation. Numerous parties

[6] Viaero Wireless Comments at iii-iv, 6-7.

are concerned that they have had no opportunity to review and test the CostQuest Broadband Analysis Tool ("CQBAT") developed by CostQuest Associates, Inc., and proposed as part of the ABC Plan, and that the Commission has allotted an obviously inadequate amount of time for analysis and adoption of a cost model.

Viaero Wireless's proposal for a phased consideration of cost models addresses these issues and criticisms. The complexities associated with developing, reviewing, refining, testing, modifying, and implementing a cost model for use in disbursing CAF support require a more deliberative process than the Commission thus far has followed. Viaero Wireless urges the Commission to respond positively to the concerns expressed regarding this process, and to follow a different approach, taking into account the suggestions made by Viaero Wireless and other commenters.

II. DISCUSSION.

There is strong support in the record for the use of a forward-looking economic cost model as the basis for disbursing CAF support to all funding recipients, coupled with substantial concern that interested parties have not been provided with any meaningful opportunity to review and test the CQBAT model submitted by the Price Cap Carriers. Viaero Wireless's proposal for a three-phase process for the consideration and implementation of a cost model is responsive to these concerns.

Numerous commenters also agree with Viaero Wireless that the Commission should no longer rely upon rate-of-return and embedded cost mechanisms for the disbursement of universal service support and that, if the Commission decides to retain these mechanisms for use in providing support to small rural incumbents, then the Commission should act expeditiously to represcribe the current 11.25 percent rate of return.

One of the most critical concerns expressed in the record is the need for sufficient universal service funding for mobile wireless broadband deployment in rural areas, and the failure of the Wireline Proposals and the State Member Plan to make realistic recommendations for achieving this goal. Numerous parties criticize these proposals for their pursuit of disproportionately high levels of ongoing funding for wireline incumbents.

Several commenters agree with Viaero Wireless that the Commission's goals and objectives for the deployment of mobile wireless broadband networks would be best served by the establishment of separate CAF funding mechanisms for wireline and mobile wireless broadband, with sufficient levels of support budgeted for each fund.

The Price Cap Carriers' proposal for a right of first refusal, which would give incumbents an entitlement to claim all ongoing universal service support in their service areas for themselves, to the exclusion of any existing or potential competitive service providers, is subjected to extensive criticism in the comments, principally on the grounds that the proposal is not competitively neutral and would lead to the inefficient use of CAF support.

A. Concerns Regarding Review of the Proposed CQBAT Cost Model Buttress Viaero Wireless's Proposal for a Three-Phase Process for Universal Service Reform.

Comments filed in response to the *Public Notice* confirm Viaero Wireless's view that taking short-cuts is not the way to develop and implement an accurate, workable, and durable cost model for use in disbursing CAF support. Numerous commenters voice objections to procedures (or lack of procedures) associated with the Commission's consideration of the CQBAT model submitted by the Price Cap Carriers as part of the ABC Plan. The Price Cap Carriers have advised that "CQBAT allows the calculation of the forward-looking cost of providing broadband, and the calculation of estimated support levels, on a census block basis[,]"[7] and have expressed the view that, "[t]o ensure that the CAF can begin disbursing support by July 1, 2012, the Commission should adopt the CQBAT model prior to January 1, 2012."[8]

Various problems have accompanied the submission and review of the CQBAT model, sparked primarily by the fact that interested parties have been given virtually no opportunity to review the mechanics and output of the model. The Nebraska PSC explains what the procedural standard should be: "An open, transparent, independently verifiable cost model should be available to all interested persons to satisfy procedural and substantive due process concerns."[9] This has not happened with respect to the CQBAT model. Instead, as NARUC explains, the opposite has occurred:

> Necessarily, the *ABC Industry Plan* proponents had the model runs completed BEFORE they filed the plan. However, they've yet to file the model itself. Why? It is difficult to come up with any rational excuse for delay. An uncharitable view suggests they are hoping to limit the prospects for any serious critique or examination of the model by filing it at the last possible moment. Certainly, whatever their intentions, that will be the result. Even if filed this week, there will not be enough time for anyone, including the FCC's own experts, to conduct an adequate analysis of the model—given the anticipated effort to get an order ready by the October 2011 Agenda meeting. It seems likely that the plan proponents' decision

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[7] ABC Plan, Attach. 1, at 4.

[8] *Id*.

[9] Nebraska Public Service Commission ("Nebraska PSC") Comments at 12 (footnote omitted). *See* Independent Telephone and Telecommunications Alliance, *et al*. ("ITTA") Comments at 4 (arguing that "[t]he Commission should refrain from drawing any conclusions regarding the sufficiency, accuracy, reliability or usefulness of the CQBAT model until all interested parties have been afforded access to the model and a reasonable opportunity to review it and present their input to the Commission. To do otherwise would be blatantly arbitrary and capricious"); Rural Independent Competitive Alliance ("RICA") Comments at 11 (noting that "[t]he Commission should not . . . adopt a model that is not entirely transparent and fully available to public inspection. . . . A valid, public transparent verification of the CQBAT model is necessary before it can be adopted to determine rights and responsibilities"); Virginia State Corporation Commission Staff at 4 (indicating that "[t]he validity of the ABC Plan's cost model that quantifies and potentially directs approximately $2.2 B of the Connect America Fund . . . to support the provision of broadband services in high cost areas served by price cap companies has not been analyzed, and the model has not been made available to interested parties").

> to delay filing the actual model will prejudice the public's ability to discuss and rebut it.[10]

It is evident that review of the CQBAT model has not proceeded in an optimum fashion, and that any subsequent decision by the Commission to utilize the model could be compromised by the confusion and uncertainty that have surrounded the submission of the model.[11] In addition

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[10] National Association of Regulatory Utility Commissioners ("NARUC") Comments at 8-9 (footnote omitted) (emphasis in original). Ad Hoc expresses similar concerns:

> The Commission has not provided the public adequate time to review and comment on the CQBAT model. The first public glimpse of the ABC Plan was less than a month from the due date of this filing, and the back-up documentation to the CQBAT model necessary to provide reasoned comment on its utility was made available less than two weeks ago. To make matters worse, the initial documentation for the CQBAT model was filed as "confidential" when it should have been filed, un-redacted, in the public record. It is highly unlikely that, given this series of filing "errors," any party has had an opportunity to review the CQBAT model or its inputs adequately; certainly Ad Hoc has not. The Commission should not abet this inadequate public notice and opportunity to comment by rushing to judgment on the CQBAT model or requiring others to rush to such judgment.

Ad Hoc Telecommunications Users Committee ("Ad Hoc") Comments at 15 (footnotes omitted). Similar issues are raised by Consolidated:

> Consolidated has significant concerns about the CQBAT model, and encourages the Commission to require extensive disclosure and testing of the assumptions, data sources, and algorithms underlying the model. Regardless of whether such disclosure is required as a matter of administrative law (which it may well be), sound policymaking requires that the Commission be able to determine as a matter of fact whether the model produces sufficiently valid results to be useful in distributing support that will be both "predictable" and "sufficient" to meet the statutory universal service goals.
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> * * *
>
> The ABC plan raises many more questions than it answers concerning the cost model. The Commission should ensure not only that the answers to these questions are in the record before proceeding, but it also should provide interested parties a meaningful opportunity to review and comment on the plan *after* this information is provided.

Consolidated Communications Holdings, Inc. ("Consolidated") Comments at 8. 9-10.

[11] The Maine and Vermont Regulatory Agencies, for example, complain that their specific requests for a copy of the model and data showing specific results of the model have not been met (at the time of their filing of comments):

> This makes it impossible to meaningfully comment on whether the model is adequate, whether the full implications of the ABC Plan are worse than anticipated, and how to effectively modify the ABC Plan.
>
> * * *

to these problems relating to review of the CQBAT model, the scattershot manner in which the Commission in this proceeding has approached the issue of using cost models for CAF disbursements has potentially made matters worse.

For example, in addition to the Price Cap Parties, two other parties—U.S. Cellular and MTPCS—have developed cost models, based on wireless technologies, for use in the provision of high cost support.[12] While the *Public Notice* seeks comment on specific questions concerning the CQBAT model,[13] the Commission has not yet initiated any such steps regarding the U.S. Cellular or MTPCS models.[14]

Viaero Wireless shares NARUC's concern that, as the Commission barrels down the mountain toward its October 2011 Agenda Meeting, it does not find itself in a position to undertake a thorough review of cost models that are being developed, to provide interested parties with a sufficient opportunity to review and comment upon these models, or to take other steps toward

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> To provide all interested persons a fair and meaningful opportunity to comment on the model and the ABC Plan, it is essential that the model and data outputs be made available to all interested persons without restriction, and that a subsequent opportunity for comment be offered. Otherwise, commenters have no basis for actually questioning all of the ABC Plan, but certainly no basis to support it either. This is particularly true if the Commission is considering formal adoption of the model. And without it, there is no way to answer the Commission's question as to how the model can be improved.

Maine Public Utilities Commission, Vermont Public Service Board & Vermont Department of Public Service ("Maine and Vermont Regulatory Agencies") Comments at 18-19.

[12] *See* Letter from David A. LaFuria, Counsel to United States Cellular Corporation ("U.S. Cellular"), to Marlene H. Dortch, FCC, WC Docket No. 05-337 *et al*., (filed June 16, 2011), Enclosure, "U.S. Cellular, USF Mobile Broadband Model, Model Methods and Output" (June 10, 2011); MTPCS, LLC d/b/a Cellular One ("MTPCS") Comments at 2.

[13] *Notice* at 3.

[14] The Commission notes that "US Cellular has proposed that we determine appropriate support levels for mobile carriers in targeted high cost rural areas using a model of an efficient level of costs[,]", *id*. at 2 n.5, but the Commission has not sought any public comment on the U.S. Cellular model.

the development of additional models from which it could ultimately make a selection for use with its CAF mechanisms.

It is against this backdrop that Viaero Wireless renews the suggestions made in its Comments. The next step for the Commission (in addition to adopting an order in this proceeding in the near term taking steps that would result in savings for universal service support mechanisms[15]) should be to initiate a further rulemaking in this proceeding specifically focused on development of a cost model. In subsequent phases, the Commission would make decisions regarding the use of a model, based upon its own analysis and input from interested parties. The Commission would then proceed with phasing in utilization of the model for CAF disbursements.[16]

B. The Comments Reflect Concern Regarding Any Continued Reliance on Rate-of-Return and Embedded Cost Mechanisms, and Regarding the Need To Represcribe the Current Rate of Return.

Several commenters support Viaero Wireless's view that the Commission, as part of the transformation of its universal service support program, should remove any mechanisms designed to disburse support to rate-of-return carriers based on their embedded costs. If the Commission decided to continue relying on these rate-of-return and embedded cost mechanisms in its

[15] *See* Viaero Wireless Comments at 6, 7-8.

[16] U.S. Cellular has suggested one way in which such a transition could work:

> The Commission should continue under the existing mechanism until a model is developed and fully vetted. Once a model is developed, support should begin to transition to the new mechanism approximately one year after its adoption, to provide carriers with an appropriate period of time to prepare, and to permit states adequate time to designate new CETCs in high-cost areas where no carrier is designated as an ETC. Support would migrate to the new program in phases, as carriers elect support based on the model, with the new mechanism fully implemented within five years.

Letter from David A. LaFuria, Counsel to U.S. Cellular, to Marlene H. Dortch, FCC, WC Docket No. 05-337 *et al*. (filed July 29, 2011) ("U.S. Cellular July 29 Letter"), at 6.

provision of universal service support, then, at a minimum, the Commission should lower the authorized rate of return.

1. The Connect America Fund Should Not Make Support Disbursements Based on Rate-of-Return or Embedded Cost Mechanisms.

Viaero Wireless in its Comments has urged the Commission to transform the universal service system in a manner that ends any use of rate-of-return and embedded cost mechanisms for the disbursement of support,[17] and the Wood Paper has provided a rationale for taking such a step by analyzing and documenting the numerous infirmities of a rate-of-return regulatory regime.[18]

As a threshold matter, it should be noted that the Commission has expressed skepticism regarding the performance of these mechanisms, voicing concerns that "a support mechanism based on . . . a carrier's embedded costs . . . provides no incentives for ETCs to provide supported services at the minimum possible costs . . . ."[19] The Commission has also noted, in this proceeding, that, if support is based on cost, it should be based on forward-looking economic cost, not embedded costs, and that there may be significant problems inherent in indefinitely maintaining separate mechanisms based on different economic principles.[20]

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[17] *See* Viaero Wireless Comments at 15-17.

[18] *See* Viaero Wireless Comments, Exhibit 2, Don Wood, "No Steps Forward, Two Steps Back: An Analysis of the RLEC Plan for Regulatory Reform" ("Wood Paper"); Viaero Wireless Comments at 16-17.

[19] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495, 1500 (para. 11) (2008).

[20] *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, 26 FCC Rcd 4554, 4690 (para. 448) (2011) (footnotes and internal quotation marks omitted).

The Wood Paper points out that the Rural Associations have expressed the view that, if the Commission hopes to engage in an informed decision-making process with regard to the continued use of rate-of-return and embedded cost mechanisms, it should begin with an acknowledgment of the efficiency and effectiveness of the existing support mechanisms.[21] The Wood Paper, however, explains that there is no basis for such an acknowledgment:

> The reality is that the RLECs can make no legitimate claim of efficiency regarding the outcome of the existing regulatory mechanism for rate-of-return carriers, because they do not know, and cannot know, how the total costs that they have incurred compare to the total costs that would have been incurred subject to market-based incentives, because no external validation of their level of costs is currently available.[22]

The Wood Paper indicates that the Rural Associations are proposing a budget of approximately $2 billion in annual CAF support for rate-of-return carriers, and points out that the Rural Associations are asking the Commission "to accept an assurance along the lines of 'trust us, $2 billion isn't that bad as long as it isn't growing too fast,' and are urging the Commission to accept this wholly untested baseline of costs as the starting point for reform."[23] There is support in the record for Viaero Wireless's view that neither these rural local exchange carrier ("LEC") assurances, nor their budget proposals, should not be accepted, and that the time is past due for the Commission to break away from rate-of-return and embedded cost mechanisms, since doing so will virtually guarantee more efficient use of CAF support.

Free Press, for example, criticizes the proposals made in the Joint Letter because they do not suggest any meaningful reform of the manner in which the high-cost mechanism provides disbursements to rate-of-return carriers, pointing out that the Joint Letter would "preserve[ ] the

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[21] Wood Paper at 59.

[22] *Id*. at 61.

[23] *Id*.

current broken system of treating rural rate-of-return carriers different from larger, 'non-rural' price cap carriers."[24] Even more problematic is the fact that the Joint Letter "does nothing to reform the inefficiencies and perverse incentives inherent in the historical cost support methodology."[25]

CTIA is also critical of the current rate-of-return and embedded cost regime for high-cost disbursements to rural incumbents, pointing out that "[o]ne of the central shortcomings of the current high-cost system is that much of it relies on guaranteed rate-of-return mechanisms that do not reflect the level of competition that has developed, and will continue to develop, across the U.S."[26] CTIA cautions that "[s]upport mechanisms that insulate certain providers from competitive pressure would be manifestly unfair, and potentially retard both the development of competition and the deployment of broadband facilities[,]"[27] and concludes that "it is critical that the Commission craft support mechanisms that do not ensure that rate-of-return carriers are 'made whole' out of universal service for competitive losses."[28]

The Rural Associations attempt to justify retention of the rate-of-return and embedded cost mechanisms by suggesting short-term palliatives involving limitations on capital cost recovery and on the recovery of corporate operations expense.[29] The Wood Paper, however, demon-

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[24] Free Press Comments at 8.

[25] *Id*.

[26] CTIA–The Wireless Association® ("CTIA") Comments at 18.

[27] *Id*. at 19.

[28] *Id*.

[29] Viaero Wireless agrees with Cellular South's view that it is "misguided [to assume] that this [rate-of-return] mechanism can somehow be overhauled to improve the incentives of rural incumbents to make rational investments and to avoid the temptation of pumping up costs as a means of inflating the amount of support they receive . . . ." Cellular South Comments at 17.

strates various ways in which these proposals would be ineffective,[30] and concludes that they would impose no additional restraints on overall loop-related investment costs recovered by the rural incumbents, and only slight additional constraints on the recovery of corporate operations expense.[31]

More importantly, under the Rural Associations' approach, all other elements of the existing rate-of-return, embedded cost regime would be undisturbed, which would be harmful to consumers and businesses in rural areas because, by permitting the costs recoverable by rural incumbents to remain excessively high, "the amount of broadband deployment that could be funded with a fund of a given size would be diminished . . . ."[32] The Wood Paper concludes that, if the Rural Associations' proposals are accepted, then:

> an important opportunity will have been missed to begin to transition the RLECs away from the protection of rate-of-return regulation and toward a form of market-based incentive regulation. Without such a transition process to wean RLECs from rate-of-return (and to provide the incentives necessary for them to take action to increase the efficiency of their operations), the size of the fund dedicated to RLEC cost recovery will remain high, to the detriment of both potential customers residing in currently-unserved areas and customers across the country who are the source of high-cost funding provided to the RLECs.[33]

For all these reasons, Viaero Wireless urges the Commission to conclude that its transformation to a new universal service regime should begin with a new disbursement structure that leaves rate-of-return and embedded cost mechanisms behind and moves rural incumbents into a market-based incentive regulatory framework.

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[30] Wood Paper at 63-68.

[31] *Id*. at 68.

[32] *Id*.

[33] *Id*.

2. At a Minimum, the Commission Should Represcribe the Current 11.25 Percent Rate of Return.

Viaero Wireless observes in its Comments that, "[i]f the Commission insists upon retaining a RoR mechanism for providing CAF support to rural incumbent LECs, this misadventure would be compounded by retaining the current authorized 11.25 percent rate of return, which is dramatically out of step with prevailing economic conditions."[34] Viaero Wireless favors prescription of "a more realistic rate of return for use in connection with CAF funding mechanisms for rural incumbents."[35] A number of commenters agree with this view.

CTIA, for example, supports "reducing the target rate of return that carriers may earn,"[36] and Ad Hoc proposes that the Commission should adopt a presumptive rate of return of 8.5 percent, the level recommended by the State Members, concluding that "an 8.5% presumed rate would be more than adequate to support the earnings requirements of any rate of return carriers."[37] Free Press criticizes the proposal in the Joint Letter to reduce the rate of return to 10.0 percent, arguing that the proposal "fails to adequately address inflated rates of return . . . ."[38] Cellular South observes that "a prerequisite for the continued use of the rate-of-return mechanism should be a represcription of the stratospheric 11.25 percent rate of return that has remained in place since 1990."[39]

There can be little dispute that the excessive 11.25 percent rate of return imposes on consumers (through their universal service surcharge payments) the burden of funding the rural in-

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[34] Viaero Wireless Comments at 17.

[35] *Id*. at 17-18.

[36] CTIA Comments at 19.

[37] Ad Hoc Comments at 17.

[38] Free Press Comments at 8.

[39] Cellular South Comments at 17-18 (footnote omitted).

cumbents' over-recovery of their costs through the high-cost support mechanism. If the Commission continues—even in the face of strong opposition in the record—to make CAF disbursements based on rate-of-return and embedded cost mechanisms, then it at least should prescribe a rate of return that helps to address this over-recovery.

Finally, Viaero Wireless reiterates the view expressed in its Comments, that reductions in the level of the Commission's prescribed rate of return should be coupled with efforts by state regulatory commissions to engage in vigorous oversight of wireline carriers, including conducting rate cases at regular intervals.[40]

C. The Success of the Commission's Transformed Universal Service Regime Largely Depends on Providing Sufficient Funding for Mobile Wireless Broadband Networks.

Viaero Wireless in its Comments criticizes the CAF budget proposals advanced in the Wireline Proposals and the State Member Plan because the level of funding they suggest for wireless mobile broadband disregards the growing consumer and business demand for mobile broadband services, as well as the benefits these services are capable of bringing to rural communities.[41] Numerous commenters agree that these funding proposals should not be adopted by the Commission because they would significantly compromise efforts to deploy mobile wireless broadband networks throughout rural America.

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[40] Viaero Wireless Comments at 18. Viaero Wireless provides data in its Comments reflecting excessive intrastate rates of return earned by selected carriers. *Id*. at 19 (Table, "Rates of Return for Selected Small Rural Local Exchange Carriers"). Since filing its Comments, Viaero Wireless has obtained more current information for carriers in Oregon. The rate of return for Citizens Telecommunications Company of Oregon was 67.5 percent for the year ending December 31, 2010, compared to 50.6 percent in fiscal year 2009, and the rate of return for Mount Angel Telephone Company decreased slightly from 34.7 percent in fiscal year 2009 to 31.3 percent for the year ending December 31, 2010. *See* Oregon Public Utility Commission, "2010 Oregon Utility Statistics," at 73, 75, accessed at http://www.puc.state.or.us/PUC/statbook2010.pdf.

[41] Viaero Wireless Comments at 10-11.

Bringing access to mobile broadband to consumers and businesses is an expensive undertaking. For example, CTIA discusses a cost study it submitted three years ago that demonstrated that an investment of approximately $22 billion would be needed for the ubiquitous deployment of 3G wireless broadband in unserved areas.[42] CTIA explains that, "[w]hile providers have made considerable progress in deploying 3G networks since 2008, developing a well-calibrated estimate of the support levels needed to bridge the private investment gap is a key component to sizing"[43] a funding mechanism for mobile wireless broadband. The Wireline Proposals make no effort to undertake such a sizing analysis with regard to necessary support levels for mobile broadband deployment.

Moreover, the U.S. Cellular USF Mobility Model Report[44] illustrates that the costs associated with U.S. Cellular's deployment of ubiquitous 4G wireless networks in four of the sixteen states in which it currently receives high-cost support would exceed $122 million. U.S. Cellular concludes that these modeled costs support a conclusion "that proposals to limit funding for mobile broadband deployment to annual levels of up to $300 million (or up to $500 million) are not realistic in light of the funding levels necessary to accomplish ubiquitous mobile broadband deployment in rural areas."[45]

Notwithstanding the substantial funding commitment that is necessary to ensure ubiquitous mobile broadband deployment in rural areas, the Wireline Proposals are not crafted with a view toward ensuring that sufficient funding is made available for this deployment. Ad Hoc

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[42] CTIA Comments at 14.

[43] *Id*. at 14-15.

[44] Letter from David A. LaFuria, Counsel to U.S. Cellular, to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al*. (filed Aug. 6, 2011), Enclosure ("U.S. Cellular USF Mobility Model Report, August 5, 2011").

[45] U.S. Cellular Comments at 24.

draws attention to the fact that "[b]oth the ABC Plan and RLEC Plan focus on preserving USF funding for traditional wireline services, directing only limited amounts to the use of alternative technologies such as wireless and satellite which are often more cost-effective for broadband deployments in high cost areas[,]"[46] and that "the Carrier Plans propose that nearly every dollar currently included in the HCF [high cost fund] be reserved for price cap carriers and rate of return carriers."[47]

The ABC Plan "would allot $2.2 billion from the CAF for expenditure in areas presently served by incumbent price cap carriers."[48] Ad Hoc points out that the ABC Plan also "would grant the incumbent price cap LECs a right of first refusal for $1.8 billion (82.2%) of those dollars—guaranteeing the price cap ILECs significantly more USF [Universal Service Fund] dollars in the future than the $1 billion they receive today."[49]

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[46] Ad Hoc Comments at 7.

[47] *Id*. (footnote omitted).

[48] *Id*. at 10.

[49] *Id*. (footnote omitted). The right-of-first refusal ("ROFR") proposal is discussed in Section II.E., *infra*. CTIA is critical of the ABC Plan because its proposed funding level of $300 million "appears to be insufficient to meet the needs of mobile broadband consumers in high-cost areas." CTIA Comments at 14. *See* RICA Comments at 5; Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SouthernLINC Wireless") Comments at 21 (explaining that "[t]he ILECs' proposal to allocate $300 million (or less) to the wireless fund, while reserving more than $4.2 billion for themselves, will disadvantage wireless carriers unfairly and will delay (and perhaps even reverse) the continued deployment of broadband services. Specifically, it will be difficult, if not impossible, for existing wireless ETCs to deploy additional facilities to serve, or continue to serve, truly high cost areas"); T-Mobile USA, Inc. ("T-Mobile"), Comments at 20-21 (explaining that "$300 million, which is about *ten percent* of the amount that wireless carriers contribute to the USF every year, is woefully inadequate . . . for broadband mobility funding") (emphasis in original) (footnote omitted); Universal Service for America Coalition ("USA Coalition") Comments at 18 (arguing that "[t]he end result [of the ABC Plan] is the decimation of the USF support upon which wireless carriers serving rural areas rely, reduction in intermodal competition for the price-cap carriers, and a less vibrant communications market in rural, insular, and wireless areas"). Rural Telecommunications Group, Inc. ("RTG") explains that a $300 million allotment of CAF funding for mobile broadband is both unsupported and out of step with consumer demand:

> The plans [proposed by incumbent LECs] provide no basis for the selection of the $300 million target, and this arbitrary amount of USF support for wireless is completely inade-

Free Press expresses similar concerns, indicating that "[c]urrently, price cap incumbent carriers receive about $500 million in annual High Cost Fund support, or about 12 percent of the total. Under the Joint Industry Framework, this support would increase to $2.2 billion, or half of the total."[50] Free Press explains that "[t]his shift is accomplished largely through the redistribution of the current funding allocated to competitive eligible telecommunications carriers . . . , who in most cases are wireless providers."[51]

The Wireline Proposals not only harm consumers in rural areas by siphoning off funds that otherwise could assist in deploying mobile wireless broadband networks, but also by undercutting competition in rural markets. Google observes that "[b]roadband competition in USF supported areas can be increased by expanding USF support beyond incumbent wireline carriers,"[52] but the prospect of such competition developing is significantly diminished if CAF funding is allocated in a lopsided manner that favors incumbents, as is suggested by the Wireline Proposals.

Viaero Wireless also agrees with USA Coalition's analysis regarding the competitive harms that would result from shrinking support to wireless competitive ETCs to $300 million, as

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> quate to effectively support and expand mobile broadband in rural areas. The meager amount of proposed mobility support shows that the landline authors of the RLEC and ABC plans are oblivious to the rapid changes taking place in the marketplace or have chosen to ignore them. Consumers want and expect to have the ability to access broadband when they want and wherever they want, and the only way to meet this expectation is through mobility.

RTG Comments at 3 (footnote omitted).

[50] Free Press Comments at 7-8.

[51] *Id*. at 8.

[52] Google Inc. ("Google") Comments at 13 (footnote omitted). *See* SouthernLINC Wireless Comments at 21 (arguing that "minimal funding for wireless services will provide wireline carriers with an unfair competitive advantage, skewing the market for broadband services in their favor and inhibiting the development and deployment of advanced wireless services").

the Wireline Proposals would do. USA Coalition explains that reducing wireless support in rural areas "would skew the market in rural areas in favor of the largest nationwide carriers."[53] The largest wireless carriers capitalize on "their nationwide footprint and nationwide pricing policies [that] allow them to engage in implicit cross-geographic subsidization."[54] USA Coalition further explains that "smaller carriers and those that focus on high-cost areas rely on USF to offset the higher costs associated with providing service in those areas. By reducing the amount of high-cost support available, the FCC essentially eliminates the ability of these regional, rurally-oriented carriers to compete with the larger carriers."[55]

The CAF budget allocations suggested in the Wireline Proposals and the State Member Plan would not provide a workable basis for the Commission's transformation of its universal service regime. The Commission should reject these budget proposals and instead adopt support mechanisms that provide for a more reasonable distribution of support between wireline and mobile wireless broadband networks.

For example, RCA has proposed a funding level of $1.5 billion annually for mobile wireless broadband networks and services,[56] and U.S. Cellular has suggested an annual funding level of $1.3 billion.[57] Viaero Wireless supports these proposals. This level of funding would improve considerably the prospect of achieving the Commission's goals for providing access to mobile broadband networks for consumers and businesses throughout rural America.

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[53] USA Coalition at 23.

[54] *Id*.

[55] *Id*. at 23-24.

[56] RCA Comments at 13-14 (noting, however, that "the ultimate funding allocation should depend on the outputs of a forward-looking cost model").

[57] U.S. Cellular July 29 Letter at 5.

D. There Is Support in the Record for Using Separate Fund Mechanisms To Provide Support to Wireline and Mobile Wireless Broadband.

Viaero Wireless in its Comments focuses on the issue of establishing separate funding mechanisms for wireline and mobile wireless broadband networks, concluding that "[a] separate fund for mobile broadband—with sufficient funding levels—is a critical component of the Commission's universal service reforms because rural consumers should have access to robust broadband networks that facilitate the use of rapidly evolving mobile devices and applications."[58] Several commenters agree that the Commission should establish separate funds for CAF disbursements.

The Rural Associations emphasize that, "[t]o the greatest extent possible within the confines of [various proposed] funding targets, consumers in high-cost rural areas should have access to both fixed and mobile broadband services that are reasonably comparable to the fixed and mobile broadband services provided in urban areas at reasonably comparable rates."[59] For purposes of accommodating this policy of ensuring consumers' access to both wireline and mobile wireless broadband, the Rural Associations conclude that "[i]t will be far more efficient and effective for the Commission to adopt separate fixed and mobile support mechanisms than to seek a 'one-size-fits-all' mechanism that is likely to be too unwieldy to address successfully the needs of either rural wireline or wireless carriers, or their customers."[60]

Although Viaero Wireless disagrees with the Rural Associations regarding the level of budget allocations that should be made to a separate mobile wireless broadband funding mechan-

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[58] Viaero Wireless Comments at 9.

[59] Rural Associations Comments at 10.

[60] *Id*. at 12.

ism,[61] Viaero Wireless endorses the Rural Associations' proposal for separate funding mechanisms. Other parties agree with this approach. For example, ITTA expresses support for separate funding mechanisms by noting that "[f]ixed and mobile broadband services are sufficiently different in nature and price that the Commission should develop separate support programs for each within the CAF."[62]

RCA has reservations concerning the establishment of a separate funding mechanism for mobile broadband, expressing the view that a single funding mechanism "would put all broadband providers on [an] equal footing for CAF support and eliminate the historical bias in favor of wireline technology."[63] RCA indicates, however, that it "would be willing to support separate funds, provided that the overall allocation of resources is equitable and competitively neutral."[64] Viaero Wireless agrees that these are prerequisites for the successful administration of a separate CAF funding mechanism for mobile broadband.

Finally, Viaero Wireless agrees with RCA that, if the Commission adopts separate funding mechanisms, then support within each fund should be fully portable. As RCA explains, the Commission should "ensure that funding is success-based within [the] distinct funds. The Commission should not allow ILECs to collect support payments for customers they lose to wireline competitors, even if those ILECs receive support from a dedicated wireline fund."[65]

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[61] See Section II.C., *supra*.

[62] ITTA Comments at 6 (footnote omitted).

[63] RCA Comments at 11.

[64] *Id*.

[65] *Id*. at 20-21.

E. The Price Cap Carriers' Right-of-First-Refusal Proposal Finds Little Support in the Record.

Viaero Wireless in its Comments criticizes the ROFR mechanism proposed in the ABC Plan, arguing that "[t]he ROFR option, by definition, closes out any opportunity for other carriers to receive support in service areas for which the option is exercised."[66] There is substantial support for this view in the record.

CTIA, for example, explains that it "is concerned that proposals to implement a right of first refusal mechanism may exclude wireless carriers from meaningful participation in the universal service program, to the detriment of rural consumers."[67] Free Press points out that the ROFR proposal would allow price cap carriers "to insulate themselves from . . . competition"[68] and would "expand[ ] the inefficiencies of the current High Cost Fund."[69] MTPCS opposes the ROFR proposal because it would harm consumers who currently benefit from the competitive provision of services in their areas:

> No carrier should have a right of first refusal over a portion of the Fund—certainly not as to support for areas where several carriers have made significant investments. All carriers serving an area deserve an equal opportunity to continue providing service to consumers. More importantly, consumers should retain the availability of these carriers to benefit from the universal service support deployed previously to afford them these choices.[70]

U.S. Cellular explains that "[s]etting aside funding for a particular class of carrier would be inimical to competitive neutrality, efficiency, and ultimately consumer welfare. . . . U.S. Cellular

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[66] Viaero Wireless Comments at 14.

[67] CTIA Comments at 19 (footnote omitted). *See* CompTel Comments at 25-26 ("concluding that "[n]either the ABC Plan nor its legal analysis provides any justification for . . . the notion that the ILEC should get 100% of proposed funding"); National Association of State Utility Consumer Advocates Comments at 84.

[68] Free Press Comments at 8.

[69] *Id*.

[70] MTPCS Comments at 25.

cannot think of a single public policy reason justifying a virtual set-aside, for the least efficient providers of services."[71]

In Viaero Wireless's view, the proposed ROFR should not be adopted by the Commission because it would result in the disbursement of universal service support in a manner that would violate the Commission's principle of competitive and technological neutrality. On its face, the proposal would give an incumbent carrier an exclusive right to receive *all support* in its service area—to the *exclusion* of all other carriers—"[i]f the incumbent LEC that serves the wire center has already made high-speed Internet service available to more than 35 percent of the service locations in the wire center . . . ."[72]

There is simply no credible policy basis for allowing the incumbent to lock up funding, and to exclude potential competitors or deprive existing competitors of continued receipt of universal service support, if the incumbent has achieved broadband coverage for a mere 35 percent of its wire center. Further, it appears from the ABC Plan proposal that this broadband coverage would not even be required to be in high-cost sections of the wire center in order for the incumbent to expropriate the entirety of universal service support available for its service area.

Viaero Wireless thus agrees with RCA that "[a]n ILEC right of first refusal would accomplish precisely what the Commission hoped to avoid in undertaking USF reform."[73] RCA explains that:

> Instead of elevating the interests of consumers over those of providers, a right of first refusal would treat ILECs' interests as paramount, a notion which has no basis in the Act, and would award ILECs a unilateral right to exclude wireless com-

[71] U.S. Cellular Comments at 31.

[72] ABC Plan, Attach. 1, at 6.

[73] RCA Comments at 15.

> petitors from CAF support, further entrenching them as broadband monopolists in rural America.[74]

The Commission should reject the Price Cap Carriers' proposal in order to prevent this further entrenchment and to enforce its principle of competitive and technological neutrality.

III. CONCLUSION.

A recurring message from several categories of stakeholders in the comments is that the Commission should follow a more deliberate course in deciding whether to use a forward-looking economic cost model to disburse Connect America Fund support to all funding recipients. Viaero Wireless respectfully urges the Commission to consider the three-phase plan suggested by Viaero Wireless as an effective means of developing and implementing a CAF cost model.

[*Remainder of page intentionally left blank.*]

[74] *Id.*

The record also provides the Commission with ample reason to reject many of the proposals advanced by the incumbent local exchange carriers, most notably their self-interested campaign to garner exceptionally large increases in their current levels of high-cost support, at the expense of consumers and businesses in rural areas and notwithstanding the increasing demand for access to mobile wireless broadband networks and services.

Respectfully submitted,

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