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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

COMMENTS of C SPIRE WIRELESS

David A. LaFuria
John Cimko

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

January 18, 2012

TABLE OF CONTENTS

SUMMARY

As the Commission continues its efforts to reform its universal service program to make it more effective in facilitating the deployment of fixed and mobile broadband networks in rural America, C Spire Wireless welcomes this opportunity to comment on proposals and issues presented in the *Further Notice*.

<u>Fundamental Problems and Concerns</u>

The *Order* adopted by the Commission in this proceeding in October of last year, and the *Further Notice* that C Spire Wireless addresses in these Comments, reflect the Commission's best efforts to meet its statutory responsibilities, but these efforts are severely compromised by the Commission's short-sighted vision. As the Commission is laboring to transform its universal service program to facilitate the build-out of broadband networks, it is ignoring a transformation that is rapidly progressing in the American marketplace.

The most glaring evidence of this short-sighted vision is the Commission's budget. The Commission has a statutory mandate to ensure that its universal service mechanisms are sufficient to meet goals and principles enacted by Congress in the Telecommunications Act of 1996. But the Commission has not attempted to devise universal service reforms that will meet President Obama's goal of virtually ubiquitous deployment of high-speed mobile broadband networks, or to ensure that consumers throughout all high-cost areas in rural America have access to both fixed and mobile broadband services comparable to those available in urban areas.

Both the *Order* and the *Further Notice* are replete with conclusions reached by the Commission that the limitations in the programs it is fashioning to support mobile broadband networks are driven by the boundaries of the "available budget." This self-fulfilling prophesy regarding the relationship between the Commission's budget and what the Commission's programs

can accomplish in bringing mobile broadband to rural America does not constitute sound public policy, especially since the Commission has shown little initiative in reforming its contribution rules, which could be modified in ways that would give the Commission considerably more flexibility in funding mobile broadband deployment.

The *Order* and the *Further Notice* do not take heed of where the country is going. Consumers are transforming the telecommunications marketplace by switching their allegiance from fixed telephony to mobile voice and broadband services. In the face of this transformation, it simply is not enough for the Commission to start with a fixed budget and then work backward, making one auction-based award for some unserved areas, locking in underfunded Mobility Fund support for up to ten years, and then telling consumers in unserved areas in the rest of the country that their only option is to receive satellite service for a decade or more.

The Commission's budget is not only short-sighted, but it also short-changes mobile broadband and makes a disproportionately high allocation of support to rate-of-return carriers, preserving their funding, and ignoring the fact that this funding will be used to protect an outmoded technology, and that sharp and continuing decreases in access lines served by these incumbent carriers reflect the fact that consumers increasingly prefer mobile voice and broadband services.

Mobility Fund Phase II

C Spire Wireless urges the Commission to adopt a forward-looking economic cost model, rather than a single-winner reverse auction mechanism, for use in disbursing Mobility Fund Phase II support. A cost model—when combined with funding portability—would serve the Commission's principle of competitive neutrality and would also ensure the efficient use of funding by Phase II support recipients.

The Commission's plan to dispense with portability by making Phase II funding available to only one provider in an eligible service area is ill-advised because using Phase II support to stimulate ongoing competition in rural communities would result in more affordable and higher quality broadband services. Consumers would benefit from competitive entry and the efficient use of Phase II funding, and from the fact that use of a cost model would be effective in creating incentives for private investment. A cost model also would adhere to the Commission's principle of fiscal responsibility because it would effectively operate as a funding cap for each eligible service area.

In contrast, a single-winner reverse auction mechanism is both untested and weighted down by numerous disadvantages. A reverse auction mechanism would not promote deployment of mobile broadband services comparable to those available in urban areas. Reverse auctions also would likely have a chilling effect on the availability of private financing for the deployment of mobile broadband networks, and would create a significant risk that auction winners (*i.e.*, those with the lowest bids) would cut corners and fail to deliver high-quality mobile broadband to rural consumers. Bidders would have incentives to engage in anti-competitive practices (*e.g.*, "low ball" bidding tactics), and a single-winner reverse auction mechanism also would likely require extensive regulation and enforcement efforts by the Commission to police the activities of auction winners.

Because single-winner reverse auctions are untested, C Spire Wireless urges the Commission to utilize data generated by the implementation and operation of the single-winner reverse auction mechanism for the disbursement of Mobility Fund Phase I support before deciding whether to use such a mechanism for Phase II. This approach would confirm whether C Spire Wireless and numerous other commenters are correct in expressing concerns that a single-winner reverse auction mechanism would not be effective in meeting the Commission's objectives for mobile broadband deployment. There is no rational basis for the Commission's rushing to final action regarding selection of a Phase II disbursement mechanism, before it gives itself, and interested parties, an opportunity to evaluate the results of the Phase I reverse auction.

C Spire Wireless also argues that the Commission should not use its proposed "unsubsidized competitor" mechanism to restrict eligible service areas from receiving Phase II support, the Commission should place certain limits on any package bidding auction mechanism it may adopt, the Commission should establish a 75 percent build-out requirement within five years for Phase II, and the Commission should require Phase II support recipients to provide mobile voice and data services that meet or exceed a minimum bandwidth or data rate of 768 kbps downstream and 200 kbps upstream.

In discussing the advantages of using a cost model, C Spire Wireless also suggests that the Commission should consider combining the use of a model with a consumer coupon system as the mechanism for disbursing Phase II support. The cost model would be used to identify costs, and then, instead of disbursing support to carriers, the Commission would provide coupons directly to consumers, who would be free to apply their coupons to the service provider of their choice, in a truly market-based mechanism that allows consumers to pick winners in the market.

Rate-of-Return Carriers

The Commission can begin to cure the budget problems that C Spire Wireless describes in these Comments by taking several actions with respect to its treatment of rate-of-return carriers. The Commission should not attempt to accommodate rate-of-return carriers in any way based on the fact that the Commission's overly generous Connect America Fund budget outlays for rate-of-return carriers fall somewhat short of what rate-of-return carriers' representatives demand in the plan they have submitted to the Commission.

Instead, if any savings are generated by the operation of the Commission's CAF support mechanisms, the Commission should allocate these savings to the Mobility Fund, in order to narrow the gap between funding the Commission has budgeted for price cap and rate-of-return carriers compared to the level of funding for mobile broadband providers. By doing so, the Commission would make its support mechanisms more responsive to consumer demand reflected in the marketplace.

The Commission also should act promptly to reduce the rate of return, which has not been modified for more than two decades and currently is set at a level that bears no relationship to marketplace realities.

More fundamentally, the Commission should stop its procrastination regarding reforming the high-cost support mechanism used to disburse funding to rate-of-return incumbents. The Commission has long recognized that the current embedded-cost mechanism creates powerful incentives for inefficient operations, and the Commission's newly prescribed principle of fiscal responsibility dictates that the Commission should give high priority to moving rate-of-return carriers to universal service support mechanisms that eliminate these incentives.

Other Issues

C Spire Wireless argues that the Commission should establish a presumption that, if a carrier is offering the same rates, terms, and conditions to both urban and rural customers, then the carrier's offering will be treated as sufficient to meet the statutory mandate of reasonable comparability. C Spire Wireless opposes any requirement that any service provider receiving

CAF Phase II funding through the Commission’s reverse auction mechanism must finance a fixed percentage of any build-out with non-CAF or private funds.

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	))	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	))	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	))	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

COMMENTS of C SPIRE WIRELESS

Cellular South, Inc., d/b/a C Spire Wireless ("C Spire Wireless"), by counsel, hereby submits these Comments, pursuant to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

---

[1] *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011), 76 Fed. Reg. 73830 (Nov. 29, 2011), 76 Fed. Reg. 78384 (Dec. 16, 2011), 76

C Spire Wireless is the Nation's largest privately-held wireless carrier (measured by number of subscribers), serving all of Mississippi as well as portions of Florida, Alabama, and Tennessee. The area C Spire Wireless serves is overwhelmingly rural, and C Spire Wireless faces enormous challenges in competing with AT&T and Verizon, the two largest national carriers that currently dominate the commercial mobile wireless industry in the United States. C Spire Wireless has been an active and ongoing participant in the Connect America Fund ("CAF"), Mobility Fund, and related rulemaking proceedings since their initiation by the Commission.[2]

I. INTRODUCTION.

C Spire Wireless commends the Commission for its efforts to reform and modernize its universal service program so that it can be effective in a new communications world in which broadband networks and services have occupied center stage. Although C Spire Wireless is convinced the Commission lacks jurisdiction to take certain actions in the *Order* regarding the use of universal service support for the provision of broadband Internet access services, C Spire Wire-

---

Fed. Reg. 81562 (Dec. 28, 2011) ("*Order*" and "*Further Notice*"), *recon.*, FCC 11-189 (rel. Dec. 23, 2011), *further recon. pending*. The deadline for comments on sections of the *Further Notice* addressed in these Comments is January 18, 2012. The *Further Notice* continues the exploration of inquiries and proposals made by the Commission in *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *High-Cost Universal Service Support*, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657 (2010) ("*CAF NOI/NPRM*"); *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716 (2010) ("*Mobility Fund NPRM*"); *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011) ("*USF-ICC Reform NPRM*"); and *Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, Public Notice, DA 11-1348 (WCB rel. Aug. 3, 2011) ("*August 3 Public Notice*").

[2] C Spire Wireless has filed a Petition for Review of the *Order*, and intends to challenge the *Order* on the grounds that, *inter alia*, the Commission lacks jurisdiction to regulate information service providers of

less nonetheless appreciates this opportunity to comment on various Commission proposals regarding the implementation of Phase II of the Mobility Fund and other issues.

C Spire Wireless's Comments reflect two general observations regarding the *Order* and *Further Notice*. First, the Commission made a mistake in the *Order* regarding the operation of the Mobility Fund, which it now has the opportunity to correct in the *Further Notice*. Specifically, the Commission chose a single-winner reverse auction mechanism to disburse Mobility Phase I support, a misstep that it should now avoid repeating. While it is true that the Commission expresses a preference in the *Further Notice* for using the same reverse auction mechanism for Phase II, the Commission also asks supporters of a cost model to explain why such a mechanism would produce superior results.

Over the course of this proceeding numerous commenters have expressed concerns regarding the use of a single-winner reverse auction to disburse universal service support, and have specifically described numerous disadvantages of such a mechanism. C Spire Wireless has presented these views in the past, and renews them in these Comments in response to the Commission's solicitation.

A single-winner reverse auction, by installing an exclusive fund recipient in each eligible service area and consequently eliminating funding portability, not only overturns the Commission's longstanding commitment to a universal service program that promotes competitive entry and adheres to the Commission's principle of competitive neutrality, but also risks saddling rural consumers with high-priced, low-quality broadband services from a single provider, precisely the problem that the Telecommunications Act of 1996 ("1996 Act") was intended to solve.

---

broadband Internet access services under the Communications Act of 1934 ("Act"). *See Cellular South, Inc., d/b/a C Spire Wireless v. FCC*, No. 11-9590 (10th Cir. petition for review filed Dec. 8, 2011).

A forward-looking economic cost model would cure these problems. A model would accurately identify the level of costs an efficient carrier would incur in deploying broadband in a given eligible service area, and these costs would become the ceiling for support in that area, giving multiple carriers the option to compete for customers and to receive Phase II support based upon the subscribers they are able to win. Rural consumers would benefit from this disbursement mechanism because it would ensure the efficient deployment of broadband networks and delivery of broadband services, and it would provide consumers with a choice among different service providers.

C Spire Wireless also observes that the Commission has the means available to ensure that it makes an informed choice between the use of a cost model or a single-winner reverse auction as the Phase II disbursement mechanism: The Commission should wait for the results of the Phase I reverse auction, and should allow interested parties to comment on the results of the auction, before taking any final action regarding the Phase II mechanism. Such an approach would help to ensure a decision regarding the Phase II disbursement mechanism that is driven by the data produced by the Phase I auction.

And, *second*, the Commission chose not to address an issue in the *Order*, which it now should confront and commit to solve. Specifically, the Commission did not transform funding mechanisms that disburse support to rate-of-return carriers by integrating them into model-based or auction-based CAF support mechanisms. By continuing to rely on high-cost mechanisms that allocate support to incumbent rate-of-return carriers based on their embedded costs, the Commission missed an opportunity to abolish a support mechanism that the Commission itself has long criticized because it creates incentives for inefficient carrier operations.[3]

In taking its next steps in this proceeding, based on the *Further Notice*, the Commission should not only represcribe the current rate of return, reducing it to the lower end of a range between 7 and 9 percent, but should also establish a specific timetable for transitioning rate-of-return carriers to a new regulatory structure that ensures efficient operations. The current rate of return is more appropriate for a cost of capital that has not existed for a decade or more.

II. DISCUSSION.

C Spire Wireless's Comments focus principally on the Commission's proposals for Mobility Fund Phase II. The Commission emphasizes fiscal responsibility and fashions proposals that are explicitly constrained by its self-imposed budget limitations, but the Commission fails to link its universal service objectives for mobile broadband with any effort to promote and reap the benefits of competition in the rural marketplace. C Spire Wireless makes various suggestions in the following sections regarding how the Commission should change its focus and priorities in ways that would facilitate competition and benefit rural consumers.

C Spire Wireless's Comments also address issues relating to the provision of CAF support to rate-of-return carriers, focusing on issues regarding budget targets for these carriers, the distribution of any savings from the operation of the CAF mechanisms, and the represcription of

---

[3] For example, the Commission determined in the *USF First Report and Order* that:

> the 1996 Act's mandate to foster competition in the provision of telecommunications services in all areas of the country and the principle of competitive neutrality compel us to implement support mechanisms that will send accurate market signals to competitors. We find that the current [embedded cost] support mechanisms neither ensure that ILECs are operating efficiently nor encourage them to do so. . . . Thus, we agree . . . that calculating high-cost support based on embedded cost is contrary to sound economic policy.

the current interstate rate of return. C Spire Wireless also expresses concern that the Commission's actions in the *Order*, and its proposals in the *Further Notice*, completely fail to address the fundamental driver of the increased cost of the current high-cost fund: The broken policy of disbursing support to rate-of-return carriers based upon their embedded costs must be replaced.

As C Spire Wireless will demonstrate, the Commission's current regulatory framework for rate-of-return carriers insulates them from competitive pressures and enables them to continue operating inefficiently. The current universal service program can hardly be transformed to better serve the Commission's goals for the deployment of fixed and mobile broadband networks if the Commission continues to turn its back on this fundamental flaw of the current system.

A. Mobility Fund Phase II.

The main issue confronting the Commission regarding its rules for Mobility Fund Phase II is the mechanism to be used for the disbursement of support to mobile broadband providers. C Spire Wireless in the following sections recommends that the Commission should abandon its preference for a single-winner reverse auction mechanism and instead adopt a forward-looking economic cost model that would be more effective than auctions in meeting the Commission's goals for the deployment of mobile broadband networks.

C Spire Wireless also argues that, if the Commission does decide to adopt a reverse auction mechanism for use in disbursing Phase II support, it should make support available to more than one mobile broadband provider in each eligible service area, require that funding be fully portable among providers, and impose certain limits on the use of package bidding.

Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8935 (para. 292) (1997) ("*USF First Report and Order*") (subsequent history omitted).

The Commission should not limit Phase II support in a given service area based upon the presence of an unsubsidized competitor, but, if the Commission decides to impose such a funding restriction, then it should not use the availability of unsubsidized 3G service as the threshold for cutting off support. Finally, C Spire Wireless urges the Commission to adopt realistic build-out requirements for 4G broadband, and supports the Commission's proposal that Phase II funding recipients must meet a broadband speed threshold of 768 kbps downstream, and 200 kbps upstream.

1. A Cost Model Would Be Superior to Reverse Auctions in Utilizing Mobility Fund Phase II Support to Benefit Rural Consumers.

Although the Commission has opted to use a single-winner reverse auction mechanism to disburse Mobility Fund Phase I support,[4] the Commission acknowledges that, "[i]nstead of determining support for mobile wireless providers through competitive bidding, we could determine support using a model that estimates the costs associated with meeting public interest obligations, as well as a provider's likely revenues from doing so."[5] The Commission therefore indicates that "commenters advocating for a model should address why a model-based approach would better serve"[6] the Commission's mobile broadband goals than the Commission's proposal to use a single-winner reverse auction mechanism for Mobility Fund Phase II.

a. Advantages of a Cost Model.

C Spire Wireless welcomes this further opportunity to convince the Commission that its adoption of a single-winner reverse auction mechanism would not serve its mobile broadband policies, and that the use of a forward-looking economic cost model is a much better vehicle for

---

[4] *Order* at para. 322.

[5] *Further Notice* at para. 1174.

[6] *Id*.

keeping the achievement of the Commission's policy goals on track. The evidence, which the Commission largely chose to overlook in the *Order*, presents a compelling case that a cost model would be more effective than the untested and criticized single-winner reverse auction approach, in meeting the Commission's objectives.

First, a cost model, especially when combined with funding portability,[7] would advance the Commission's universal service principle of competitive neutrality.[8] Mobile broadband providers would be eligible for support at levels derived by the cost model so long as they are capable of providing service with sufficient efficiency to meet the Commission's public interest obligations with the level of funding disbursed to them. No mobile carrier would be provided with a competitive advantage.

Second, a cost model, in preserving and promoting competition, serves as a driver for consumer benefits.[9] If Mobility Fund Phase II support is awarded based upon carrier efficiency—rather than being disbursed through a single-winner reverse auction mechanism that could encourage "low ball" bidding and anti-competitive strategies and behavior—then the funding recipients' efficient operations will produce a variety of consumer benefits, including lower prices, more reliable mobile broadband service, better quality services, and more extensive broadband network coverage.

---

[7] The advantages of making universal service support fully portable among eligible service providers in a given service area are discussed in Section II.A.2.b., *infra*.

[8] *See* Cellular South *August 3 Public Notice* Comments at 9. Fifteen years ago the Commission determined that "universal service mechanisms and rules" should "neither unfairly advantage nor disadvantage one provider over another . . . ." *USF First Report and Order*, 12 FCC Rcd at 8801 (para. 47).

[9] *See* Cellular South *August 3 Public Notice* Comments at 9 (citing Letter from David A. LaFuria, Counsel to United States Cellular Corporation ("U.S. Cellular"), to Marlene H. Dortch, FCC, WC Docket No. 05-337 *et al.*, (filed June 16, 2011), Enclosure, "U.S. Cellular, USF Mobile Broadband Model, Model Methods and Output" (June 10, 2011), at 6).

Third, given the fact that the level of Mobility Fund Phase II support will not be sufficient in itself—under any scenario—to accomplish President Obama's goal for the virtually ubiquitous deployment of high-speed mobile broadband service,[10] it becomes important for the Commission to select funding mechanisms that are effective in promoting private investment.[11] A cost model would be effective in creating incentives for this private investment because it would establish a fixed level of support for service areas eligible for Phase II support. Market certainty is an important prerequisite for the availability of investment financing, and establishing a fixed level of support would create this certainty by furnishing relevant information to potential market entrants.

Fourth, the Commission has placed considerable emphasis on what it perceives to be the need to design broadband funding mechanisms that adhere to its principle of fiscal responsibility.[12] Using a cost model to disburse Mobility Fund Phase II support would promote the Commission's principle, because the cost model would effectively operate as a funding cap for each eligible service area. The model would define the level of support necessary for the deployment and provision of mobile broadband services in these areas. Mobile broadband carriers could then decide whether to seek this level of support.

[10] *See, e.g.*, President Barack Obama, Remarks by the President on the National Wireless Initiative in Marquette, Michigan (Feb. 10, 2011), at 8 (unpaginated transcript) (emphasis added) (acknowledging that mobile broadband has become increasingly important for consumers, businesses, educational and other institutions, and the national economy, and calling for "invest[ment] in the next generation of ***high-speed wireless coverage*** for 98 percent of Americans").

[11] On the other hand, C Spire Wireless supports the Commission's decision to stop short of requiring Mobility Fund recipients to "put up a share of their own funds for a project . . . ." *Order* at para. 404. See Section II.D., *infra*.

[12] *See Order* at para. 11 (referencing the principle to "[c]ontrol the size of USF as it transitions to support broadband, including by reducing waste and inefficiency. We recognize that American consumers and businesses ultimately pay for USF, and that if it grows too large this contribution burden may undermine the benefits of the program by discouraging adoption of communications services.").

Fifth, one of the ways in which a cost model can ensure the efficient use of support to advance the Commission's principle of modernizing and refocusing the Universal Service Fund ("USF") "to make affordable broadband *available to all Americans*"[13] and to ensure that unserved communities do not continue to be left behind is by "identifying high-cost areas that have difficult terrain, low population density, and other challenges, and eliminating low-cost areas from eligibility for support."[14] Selecting a cost model that drives support to areas needing it the most would reflect the Commission's commitment to use universal support efficiently to bring broadband to unserved communities.[15]

Sixth, a cost model would provide the flexibility needed to enable the adjustment of support levels in a manner that provides incentives for carriers to deploy mobile broadband as ubiquitously as possible in unserved areas. A cost model would be capable of adjusting support levels upward for particular eligible service areas if carriers have not opted to deploy broadband networks in those areas, and, the model could also adjust support levels downward if experience demonstrates that the Commission's deployment goals can be met in particular service areas with lower levels of support.

And, *seventh*, cost models have the advantage of a proven track record, which has long been recognized by the Commission. To take one example, the Commission determined more than a decade ago that:

---

[13] *Id*. (emphasis added).

[14] Cellular South Reply Comments, WC Docket No. 10-90, *et al*., filed Aug. 11, 2010 ("Cellular South *CAF NOI/NPRM* Reply"), at 12-13.

[15] *See USF First Report and Order*, 12 FCC Rcd at 8899 (para. 225) (emphasis added) (noting that the use of a cost model "will ensure that universal service support corresponds to the cost of providing the supported services, and thus, will preserve and advance universal service and *encourage efficiency because support levels will be based on the costs of an efficient carrier*").

> Support based on forward-looking models will ensure that support payments remain specific, predictable, and sufficient, as required by section 254 [of the Act], particularly as competition develops. To achieve universal service in a competitive market, support should be based on the costs that drive market decisions, and those costs are forward-looking costs.[16]

In C Spire Wireless's view, prudence and sound public policy dictate that the Commission should rely upon a cost model for the disbursement of Mobility Fund Phase II support, rather than embracing a single-winner reverse auction mechanism with all its harmful anti-competitive effects.

b. Disadvantages of Reverse Auction Mechanisms in General.[17]

There is a stark contrast between a cost model and a reverse auction mechanism, in terms of their respective capabilities in advancing the Commission's mobile broadband deployment objectives. The reverse auction approach, because of its numerous disadvantages, does not fare well in any comparison between the two disbursement mechanisms.

First, there is no reason to conclude that a reverse auction mechanism "would provide support that is sufficient to both preserve and advance universal service."[18] In fact, contrary to the mandate established in the Act,[19] reverse auctions would not promote the availability of reasonably comparable services at reasonably comparable rates in rural areas. There can be little doubt that both the quantity and quality of service to rural areas will suffer as "[a]uctions would

---

[16] *Federal-State Joint Board on Universal Service; Access Charge Reform*, CC Docket No. 96-45, CC Docket No. 96-262, Seventh Report and Order, 14 FCC Rcd 8078, 8103 (para. 50) (1999) (footnote omitted), *quoted in* Cellular South *CAF NOI/NPRM* Reply at 15.

[17] This section discusses the disadvantages of reverse auction mechanisms in general. Problems associated with *single-winner* reverse auctions are examined in Section II.A.2.a., *infra*.

[18] Cellular South *CAF NOI/NPRM* Reply at 21.

[19] *See* 47 U.S.C. § 254(b)(3) (enacting the principle that "[c]onsumers in all regions of the Nation . . . should have access to telecommunications . . . services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas").

limit the ability of carriers to compete in many areas and the benefits of innovation, service choices, and new technologies will be delayed or denied to consumers in many rural areas."[20]

Second, reverse auctions would create a considerable risk that investment in the deployment of mobile broadband in rural areas would be choked off. Private capital—in addition to Mobility Fund Phase II support—must be available to provide a realistic chance of attaining the Commission's mobile broadband goals. Reverse auctions, however, would create market uncertainties that would be anathema to prospective investors in mobile broadband networks.

Mobile carriers seeking private investment to complement their use of Phase II support for broadband deployment would likely face skeptical investors with concerns regarding whether the carriers would be winning bidders and, even if their bids were successful, whether the level of Phase II support is sufficient to make it prudent to provide additional private capital. The Commission's objective should be to encourage a synergy between the Commission's Phase II support and private investment, but the reverse auction mechanism would likely prompt decisions by many private investors to remain on the sidelines.

Third, reverse auctions create incentives for auction winners "to bolster auction–eroded profits through a variety of tactics, including cost and quality reductions . . . ."[21] These types of actions by funding recipients would not serve the interests of rural consumers, and would—without heavy-handed, public utility-type regulation—be difficult for the Commission to police.

Fourth, reverse auctions would provide some carriers with incentives to place "low ball" bids. Thus, a carrier would make a bid that may not provide sufficient support to enable the carrier to meet its public interest obligations while also generating a positive return for the carrier, if

---

[20] Cellular South *CAF NOI/NPRM* Reply at 21.

[21] Cellular South, *et al*., *Mobility Fund NPRM* Comments at 12.

this low-ball bidding would give the carrier "an offsetting benefit of reducing its obligation into the [universal service] fund"[22] or would reduce support to potential competitors.[23]

Fifth, although the Commission apparently stakes its preference for reverse auctions on its view that auction mechanisms could reduce the level of high-cost funding and generate greater efficiencies in carriers' investments and operations, "these potential benefits could very well turn out to be false economies if reverse auctions were designed and implemented in a way that fails to solve issues such as service quality, stranded investment, decreased incentives for network investments, and barriers to financing."[24]

And, *sixth*, reverse auctions as a mechanism for disbursing universal service support are untested, in contrast to cost models, which the Commission itself has consistently and repeatedly endorsed.[25] C Spire Wireless urges the Commission to forego a gamble on reverse auctions which are unlikely to meet the congressionally-mandated policy objective of ensuring widespread deployment of mobile broadband services in rural areas that are comparable in price, quality, and performance to mobile broadband services in urban areas.

C Spire Wireless also observes that there is a ready cure for the problem that single-winner reverse auctions are untested and have no track record as a mechanism for the disbursement of universal service support: The Commission should utilize data generated by the implementation and operation of the single-winner reverse auction mechanism for the disbursement of

---

[22] Rural Cellular Association Comments, WC Docket No. 10-90, *et al*., filed Aug. 11, 2010, at 17.

[23] *Id*.

[24] U.S. Cellular Reply Comments, WC Docket No. 05-337, CC Docket No. 96-45 (filed June 2, 2008), at 58.

[25] *See, e.g., USF First Report and Order*, 12 FCC Rcd at 8899 (para. 225).

Mobility Fund Phase I support[26] before deciding whether to use such a mechanism for Phase II. Given the concerns expressed by numerous parties regarding the advisability of using a reverse auction mechanism to disburse Mobility Fund support, providing interested parties with an opportunity to comment on the performance of the mechanism in Phase I would serve as a useful guide to the Commission before it takes any final action regarding Phase II disbursement mechanisms.

c. A Cost Model Should Be Used Both To Identify Eligible Areas and To Disburse Support.

The Commission poses the possibility of using a mobile wireless cost model only to identify areas that would be eligible for Mobility Fund Phase II support, but not for the actual disbursement of support. Instead, a reverse auction mechanism would be used to award funding.[27]

C Spire Wireless opposes this approach because, as C Spire Wireless has explained, a cost model would work far better than a reverse auction mechanism in bringing advanced mobile broadband services to unserved communities throughout rural America. C Spire Wireless supports the use of a cost model for purposes of identifying areas eligible for support, and encourages the Commission to recognize that a cost model also would be an effective mechanism to support the deployment of broadband in these unserved areas within the budget limits set by the Commission.

d. The Commission Should Consider Using a Consumer Coupon System as Part of a Model-Based Disbursement Mechanism.

C Spire Wireless suggests that the Commission should consider combining the use of a forward-looking cost model with a consumer coupon system as the mechanism for disbursing

[26] The Commission chose a "reverse auction format" for the disbursement of Mobility Fund Phase I support. *Order* at para. 322.

Mobility Fund Phase II support. The cost model would be used to identify the costs of an efficient carrier in deploying and operating a mobile broadband network in eligible service areas. Then, instead of disbursing support to carriers, the Commission (acting through the Universal Service Administrative Company) would provide coupons directly to consumers. The consumer coupons could be spent on the purchase of mobile broadband services provided by eligible carriers. The Commission would have flexibility to adjust coupon amounts to encourage competitive entry. Such a disbursement mechanism would give rural consumers "greater flexibility to purchase communications services that best suit their particular needs."[28]

2. If the Commission Adopts Reverse Auctions, It Should Provide Support to More Than a Single Provider in Each Service Area.

The Commission is proposing to use a single-winner reverse auction mechanism for the disbursement of Mobility Fund Phase II support. As C Spire Wireless demonstrates in this section, a single-winner format compounds the problems associated with a reverse auction mechanism, further widening the gap between reverse auctions and a cost model as an effective means of accomplishing President Obama's and the Commission's goals for the ubiquitous deployment of advanced mobile broadband services throughout rural America. Moreover, the Commission

---

[27] *Further Notice* at para. 1125.

[28] Verizon and Verizon Wireless Comments, CC Docket No. 96-45, WC Docket No. 03-109, filed July 12, 2010, at 7 (proposing a voucher system for USF Lifeline support). The Commission has proposed a similar funding mechanism for its proposed Remote Areas Fund:

> We propose that support for remote areas be structured as a portable consumer subsidy. Specifically, we seek comment on CAF support being used to make available discounted voice and broadband service to qualifying residences/households in remote areas, in a manner similar to our Lifeline and Link Up programs . . . . As with Lifeline and Link Up, ETCs providing service in remote areas would receive subsidies only when they actually provide supported service to an eligible customer. Such a program structure would have the effect of making voice and broadband more affordable for qualifying consumers, <u>*thus promoting consumer choice and competition*</u> in remote areas.

Further Notice at para. 1225 (footnote omitted) (emphasis added).

has failed to give adequate consideration to concerns already expressed in the record of this proceeding regarding the use of a single-winner reverse auction mechanism to disburse Mobility Fund support.

a. Disadvantages of Single-Winner Reverse Auctions.

While the Commission apparently takes the view that a single-winner reverse auction could effectively lower the level of Mobility Fund Phase II support, the Commission should take into account the fact that use of a single-winner reverse auction mechanism presents numerous problems, in addition to those problems associated with reverse auctions that C Spire Wireless has already discussed.[29]

First, a single-winner reverse auction mechanism is not consistent with the 1996 Act. The Commission has long acknowledged that Congress, in the 1996 Act, "established principles for the preservation and advancement of universal service in a competitive telecommunications environment[,]"[30] and that competition and universal service are dual goals that must be given equal weight by the Commission's policies.[31] Using a single-winner reverse auction mechanism to disburse Mobility Fund Phase II support, rather than constituting a universal service policy designed to act in concert with the promotion of competitive markets, would instead risk isolating rural markets from competition and reinforcing the market strength of the most dominant carriers.

---

[29] See Section II.A.1.b., *supra*.

[30] *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 96-45, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244, 11252 (para. 14) (2001).

[31] *USF First Report and Order*, 12 FCC Rcd at 8787-88 (para. 19), 8791-92 (para. 25).

Second, funding only a single reverse auction winner in each service area eligible for Phase II funding, in addition to sidetracking the pro-competitive policies of the 1996 Act, would threaten to convert the Commission into an über-regulator, since it would be necessary for the Commission to attempt to police the activities of Mobility Fund auction winners. Each auction winner would have the benefit of a Commission-mandated dominant market position in its funded service area, which could generate strong incentives for anti-competitive conduct. The Commission would be faced with the need to expend regulatory resources[32] for purposes of guarding against consumer harms incubated by the Commission's own policy decision.

And, *third*, the Commission's position that single-winner reverse auction mechanisms are "market-based"[33] does not withstand scrutiny. In fact, single-winner reverse auctions "would mean competition in a government auction room as opposed to competition in the market-place."[34] The hallmark of a market-based mechanism is that it works "to assist the marketplace in developing competition needed to bring consumer benefits."[35] The Commission's single-winner reverse auction mechanism would not serve this objective.

At bottom, the single-winner reverse auction mechanism is a device that, rather than being based on the dynamics of the marketplace, tilts support toward lowest-cost areas (*i.e.*, those areas that will generate the lowest bids) as a means of shrinking the size of universal service

[32] For example, the Commission would need to consider rate regulation and the imposition of Unbundled Network Element obligations to open up the funding recipients' networks to other service providers. *See* Cellular South *CAF NOI/NPRM* Reply at 20-21.

[33] *See, e.g., Order* at para. 165 ("conclud[ing] that the Connect America Fund should ultimately rely on market-based mechanisms, such as competitive bidding").

[34] Cellular South *CAF NOI/NPRM* Reply at 23.

[35] *Id*. at 24.

support at the expense of promoting ubiquitous mobile broadband deployment by competitive mobile carriers.

b. Single-Winner Auctions and the Portability of Mobility Fund Support.

In addition to the disadvantages of a single-winner reverse auction mechanism described in the preceding section, a core difficulty with such a mechanism is that, by definition, it also reflects the Commission's decision in the *Order* to negate its longstanding policy that has favored the portability of universal service support.[36]

C Spire Wireless has previously summarized the benefits of the Commission's funding portability policy as follows:

> If a universal service mechanism resulted in a set amount of support being made available for a particular area (whether on a per-line, per minute, or per MB of throughput), then ***any*** carrier willing to invest risk capital in that area and take on universal service obligations would be eligible to receive that support. It would matter not whether one carrier entered or ten carriers entered. The amount of support in an area would be capped by the amount of support apportioned for that area.[37]

[36] The Commission established this policy fifteen years ago:

> Federal universal service support will be distributed based on the interstate portion of the difference between the forwardlooking economic cost of providing service and a nationwide revenue benchmark. The amount of support will be explicitly calculable and identifiable by competing carriers, *and will be portable among competing carriers, i.e., distributed to the eligible telecommunications carrier chosen by the customer*.

USF First Report and Order, 12 FCC Rcd at 8786 (para. 15) (emphasis added). The Commission nevertheless has decided to abandon this policy:

> 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.

Order at para. 319.

[37] Cellular South *CAF NOI/NPRM* Reply at 23 (emphasis added).

As this discussion illustrates, making Mobility Fund Phase II funding portable among carriers willing to deploy and provide broadband services in eligible service areas would not threaten to upend the Commission's fiscal responsibility policy, because the cost model-determined level of support for the area would effectively be capped, and would be divided among those carriers that are successful in obtaining customers in the service area. Support would flow to the carriers that get the customers; it would *not* be used to fund "multiple networks."

More important, funding portability—in contrast to a single-winner reverse auction—would bring the benefits of competition to consumers in rural areas. It is perplexing that the Commission's preference is to scuttle portability for Phase II support,[38] given the fact that using Mobility Fund support to stimulate ongoing competition in rural communities would result in more affordable and higher quality broadband services.

In trying to fend off criticisms of its single-winner approach, the Commission assumes in the *Order* that its abandonment of portability as a universal service policy is a matter wholly within its discretion.[39] The Commission also claims that budget constraints are forcing it to leave portability behind, and that, in any event, areas in which Mobility Fund support will be provided are not conducive to the promotion of competition.[40]

In assuming it can repeal its funding portability policy, the Commission ignores the fact that portability is required by the Act. Specifically, the Fifth Circuit Court of Appeals has ruled that:

---

[38] The Commission states that it "expect[s] that . . . we will generally be supporting a single provider for a given geographic area" in Mobility Fund Phase II. *Further Notice* at para. 1136.

[39] *See Order* at para. 319.

[40] *Id.*

> The [USF funding] program must treat all market participants equally—for example, *subsidies must be portable*—so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. . . . [T]his principle is made necessary not only by the economic realities of competitive markets *but also by statute*.[41]

Single-winner reverse auctions, which port funding only between the Commission and a monopoly service provider, are not sustainable under the *Alenco* holding.

Even if the Commission were not faced with a statutory mandate to make Mobility Fund support portable, the Commission's policy reasons for abandoning portability are not persuasive and should not drive the Commission's decisions regarding the disbursement of Phase II support. In considering its disbursement mechanisms for Mobility Fund Phase I support, the Commission concluded that it should not "subsidize competition through universal service in areas that are challenging for even one provider to serve[,]" and that "given the available budget" the expansion of networks in currently unserved areas could best be accomplished by limiting support to one provider.[42]

The Commission's analysis is wrong. The issue is not whether an area presents challenges for competitive entry, but, rather, who should make that judgment. The *Alenco* court properly concluded that the market should make that decision: Prospective entrants should have the opportunity to decide whether to seek Phase II support. Any disbursement mechanism that preempts this marketplace decision fails to treat marketplace participants equally, and therefore undercuts competition and disserves consumers in rural areas.

Even if the *Alenco* court's outcome were not required by the statute—which it is—the court's finding makes eminently more policy sense than a disbursement mechanism that (1) eli-

---

[41] *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000) ("*Alenco*") (emphasis added).

[42] *Order* at para. 319.

minates competition in high-cost areas by channeling universal service support to a single recipient; and (2) rests only on the Commission's illusory evaluation of whether markets are capable of being competitive in America's rural areas.

C Spire Wireless also notes that the Commission itself—in the *Further Notice* in this proceeding—expresses its judgment that in fact it could establish a subsidy program that would "promot[e] consumer choice and competition in remote areas."[43] If the Commission holds the view that universal service subsidies can be successful in promoting competition in "extremely high-cost areas[,]"[44] it is unclear why the Commission has found it necessary to abandon a program of portable subsidies as a means of promoting competition in areas with lower costs.

Moreover, the Commission's concerns regarding the constraints of the "available budget," which it claims necessitate limiting support to one provider, are irrelevant on two counts. The Commission ignores the fact that it controls the "available budget" and, in C Spire Wireless's view, the Commission has not exercised this control effectively because it has avoided any effort to reform the universal service contribution mechanism and because its decisions in the *Order* have shortchanged funding for the deployment of mobile broadband networks.[45] It is nonsensical for the Commission to argue that the size of the available budget forces its decision to

[43] *Further Notice* at para. 1225.

[44] *Id*. at para. 1224.

[45] The Commission indicates in the *Order* that rate-of-return carriers will receive approximately $2 billion per year in total high-cost universal service support under the Commission's budget through 2017, *Order* at para 27, the second phase of CAF will distribute a total of up to $1.8 billion annually in price cap territories, *id*. at para. 25, and Mobility Fund Phase II will provide up to $400 million per year in ongoing support (with an additional $100 million earmarked for ongoing support for Tribal areas). *Id*. at para. 28. Although mobile broadband providers will have an opportunity to compete for a portion of the $1.8 billion in CAF Phase II funding in price cap territories, through participation in reverse auctions, these auctions will be conducted only if incumbent price cap carriers do not exercise the right of first refusal, adopted by the Commission, that gives incumbents an exclusive opportunity to retain a substantial portion of available funding during the first five years of CAF Phase II. *See id.* at paras. 164-166.

limit support to a single recipient in a service area, given the fact that the Commission itself can solve this purported problem by making different budgetary decisions.

In addition, even if the Commission's concerns regarding the "available budget" were more credible, portability itself accommodates the Commission's concerns. As C Spire Wireless has explained, Phase II portable support would flow *only* to the carriers that get the customers in a given service area. Thus, the presence of additional market entrants would not drive up the level of overall disbursements.

c. The Commission Has Failed To Support Its Preference for Single-Winner Reverse Auctions.

The Commission adopted a single-winner reverse auction mechanism in the *Order* for Mobility Fund Phase I disbursements,[46] but, in doing so, failed to address many of the arguments raised concerning the advantages of a cost model and the disadvantages of a reverse auction mechanism. C Spire Wireless is confident, however, that, once the Commission takes these arguments into account, it will abandon its preference for reverse auctions as a mechanism for the disbursement of Mobility Fund Phase II support.

The Commission spends virtually no time in the *Order* examining concerns that single-winner reverse auctions would fail to promote the availability of reasonably comparable services at reasonably comparable rates in rural areas, would close down mobile broadband providers' access to capital investment for deployment in rural areas, would not work in tandem with the marketplace by promoting competition and the consumer benefits that would result from competition, and would create anti-competitive incentives such as low-ball bidding.

[46] *Id*. at para. 322.

One of the few issues discussed in the above sections that the Commission does attempt to address involves the fact that reverse auctions can lead to construction and equipment quality short-cuts due to funding recipients' cost-cutting measures.[47] The Commission attempts to dispense with the concern raised in the record by observing that the Commission "must of course define clear performance standards and effective enforcement of those standards . . . ."[48]

Even assuming that the Commission could be successful in these standard-setting and enforcement endeavors,[49] the Commission's explanation raises the question of why the Commission would find it more attractive to set up such a regulatory superstructure to police the service quality short-cuts and similar actions of reverse auction winners, instead of adopting mechanisms that would prevent the emergence of such short-cuts and other incentives harmful to consumers and competition. In C Spire Wireless's view, it would be more effective to rely on the marketplace to provide incentives for carriers to improve service quality in order to attract and retain customers.

Finally, the Commission's proposal that Mobility Fund Phase II support recipients would be required to allow the collocation of additional equipment under certain circumstances, and also would be required to comply with voice and data roaming requirements as a condition to receiving Phase II support,[50] is not likely to "help address the concerns of those that argue for

---

[47] *Id*. at para. 325.

[48] *Id*.

[49] One party has argued that the Commission has not adopted any such standards and that such measures would not be sufficient in any event. *See* Blooston Rural Carriers, Petition for Partial Reconsideration, WC Docket No. 10-90, *et al*., filed Dec. 29, 2011, at 4.

[50] *Further Notice* at para. 1148.

continued support of multiple providers in a particular geographic area[,]"[51] or "to help assure that [funding recipients] do not use public funds to achieve an unfair competitive advantage."[52]

Rather than speculating about whether its collocation and roaming requirements could have any effect in nullifying the anti-competitive proclivities of carriers that exclusively receive Mobility Fund support, the Commission should reexamine its rationale for creating these anti-competitive incentives in the first place. The Commission's proposal opts to create an unfair advantage, and then to construct a regulatory scheme to police against it. C Spire Wireless submits that the Commission is approaching the problem from the wrong direction. If the Commission is truly concerned that Phase II support recipients may use support to achieve an unfair competitive advantage, then it should not choose a disbursement mechanism—*i.e.*, a single-winner reverse auction—that hands this unfair competitive advantage to funding recipients.

3. Areas Eligible for Support Should Be Defined in a Manner That Promotes Competition and Benefits Consumers.

The Commission proposes that any census block where 3G or better broadband service is available from at least one unsubsidized provider would not be eligible for Mobility Fund Phase II support.[53] C Spire Wireless opposes the Commission's "unsubsidized competitor" approach generally, and also opposes the specific proposal made by the Commission in the *Further Notice*.

As a threshold matter, C Spire Wireless urges the Commission to refrain from employing the "unsubsidized competitor" mechanism in connection with its disbursement of Mobility Fund Phase II support, because, in C Spire Wireless's view, the mechanism would not be effective in

---

[51] *Order* at para. 320 (adopting collocation and roaming requirements in the case of Mobility Fund Phase I support recipients).

[52] *Further Notice* at para. 1148.

[53] *Id*. at para. 1124.

serving the Commission's goals. While there may be some appeal to the notion that Phase II support should be withheld if service is already being provided by a carrier that is not receiving any universal service support, there are grounds for concern that it would be difficult for the Commission to devise methods to ensure that accurate measurements are made of areas in which the unsubsidized competitor is actually providing service, and that the characteristics of the unsubsidized service comport with the Commission's objectives for the types and quality of mobile broadband services that should be deployed in rural areas.

C Spire Wireless opposes the Commission's specific proposal because 3G service is the wrong threshold. If the Commission were to block Phase II funding in areas in which unsubsidized competitors are providing 3G service, as it proposes, this would have the likely effect of depriving consumers in the affected service areas of any realistic opportunity to access 4G broadband service. This lack of access to 4G broadband would raise serious issues regarding whether the Commission's Phase II support mechanism could ensure service comparability between rural and urban areas.

The Commission also proposes to identify areas eligible for Mobility Fund Phase II support on a census block basis.[54] This approach could be inconsistent with procedural requirements established in Section 214(e)(5) of the Act.[55] That provision indicates that a rural telephone company's study area will serve as the area for which an eligible telecommunications carrier ("ETC") is designated for purposes of receiving universal service support, unless the Commis-

---

[54] *Id.*

[55] 47 U.S.C. § 214(e)(5).

sion and the states, after receiving a recommendation from the Federal-State Joint Board on Universal Service, establish a different definition of the service area.[56]

4. If the Commission Adopts Reverse Auctions, It Should Impose Certain Limits on the Use of Package Bids.

The Commission tentatively concludes that some form of package bidding would enhance Mobility Fund Phase II auctions, and seeks comment regarding whether any limits on the size or composition of package bids should be adopted, "such as allowing flexible packages of blocks or larger geographic units as long as the geographic units are within the boundaries of a larger unit such as a county or a license area (*e.g.*, a CMA) . . . ."[57]

If the Commission decides to use reverse auctions as the disbursement mechanism for Phase II, it will be important for the Commission to establish package bidding rules that do not further enhance the anti-competitive consequences of reverse auctions.[58] If there are no limitations on package bidding, then larger carriers could have the capability to manipulate reverse auctions by packaging bids that cover extensive geographic areas. Smaller carriers participating in the reverse auctions would not have the resources to compete against this type of bidding strategy, placing them at yet another competitive disadvantage. For this reason, C Spire Wireless supports limiting package bids to aggregations of geographic areas that are within the boundaries of a county.

---

[56] *Id*.

[57] *Further Notice* at para. 1156 (footnote omitted).

[58] See Sections II.A.1.b., II.A.2.a., II.A.2.b., *supra*.

5. Public Interest Obligations for Mobility Fund Phase II Support Recipients Should Set Realistic Deployment Targets for 4G Broadband.

The Commission proposes that service providers receiving Mobility Fund Phase II support should be "required to construct a network offering the required service in the required area within three years."[59] The Commission explains that this deployment would be administered "consistent with the approach we are taking for [Mobility Fund] Phase I support used to deploy 4G . . . ."[60] Specifically, for Phase I:

> At the end of the [three-year] period for [4G] build-out, providers will be obligated to provide the service defined above [*i.e.*, service meeting various speed and performance metrics adopted by the Commission] in the areas for which they receive support, over at least 75 percent of the road miles associated with census blocks identified as unserved . . . .[61]

C Spire Wireless is concerned that three years may not be sufficient time for carriers to deploy 4G broadband networks covering 75 percent of road miles in unserved areas. As C Spire Wireless has discussed, the use of a single-winner reverse auction mechanism would likely compromise the ability of carriers to obtain the private investment that could be combined with Phase II support to accelerate broadband deployment, and, if these investment impediments materialize, then a three-year build-out requirement may not be realistic.

A more reasonable approach would be to require attainment of the Commission's 75 percent build-out requirement within five years, perhaps with an interim three-year deadline for achieving deployment of 50 percent of road miles in unserved areas.

The Commission also proposes that Mobility Fund Phase II support recipients should be required to provide mobile voice and data services that meet or exceed a minimum bandwidth or

---

[59] *Further Notice* at para. 1145.

[60] *Id*.

[61] *Order* at para. 365.

data rate of 768 kbps downstream and 200 kbps upstream.[62] C Spire Wireless favors this approach, especially since, as the Commission explains, using a standard requiring speeds of 768 kbps downstream and 200 kbps upstream, "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."[63]

Thus, the Commission's approach will ensure the deployment of robust mobile broadband networks in rural areas, without introducing the engineering difficulties and expense associated with attempting to achieve speeds of 4 Mbps downstream and 1Mbps upstream at the cell edge of mobile broadband networks.

B. Connect America Fund for Rate-of-Return Carriers; Interstate Rate of Return.

The Commission should take no further steps to accommodate the budget plan submitted by rural incumbent carrier representatives, and instead should allocate to the Mobility Fund any savings that emerge from the operation of CAF mechanisms. The Commission also should now take the long overdue action to represcribe the interstate rate of return, reducing the rate of return to the lower end of a range between 7 and 9 percent. More generally, the Commission should act as promptly as possible on its commitment to "ultimately" integrate support for rate-of-return incumbents into CAF mechanisms, while doing away with embedded cost as a disbursement mechanism. C Spire Wireless discusses these issues in the following sections.

---

[62] *Further Notice* at para. 1142.

[63] *Order* at para. 362.

1. Budget Targets for Rate-of-Return Carriers; Utilization of Connect America Fund Savings.

The Commission adopted an annual budget of $2 billion for rate-of-return carriers over the next six years,[64] noting at the same time that this budget fell short of the budget proposed in a plan submitted by the Rural Associations (a consortium of organizations representing the interests of rate-of-return carriers).[65] Specifically, the Commission indicates that the Rural Associations "aim for a budget target of $2.05 billion in combined funding for USF and their suggested access restructure mechanism in the first year of implementation, and [that the budget target] may grow to $2.3 billion by the sixth year."[66]

Given this discrepancy, the Commission asks how it could "best accommodate the Rural Association Plan within the budgetary framework adopted" by the Commission,[67] and also asks whether any savings realized in other components of the CAF should be used to increase funding for rate-of-return carriers.

C Spire Wireless urges the Commission not to take any additional steps to accommodate the budget targets set by the Rural Associations. The *Order* spares rate-of-return carriers from any exposure to model-based disbursement mechanisms or single-winner reverse auctions, instead settling for actions intended "to eliminate waste and inefficiency and improve incentives for rational investment and operation by rate-of-return LECs"[68] and opting for "lay[ing] the

---

[64] *Id*. at paras. 18, 126.

[65] *Further Notice* at para. 1034.

[66] *Id*.

[67] *Id*.

[68] *Order* at para. 195.

foundation for subsequent Commission action that will set rate-of-return companies on a path toward a more incentive-based form of regulation."[69]

C Spire Wireless is concerned by the Commission's decision to leave for another day any effort to shift away from a broken system for providing universal service support to rate-of-return carriers, and suggests that the Commission should not compound the effects of this unwarranted delay by seeking ways to provide additional CAF support to rate-of-return carriers. Instead, if any savings are realized in the operation of the various CAF components, the Commission should allocate these savings to the Mobility Fund, so that consumers can receive increased access to the services that they most want and desire in the 21st Century.

Several factors support this approach. ***First***, mobile broadband is underfunded, compared to price cap carriers and rate-of-return carriers. The numbers speak for themselves: As C Spire Wireless has described, under the Commission's budget, rate-of-return carriers will receive approximately $2 billion per year through 2017; the second phase of the CAF will provide $1.8 billion annually in price cap territories; and Mobility Fund Phase II will provide up to $400 million per year in ongoing support to mobile broadband providers (with an additional $100 million earmarked for support for Tribal areas).

Second, making additional funding available for the Mobility Fund by utilizing savings from other CAF components would be responsive to the growing consumer demand for mobile broadband services.[70]

---

[69] *Id*.

[70] For example, according to the Mobile Future Coalition:

> Mobile Internet usage is the fastest growing segment of broadband adoption today. In fact, 1 in 5 Americans now use a handheld device to access the Internet on a daily basis. And, these ranks are growing fast. Over the next 10 years, wireless Internet usage is projected to grow at 100 times the rate of wireless voice traffic.

Third, line counts for incumbent rate-of-return carriers have dropped nearly 32 percent from 1998 to 2008,[71] further suggesting that any additional CAF allocations to rate-of-return carriers would not be in harmony with the trends in consumer demand.

And, *fourth*, bolstering support available through the Mobility Fund would help to realize President Obama's objectives for the deployment of high-speed mobile broadband service.

2. Interstate Rate-of-Return Represcription.

The Commission notes that it last prescribed the authorized rate of return in 1990,[72] and seeks comment on its analysis for a represcription. The Commission's preliminary assessment is that, based on recent data, the weighted average cost of capital ("WACC") (*i.e.*, the rate of return required to maintain the current value of a firm)[73] indicates a rate of return in the range of approximately 7 to 8 percent for rate-of-return carriers. "This preliminary analysis would conservatively suggest that the authorized interstate rate of return should be no more than 9 percent."[74]

C Spire Wireless agrees with the Commission's preliminary analysis, and suggests that the represcribed rate of return should be at the lower end of a range between 7 and 9 percent. The Commission points out that the current WACC for AT&T and Verizon is in the range of 6 to 8

Mobile Future Website, accessed at http://mobilefuture.org/issues/archive/mobile_broadband. According to information available at its website, Mobile Future is a coalition of American technology and communications companies, consumers, and non-profit organizations that support efforts to encourage investment and innovation in the wireless sector.

[71] *See Order* at paras. 885-886 (discussing the fact that incumbent carriers are losing lines and experiencing a significant and ongoing decrease in minutes-of-use ("MOU")). Incumbent rate-of-return carriers had 179,822,123 local loops at year-end 1998, compared to 122,596,593 local loops at year-end 2008. *See* FCC, TRENDS IN TELEPHONE SERVICE, Table 20.1 (March 2000); FCC, TRENDS IN TELEPHONE SERVICE, Table 7.2 (Sept. 2010).

[72] *Further Notice* at para. 1046. The Commission reduced the rate of return at that time from 12 percent to 11.25 percent.

[73] *Id*. at para. 1049.

[74] *Id*. at para. 1057.

percent, and that, even in the unlikely event that interest rates increase by 1.5 percent, the WACC for rate-of-return carriers would remain in the range of 7 to 8 percent. These findings support a represcribed rate of return below 9 percent.

The Commission also invites comment regarding how it can ensure "that the rate of return over time remains consistent with changes in the financial markets and cost of capital[,]"[75] and regarding mechanisms that could be used to effect automatic adjustments in the prescribed rate of return. C Spire Wireless urges the Commission to pursue such mechanisms as a means of avoiding the current situation, in which the prescribed rate of return has been locked in place for more than two decades.

Adopting rules to utilize an automatic mechanism for adjusting the rate of return for rate-of-return carriers eligible for universal service support is important because rate-of-return carriers, under the Commission's proposals,[76] will not be subject to cost model-based support or reverse auction mechanisms, but instead will continue to receive their universal service support (other than intercarrier compensation support) through existing high-cost support mechanisms,[77] which are based on embedded costs. As will be explained further below,[78] C Spire Wireless considers this to be a flawed approach, and has advocated the use of an economic cost model for disbursement of ***all*** CAF and Mobility Fund support.[79] Given the Commission's approach of continuing to operate mechanisms that provide funding for incumbent rural carriers based on

---

[75] *Id*. at para. 1047.

[76] *See id.* at paras. 1031-1043.

[77] *Id*. at para. 1031.

[78] See Section II.B.3., *infra*.

[79] *See*, *e.g.*, Cellular South *August 3 Public Notice* Comments at 5.

their embedded costs, the use of an automatic adjustment mechanism to revise the prescribed rate of return would promote the Commission's principle of fiscal responsibility.

3. Reforming Support Mechanisms for Rate-of-Return Carriers.

The Commission concludes in the *Further Notice* "that all universal high-cost support should ultimately be distributed through CAF for all recipients."[80] The operative word in the Commission's conclusion is "ultimately," since the Commission has refrained in the *Order* from taking such a step in the case of rate-of-return carriers, choosing instead "[i]n the near term" to continue awarding their support based upon their embedded costs.[81]

The Commission's reluctance to proceed with the reform of support mechanisms for rate-of-return carriers is regrettable, especially in light of the Commission's own conclusion in the *Order* that "[t]he effect of current interstate rate regulation is to insulate rate-of-return carriers from revenue loss due to competitive pressures that result in declining lines and MOU."[82] Moreover, the Commission's National Broadband Plan recommended that the Commission should require rate-of-return carriers to move to incentive regulation, explaining that:

> Rate-of-return regulation was implemented in the 1960s, when there was a single provider of voice services in a given geographic area that had a legal obligation to serve all customers in the area and when the network only provided voice service. Rate-of-return regulation was not designed to promote efficiency or innovation; indeed, when the FCC adopted price-cap regulation in 1990, it recognized that

[80] *Further Notice* at para. 1031.

[81] *Id*.

[82] *Order* at para. 901. The Commission has also concluded that, "[i]n many cases, support is used to offset the increasing revenue losses to . . . incumbent carriers as the gap between legacy technology and more efficient technologies has widened." *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services*, WC Docket No. 05-337, *et al*., Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, 6656 (App. B., para. 3) (2008).

> rate of return does not provide sufficient incentives for broad innovations in the way firms do business.[83]

The Commission's acknowledgment that current rate regulation insulates rate-of-return carriers from competitive pressures is another way of saying that competing carriers—including mobile carriers—are harmed by the retention of this outmoded regulatory regime. It also is significant that the Commission has further pointed out that, "if [universal service] support is based on cost, it should be based on forward-looking economic cost, *not embedded costs*, and . . . there may be significant problems inherent in indefinitely maintaining separate mechanisms based on different economic principles."[84]

The Commission's continued reliance on embedded costs as the disbursement mechanism for high-cost support to rate-of-return carriers is harmful to competition, and it further disserves consumers in rural areas because "a support mechanism based on . . . a carrier's embedded costs . . . provides no incentives for ETCs to provide supported services at the minimum possible cost."[85] This failure to provide incentives for the efficient deployment and delivery of broadband services also contradicts the Commission's commitment to fiscal responsibility, since it creates the likelihood that the Commission's high-cost support mechanisms are overfunding rate-of-return carriers.

The damaging effects of the Commission's continuing endorsement of embedded cost as the mechanism for high-cost support disbursements to rate-of-return incumbents is illustrated by

---

[83] Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010), at 147 (footnote and internal quotation marks omitted).

[84] *USF-ICC Reform NPRM*, 26 FCC Rcd at 4690 (footnotes and internal quotation marks omitted) (emphasis added).

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

the fact that the overall level of high-cost disbursements has continued to increase even after the Commission imposed a cap on high-cost disbursements to wireless ETCs nearly four years ago.[86] Thus, $1.402 billion in high-cost loop support was disbursed in 2007 (the last full year prior to imposition of the interim cap), while an estimated $1.468 billion was disbursed in 2010, an increase of nearly 5 percent, notwithstanding the cap.[87] In addition, this increase in high-cost support to incumbent rate-of-return carriers has occurred notwithstanding the fact that "Commission data and the record show that [these] carriers are losing lines and experiencing a decrease in minutes-of-use."[88]

C Spire Wireless has previously expressed the view that "the embedded cost mechanism used to disburse support to rural incumbents is bankrupt and should have been discarded long ago[,]"[89] agreeing with Viaero Wireless that "[l]inking CAF support to rural incumbent LECs' embedded costs would be the antithesis of reform."[90] C Spire Wireless again urges the Commission to limit as much as possible the duration of its near-term reliance upon embedded cost disbursement mechanisms for rate-of-return carriers, and to move as quickly as possible to disbursement mechanisms based on the use of forward-looking economic cost models. Ideally, the Commission should establish a specific timetable for completing the "necessary process of transitioning to a more incentive-based form of regulation."[91]

---

[86] *See High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008), *aff'd*, *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

[87] FCC, 2010 UNIVERSAL SERVICE MONITORING REPORT, CC Docket No. 98-202 (rel. Dec. 2010), at 3-15 (Table 3.1). The estimate for 2010 is based on Universal Service Administrative Company projections.

[88] *USF-ICC Reform NPRM*, 26 FCC Rcd at 4732 (para. 570) (footnote omitted).

[89] Cellular South *August 3 Public Notice* Comments at 16.

[90] N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless ("Viaero Wireless") *August 3 Public Notice* Comments at 15, *quoted in* Cellular South *August 3 Public Notice* Reply Comments at 11.

[91] *Order* at para. 204 (footnote omitted).

C. Broadband Public Interest Obligations.

In discussing policies and public interest obligations it should adopt with respect to reasonably comparable voice and broadband services, the Commission asks for comment regarding whether it should establish a presumption that, if a given service provider is offering the same rates, terms, and conditions to both urban and rural customers, then that will be treated as "sufficient to meet the statutory requirement that services be reasonably comparable . . . ."[92]

C Spire Wireless supports this approach. Consumers in rural areas would be served by the presumption because it would ensure that—in keeping with the Section 254(b)(3) mandate—services they obtain from a carrier receiving CAF or Mobility Fund support are effectively the same as services provided by the carrier to its customers in urban areas. In addition, the presumption would make sense from an administrative perspective because, if a service provider is able to demonstrate that the voice and broadband services it furnishes to customers in rural areas are the same as the offerings it makes available to urban customers, then there should be no need to require the service provider to do anything further.

D. Competitive Process in Price Cap Territories Where the Incumbent Declines To Make a State-Level Commitment.

As part of its discussion of the mechanisms it should use in price cap territories where incumbent price cap carriers do not exercise their right of first refusal for CAF funding, the Commission focuses on provider eligibility requirements and asks for comment regarding whether it should require that any carrier receiving CAF support must "finance a fixed percentage of any build-out with non-CAF or private funds."[93]

---

[92] *Further Notice* at para. 1027.

[93] *Id*. at para. 1200.

C Spire Wireless opposes such a requirement. It could work to the disadvantage of smaller carriers, especially in light of the difficulties that a reverse auction mechanism would cause with respect to the availability of private investment,[94] and could thus discourage or impede participation in CAF Phase II reverse auctions. Although such a requirement might result in shrinking the level of CAF Phase II disbursements the Commission is required to make—producing budget savings and advancing the Commission's commitment to fiscal responsibility—C Spire Wireless suggests that the Commission's policies regarding the funding of broadband deployment should be designed in a manner that expands, rather than contracts, the opportunities for carriers to compete for CAF funding.

Moreover, certification requirements regarding a carrier's financial and technical capabilities[95] would ensure that the carrier will meet its build-out and other public interest obligations, without imposing any type of matching requirement on fund recipients. The Commission reached this conclusion in considering the requirements it should adopt for Mobility Fund Phase I support recipients, finding that "[w]hile requiring that Fund recipients put up a share of their own funds for a project may be an effective way to ensure that the recipient has sufficient stake in the project to effect its completion, we do not believe this requirement is needed in light of the other measures we adopt here."[96]

III. CONCLUSION.

C Spire Wireless respectfully suggests that the Commission should give careful consideration to arguments presented by C Spire Wireless and other commenters demonstrating the ad-

[94] See Section II.A.1.b., *supra*.

[95] *See Further Notice* at para. 1200.

[96] *Order* at para. 404.

vantages of using a forward-looking economic cost model as the basis for disbursing Mobility Fund Phase II support. If the Commission provides itself, and interested parties, with sufficient time to evaluate the results of the Commission's use of a single-winner reverse auction mechanism for the disbursement of Phase I support, there is a strong likelihood that the Commission will be presented with convincing and well-documented evidence that the flaws inherent in this mechanism make it a poor choice as a vehicle for disbursing Phase II support.

The Commission, in the next phase of its efforts to reform its universal service mechanisms, should give priority to terminating the use of embedded cost as the mechanism for awarding high-cost support to incumbent rate-of-return carriers, and should instead bring these carriers under the coverage of more incentive-based models for allocating CAF funding.

In addition, the Commission should finally take steps to represcribe the interstate rate of return, and should repurpose any savings from the operation of its CAF support mechanisms for use in supporting mobile broadband network deployment through the Mobility Fund, rather than

[*Remainder of Page Intentionally Left Blank*] funneling such savings to rate-of-return carriers as a means of accommodating the funding demands presented by these carriers' representatives.

Respectfully submitted,

C SPIRE WIRELESS

By:___________________________

David A. LaFuria
John Cimko

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

January 18, 2012