

284. The FNPRM seeks comment on the methodology and data for determining overlap. Upon receiving a record on those issues, we direct the Wireline Competition Bureau to publish a finalized methodology for determining areas of overlap and to publish a list of companies for which there is a 100 percent overlap. In study areas where there is 100 percent overlap, we will freeze the incumbent's high-cost support at its total 2010 support, or an amount equal to \$3,000 times the number of reported lines as of year end 2010, whichever is lower,⁴⁶⁷ and reduce such support over three years (i.e. by 33 percent each year).⁴⁶⁸ In addition, in the FNPRM, we seek comment on a process for determining support in study areas with less than 100 percent overlap.

11. Impact of These Reforms on Rate-of-Return Carriers and the Communities They Serve

285. We agree with the Rural Associations that "there is ... without question a need to modify certain of the existing universal service mechanism to enhance performance and improve sustainability."⁴⁶⁹ We take a number of important steps to do so in this Order, and we are careful to implement these changes in a gradual manner so that our efforts do not jeopardize service to consumers or investments made consistent with existing rules. It is essential that we ensure the continued availability and affordability of offerings in the rural and remote communities served by many rate-of-return carriers. The existing regulatory structure and competitive trends have placed many small carriers under financial strain and inhibited the ability of providers to raise capital.⁴⁷⁰

286. Today, we reaffirm our commitment to these communities. We provide rate-of-return carriers the predictability of remaining under the legacy universal service system in the near-term, while giving notice that we intend to transition to more incentive-based regulation in the near future.⁴⁷¹ We also provide greater certainty and a more predictable flow of revenues than the status quo through our intercarrier compensation reforms, and set a total budget to direct up to \$2 billion in annual universal service (including CAF associated with intercarrier compensation reform) payments to areas served by rate-of-return carriers. We believe that this global approach will provide a more stable base going forward for these carriers, and the communities they serve.

287. Today's package of universal service reforms is targeted at eliminating inefficiencies and closing gaps in our system, not at making indiscriminate industry-wide reductions. Many of the rules addressed today have not been comprehensively examined in more than a decade, and direct funding in

⁴⁶⁷ For this purpose, "total 2010 support" is the amount of support disbursed to carrier for 2010, without regard to prior period adjustments related to years other than 2010 and as determined by USAC on January 31, 2011.

⁴⁶⁸ Consistent with our discussion above, we do not disturb any existing state voice COLR obligations, and therefore carriers must satisfy those voice requirements as required by their state. For those states that still maintain voice COLR obligations, we encourage them to review their respective regulations and policies in light of the changes we adopt here today and revisit the appropriateness of maintaining those obligations for entities that no longer receive either state or federal high-cost universal service funding and where competitive services are available to consumers. *See supra* para. 1100.

⁴⁶⁹ *See* Rural Associations *USF/ICC Transformation NPRM Comments* at i.

⁴⁷⁰ *See, e.g.,* CoBank *USF/ICC Transformation NPRM Comments* at 3-5; Letter from Jonathan Adelstein, Rural Utilities Service, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al.*, Attach. (July 29, 2011) (*RUS Letter*); Letter from C. Douglas Jarrett, Rural Telephone Finance Cooperative, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, *et al.* (Aug. 10, 2011).

⁴⁷¹ We seek comment in the FNPRM on the Rural Associations' proposal for a broadband-focused CAF and in particular ask how we could modify that proposal to incorporate appropriate incentives for efficient investment and operations. *See* Rural Associations *USF/ICC Transformation NPRM Comments* at 7-38; *See infra* Section XVII (Further Notice of Proposed Rulemaking).

ways that may no longer make sense in today's marketplace. By providing an opportunity for a stable 11.25 percent interstate return for rate-of-return companies, regardless of the necessity or prudence of any given investment, our current system imposes no practical limits on the type or extent of network upgrades or investment. Our system provides universal service support to both a well-run company operating as efficiently as possible, and a company with high costs due to imprudent investment decisions, unwarranted corporate overhead, or an inefficient operating structure.

288. In this Order, we take the overdue steps necessary to address the misaligned incentives in the current system by correcting program design flaws, extending successful safeguards, ensuring basic fiscal responsibility, and closing loopholes to ensure our rules reward only prudent and efficient investment in modern networks. Today's reforms will help ensure rate-of-return carriers retain the incentive and ability to invest and operate modern networks capable of delivering broadband as well as voice services, while eliminating unnecessary spending that unnecessarily limits funding that is available to consumers in high-cost, unserved communities.

289. Because our approach is focused on rooting out inefficiencies, these reforms will not affect all carriers in the same manner or in the same magnitude. After significant analysis, including review of numerous cost studies submitted by individual small companies and cost consultants,⁴⁷² NECA and USAC data, and aggregated information provided by the Rural Utilities Service (RUS) on their current loan portfolio,⁴⁷³ we are confident that these incremental reforms will not endanger existing service to consumers. Further, we believe strongly that carriers that invest and operate in a prudent manner will be minimally affected by this Order.

290. Indeed, based on calendar year 2010 support levels, our analysis shows that nearly 9 out of 10 rate-of-return carriers will see reductions in high-cost universal service receipts of less than 20 percent annually, and approximately 7 out of 10 will see reductions of less than 10 percent.⁴⁷⁴ In fact, almost 34 percent of rate-of-return carriers will see no reductions whatsoever, and more than 12 percent of providers will see an increase in high-cost universal service receipts. This, coupled with a stabilized path for ICC, will provide the predictability and certainty needed for new investment.

291. Looking more broadly at all revenues, we believe that the overall regulatory and revenue predictability and certainty for rate-of-return carriers under today's reforms will help facilitate access to capital and efficient network investment. Specifically, it is critical to underscore that legacy high-cost support is but one of four main sources of revenues for rate-of-return providers: universal service revenues account for approximately 30 percent of the typical rate-of-return carrier's total revenues.⁴⁷⁵

⁴⁷² See, e.g., *JSI Ex Parte* (filed Mar. 29, 2011); *Fred Williamson & Associates, Inc. Ex Parte* (filed May 19, 2011). We note that many of the carriers or their consultants presented an analysis of the reforms as proposed in the NPRM, assuming that the Commission would adopt all of the proposals. Because the package of reforms we adopt today is more modest than originally proposed, with a number of reforms phased in over a period of time, the impact is much less significant than those commenters projected.

⁴⁷³ *RUS Ex Parte* (filed Aug. 8, 2011).

⁴⁷⁴ In order to analyze the impact of reforms, Commission staff estimated the dollar impact of each individual rule change on every cost company for which it had data, using the most recently available disbursement and cost data. Commission staff utilized data from both NECA and USAC. See e.g., *National Exchange Carrier Assoc., Inc., Universal Service Fund Data: NECA Study Results, 2010 Report* (filed Sept. 30, 2011); *USAC High-Cost Disbursement Tool*. Staff then summed the individual change in support amounts (positive or negative) across the individual programs to derive a company-specific net change, both in actual dollars and on a percentage basis. For calculations involving changes to HCLS, estimates did not take into account the effect of the shift in the national average cost per line resulting from all rule changes; actual impacts therefore could vary slightly.

⁴⁷⁵ See *Western Telecommunications Alliance Comments in re NBP PN #19 (Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan, GN Docket No. 09-47, 09-* (continued...)

Today's action does not alter a provider's ability to collect regulated or unregulated end-user revenues, and comprehensively reforms the fourth main source of revenues, the intercarrier compensation system. Importantly, ICC reforms will provide rate-of-return carriers with access to a new explicit recovery mechanism in CAF, offering a source of stable and certain revenues that the current intercarrier system can no longer provide.⁴⁷⁶ Taking into account these other revenue streams, and the complete package of reforms, we believe that rate-of-return carriers on the whole will have a stronger and more certain foundation from which to operate, and, therefore, continue to serve rural parts of America.

292. We are, therefore, equally confident that these reforms, while ensuring significant overall cost savings and improving incentives for rational investment and operation by rate-of-return carriers, will in general not materially impact the ability of these carriers to service their existing debt. Based on an analysis of the reform proposals in the Notice, RUS projects that the Times Interest Earned Ratio (TIER) for some borrowers could fall below 1.0, which RUS considers a minimum baseline level for a healthy borrower.⁴⁷⁷ However, the package of reforms adopted in this Order is more modest than the set proposed in the Notice. In addition, companies may still have positive cash flow and be able to service their debt even with TIERs of less than 1.0.⁴⁷⁸ Indeed of the 444 RUS borrowers in 2010, 75 (17 percent) were below TIER 1.0.⁴⁷⁹ Moreover, whereas RUS assumed that all USF reductions directly impact borrowers' bottom lines, in fact we expect many borrowers affected by our reforms will be able to achieve operational efficiencies to reduce operating expenses, for instance, by sharing administrative or operating functions with other carriers, and thereby offset reductions in universal service support.

293. We, therefore, reject the sweeping argument that the rule changes we adopt today would unlawfully necessarily affect a taking.⁴⁸⁰ Commenters seem to suggest that they are entitled to continued USF support as a matter of right. Precedent makes clear, however, that carriers have no vested property interest in USF. To recognize a property interest, carriers must "have a legitimate claim of entitlement to" USF support.⁴⁸¹ Such entitlement would not be established by the Constitution, but by independent sources of law.⁴⁸² Section 254 does not expressly or impliedly provide that particular companies are

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51, 09-137, Public Notice, 24 FCC Rcd 13757 (WCB 2009) (*NBP PN #19*) at 25, 27 (filed Dec. 7, 2009) (stating that for small rural LECs, high cost represents 30–40 percent of regulated revenues); RUS *Ex Parte* (filed Aug. 1, 2011), Attach. at slide 24 (stating that over 70 percent of RUS borrowers receive greater than 25 percent of operating revenues from USF).

⁴⁷⁶ See *infra* section XII (Comprehensive Intercarrier Compensation Reform).

⁴⁷⁷ RUS indicates that over a five-year horizon, it expects borrowers to maintain a minimum 1.25 TIER ratio. RUS *Ex Parte* (filed Aug. 1, 2011), Attach. at slides 18-21.

⁴⁷⁸ *Id.* at slide 18. The RUS modeling assumed a percentage loss of USF support and then analyzed the impact on borrowers, but the analysis did not include the possibility that borrowers' profits could rise through increased revenues and profits from non-regulated services, or other possible sources of revenues, *e.g.*, by raising artificially low rates.

⁴⁷⁹ *Id.* at slide 26.

⁴⁸⁰ Alexicon *USF/ICC Transformation NPRM* Comments at 25-29; SureWest *USF/ICC Transformation NPRM* Reply at 2.

⁴⁸¹ *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).

⁴⁸² *Id.*; see also *Members of the Peanut Quota Holders Assoc. v. U.S.*, 421 F.2d 1323, 1334 (Fed. Cir. 2005), *cert. denied*, 548 U.S. 904 (2006) (finding that congressional action amending peanut quota program to exclude prior beneficiaries from that program did not effect a takings because "peanut quota is entirely the product of a government program unilaterally extending benefits to the quota holders, and nothing in the terms of the statute indicated that the benefits could not be altered or extinguished at the government's election").

entitled to ongoing USF support. Indeed, there is no statutory provision or Commission rule that provides companies with a vested right to continued receipt of support at current levels, and we are not aware of any other, independent source of law that gives particular companies an entitlement to ongoing USF support. Carriers, therefore, have no property interest in or right to continued USF support.⁴⁸³

294. Additionally, carriers have not shown that elimination of USF support will result in confiscatory end-user rates. To be confiscatory, government-regulated rates must be so low that they threaten a regulated entity's "financial integrity"⁴⁸⁴ or "destroy the value" of the company's property.⁴⁸⁵ Carriers face a "heavy burden" in proving confiscation as a result of rate regulation.⁴⁸⁶ To the extent that any rate-of-return carrier can effectively demonstrate that it needs additional support to avoid constitutionally confiscatory rates, the Commission will consider a waiver request for additional support.⁴⁸⁷ We will seek the assistance of the relevant state commission in review of such a waiver to the extent that the state commission wishes to provide insight based on its understanding of the carrier's activities and other circumstances in the state. We do not expect to routinely grant requests for additional support, but this safeguard is in place to help protect the communities served by rate-of-return carriers.

E. Rationalizing Support for Mobility

295. Mobile voice and mobile broadband services are increasingly important to consumers and to our nation's economy. Given the important benefits of and the strong consumer demand for mobile services, ubiquitous mobile coverage must be a national priority. Yet despite growth in annual funding for competitive ETCs of almost 1000 percent over the past decade—from less than \$17 million in 2001 to

⁴⁸³ Moreover, even if we were to recognize a property interest in USF support, our action today would not result in a taking in circumstances such as these, where the "interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Penn Central Transportation v. New York City*, 438 U.S. 104, 124 (1978); see also *Connolly v. Pension Benefit Guaranty Corporation*, 475 U.S. 211, 225 (1986). The "purpose of universal service is to benefit the customer, not the carrier." *Rural Cellular Association v. FCC*, 588 F.3d 1095, 1103 (D.C. Cir. 2009) (quoting *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000)). As we have made clear, our national goal is to advance broadband availability while preserving the voice and broadband service that exists today, and this objective would be achieved more effectively by revising our current rules and adjusting support amounts for particular recipients, balancing the principles set forth in section 254(b). The Commission has discretion to balance competing section 254(b) principles. *Qwest Communications Intern., Inc. v. FCC*, 298 F.3d 1222, 1234 (10th Cir. 2005) ("The FCC may exercise its discretion to balance the principles against one another when they conflict, but may not depart from them altogether to achieve some other goal."). Thus, the Commission may balance the principles posited in section 254(b)(3) ("Access to advanced telecommunications and information services should be provided in all regions of the Nation") and (b)(4) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services" at rates that are reasonably comparable to urban rates) with the principle in section 254(b)(5) principle ("There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service"). Nothing in the Takings Clause or section 254 precludes the Commission from such reasoned decision making, even if it means taking support away from some current support recipients. The requirement that support should be "specific, predictable and sufficient" does not mean that support levels can never change and does not establish a right to the funding.

⁴⁸⁴ *Illinois Bell Tel. Co. v. FCC*, 988 F.2d 1254, 1263 (D.C. Cir. 1993).

⁴⁸⁵ *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989).

⁴⁸⁶ *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 605 (1944).

⁴⁸⁷ See *infra* paras. 539-544.

roughly \$1.22 billion in 2010⁴⁸⁸—there remain many areas of the country where people live, work, and travel that lack any mobile voice coverage, and still larger geographic areas that lack current generation mobile broadband coverage. To increase the availability of current generation mobile broadband, as well as mobile voice, across the country, universal service funding for mobile networks must be deployed in a more targeted and efficient fashion than it is today.

296. It is clear that the current system does not efficiently serve the nation. In 2008, the Commission concluded that rapid growth in support to competitive ETCs as a result of the identical support rule threatened the sustainability of the universal service fund.⁴⁸⁹ Further, it found that providing the same per-line support amount to competitive ETCs had the consequence of encouraging wireless competitive ETCs to supplement or duplicate existing services while offering little incentive to maintain or expand investment in unserved or underserved areas.⁴⁹⁰ As a consequence, the Commission adopted an interim state-by-state cap on high-cost support for competitive ETCs, subject to two exceptions, pending comprehensive high-cost universal service reform.⁴⁹¹

297. The interim cap slowed the growth in competitive ETC funding, but it did not address where such funding is directed or whether there are better ways to achieve our goal of advancing mobility in areas where such service would not exist absent universal service support. Many areas are served by multiple wireless competitive ETCs that likely are competing with each other.⁴⁹² In other areas of the country, mobile coverage is lacking, and there may be no firms willing to enter the market, even at current support levels.

298. Today we adopt reforms that will secure funding for mobility directly, rather than as a side-effect of the competitive ETC system, while rationalizing how universal service funding is provided to ensure that it is cost-effective and targeted to areas that require public funding to receive the benefits of

⁴⁸⁸ *Interim Cap Order*, 23 FCC Rcd at 8837-38, para. 6 (noting growth from \$17 million in 2001 to \$1.18 billion in 2007); *2010 Disbursement Analysis*.

⁴⁸⁹ Section 54.307 of the Commission's rules, also known as the "identical support rule," provides competitive ETCs the same per-line amount of high-cost universal service support as the incumbent local exchange carrier serving the same area. 47 C.F.R. § 54.307.

⁴⁹⁰ *Interim Cap Order*, 23 FCC Rcd at 8843-44, paras. 20-21.

⁴⁹¹ *Id.* at 8837, para. 5. Specifically, the Commission capped support for competitive ETCs in each state at the total amount of support for which all competitive ETCs serving the state were eligible to receive in March 2008, annualized. *Id.* at 8846, paras. 26-28. The *Interim Cap Order* included exceptions for competitive ETCs serving Tribal lands and Alaska Native regions ("covered locations") and for competitive ETCs submitting cost studies demonstrating their own high costs of providing service. *Id.* at 8848-49, paras. 31-33. The interim cap for competitive ETCs was set at \$1.36 billion. See Letter from Sharon Gillett, Chief, Wireline Competition Bureau, to Karen Majcher, USAC, WC Docket No. 05-337, DA 11-243 (dated Feb. 8, 2011). Actual disbursements to competitive ETCs in 2010 were approximately \$1.22 billion. *2010 Disbursement Analysis*. Actual competitive ETC disbursements vary from the interim cap amount for two reasons. First, true-ups and other out-of-period adjustments sometimes result in disbursements in a year other than the one against the payments apply for interim cap purposes. Second, some states have seen a reduction in demand for competitive ETC support since the cap was established and, as a result, total support disbursed is less than the interim cap amount.

⁴⁹² See Federal Communications Commission Response to United States House of Representatives Committee on Energy and Commerce, Universal Service Fund Data Request of June 22, 2011, Request 7: Study Areas with the Most Eligible Telecommunications Carriers (Table 1: Study Areas with the Most Eligible Telecommunications Carriers in 2010), available at <http://republicans.energycommerce.house.gov/Media/file/PDFs/2011usf/ResponsetoQuestion7.pdf>. (FCC Response to House Energy and Commerce Committee). Ten incumbent study areas have 11 or more competitive ETCs, albeit not necessarily serving overlapping service areas within the incumbent study areas. *Id.*

mobility. While we proposed providing support to a single fixed or mobile service provider, many commenters supported the establishment of separate fixed and mobile programs.⁴⁹³ As described above, we establish ubiquitous availability of mobile services as a universal service goal.⁴⁹⁴

299. To accomplish this goal, we establish the Mobility Fund. The first phase of the Mobility Fund will provide one-time support through a reverse auction, with a total budget of \$300 million, and will provide the Commission with experience in running reverse auctions for universal service support. We expect to distribute this support as quickly as feasible, with the goal of holding an auction in 2012, with support beginning to flow no later than 2013. As part of this first phase, we also designate an additional \$50 million for one-time support for advanced mobile services on Tribal lands, for which we expect to hold an auction in 2013. The second phase of the Mobility Fund will provide ongoing support for mobile service with the goal of holding the auction in the third quarter of 2013 and support disbursed starting in 2014, with an annual budget of \$500 million.⁴⁹⁵ This dedicated support for mobile service supplements the other competitive bidding mechanisms under the Connect America Fund.⁴⁹⁶

300. In the remainder of this section, we establish Phase I of the Mobility Fund and the dedicated Tribal Mobility Fund, each providing for one-time support; establish the budget for Phase II of the Mobility Fund to provide ongoing support; and establish the transition from the identical support rule to these new dedicated funding mechanisms for mobility. In the FNPRM, we seek comment on specific proposals to determine and distribute ongoing support in Phase II of the Mobility Fund, including proposals to target dedicated funding to Tribal lands.

1. Mobility Fund Phase I

a. Introduction and Background

301. Millions of Americans live in communities where current-generation mobile service is unavailable, and millions more work in or travel through such areas. In order to help ensure the availability of mobile broadband across America, we establish the Mobility Fund. In the three decades since the Commission issued the first cellular telephone licenses, the wireless industry has continually expanded and upgraded its networks to the point where third generation (often called “advanced” or “3G”) mobile wireless services are now widely available.⁴⁹⁷ Such services typically include both voice telecommunications service and Internet access. However, significant mobility gaps remain a problem

⁴⁹³ In the *USF/ICC Transformation NPRM*, we proposed moving to a long-term CAF that would provide ongoing support for a single mobile or fixed broadband provider in any given geographic area, but also sought comment on creating separate programs to support mobile and fixed services. *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4697-701, paras. 479-89. AT&T *USF/ICC Transformation NPRM* Comments at 87, 108; Mid-Rivers *USF/ICC Transformation NPRM* Reply at 14; Nebraska Commission *USF/ICC Transformation NPRM* Comments at 17; Rural Associations *USF/ICC Transformation NPRM* Comments at 83; RICA *USF/ICC Transformation NPRM* Comments, at 4; South Dakota Public Utilities Commission *USF/ICC Transformation NPRM* Reply at 5; TCA *USF/ICC Transformation NPRM* Comments, at 15-16; T-Mobile *USF/ICC Transformation NPRM* Comments at 2, 4-6; US Cellular *USF/ICC Transformation NPRM* Comments, at 10-11. *See also Joint Board 2007 Recommended Decision*, 22 FCC Rcd 20477 (recommending establishment of a separate Mobility Fund).

⁴⁹⁴ *See supra* para. 53.

⁴⁹⁵ *See infra* para. 481.

⁴⁹⁶ *See supra* section VII.C.2.

⁴⁹⁷ In this Order, we use the terms “current generation,” “3G,” and “advanced” interchangeably to refer to mobile wireless services that provide voice telecommunications service on networks that also provide data services such as Internet access. The meaning of “advanced” in this context is constantly evolving. We expect that some would include 4G today and that, in the near future, 4G and subsequent technologies also will be within the meaning of “advanced” mobile services.

for residents, public safety first responders, businesses, public institutions, and travelers, particularly in rural areas. Such gaps impose significant disadvantages on those who live, work, and travel in these areas. Today's Order seeks to address these gaps.

302. The Mobility Fund builds on prior proposals for modernizing the structure and operation of the USF. It was the Federal-State Joint Board on Universal Service ("Joint Board") that first recognized the importance of directly addressing the infrastructure needs in areas unserved by mobile service, and in the 2007 *Recommended Decision*, the Joint Board recommended that the Commission establish a Mobility Fund.⁴⁹⁸ In the *Recommended Decision*, the Joint Board acknowledged that the universal availability of mobile services was a national priority and proposed that a Mobility Fund be created to subsidize the costs of construction of new facilities in "unserved" areas where significant population density lacked wireless voice service.⁴⁹⁹ The Joint Board also contemplated that funds would be available to construct facilities along roads and highways, to advance important public safety interests.⁵⁰⁰ Finally, the Joint Board recommended that some funds be made available – at least for some limited period of time – to provide continuing operating subsidies to carriers where service is essential but where usage is so slight that there is not a business case to support ongoing operations, even with substantial support for construction.⁵⁰¹

303. Following on the Joint Board's work, the *National Broadband Plan* recommended a Mobility Fund in connection with broader reforms of the USF.⁵⁰² The plan recommended targeted, one-time support for deployment of 3G infrastructure in order to bring all states to a minimum level of mobile service availability, without increasing the size of the USF.

304. In the *USF Reform NOI/NPRM*, the Commission sought comment on the use of a form of procurement auction to determine and target one-time subsidies for deployment of broadband-capable networks in areas unserved by such networks.⁵⁰³ In the *Mobility Fund NPRM*, the Commission outlined a process by which it would solicit bids for support by providers willing to expand current generation wireless networks into areas without such service.⁵⁰⁴

305. Following the release of the *Mobility Fund NPRM*, the Wireless Bureau released a Public Notice seeking comment on a series of more detailed questions focused on how to facilitate service to Tribal lands.⁵⁰⁵ The Public Notice proposed various mechanisms by which Tribal governments might help shape the outcome of an auction to bring mobile services to Tribal lands.

b. Overall Design of Mobility Fund Phase I

(i) Legal Authority

306. We have discussed above the Commission's authority to provide universal service funding to support the provision of voice telephony services. We explained that, pursuant to our statutory

⁴⁹⁸ See *Recommended Decision*, 22 FCC Rcd at 20,482, paras. 16-18.

⁴⁹⁹ *Id.* at 20,478, para. 4, 20,482, para. 16.

⁵⁰⁰ *Id.* at 20,482, para. 16.

⁵⁰¹ *Id.* at 20,482 para. 16, 20,486, para. 38.

⁵⁰² National Broadband Plan at 146.

⁵⁰³ *USF Reform NOI/NPRM*, 25 FCC Rcd at 6674-76, paras. 43-48.

⁵⁰⁴ See, generally, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14,716 (2010) (*Mobility Fund NPRM*).

⁵⁰⁵ *Further Inquiry into Tribal Issues Relating to Establishment of a Mobility Fund*, WT Docket No. 10-208, Public Notice, 26 FCC Rcd 5997 (Wireless Telecom. Bur. 2011) (*Tribal Mobility Fund Public Notice*).

authority, we may require that universal service support be used to ensure the deployment of broadband networks capable of offering not only voice telephony services, but also advanced telecommunications and information services, to all areas of the nation, as contemplated by the principles set forth in section 254(b) of the Act. In this section, we apply our legal analysis of our statutory authority to the establishment of Phase I and II of the Mobility Fund.⁵⁰⁶ We note that multiple commenters support our authority to extend universal service support to providers of mobile services.⁵⁰⁷

307. As an initial matter, it is wholly apparent that mobile wireless providers offer “voice telephony services” and thus offer services for which federal universal support is available. Furthermore, wireless providers have long been designated as ETCs eligible to receive universal service support. Nonetheless, a number of parties responding to the *Mobility Fund NPRM* question the Commission’s authority to establish the Mobility Fund as described below.⁵⁰⁸ We reject those arguments for the reasons stated below.

308. First, we reject the argument that we may not support mobile networks that offer services other than the services designated for support under section 254. As we have already explained, under our longstanding “no barriers” policy, we allow carriers receiving high-cost support “to invest in infrastructure capable of providing access to advanced services” as well as supported voice services.⁵⁰⁹ Moreover, section 254(e)’s reference to “facilities” and “services” as distinct items for which federal universal service funds may be used demonstrates that the federal interest in universal service extends not only to supported services but also the nature of the facilities over which they are offered. Specifically, we have an interest in promoting the deployment of the types of facilities that will best achieve the principles set forth in section 254(b) (and any other universal service principle that the Commission may adopt under section 254(b)(7)), including the principle that universal service program be designed to bring advanced telecommunications and information services to all Americans, at rates and terms that are comparable to the rates and terms enjoyed in urban areas. Those interests are equally strong in the wireless arena. We thus conclude that USF support may be provided to networks, including 3G and 4G

⁵⁰⁶ The prior discussion of the Commission’s legal authority to support networks capable of offering voice and broadband addresses some of the arguments commenters made in response to the *Mobility Fund NPRM*. For example, Cellular South contended in comments responding to the *Mobility Fund NPRM* that the proposal violated a statutory mandate to support competition together with universal service. See Cellular South et al. *Mobility Fund NPRM Comments* at 17-19. As noted above in the discussion of the Commission’s general legal authority, our proposals today further both competition and universal service. See *supra* paras. 68-69.

⁵⁰⁷ See, e.g., TIA *Mobility Fund NPRM Comments* at 2, 6-7; Verizon *Mobility Fund NPRM Comments* at 6-7; Verizon *Mobility Fund NPRM Reply* at 3, 12-13, and 15.

⁵⁰⁸ Apart from the Commission’s authority to establish a Mobility Fund, several parties also dispute the Commission’s authority to fund it from reserve USF funds that were relinquished by Verizon Wireless and Sprint. See, e.g., MTPCS *Mobility Fund NPRM Comments* at 6-8; RCA *Mobility Fund NPRM Comments* at 11-12; USA Coalition *Mobility Fund NPRM Comments* at 25-26; US Cellular *Mobility Fund NPRM Comments* at 16-18; SouthernLINC *Mobility Fund NPRM Reply* at 5-6. We address and reject those arguments elsewhere. See *infra* Appendix F.

⁵⁰⁹ *Rural Task Force Order*, 16 FCC Rcd at 11,322, para. 200 (“[U]se of support to invest in infrastructure capable of providing access to advanced services does not violate section 254(e), which mandates that support be used ‘only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.’ The public switched telephone network is not a single-use network. Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services.”) (footnote omitted).

wireless services networks, that are capable of providing additional services beyond supported voice services.⁵¹⁰

309. For similar reasons, we reject arguments made by MetroPCS, NASUCA, and US Cellular that the Mobility Fund would impermissibly support an “information service;”⁵¹¹ by Free Press and the Florida Commission that establishment of the Mobility Fund would violate section 254 because mobile data service is not a supported service;⁵¹² and by various parties that section 254(c)(1) prohibits funding for services to which a substantial majority of residential customers do not subscribe.⁵¹³ All of these arguments incorrectly assume that the Mobility Fund will be used to support mobile data service as a supported service in its own right. To the contrary, the Mobility Fund will be used to support the provision of “voice telephony service” and the underlying mobile network. That the network will also be used to provide information services to consumers does not make the network ineligible to receive support; to the contrary, such use directly advances the policy goals set forth in section 254(b), our new universal service principle recommended by the Joint Board, as well as section 706.⁵¹⁴

310. We also reject the argument that the Mobility Fund violates the principle in section 254(b)(5) that “[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”⁵¹⁵ Commenters argue that non-recurring funding won in a reverse auction is not “predictable” because the final amount of support is not known in advance of the bidding or “sufficient” because non-recurring funding will not meet recurring costs.⁵¹⁶ We disagree. The terms “predictable” and “sufficient” modify “Federal and State mechanisms.” Here, our reverse auction rules establish a predictable mechanism to support universal service in that the carrier receiving support has notice of its rights and obligations before it undertakes to fulfill its universal service obligations.⁵¹⁷ Moreover, this interpretation of the statute was upheld by the Fifth Circuit’s decision in *Alenco Commc’ns v. FCC*.⁵¹⁸ In determining whether certain universal service distribution mechanisms were “predictable,” as required by section 254(b)(5), the *Alenco* court found that “the Commission reasonably

⁵¹⁰ *Rural Task Force Order*, 16 FCC Rcd at 11,322, para. 199 (“[O]ur universal service policies should not inadvertently create barriers to the provision of access to advanced services.”).

⁵¹¹ See *MetroPCS Mobility Fund NPRM Comments* at 4-5; *NASUCA Mobility Fund NPRM Comments* at 3; *US Cellular Mobility Fund NPRM Comments* at 6, 10. Cf. *USA Coalition Mobility Fund NPRM Comments* at 4 (“wireless networks are an integrated facility capable of providing both supported telecommunications services as well as information services.”).

⁵¹² *Free Press Mobility Fund NPRM Comments* at 2; *Florida Commission Mobility Fund NPRM Reply* at 2-3.

⁵¹³ *Free Press Mobility Fund NPRM Comments* at 2; *USA Coalition Mobility Fund NPRM Comments* at 5-6, 8; *Benton et al. Mobility Fund NPRM Reply* at 3; *USA Coalition Mobility Fund NPRM Reply* at 7-8. Compare *HITN Mobility Fund NPRM Reply* at 3 (“majority of Americans do indeed have access to mobile broadband services”).

⁵¹⁴ 47 U.S.C. § 254(b). Because we are not designating mobility as a supported service, we need not concern ourselves with RICA’s argument that doing so could jeopardize existing support to incumbent LECs and wireline competitive ETCs not offering mobility. *RICA Mobility Fund NPRM Reply* at 3. RICA’s argument is premised on 47 U.S.C. § 214(e)(1)(A), which requires ETCs to offer all supported services throughout their service territory. *Id.*

⁵¹⁵ 47 U.S.C. § 254(b)(5).

⁵¹⁶ *Cellular South et al. Mobility Fund NPRM Comments* at 19; *RTG Mobility Fund NPRM Comments* at 5; *USA Coalition Mobility Fund NPRM Reply* at 6.

⁵¹⁷ See *Verizon Mobility Fund NPRM Reply* at 13.

⁵¹⁸ *Alenco Communications et al. v. FCC*, 201 F.3d 608 (5th Cir. 2000).

construed the predictability principle to require only predictable rules that govern *distribution* of subsidies....⁵¹⁹

311. Our mechanism is also “sufficient.” The auction process is effectively a self-selecting mechanism: Bidders are presumed to understand that Mobility Fund Phase I will provide one-time support, that bidders will face recurring costs when providing service, and that they must tailor their bid amounts accordingly. We decline to interpret the “sufficiency” requirement so broadly as to require the Commission to guarantee that carriers who receive support make the correct business judgments in deciding how to structure their bids or their service offerings to consumers.

312. Cellular South contends that “by collecting USF contributions from all ETCs and awarding distributions to only a limited set of ETCs, support auctions would transform the Fund into an unconstitutional tax.”⁵²⁰ Again, we disagree. As the Supreme Court has explained, “a statute that creates a particular governmental program and that raises revenue to support that program, as opposed to a statute that raises revenue to support Government generally, is not a ‘Bil[l] for raising Revenue’ within the meaning of the Origination Clause.”⁵²¹ This analysis clearly applies to the sections of the Telecommunications Act of 1996 authorizing the Universal Service Fund, including the Mobility Fund. Moreover, we conclude that the Fifth Circuit’s analysis of this issue with respect to paging carriers applies equally to all carriers. As that court explained: “universal service contributions are part of a particular program supporting the expansion of, and increased access to, the public institutional telecommunications network. Each paging carrier directly benefits from a larger and larger network and, with that in mind, Congress designed the universal service scheme to exact payments from those companies benefiting from the provision of universal service.”⁵²² Finally, as Verizon notes, there is always likely to be a disparity between the contributions parties make to the USF and the amounts that they receive from the USF.⁵²³ Indeed, section 254(d) requires contributions from “every telecommunications carrier that provides interstate telecommunications services,” not just ETCs or funding recipients.⁵²⁴

(ii) Size of Mobility Fund Phase I

313. *Background.* In the *Mobility Fund NPRM*, the Commission proposed to use \$100 million to \$300 million in USF high-cost universal service support to fund, on a one-time basis, the expansion of current-generation mobile wireless services through creation of the Mobility Fund.⁵²⁵ The

⁵¹⁹ *Alenco*, 201 F.3d at 623 (emphasis added); see also *id.* at 622 (explaining that universal service support for high-cost loops was “predictable” because “[t]he methodology governing subsidy *disbursements* [wa]s plainly stated and made available to LECs.”) (emphasis added).

⁵²⁰ Cellular South et al. *Mobility Fund NPRM* Comments at 16.

⁵²¹ *United States v. Munoz-Flores*, 495 U.S. 385, 398 (1990).

⁵²² See *Texas Office of Public Utility Counsel et al. v. FCC*, 183 F.3d 393, 428 (5th Circ. 1999) (rejecting argument of paging carriers that collecting contributions from them for universal service violates the Origination Clause). The Fifth Circuit also concluded, in dicta, that contributions under the Universal Service Fund are fees and not taxes, for purposes of the Taxation Clause. *Id.* at n.52.

⁵²³ Verizon *Mobility Fund NPRM* Reply at 13. There is no statutory or regulatory requirement that ETCs derive a benefit from the program equivalent to their contributions to USF. Moreover, USF contributions typically are collected by ETCs directly from consumers, as a separate line item, on consumers’ phone bills. As such, the benefits of USF rightly flow to consumers, as contemplated by section 254.

⁵²⁴ 47 U.S.C. § 254(d). For the same reason, we disagree with Cellular South that auctions would be “inequitable and discriminatory” in violation of section 254(d). Cellular South et al. *Mobility Fund NPRM* Comments at 17. Nothing in that section suggests that contributors are entitled to USF disbursements.

⁵²⁵ *Mobility Fund NPRM*, 25 FCC Rcd at 14,722, para. 13.

Commission noted that the ultimate impact of any amount of support would depend on a variety of factors, including the extent to which non-recurring funding makes it possible to offer service profitably in areas previously uneconomic to serve and the extent to which new customers adopt services newly made available.⁵²⁶ The *Mobility Fund NPRM* sought comment on what amount was optimal to provide effective, targeted support to expand coverage within a relatively short timeframe to those areas without current-generation networks where build out of such networks may be accelerated with one-time assistance.⁵²⁷

314. *Discussion.* We conclude that \$300 million is an appropriate amount for one-time Mobility Fund Phase I support, and is consistent with our goal of swiftly extending current generation wireless coverage in areas where it is cost effective to do so with one-time support. We believe that there are unserved areas for which such support will be useful, and that competition among wireless carriers for support to serve these areas will be sufficient to ensure that the available funds are distributed efficiently and effectively. We agree with those commenters that suggest a one-time infusion of \$300 million will achieve significant benefits, while at the same time ensuring adequate universal service monies are available for other priorities, including broader reform initiatives to address ongoing support.⁵²⁸ We also note that, consistent with a number of comments filed in response to the *Mobility Fund NPRM*,⁵²⁹ we are deciding to provide significant ongoing support for mobile services through our Mobility Fund Phase II. We recognize that a number of commenters, in responding to the *Mobility Fund NPRM*, contend that the originally proposed range of \$100-\$300 million in one-time support for the Mobility Fund would not be sufficient to achieve ubiquitous deployment of mobile broadband.⁵³⁰ We find, however, that \$300 million

⁵²⁶ *Id.* at 14,722, para. 14.

⁵²⁷ *Id.*

⁵²⁸ See, e.g., Verizon *Mobility Fund NPRM* Comments at 5; ACA *Mobility Fund NPRM* Reply at 4. See also CWA *Mobility Fund NPRM* Comments at 2-4 (limit one-time support to reserve USF support for more comprehensive reform); Windstream *Mobility Fund NPRM* Comments at 4-6 (Mobility Fund should serve as complement to CAF).

⁵²⁹ See, e.g., Alaska Telephone *Mobility Fund NPRM* Comments at 2; CTIA *Mobility Fund NPRM* Comments at 6-11; ITTA *Mobility Fund NPRM* Comments at 3-4; RTG *Mobility Fund NPRM* Comments at 5-6; Texas Statewide *Mobility Fund NPRM* Comments at 6-7; TIA *Mobility Fund NPRM* Comments at 2-9; T-Mobile *Mobility Fund NPRM* Comments at 5; USA Coalition *Mobility Fund NPRM* Comments at 20-22; Alaska Governor *Mobility Fund NPRM* Reply at 2; CTIA *Mobility Fund NPRM* Reply at 4-5; GCI *Mobility Fund NPRM* Reply at 6; RCA *Mobility Fund NPRM* Reply at 4-5; SouthernLINC *Mobility Fund NPRM* Reply at 4; USA Coalition *Mobility Fund NPRM* Reply at 6, 9.

⁵³⁰ See, e.g., AT&T *Mobility Fund NPRM* Comments at 2-3; New EA *Mobility Fund NPRM* Comments at 6; Indiana Commission *Mobility Fund NPRM* Comments at 6-7; Mid-Rivers *Mobility Fund NPRM* Comments at 4; Ohio Commission *Mobility Fund NPRM* Comments at 3; RCA *Mobility Fund NPRM* Comments at 9; RTG *Mobility Fund NPRM* Comments at 2; T-Mobile *Mobility Fund NPRM* Comments at 2, 6; USA Coalition *Mobility Fund NPRM* Comments at 20-24; Alaska Commission *Mobility Fund NPRM* Reply at 7-8. CTIA's 2011 *Mobility Study* finds that it would require \$7.8 billion of initial investment to ensure ubiquitous coverage of both HSPA and EvDO (3G) mobile broadband services, and \$21 billion of initial investment to ensure ubiquitous coverage of both LTE and WiMax (4G) mobile broadband services. We note that significant private investment is being made to deploy mobile wireless broadband, and conclude we should not, and cannot, structure our universal service support for mobility to displace private investment being used to expand coverage of 3G and 4G networks. Instead, our goal is to supplement that investment where and to the degree necessary. See CTIA-The Wireless Association, U.S. Ubiquitous Mobility Study, dated September 21, 2011, submitted in *ex parte* notification filed by the CTIA-The Wireless Association on September 22, 2011, in GN Docket No. 09-51, WC Docket Nos. 96-45, 05-337, and 10-90; WT Docket No. 10-208; and CC Docket No. 01-92 (*CTIA 2011 Mobility Study*).

should be sufficient to enable the deployment of 3G or better mobile broadband to many of the areas where such services are unavailable.⁵³¹

(iii) **Basic Structure for Mobility Fund Phase I**

315. *Background.* Given the Commission's goals for the Mobility Fund, it proposed in the *Mobility Fund NPRM* not to adopt the structure of the USF's existing competitive ETC rules, which allow support for multiple providers in one area, but rather to provide support to no more than one entity in any given geographic area.⁵³² The Commission also proposed to adopt certain terms and conditions to minimize competitive concerns raised by certain wireless providers.⁵³³

316. *Discussion.* We decline to adopt the structure of the current competitive ETC rules, which provide support for multiple providers in an area. As discussed elsewhere, we are concluding that that structure has led to duplicative investment by multiple competitive ETCs in certain areas at the expense of investment that could be directed elsewhere, including areas that are not currently served. We therefore conclude that, as a general matter, the Commission should not award Mobility Fund Phase I support to more than one provider per area unless doing so would increase the number of units (road miles) served, as is possible with partially overlapping bids. We agree with numerous commenters that our priority in awarding USF support should be to expand service,⁵³⁴ and that permitting multiple winners as a routine matter in any geographic area to serve the same pool of customers would drain Mobility Fund resources with limited corresponding benefits to consumers.⁵³⁵ We note, however, that in certain limited circumstances, the most efficient use of resources may result in small overlaps in supported service. Thus, we delegate to the Bureaus, as part of the auctions procedures process, the question of the circumstances, if any, in which to allow overlaps in supported service to permit the widest possible coverage given the overall budget.⁵³⁶

317. Commenters that oppose our proposal maintain that it would unfairly deprive customers of the benefits of competition,⁵³⁷ create barriers to entry,⁵³⁸ and require the Commission to "hyper

⁵³¹ See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4560-61, para. 10; see also National Broadband Plan at 149-150.

⁵³² *Mobility Fund NPRM*, 25 FCC Rcd at 14,723, para. 15.

⁵³³ *Id.* at 14,723, para. 15, 14,728, para. 36.

⁵³⁴ See *CenturyLink Mobility Fund NPRM Comments* at 8; *ITTA Mobility Fund NPRM Comments* at 4-5; *Indiana Commission Mobility Fund NPRM Comments* at 4; *Verizon Mobility Fund NPRM Reply* at 16.

⁵³⁵ See *Verizon Mobility Fund NPRM Reply* at 16. The *CTIA 2011 Mobility Study* provides an indication of how much more money could be required to support multiple providers. Specifically, the study found \$10 billion would be required to ensure 4G mobile broadband coverage using either LTE or WiMax technologies, but more than double that amount, \$21 billion, would be required to ensure 4G broadband coverage using both LTE and WiMax.

⁵³⁶ See *infra* para. 420.

⁵³⁷ See *ACS Mobility Fund NPRM Comments* at 5-6; *ATA Mobility Fund NPRM Comments* at 3; *Cellular South et al. Mobility Fund NPRM Comments* at 21-22; *CTIA Mobility Fund NPRM Comments* at 7-9; *Sprint Mobility Fund NPRM Comments* at 2; *T-Mobile Mobility Fund NPRM Comments* at 3, 7; *US Cellular Mobility Fund NPRM Comments* at 20-21. But see *Verizon Mobility Fund NPRM Reply* at 14 (competitive bidding would treat all market participants alike; "there will be no mystery to the application process or the criteria for selecting winning bidders.").

⁵³⁸ See *New EA Mobility Fund NPRM Comments* at 4-5.

regulate” to protect against anti-competitive behavior.⁵³⁹ Some assert that these presumed consequences violate express provisions of the Communications Act regarding universal service support.⁵⁴⁰

318. Many of the objections to the Commission’s authority assume that the Universal Service Fund’s existing competitive ETC rules, which allow support for multiple providers in one area, are the only way to fulfill the goals of the statute. We disagree with this premise. As Verizon notes, the statute’s goal is to expand availability of service to users.⁵⁴¹ It is certainly true that section 214(e) allows the states to designate more than one provider as an eligible telecommunications provider in any given area.⁵⁴² But nothing in the statute compels the states (or this Commission) to do so; rather, the states (and this Commission) must determine whether that is in the public interest. Likewise, nothing in the statute compels that every party eligible for support actually receive it.

319. We acknowledge that in the past the Commission concluded that universal service subsidies should be portable, and allowed multiple competitive ETCs to receive support in a given geographic area. Based on the experience of a decade, however, we conclude that this prior policy of supporting multiple networks may not be the most effective way of achieving our universal service goals. In this case, we choose not to subsidize competition through universal service in areas that are challenging for even one provider to serve.⁵⁴³ Given that Mobility Fund Phase I seeks to expand the availability of current and next generation services, it will be used to offer services where no provider currently offers such service. We conclude that the public interest is best served by maximizing the expansion of networks into currently unserved communities given the available budget, which will generally result in providing support to no more than one provider in a given area.

320. We further note, however, that participation in Mobility Fund Phase I is conditioned on collocation and data roaming obligations designed to minimize anticompetitive behavior. We also require that recipients provide services with Mobility Fund Phase I support at reasonably comparable rates.⁵⁴⁴ These obligations should help address the concerns of those that argue for continued support of multiple providers in a particular geographic area and further our goal to ensure the widest possible reach of Phase I of the Mobility Fund.

(iv) Auction To Determine Awards of Support

321. *Background.* In the *Mobility Fund NPRM*, the Commission proposed to use a competitive bidding mechanism to determine the entities that would receive support and the amount of support they would receive. That is, it proposed to award support based on the lowest per-unit bid amounts submitted in a reverse auction, subject to the constraint discussed above that there will be no more than one recipient per geographic area, so as to make the limited funds available go as far as possible.⁵⁴⁵ The *Mobility Fund NPRM* sought comment on this approach generally and on particular

⁵³⁹ See, e.g., US Cellular *Mobility Fund NPRM* Comments at 20-21.

⁵⁴⁰ See RCA *Mobility Fund NPRM* Comments at 8; SouthernLINC *Mobility Fund NPRM* Reply at 3; NE Colorado *Mobility Fund NPRM* Reply at 6; US Cellular *Mobility Fund NPRM* Reply at 13.

⁵⁴¹ Verizon *Mobility Fund NPRM* Reply at 10 (“Nowhere in the USF policy goals listed in section 254(b) of the Act does it say that universal service programs should be designed to prop up multiple providers with government subsidies in areas that are prohibitively expensive for even one provider to serve.”).

⁵⁴² 47 U.S.C. § 214(e).

⁵⁴³ See *infra* section VII.E.4. (Eliminating the Identical Support Rule); see also Verizon *Mobility Fund NPRM* Reply at 10, 16.

⁵⁴⁴ See *infra* paras. 384-385.

⁵⁴⁵ *Mobility Fund NPRM*, 25 FCC Rcd at 14,723, para. 16.

aspects of how such an auction might work. The Commission further proposed to give the Wireline Bureau and the Wireless Bureau discretion to determine specific auction procedures in a separate pre-auction proceeding, consistent with our approach in spectrum auctions.

322. *Discussion.* The goal of Mobility Fund Phase I is to extend the availability of mobile voice service on networks that provide 3G or better performance and to accelerate the deployment of 4G wireless networks in areas where it is cost effective to do so with one-time support. The purpose of the mechanism we choose is to identify those areas where additional investment can make as large a difference as possible in improving current-generation mobile wireless coverage. We adopt a reverse auction format because we believe it is the best available tool for identifying such areas – and associated support amounts – in a transparent, simple, speedy, and effective way. In such a reverse auction, bidders are asked to indicate the amount of one-time support they would require to achieve the defined performance standards for specified numbers of units in given unserved areas. We discuss later the details of the auction mechanism, including our proposal to award support to maximize the number of units covered given the funds available. Here, we conclude simply that a reverse auction is the best way to achieve our overall objective of maximizing consumer benefits given the available funds.

323. Objections to our proposal to use a competitive bidding mechanism largely challenge or misunderstand the goals of the instant proposal. GVNW, for example, argues that the Mobility Fund will not provide adequate support over the longer term. This fails to recognize that Mobility Fund Phase I is focused solely on identifying recipients that can extend coverage with one-time support.⁵⁴⁶ Other commenters argue that our approach is unlikely to provide support for the areas that are the very hardest to cover, noting how important high-cost USF support is in these areas.⁵⁴⁷ In this regard, we reiterate that Phase I has a limited and targeted purpose and is not intended to ensure that the highest cost areas receive support. Those issues are addressed separately in the sections of the Order discussing Mobility Fund Phase II and other aspects of CAF, as well as in the FNPRM adopted today.

324. Others contend that funding will be directed to areas that will be built out with private investment even without support.⁵⁴⁸ To prevent funding from going to such areas, Windstream suggests that the Commission could require a certain level of private investment before any subsidy kicks in or include an assessment of revenue/expense forecasts as part of the selection process.⁵⁴⁹ We observe that the areas eligible for Mobility Fund Phase I funding generally are ones where the economics have not been sufficient to date to attract private investment. While it may be true that some of these areas potentially could be built out using private investment over time, our goal in establishing the Mobility Fund is to provide the necessary “jump start” to accelerate service to areas where it is cost effective to do so. As discussed below, we are also excluding from auction those areas where a provider has made a regulatory commitment to provide 3G or better wireless service, or has received a funding commitment from a federal executive department or agency in response to the carrier’s commitment to provide 3G or better service.⁵⁵⁰ Taken together, we believe these measures provide sufficient safeguards to exclude funding for areas that would otherwise be built with private investment in the near term.

⁵⁴⁶ GVNW *Mobility Fund NPRM* Comments at 3-8.

⁵⁴⁷ ACS *Mobility Fund NPRM* Comments at 3-4; ATA *Mobility Fund NPRM* Comments at 2-3; Alaska Commission *Mobility Fund NPRM* Reply at 4; Alaska Governor *Mobility Fund NPRM* Reply at 2.

⁵⁴⁸ See, e.g., Free Press *Mobility Fund NPRM* Comments at 3; GCI *Mobility Fund NPRM* Comments at ii; RCA *Mobility Fund NPRM* Comments at 9; Windstream *Mobility Fund NPRM* Comments at 4-5; ACA *Mobility Fund NPRM* Reply at 5; Benton et al. *Mobility Fund NPRM* Reply at 4; GCI *Mobility Fund NPRM* Reply at 9.

⁵⁴⁹ Windstream *Mobility Fund NPRM* Comments at 5-6.

⁵⁵⁰ See *infra* paras. 341-342.

325. Other commenters object to our proposal to use an auction based on issues that are common to any competitive mechanism. The Blooston Rural Carriers, among others, argue that reverse auctions can lead to construction and equipment quality short-cuts due to cost cutting measures.⁵⁵¹ We must of course define clear performance standards and effective enforcement of those standards, as is prudent when seeking any commitment for specific performance. We expect that bidders will consider cost-effective ways of fairly meeting those requirements, which in turn is consistent with our objective to extend coverage for mobile services as much as possible given available funds.

326. We are unpersuaded by arguments that we should not conduct a reverse auction because larger carriers, with greater economies of scale or other potential advantages, will be able to bid more competitively than smaller providers.⁵⁵² For a variety of reasons noted elsewhere, we are confident that both the auction design and natural advantages of carriers with existing investments in networks in rural areas should provide opportunities for smaller providers to compete effectively at auction. Some parties have contended that reverse auctions generally unduly harm small businesses or offer no benefits to federal agencies that make use of them, citing prior attempts to utilize reverse auctions in other contexts, such as Medicare.⁵⁵³ The examples provided, however, illustrate issues in implementing specific reverse auction programs, rather than demonstrating that reverse auctions are inherently biased against small businesses.⁵⁵⁴ Accordingly, we do not find that these examples demonstrate that small businesses are unable to meaningfully participate in a well-designed and executed reverse auction.

327. MTPCS and US Cellular advocate that the Commission take into account factors other than the lowest price, and consider factors such as quality of service, the existence of redundant connections, and availability of quality equipment.⁵⁵⁵ The commenters do not, however, suggest how such metrics could be implemented in this context. Indeed, we conclude that, for purposes of Mobility Fund Phase I, the difficulty in appropriately weighting such differences in the service provided outweigh the benefits that might be gained from such an approach. Rather, we choose to focus on the more concrete and direct approach of adopting appropriate, uniform, minimum performance requirements applicable to all support recipients.

328. Finally, certain commenters object to the use of a reverse auction on the grounds that a reverse auction would provide support to at most one bidder in an area.⁵⁵⁶ For reasons discussed above,

⁵⁵¹ Blooston *Mobility Fund NPRM* Comments at 2; Cellular South et al. *Mobility Fund NPRM* Comments at 12; GVNW *Mobility Fund NPRM* Comments at 8; RTG *Mobility Fund NPRM* Comments at 7.

⁵⁵² See, e.g., Blooston *Mobility Fund NPRM* Comments at 5-6; JCPES *Mobility Fund NPRM* Comments at 4-5; Mid-Rivers *Mobility Fund NPRM* Comments at 6; MTPCS *Mobility Fund NPRM* Comments at 4; RTG *Mobility Fund NPRM* Comments at 7-8; RCA *Mobility Fund NPRM* Reply at 9; RICA *Mobility Fund NPRM* Reply at 6.

⁵⁵³ See Nex-Tech and Carolina West Wireless, *Ex Parte* Notice, December 8, 2010 (Redacted); Nex-Tech Wireless, Carolina West Wireless, and Cellular One of East Central Illinois, *Ex Parte* Notice, September 28, 2010 (Redacted); see also United States Government Accountability Office, Medicare, CMS Working To Address Problems from Round 1 of the Durable Medical Equipment Competitive Bidding Program, GAO-10-207, November 2009.

⁵⁵⁴ For example, according to the Government Accountability Office (GAO), the primary problems with Round 1 of the Durable Medical Equipment Competitive Bidding program involved “poor timing and lack of clarity in bid submission information, a failure to inform all suppliers that losing bids could be reviewed, and an inadequate electronic bid submission system.” GAO Highlights, Highlights of GAO-10-27, Medicare, CMS Working to Address Problems from Round 1 of the Durable Medical Equipment Competitive Bidding Program, November 2009. Nonetheless, the GAO noted that competitive bidding “has the potential to produce considerable benefits, including reducing overall Medicare spending for [durable medical equipment].” *Id.*

⁵⁵⁵ MTPCS *Mobility Fund NPRM* Comments at 4; US Cellular *Mobility Fund NPRM* Reply at 24.

⁵⁵⁶ Cellular South et al. *Mobility Fund NPRM* Comments at 17, 21; RCA *Mobility Fund NPRM* Comments at 2-4; US Cellular *Mobility Fund NPRM* Comments at 20-22; NE Colorado Cellular *Mobility Fund NPRM* Reply at 1.

we have decided not to provide support routinely to more than one provider in an area, contrary to current provision of support to competitive ETCs.

329. *Delegation of Authority.* We also adopt our proposal to delegate to the Bureaus authority to administer the policies, programs, rules and procedures to implement Mobility Fund Phase I as established today. The only commenter addressing this particular point, T-Mobile, supported the delegation to the Wireless Bureau to provide useful flexibility in pre-auction preparation.⁵⁵⁷ In addition to the specific tasks noted elsewhere, such as identifying areas eligible for Mobility Fund support and the number of units associated with each, this delegation includes all authority necessary to conduct a Mobility Fund Phase I auction and conduct program administration and oversight consistent with the policies and rules we adopt in this Order.⁵⁵⁸

(v) Identifying Unserved Areas Eligible for Support

330. In the *Mobility Fund NPRM*, the Commission proposed to identify unserved areas on a census block basis and offer support by census tracts, grouping together all unserved census blocks in the same tract for purposes of awarding support based on competitive bidding.⁵⁵⁹ This proposal involves several related elements, including determining the geographic basis for identifying served and unserved areas, the coverage units associated with unserved geographic areas, and the minimum geographic basis on which unserved areas will be grouped when offered in bidding for Mobility Fund Phase I support. For the reasons discussed with respect to each element, we adopt the proposal in the *Mobility Fund NPRM*, with modifications. We will use road miles, rather than residential population, as the baseline for coverage units in each unserved area, and we delegate to the Bureaus, as part of the auctions procedures process, the question of whether to use a minimum area for bidding like census tracts, as we had proposed, or whether to provide for bidding on individual census blocks with the opportunity for package bidding on combinations of census blocks.

(a) Using Census Blocks to Identify Unserved Areas

331. *Background.* The Commission proposed to determine the availability of service at the census block level as the first step in identifying those areas that are eligible for Mobility Fund Phase I support.⁵⁶⁰ The census block is the smallest geographic unit for which the Census Bureau collects and tabulates decennial census data. Determining the extent of current-generation mobile wireless services by census block should provide a very detailed picture of the availability of 3G mobile services.

332. *Discussion.* We will identify areas eligible for Mobility Fund Phase I support at the census block level. We believe a granular review will allow us to identify unserved areas with greater accuracy than if we used larger areas.⁵⁶¹ Although census blocks, particularly in rural areas, may include both served and unserved areas,⁵⁶² it is not feasible to identify unserved areas on a more granular level for Mobility Fund Phase I, since as noted, census blocks are the smallest unit for which the Census Bureau provides data. NTCH observes that reviewing service by census block will result in a larger absolute

⁵⁵⁷ T-Mobile *Mobility Fund NPRM* Comments at 16.

⁵⁵⁸ See *infra* paras. 337 and 353.

⁵⁵⁹ *Mobility Fund NPRM*, 25 FCC Rcd at 14,724, para. 20.

⁵⁶⁰ *Id.* at 14,724, para 21.

⁵⁶¹ T-Mobile *Mobility Fund NPRM* Comments at 10-11.

⁵⁶² See Letter from Bruce A. Olcott, Counsel to the State of Hawaii, to Hon. Julius Genachowski, Chairman, FCC, at 2, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51 (Oct. 19, 2011).

number of unserved areas than a review based on larger geographic areas,⁵⁶³ but we do not believe this larger absolute number of unserved areas will unduly complicate administration of the fund.

(b) Identifying Unserved Census Blocks

(i) Using American Roamer Data

333. *Background.* The Commission further proposed to measure the availability of current-generation mobile wireless services by using American Roamer data identifying the geographic coverage of networks using EV-DO, EV-DO Rev A, and UMTS/HSPA.⁵⁶⁴ The *Mobility Fund NPRM* sought comment on whether there are differences in the way that carriers report information to American Roamer that should affect our decision on this issue and whether possible alternative datasets exist for this purpose.⁵⁶⁵

334. *Discussion.* We conclude that American Roamer data is the best available choice at this time for determining wireless service at the census-block level. American Roamer data is recognized as the industry standard for the presence of service, although commenters note that the data may not be comprehensive and accurate in all cases.⁵⁶⁶ We anticipate that the Bureaus will exercise their delegated authority to use the most recent American Roamer data available in advance of a Phase I auction in 2012. We note that, in so doing, they should use the data to determine the geographic coverage of networks using the technologies noted in the *Mobility Fund NPRM* (i.e., EV-DO, EV-DO Rev A, UMTS/HSPA) or better.⁵⁶⁷

335. Some commenters propose that the Commission rely instead on data provided for the National Broadband Map created pursuant to the American Recovery and Reinvestment Act, or on data previously submitted to the Commission on FCC Form 477, though the latter source would not reflect reporting by census block.⁵⁶⁸ For future mobility-focused auctions, it may be possible to obtain information from state and Tribal governments to identify areas in need of support. In addition, it may soon be possible to rely, at least in part, on the data provided in connection with the National Broadband Map and FCC Form 477, depending on our anticipated reform to that data collection. Inconsistencies with respect to wireless services have been noted in the initial phase of data gathering for the National Broadband Map, however. Although we expect those discrepancies to be resolved as the project evolves over time,⁵⁶⁹ we cannot now conclude that National Broadband Map data will be an appropriate source of data in time for a Mobility Fund Phase I auction.

⁵⁶³ NTCH *Mobility Fund NPRM* Comments at 3.

⁵⁶⁴ *Mobility Fund NPRM*, 25 FCC Rcd at 14,724, para. 22.

⁵⁶⁵ *Id.* at 14,724-25, para. 23.

⁵⁶⁶ AT&T *Mobility Fund NPRM* Comments at 9-10; Alaska Commission Reply at 11; Benton et al. Reply at 9; HITN Reply at 3-4; NE Colorado Cellular Reply at 9. *But see* Verizon *Mobility Fund NPRM* Comments at 16 (“Using American Roamer data for this purpose is sensible and . . . we are not aware of any other source that presents a viable alternative.”)

⁵⁶⁷ Here, we make clear that in identifying unserved census blocks we will exclude census blocks that are served by 3G or better service. Better than 3G service would include any 4G technologies, including, for example, HSPA+ or LTE.

⁵⁶⁸ California Commission *Mobility Fund NPRM* Comments at 12-14; Verizon *Mobility Fund NPRM* Comments at 16.

⁵⁶⁹ See *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, (continued...)

336. Some commenters observe that American Roamer data relies on reporting by existing providers and therefore may tend to over-report the extent of existing coverage.⁵⁷⁰ While we intend to be as accurate as possible in determining the extent of coverage, we recognize that perfect information is not available. We know of no data source that is more reliable than American Roamer, nor does the record reflect any other viable options. Moreover, to the extent that American Roamer data may reflect over-reporting of coverage, we note that this makes it less likely that we will mistakenly identify areas already served by 3G networks as unserved, and hence, less likely that we will assign support to cover areas that are not in fact unserved by our definition. Our objective is, of course, to identify unserved areas as accurately as possible.

337. Several commenters note that the potential for error is unavoidable and therefore advocate that some provision be made for outside parties to appeal or initiate a review of the initial coverage determination for a particular area.⁵⁷¹ We conclude that we will, within a limited timeframe only, entertain challenges to our determinations regarding unserved geographic areas for purposes of Mobility Fund Phase I. Specifically, we will make public a list of unserved areas as part of the pre-auction process and afford parties a reasonable opportunity to respond by demonstrating that specific areas identified as unserved are actually served and/or that additional unserved areas should be included. Our goal is to accelerate expanded availability of mobile voice service over current-generation or better networks by providing one-time support from a limited source of funds, and any more extended pre-auction review process might risk undue delay in making any support available. Providing for post-auction challenges would similarly inject uncertainty and delay into the process. We therefore conclude that it is important to provide finality prior to the auction with respect to the specific unserved census blocks eligible for support. Accordingly, the Bureaus will finalize determinations with respect to which areas are eligible for support in a public notice establishing final procedures for a Mobility Fund Phase I auction.

(ii) Other Service-Related Factors

338. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on whether factors other than existing mobile service, including the presence of voice and broadband services on non-mobile networks, should be considered in determining which census blocks are unserved and eligible for support.⁵⁷²

339. *Discussion.* After review of the record, we conclude that we will not consider the presence in a census block of voice or broadband services over non-mobile networks in determining which census blocks are unserved. As noted by commenters, mobile services provide benefits, consistent with, and in furtherance of the principles of section 254, not offered by fixed services.⁵⁷³ The ability to communicate from any point within a mobile network's coverage area lets people communicate at times
(Continued from previous page)

Seventh Broadband Progress Report and Order on Reconsideration, 26 FCC Rcd 8008, 8078-93, App. F (2011) (Section 706 Seventh Report and Order on Reconsideration).

⁵⁷⁰ New EA *Mobility Fund NPRM* Comments at 5; Alaska Commission *Mobility Fund NPRM* Reply at 11; Benton et al. *Mobility Fund NPRM* Reply at 9; HITN *Mobility Fund NPRM* Reply at 3-4; NE Colorado *Mobility Fund NPRM* Reply at 9-10.

⁵⁷¹ AT&T *Mobility Fund NPRM* Comments at 9-10; Texas Statewide Coop *Mobility Fund NPRM* Comments at 6; WorldCall *Mobility Fund NPRM* Comments at 10. HITN cautions that we should require parties who seek to challenge that a specific area is unserved to provide empirical data rather than rely on advertising claims to support any such challenge. HITN *Mobility Fund NPRM* Reply at 4.

⁵⁷² *Mobility Fund NPRM*, 25 FCC Rcd at 14,724-25, para. 23.

⁵⁷³ WorldCall *Mobility Fund NPRM* Comments at 11-12.

when they may need it most, including during emergencies. The fact that fixed communications may be available nearby does not detract from this critical benefit. Moreover, the Internet access provided by current and next generation mobile networks renders them qualitatively different from existing voice-only mobile networks. Current and next generation networks offer the ability to tap resources well beyond the resources available through basic voice networks. Accordingly, in identifying blocks eligible for Mobility Fund support, we will not consider whether voice and/or broadband services are available using non-mobile technologies or pre-3G mobile wireless technologies.

340. Some commenters also suggest that the Commission prioritize support to those areas where there is no wireless service availability at all.⁵⁷⁴ We share commenters' goal of expanding the availability of basic mobile services to all Americans. However, the areas that currently lack basic mobile services are likely to be among the most difficult or expensive to serve and would likely require significant ongoing support to remain operational. Given the limited size and scope of the Mobility Fund Phase I, we do not believe that this support mechanism, even with a priority for completely unserved areas, would most efficiently address those areas. Rather, we address these areas in the parts of this Order and the FNPRM addressing ongoing support for wireless services and highest cost areas.

341. That said, to help focus Mobility Fund Phase I support toward unserved locations where it will have the most significant impact, we provide that support will not be offered in areas where, notwithstanding the current absence of 3G wireless service, any provider has made a regulatory commitment to provide 3G or better wireless service, or has received a funding commitment from a federal executive department or agency in response to the carrier's commitment to provide 3G or better wireless service.⁵⁷⁵

342. To implement this decision, we will require that all wireless competitive ETCs that receive USF high cost support, under either legacy or reformed programs, as well as all parties that seek Mobility Fund support, review the list of areas eligible for Mobility Fund support when published by the Commission and identify any areas with respect to which they have made a regulatory commitment to provide 3G or better wireless service or received a federal executive department or agency funding commitment in exchange for their commitment to provide 3G or better wireless service. We recognize that a regulatory commitment ultimately may not result in service to the area in question. Nevertheless, given the limited resources provided for Mobility Fund Phase I and the fact that the commitments were made in the absence of any support from the Mobility Fund, we conclude that it would not be an appropriate use of available resources to utilize Mobility Fund support in such areas.

(iii) Using Centroid Method

343. *Background.* In the *Mobility Fund NPRM*, the Commission proposed to consider any census block as unserved, *i.e.*, eligible for support, if the American Roamer data indicates that the geometric center of the block – referred to as the centroid⁵⁷⁶ – is not covered by networks using EV-DO,

⁵⁷⁴ See AT&T *Mobility Fund NPRM* Comments at 4; Free Press *Mobility Fund NPRM* Comments at 3; MetroPCS *Mobility Fund NPRM* Comments at 8; CWA *Mobility Fund NPRM* Reply at 4; RCA *Mobility Fund NPRM* Reply at 3-4; RICA *Mobility Fund NPRM* Reply at 2.

⁵⁷⁵ Such federal funding commitments may have been made under, but are not limited to, the Broadband Technology Opportunities Program (BTOP) and Broadband Initiatives Program (BIP) authorized by the American Recovery and Reinvestment Act of 2009, P.L. 111-5, 123 Stat. 115 (ARRA).

⁵⁷⁶ We use the term "centroid" to refer to the internal point latitude/longitude of a census block polygon. For more information, see U.S. Census Bureau, *Putting It All Together*, http://lehd.did.census.gov/led/library/doc/PuttingItTogether_20100817.pdf (visited Nov. 4, 2011).

EV-DO Rev A, or UMTS/HSPA or better.⁵⁷⁷ The Commission also sought comment on alternative approaches.⁵⁷⁸

344. *Discussion.* We conclude that employing the centroid method is relatively simple and straightforward, and will be an effective method for determining whether a block is uncovered. Some commenters support the Commission proposal to use the centroid method both as manageable and effective,⁵⁷⁹ while others prefer the alternative proportional method described in the *Mobility Fund NPRM*.⁵⁸⁰ Parties advocating for the alternative method assert that a proportional process will be more accurate.⁵⁸¹ More specifically, some note that although most census blocks are small, some can be large, particularly in low-density rural areas, and that coverage at the centroid might result, incorrectly, in the entirety of those large areas being deemed served.⁵⁸² While we acknowledge that advantages and disadvantages exist with both methods, we find that, on balance, the centroid method is the best approach for this purpose. We note that the Commission has consistently used the centroid method for determining coverage in other contexts, such as evaluating competition in the mobile wireless services industry, where it is also useful to have a clear and consistent methodology for determining whether a given area has coverage. Based on our experience in these contexts, we find the centroid method to be an administratively simple and efficient approach that, if used here, will permit us to begin distributing this support without undue delay. For these reasons, we will use the centroid method to determine which census blocks are unserved by 3G or better networks for purposes of Mobility Fund Phase I.

(c) Offering Support for Unserved Areas by Census Block

345. *Background.* The Commission proposed in the *Mobility Fund NPRM* to group unserved census blocks by larger areas – census tracts – as the minimum area for competitive bidding, since individual census blocks may be too small to serve as a viable basis for providing support.⁵⁸³ The Commission therefore proposed to accept bids for support to expand coverage to all the unserved census blocks within a particular census tract and sought comment on that approach.⁵⁸⁴

346. *Discussion.* Upon review of the comments and further reflection, we determine that the census block should be the minimum geographic building block for defining areas for which support is provided. Using census blocks as the minimum geographic area gives the Commission and bidders more flexibility to tailor their bids to their business plans. Because census blocks are numerous and can be quite small, we believe that we will need to provide at the auction for the aggregation of census blocks for purposes for bidding. We delegate to the Bureaus, as part of the auctions procedures process, the task of

⁵⁷⁷ *Mobility Fund NPRM*, 25 FCC Rcd at 14,724, para. 22.

⁵⁷⁸ *Id.* at 14,724-5, paras. 22-23.

⁵⁷⁹ AT&T *Mobility Fund NPRM* Comments at 10; Verizon *Mobility Fund NPRM* Comments at 16.

⁵⁸⁰ Greenlining *Mobility Fund NPRM* Comments at 3. *Cf.* Mid-Rivers *Mobility Fund NPRM* Comments at 7; NTCH *Mobility Fund NPRM* Comments at 4.

⁵⁸¹ Greenlining *Mobility Fund NPRM* Comments at 3.

⁵⁸² Mid-Rivers *Mobility Fund NPRM* Comments at 7.

⁵⁸³ *Mobility Fund NPRM*, 25 FCC Rcd at 14,725, paras. 25-26. Census tracts generally have between 1,200 and 8,000 inhabitants and average about 4,000 inhabitants. Each census tract consists of multiple census blocks and every census block fits within a census tract. There are over 11 million census blocks nationwide.

⁵⁸⁴ *Id.* at 14,725, para. 25. As discussed herein, a provider receiving support would be considered to cover a particular census block when it demonstrates compliance with the performance requirements adopted by the Commission, and not simply by covering the block's centroid.

deciding whether to provide a minimum area for bidding comprised of an aggregation of eligible census blocks (e.g., census tracts or block groups) or whether to permit bidding on individual census blocks and provide bidders with the opportunity to make “all-or-nothing” package bids on combinations of census blocks. Package bidding procedures could specify certain predefined packages,⁵⁸⁵ or could provide bidders greater flexibility in defining their own areas, comprised of census blocks. However, we would not expect that any aggregation, whether predetermined by the Bureaus or defined by bidders, would exceed the bounds of one Cellular Market Area (CMA).⁵⁸⁶

347. In deciding this issue, we recognize that the unique circumstances raised by the large size of census areas in Alaska may require that bidding be permitted on individual census blocks, rather than a larger pre-determined area, such as a census tract or block group. In Alaska, the average census block is more than 50 times the size of the average census block in the other 49 states and the District of Columbia,⁵⁸⁷ such that the large size of census areas poses distinctive challenges in identifying unserved communities and providing service.⁵⁸⁸

348. Few commenters address the minimum geographic building block issue directly. Those that do generally support the Commission’s initial proposal to structure the auction to provide for bidding on census tracts that include unserved census blocks, although few took issue with the possibility of using census blocks as the basic building block.⁵⁸⁹ Others propose alternatives, such as permitting carriers to define their own service areas in which they seek to bid.⁵⁹⁰ Nearly all of the comments touching on the minimum geographic bidding area acknowledge the underlying goals of making a selection based on ease of administration, effective identification of unserved areas, and promoting the widest possible deployment of mobile services.

(d) Establishing Unserved Units

349. *Background.* In the *Mobility Fund NPRM*, the Commission proposed to use population as the base unit with which to compare unserved census blocks.⁵⁹¹ It also sought comment on taking into account characteristics such as road miles, traffic density, and/or community anchor institutions in determining the number of units in each unserved census block and asked how, if multiple characteristics were to be used, the various factors should be weighted.⁵⁹²

⁵⁸⁵ See, e.g., *Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76*, Public Notice, 22 FCC Rcd 18,141, 18,179-81, paras. 138-144 (Wireless Telecom. Bur. 2007) (*700 MHz Auction Procedures Public Notice*).

⁵⁸⁶ Cellular Market Areas (CMAs) are the areas in which the Commission initially granted licenses for cellular service. Cellular markets comprise Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs). See 47 C.F.R. § 22.909.

⁵⁸⁷ 2010 census data indicates that the average census block size in Alaska is 14.7 square miles, while the average census block size in the other 49 states and the District of Columbia is .28 square miles.

⁵⁸⁸ See *ACS Mobility Fund NPRM* Comments at 5; *GCI Mobility Fund NPRM* Comments at 4; *Alaska Commission Mobility Fund NPRM* Reply at 10.

⁵⁸⁹ See, e.g., *AT&T Mobility Fund NPRM* Comments at 10-11; *Greenlining Institute Mobility Fund NPRM* Comments at 3; *NTCH Mobility Fund NPRM* Comments at 3-4; *T-Mobile Mobility Fund NPRM* Comments at 10-11; *Verizon Mobility Fund NPRM* Comments at 15; *Windstream Mobility Fund NPRM* Comments at 6.

⁵⁹⁰ See *ACS Mobility Fund NPRM* Comments at 5; *Alaska Commission Mobility Fund NPRM* Reply at 11; see also *Mid-Rivers Mobility Fund NPRM* Comments at 6-7 (proposing the use of licensed coverage areas).

⁵⁹¹ *Mobility Fund NPRM*, 25 FCC Rcd at 14,725, para. 27.

⁵⁹² *Id.*

350. *Discussion.* After further consideration, we conclude that we will use a single characteristic, the number of linear road miles – rather than population – as the basis for calculating the number of units in each unserved census block. We base this decision on a number of factors. First, we find that requiring additional coverage of road miles more directly reflects the Mobility Fund’s goal of extending current generation *mobile* services, as some commenters noted.⁵⁹³ We also find that using road miles, rather than population, as a unit for bids and awards of support is more consistent with our decision to measure mobile broadband service based on drive tests and to require coverage of a specified percentage of road miles as described below.

351. Moreover, we believe that using per-road mile bids as a basis for awarding support implicitly will take into account many of the other factors that commenters argue are important – such as business locations, recreation areas, and work sites – since roads are used to access those areas.⁵⁹⁴ And while traffic data might be superior to simple road miles as a measure of actual use, we have not found comprehensive and consistent traffic data across multiple states and jurisdictions nationwide. Because bidders are likely to take potential roaming and subscriber revenues into account when deciding where to bid for support under Mobility Fund Phase I, we believe that support will tend to be disbursed to areas where there is greater traffic, even without our factoring traffic into the number of road mile units.

352. Further, using road miles as the basic unit for the Mobility Fund Phase I will be relatively simple to administer, since standard nationwide data exists for road miles, as it does for population. In both cases, the data can be disaggregated to the census block level. Commenters that supported our proposal to use population as a unit did so largely based on its simplicity and its straightforward nationwide applicability, so that the logic of those commenters is consistent with our decision to use road miles instead.⁵⁹⁵

353. We note that the TIGER road miles data made available by the Census Bureau can be used to establish the road miles associated with each census block eligible for Mobility Fund Phase I support. TIGER data is comprehensive and consistent nationwide, and available at no cost. As with our standard for identifying census blocks that will be eligible for Phase I support, we anticipate that in the pre-auction process, the Bureaus will establish the road miles associated with each and identify the specific road categories considered – *e.g.*, interstate highways, etc. – to be consistent with our performance requirements and with our goal of extending coverage to the areas where people live, work, and travel.

(e) Distributing Mobility Fund Phase I Support Among Unserved Areas

354. *Background.* In the *Mobility Fund NPRM*, the Commission invited comment on distributing support among unserved areas nationwide and on various alternative methods for targeting support to a subset of unserved areas, such as states that significantly lag behind the level of 3G coverage generally available nationwide.⁵⁹⁶ In particular, the Commission requested any insights commenters could provide regarding which of these alternatives would most effectively utilize the offered support to maximize the public benefits of expanded 3G coverage.⁵⁹⁷ The Commission also sought comment on

⁵⁹³ WorldCall *Mobility Fund NPRM* Comments at 8; Mid-Rivers *Mobility Fund NPRM* Comments at 7.

⁵⁹⁴ CTIA *Mobility Fund NPRM* Comments at 12; NTCH *Mobility Fund NPRM* Comments at 4.

⁵⁹⁵ AT&T *Mobility Fund NPRM* Comments at 11; Verizon *Mobility Fund NPRM* Comments at 17.

⁵⁹⁶ *Mobility Fund NPRM*, 25 FCC Rcd at 14,726-27, para. 32.

⁵⁹⁷ *Id.*

whether and how to prioritize support for unserved areas that currently lack any mobile wireless service.⁵⁹⁸

355. *Discussion.* As discussed elsewhere, we will create a separate Mobility Fund Phase I to support the extension of current generation wireless service in Tribal lands. For both general and Tribal Mobility Fund Phase I support, we also require providers seeking to serve Tribal lands to engage with the affected Tribal governments, where appropriate, and we provide a bidding credit for Tribally-owned and controlled providers seeking to serve Tribal lands with which they are associated.⁵⁹⁹ Apart from these provisions, we conclude that we should not attempt to prioritize within the areas otherwise eligible for support from Phase I.

356. Commenters note a variety of factors that might be relevant to whether to prioritize some unserved areas over others, such as adoption rates and projected rates of population growth or decline.⁶⁰⁰ Several commenters addressing this issue favor making support available on a consistent basis to all areas defined as unserved by mobile broadband.⁶⁰¹ Others take up the Commission's suggestion and propose prioritizing support for unserved areas lacking any mobile service.⁶⁰²

357. After careful consideration of these alternatives, we find that we will achieve the greatest amount of new coverage with Mobility Fund Phase I support if we impose no restrictions on the unserved areas that are eligible for the program, and allow all unserved areas to compete for funding on an equal footing. We conclude that making all unserved areas eligible for support and allowing the auction process to prioritize which areas can be served is most likely to achieve our goal of maximizing the number of units covered given the funds available.

(vi) **Public Interest Obligations**

(a) **Mobile Performance Requirements**

358. *Background.* In the *Mobility Fund NPRM*, the Commission proposed that Mobility Fund support be used to expand the availability of advanced mobile communications services comparable or superior to those provided by networks using HSPA or EV-DO, which are commonly available 3G technologies.⁶⁰³ The Commission suggested that supported carriers would have to demonstrate that they provide services over a 3G network that supports voice and has achieved particular data rates under particular conditions, and sought comment on whether to require 4G instead.⁶⁰⁴ The Commission also

⁵⁹⁸ *Id.*

⁵⁹⁹ See *infra* paras. 489-490.

⁶⁰⁰ Ohio Commission *Mobility Fund NPRM* Comments at 6-7.

⁶⁰¹ AT&T *Mobility Fund NPRM* Comments at 11-12; TechAmerica *Mobility Fund NPRM* Comments at 3; Verizon *Mobility Fund NPRM* Comments at 18.

⁶⁰² T-Mobile *Mobility Fund NPRM* Comments at 11.

⁶⁰³ *Mobility Fund NPRM*, 25 FCC Rcd at 14,728-29, para. 37. Universal service support may be provided for services based on widely available current generation technologies – or superior next generation technologies available at the same or lower costs – even though supported services could be based on earlier technologies. Technologies used to provide the services supported by universal service funds need not be technologies that are strictly limited to providing the particular services designated for support. See *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 18 FCC Rcd 15,090, 15,095-96, para. 13 (2003) (“We recognize that the network is an integrated facility that may be used to provide both supported and non-supported services. We believe that . . . our policy of not impeding the deployment of plant capable of providing access to advanced or high-speed services is fully consistent with the Congressional goal of ensuring access to advanced telecommunications and information services throughout the nation.”) (subsequent history omitted).

⁶⁰⁴ *Mobility Fund NPRM*, 25 FCC Rcd at 14,728-30, paras. 37, 40.

proposed that recipients be required to meet certain deployment milestones in each unserved census block in a tract in order to remain qualified for the full amount of any Mobility Fund award.⁶⁰⁵ In addition, the Commission sought comment on establishing appropriate coverage metrics.⁶⁰⁶

359. *Discussion.* This Order elsewhere provides an overview of the public interest obligations that must be met by all recipients of Connect America Fund support, including recipients of Mobility Fund support.⁶⁰⁷ Recipients of Mobility Fund support, like all CAF support recipients, must offer voice service.⁶⁰⁸ Likewise, all recipients of Mobility Fund support must offer standalone voice service to the public as a condition of support.⁶⁰⁹ As the broader overview notes, however, specific broadband service requirements, unlike voice service requirements, vary for CAF recipients depending upon the particular public interest goal being met by the support provided.⁶¹⁰ Our objective for Mobility Fund Phase I is to provide support to expand current and next generation mobile services to areas without such services today. The voice and broadband services offered with support must be reasonably comparable to service available in urban areas.⁶¹¹ We detail below the mobile broadband service public interest obligations that Mobility Fund recipients must meet to satisfy this requirement.⁶¹²

360. Mobile service providers receiving non-recurring Mobility Fund Phase I support will be obligated to provide supported services over a 3G *or better* network that has achieved particular data rates under particular conditions. Specifically, Phase I recipients will be required to specify whether they will be deploying a network that meets 3G requirements or 4G requirements in areas eligible for support as those requirements are detailed here. Numerous commenters concur with our proposal to require that supported networks meet or exceed a minimum standard for voice service and data rates established by reference to current generation services, *i.e.*, 3G services.⁶¹³ As noted in some comments, this approach is also consistent with permitting providers to provide 4G services instead.⁶¹⁴ Other commenters, however, argue that the Commission should support *only* 4G networks, contending that current generation networks will soon be obsolete, in light of the on-going roll-out of 4G.⁶¹⁵

361. Recognizing the unavoidable variability of mobile service within a covered area, we proposed and are adopting performance standards that will adopt a strong floor for the service provided. Consequently, we expect that many users will receive much better service when, for example, accessing

⁶⁰⁵ *Id.* at 14,729, para. 39.

⁶⁰⁶ *Id.* at 14,728, para. 34.

⁶⁰⁷ *See supra* section VI. (Public Interest Obligations).

⁶⁰⁸ *See id.*

⁶⁰⁹ *See id.*

⁶¹⁰ *See id.*

⁶¹¹ *See id.*

⁶¹² We note that some parties contend that limiting support to one carrier per area will require undue regulation to protect the public interest, contrary to the Commission's efforts to minimize regulation. *See, e.g.*, Cellular South et al. *Mobility Fund NPRM* Comments at 19-20. We reject these arguments and find that the requirements set forth herein are consistent with the Commission's policy of regulating only to the extent necessary to serve the public interest.

⁶¹³ *See, e.g.*, Sprint *Mobility Fund NPRM* Comments at 8; Tech America *Mobility Fund NPRM* Comments at 3; T-Mobile *Mobility Fund NPRM* Comments at 12; Verizon *Mobility Fund NPRM* Comments at 20.

⁶¹⁴ Verizon *Mobility Fund NPRM* Comments at 20.

⁶¹⁵ Greenlining *Mobility Fund NPRM* Comments at 6-7; MetroPCS *Mobility Fund NPRM* Comments at 6; New EA *Mobility Fund NPRM* Comments at 9.

the network from a fixed location or when close to a base station. In light of this fact, and our decision to permit providers to elect whether to provide 3G or 4G service, we are adopting different speeds than originally proposed for those providing 3G, while retaining our original proposal for those that offer 4G. For purposes of meeting a commitment to deploy a 3G network, providers must offer mobile transmissions to and from the network meeting or exceeding an outdoor minimum of 200 kbps downstream and 50 kbps upstream to handheld mobile devices.

362. Recipients that commit to provide supported services over a network that represents the latest generation of mobile technologies, or 4G, must offer mobile transmissions to and from the network meeting or exceeding the following minimum standards: outdoor minimum of 768 kbps downstream and 200 kbps upstream to handheld mobile devices. As with the 3G speeds set forth above, we further specify that these data rates should be achievable in both fixed and mobile conditions, at vehicle speeds consistent with typical speeds on the roads covered. These minimum standards must be achieved throughout the cell area, including at the cell edge. Signal coverage satisfying these 4G standards will produce substantially faster speeds under conditions closer to the base station, very often exceeding the 4 Mbps downstream and 1Mbps upstream that have been proposed as minimum speeds for fixed broadband.

363. With respect to latency, in order to assure that recipients offer service that enables the use of real-time applications such as VoIP, we also require that round trip latencies for communications over the network be low enough for this purpose.

364. With respect to capacity, we decline at this time to adopt a specific minimum capacity requirement that supported providers must offer mobile broadband users. However, we emphasize that any usage limits imposed by a provider on its mobile broadband offerings supported by the Mobility Fund must be reasonably comparable to any usage limits for comparable mobile broadband offerings in urban areas.⁶¹⁶

365. Recipients that elect to provide supported services over 3G networks will have two years to meet their requirements and those that elect to deploy 4G networks will have three years. At the end of the applicable period for build-out, providers will be obligated to provide the service defined above in the areas for which they receive support, over at least 75 percent of the road miles associated with census blocks identified as unserved by the Bureaus in advance of the Mobility Fund Phase I auction. The Commission delegates to the Bureaus the question of whether a higher coverage threshold should be required should the Bureaus permit bidding on individual census blocks. We note that a higher coverage threshold may be appropriate in such circumstances because bidders can choose the particular census blocks they can cover. Presumably, this would allow them to choose areas in which their coverage can be 95 to 100 percent, as suggested by the *Mobility Fund NPRM*.

366. Many commenters oppose requiring 100 percent coverage within areas identified as unserved for purposes of a Mobility Fund Phase I auction.⁶¹⁷ Commenters note that due to the relatively high expense of providing last mile coverage in difficult circumstances, requiring 100 percent coverage may dissuade parties from seeking support and expanding coverage.⁶¹⁸ Proposals to address this difficulty include permitting bidders to state the extent of the coverage that they will offer as a component of their bid for support.⁶¹⁹ A number of commenters support a coverage requirement of at least 95 percent

⁶¹⁶ We note that this should not be interpreted to mean that the Commission intends to regulate usage limits, nor that the Commission is approving of or endorsing usage limits.

⁶¹⁷ ITTA *Mobility Fund NPRM* Comments at 11; MTPCS *Mobility Fund NPRM* Comments at 10; Verizon *Mobility Fund NPRM* Comments at 14.

⁶¹⁸ ITTA *Mobility Fund NPRM* Comments at 11.

⁶¹⁹ AT&T *Mobility Fund NPRM* Comments at 13, fn. 35; Verizon *Mobility Fund NPRM* Comments at 18.

but less than 100 percent, as discussed in the *Mobility Fund NPRM*.⁶²⁰ Alternatively, some commenters suggest lower thresholds of coverage, e.g., 50 to 80 percent, as minimum requirements.⁶²¹

367. Should the Bureaus choose to implement a coverage area requirement of less than 100 percent, a recipient will receive support only for those road miles actually covered and not for the full 100 percent of road miles of the census blocks or tracts for which it is responsible. For example, if a recipient covers 90 percent of the road miles in the minimum geographic area (and it meets the threshold), then that recipient will receive 90 percent of the total support available for that area. To the extent that a recipient covers additional road miles, it will receive support in an amount based on its bid per road mile up to 100 percent of the road miles associated with the specific unserved census blocks covered by a bid.⁶²²

368. In contrast to other support provided under CAF, support provided through Mobility Fund Phase I will be non-recurring. Consequently, we will not plan to modify the service obligations of providers that receive Phase I support.

(b) Measuring and Reporting Mobile Broadband

369. *Background.* In the *Mobility Fund NPRM*, the Commission proposed using data submitted from drive tests to measure whether recipients meet performance requirements.⁶²³

370. *Discussion.* As proposed in the *Mobility Fund NPRM*, we will require that parties demonstrate that they have deployed a network that covers the relevant area and meets their public interest obligations with data from drive tests.⁶²⁴ The drive test data satisfying the requirements must be submitted by the deadline for providing the service.⁶²⁵

371. Several commenters acknowledge that the Commission is building on current industry practice in proposing to require drive tests for proof of deployment.⁶²⁶ No commenters take issue with the particular data rates in the Commission's proposal, although some seek some leeway in meeting the standard, due to potential variability in conditions.⁶²⁷ Others contend that simple self-certification should suffice for proof of deployment.⁶²⁸ Some commenters contend that the Commission's proposal to measure data rates fails to measure rates in a manner that will reflect the end-to-end performance that matters to members of the public utilizing the access.⁶²⁹

⁶²⁰ T-Mobile *Mobility Fund NPRM* Comments at 11-12. Cf. TIA *Mobility Fund NPRM* Comments at 12.

⁶²¹ Verizon *Mobility Fund NPRM* Comments at 19.

⁶²² Accordingly, when reserving available support based upon those bids that are determined to be winning bids, the Commission will reserve an amount necessary to pay the support that the recipient would be entitled to in the event that it covered 100 percent of the road miles in the previously unserved census blocks.

⁶²³ *Mobility Fund NPRM*, 25 FCC Rcd at 14,729-30, para. 40.

⁶²⁴ *Id.*

⁶²⁵ We are also requiring recipients to submit drive test data to demonstrate they have met the 50 percent minimum coverage requirement required to receive the second payment of Mobility Fund Phase I support. See *infra* para. 466.

⁶²⁶ See, e.g., AT&T *Mobility Fund NPRM* Comments at 17; Sprint *Mobility Fund NPRM* Comments at 9-10.

⁶²⁷ TIA *Mobility Fund NPRM* Comments at 12. We note that ACS contends that drive tests are not feasible in Alaska because of lack of roads. ACS *Mobility Fund NPRM* Comments at 7. This contention may have had merit when we were considering drive tests as a means of measuring coverage provided to resident population. However, at least with respect to support that requires providers to cover road miles in the area rather than population, we conclude that ACS' objection regarding feasibility does not apply. See *supra* para. 350.

⁶²⁸ Verizon *Mobility Fund NPRM* Comments at 21-22.

⁶²⁹ GCI *Mobility Fund NPRM* Comments at 7.