

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 THE USA COALITION

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SUMMARY

The Universal Service for America Coalition (“USA Coalition”) appreciates the Herculean effort undertaken by the Federal Communications Commission (“FCC” or “Commission”) to reform the existing high cost support mechanism into a program that facilitates broadband deployment. Unfortunately, despite the FCC’s frequent statements concerning the vital role played by mobile services in today’s economy and the need for widespread competition, the reforms that the FCC is now considering, not to mention the reforms that the FCC has already adopted, will cause irreparable harm to the communications market in the United States, which ultimately harms consumers who increasingly rely upon wireless services. Unless the FCC immediately takes concrete steps to redress the fatal flaws in its current plans for reform, the FCC will condemn rural areas to become monopolistic communications backwaters that offer consumers only limited options for service, a far cry from the Act’s requirement that consumers in rural, insular, and high-cost areas have access to wireless services that are reasonably comparable to those available to consumers in urban areas at reasonably comparable prices.

As currently proposed, the Connect America Fund (“CAF”), Phase II of Mobility Fund, and the Remote Areas Fund (“RAF”) do not reflect the requirements of the Act. The USA Coalition submits these comments in order to call attention once again to the requirements of the Act, and to recommend proposals that reflect these requirements, including the Act’s mandate that the FCC foster, rather than preclude, competition. In structuring the CAF, the Mobility Fund, and the RAF, the FCC must ensure that support provided to wireless ETCs for the benefit of consumers is both predictable and sufficient to preserve and advance the nation’s communications networks. As it stands, the withdrawal of support from CETCs and the reverse auction bidding mechanism for Mobility Fund support renders support for wireless services

insufficient and unpredictable even to maintain, let alone advance, the services adopted by the substantial majority of residential customers.

The requirements of the Act likewise prevent the FCC from limiting the availability of universal service support -- whether structured in multiple phases or not -- to only one provider in each area. This structure is also fundamentally inconsistent with the Act's goal of promoting competition and technological innovation. By its own terms, any mechanism that limits support to a single carrier would ultimately award a regulatory monopoly to the supported provider while also artificially insulating the supported carrier from market forces that would otherwise compel the carrier to become more efficient over time. Accordingly, the FCC should not, and cannot under the Act, adopt a distribution mechanism that limits support to a single provider. Even if the Act did authorize the subsidization of a single provider, reconstructing monopolies across rural America would harm consumers and prove to be far more costly over time.

While the USA Coalition supports further consideration of whether a cost model could be an effective component of a distribution mechanism that reflects the requirements of the Act, generic discussion of cost models before the details of the distribution mechanisms for which the model would be used is finalized, or even proposed, is not particularly helpful. A cost model is not itself a distribution mechanism, but rather a tool that could be used in conjunction with a distribution mechanism. As such, the appropriateness and feasibility of a cost model will depend entirely upon its intended function as part of the overall distribution mechanism. For example, the FCC should not invest the resources necessary to develop an accurate cost model if its sole function would be to set a reserve price for a single winner reverse auction. Although theoretically feasible, the complexity and sophistication of a cost model that could determine specific support amounts may outweigh the benefits a model could offer. By contrast, a model

could be used effectively to determine comparative, rather than absolute, costs of providing service, as the USA Coalition has advocated in this proceeding.

If amended to reflect the Act's mandates, the USA Coalition could support a distribution mechanism that allocates funding based upon carriers' bids so long as the FCC takes population data into account rather than mere road miles covered when allocating and prioritizing support. Eligibility should be defined in a manner that promotes competition among qualified entities, while also taking into account the ability of the nation's largest carriers to use their large customer bases, rather than government subsidies, to fund deployment in rural, insular and high-cost areas. Specifically, eligibility should be limited to qualified ETCs with a proven service history, with bidding credits available to small businesses and participation limited to carriers with fewer than 50 million subscribers, who cannot rely upon a large subscriber base to subsidize their entry into rural and high cost areas, unless no other qualified ETCs are available to serve the area.

In order to efficiently stimulate the expansion of the nation's wireless footprint, support should also be prioritized to areas lacking 2G and 3G coverage. However, coverage determinations should be subject to challenge by carriers. Further, the FCC should strongly resist any proposal that would define service unavailability *solely* in terms of 3G services for either Phase I or Phase II of the Mobility Fund due to the devastating impact on existing providers of basic mobile services in the area, and thereby their customers, especially in light of the phase down of CETC support. Finally, the FCC must be prepared to vigilantly enforce the public interest obligations associated with the Mobility Fund auctions, particularly the collocation and data roaming requirements. By adopting measures that better account for the benefits of competition and even the threat of competitive entry in supported areas, as mandated by the Act,

the FCC will ultimately propel the affordability and innovation of wireless services in rural areas, insular and high-cost areas.

TABLE OF CONTENTS

COMMENTS OF THE USA COALITION	1
I. The Act Requires The FCC To Follow Consumers in Deciding Where and How Much Support Must Be Made Available To Ensure Reasonable Comparability	2
II. Limiting Support to a Single Provider Would Contradict the Act Regardless of The Chosen Distribution Mechanism	8
A) Any Reverse Auction Would Have To Be Designed To Facilitate Entry in a Manner that Does Not Harm Consumers or Competition	12
B) Any Model-Based Distribution Mechanism Would Have To Be Based on a Competitively- and Technologically-Neutral Model that Has Yet to Be Developed 14	
III. Support Should Be Provided on a Census-Block Basis in a Manner that Maximizes Efficiency Without Harming Competition.....	16
A) The FCC Should Use Census Blocks to Define Supported Areas but Include Population Data in Addition to Road Miles Covered to Determine Prioritization of Funding.....	16
B) Support Should Be Prioritized For Areas Where There is No 2G or 3G Service.....	18
C) Unavailability Should Not Be Defined Solely in Terms of the Availability of 3G Services	18
D) Phase II Mobility Fund Support Should Eventually Be Available for Areas Where There is No Business Case for the Deployment of 4G Service, But Only After Such Services Have Been Adopted by a Substantial Majority of the Nation’s Consumers.....	19
E) Challenges to “Unserved” or “Served” Determinations Should be Entertained As Long as American Roamer Data Is Used to Identify Areas Eligible for Support 20	
IV. The FCC Should Limit Initial Eligibility To Participate in the Mobility Fund to Carriers With Less Than 50 Million Subscribers and Provide a Bidding Credit For Small Carriers	21
A) The Commission Should Exclude Carriers With More Than 50 Million Subscribers From Mobility Fund Eligibility.....	22
B) Participation In The Selection Process Should Be Limited To ETCs With a Proven Capability To Meet The Obligations Associated With The Receipt Of Support 23	
C) The Commission Should Adopt a Bidding Credit for Small Businesses.....	24
V. In Order to Protect Competition in Supported Areas, the Commission Must Vigilantly Enforce the Mobility Fund’s Collocation and Data Roaming Obligations.....	26
VI. The FCC Should Rationalize Several of the Public Interest REPORTING Obligations and Letter of Credit Requirement for Mobility Fund and Legacy High Cost Fund Recipients	27

A) The Commission Should Eliminate the Need for Existing ETCs to Post Security as a Condition of Receiving Support.....	27
B) The Commission Should Reduce Support Available To Carriers That Do Not Meet Their Commitment To Provide Supported Service	28
C) The Commission Should Reduce And/Or Eliminate ETC Obligations In the Event That the ETC Does Not Receive USF Support	28
D) The Commission Should Minimize The Burden Associated With The Reporting Obligations Contained In The Order And In The <i>FNPRM</i>	29
VII. The Remote Areas Fund Should Be Structured In A Manner That Supplements, Rather Than Competes With, the Mobility Fund And Connect America Fund	29
CONCLUSION.....	32

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COMMENTS OF THE USA COALITION

The Universal Service for America Coalition (“USA Coalition” or “Coalition”), by its attorneys, respectfully submits these comments on the issues raised by the Federal Communications Commission (“FCC” or “Commission”) in the Report and Order and Further Notice of Proposed Rulemaking released by the FCC on November 18, 2011.¹ Specifically, the Coalition respectfully urges the FCC to implement reform in a manner which ensures that consumers in rural, insular, and high-cost areas have access to wireless services that are reasonably comparable to those available to consumers in urban areas at reasonably comparable prices, as required by the Act. Equally as important, the FCC should eschew consideration of any policy that would make competitive entry more difficult, if not impossible, in supported areas, both because the Act mandates policies that foster, rather than preclude, competition and because

¹ *Connect America Fund*, WC Docket No. 10-90, *Report & Order & FNPRM*, FCC 11-161 (rel. Nov. 18, 2011) (“*USF/ICC Reform Order*”).

policies that inhibit competition will cost consumers far more over time than policies that facilitate competitive entry.

The USA Coalition applauds the Commission’s frequent statements recognizing the value of mobile services and the need for additional wireless network build-out. Unfortunately, the size and structure of the proposed Mobility Fund makes a mockery of these statements and, ultimately, will relegate mobile services to second-rate status in many rural areas. Given the demonstrated and growing consumer preference for mobile services, the Commission should seek ways to provide greater opportunities to mobile service providers to participate in the newly created Connect America Fund, reconsider the hard funding cap on both Phase I and Phase II of the Mobility Fund, and enact measures to address the anti-competitive concerns raised by the Mobility Fund’s single-winner reverse auction approach. More fundamentally, the Commission should reexamine the manner in which it determines where support is necessary and how support is distributed in those areas.

I. THE ACT REQUIRES THE FCC TO FOLLOW CONSUMERS IN DECIDING WHERE AND HOW MUCH SUPPORT MUST BE MADE AVAILABLE TO ENSURE REASONABLE COMPARABILITY

The Communications Act of 1934, as amended (the “Act”) requires that universal service support must be allocated and distributed in the manner that best facilitates the preservation and advancement of universal availability of affordable communications services.² This goal requires that any universal service support program focus primarily upon the consumer, rather than upon any service provider or industry segment, to ensure that rural consumers have communications service options that are reasonably comparable to those enjoyed by consumers in urban areas.³ Indeed, the bedrock mandates of the Act require that the Commission:

² 47 U.S.C. § 254(b).
³ 47 U.S.C. § 254(b)(3).

- Periodically define “universal service” based upon an analysis of those services that, through the operation of market choices by customers, been subscribed to by a *substantial majority* of residential customers.⁴
- Ensure that consumers in rural and insular areas of the country have reasonably comparable access to those services defined as a “universal service” at rates reasonably comparable to those for comparable services in urban areas.⁵
- Provide specific, predictable, and sufficient support mechanisms in a competitively neutral manner to both preserve *and* advance the services designated for support such that all Americans have access to reasonably comparable services at reasonably comparable rates.⁶

The Act authorizes the Commission to use the high cost fund solely to achieve the goal of ensuring that all consumers have reasonably comparable access to the telecommunications services that the substantial majority of residential consumers are already purchasing in a manner that facilitates competition and consumer choice. However, the Act does not authorize the Commission to identify independent goals (*i.e.*, ubiquitous availability of fast broadband information services)⁷ and then design the distribution mechanism to achieve those goals at the expense of achieving the Act’s mandates in a manner that facilitates competition.

The USA Coalition welcomes the FCC’s recognition that wireless services offer unique benefits to rural consumers and the decision to add wireless services to the list of supported services pursuant to the Act’s framework.⁸ Today, 83 percent of Americans have cell phones, and approximately 35 percent of Americans use a smart phone.⁹ Smart phone ownership rates are particularly high among individuals between the ages of 25 to 44 (58%) and among African-Americans and Latinos (44%).¹⁰ Non-white smartphone users and smartphone owners with

⁴ 47 U.S.C. § 254(c)(1) (emphasis added).

⁵ 47 U.S.C. § 254(b).

⁶ *Id.*

⁷ The Order seeks to emphasize that all ETCs will have to continue to provide voice services. However, the true focus on broadband is apparent from the structure of the proposed reforms and the statements about the Commission’s intent.

⁸ *USF/ICC Reform Order* ¶ 87.

⁹ Aaron Smith, *35% of American Adults Own A Smart Phone*, Pew Internet & American Life Project (Jul. 11, 2011).

¹⁰ *Id.*

relatively low income and education levels are particularly likely to report that they go online mostly using their smartphone.¹¹ These trends, which have been accelerating over time, reflect the tremendous importance of wireless services in all areas -- including rural, insular and high cost areas -- and for all consumers -- including those considered disadvantaged for any reason. Thus, in light of the tremendous importance of wireless services for consumers, the Act requires the Commission's policies to follow the lead of consumers in ensuring that the benefits of competitive wireless services are available throughout the nation.

Just as many consumers have increasingly chosen to "cut-the-cord" for wireline voice services in favor of wireless voice services, they may, too, in the not distant future, increasingly do the same for broadband information services.¹² Therefore, the Commission should not sacrifice funding for wireless services, which may soon provide the most efficient (and more desirable) means for the delivery of information services in an effort to preserve and increase the funding available to wireline incumbents.

In refining the contours of the Mobility Fund and the Connect America Fund, the Commission therefore should enact policies that promote, rather than thwart, the widespread deployment, and maintenance, of competitive wireless networks. Among other things, the goal of achieving faster average upload or download speeds deliverable using only a specific set of technologies that are available *today* (*i.e.*, - wireline services capable of delivering 4 Mbps download - 786 kbps upload speeds) should not overshadow the importance of our nation's wireless infrastructure and the essential role that support from the legacy fund plays. The USA Coalition therefore urges the Commission to heed Commissioner's McDowell's call to lay the

¹¹

Id.

¹²

CENTER FOR DISEASE CONTROL, *Wireless Substitution: Early Release of Estimates Based on Data from the National Health Interview Survey, July-December 2010* (June 8, 2011) available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201106.pdf> (showing that approximately 30% of Americans live in households without a wireline phone).

groundwork needed in order to transition USF program “to support unserved consumers’ use of communications technologies from where they are to where they are going to be.”¹³ Accordingly, the Commission should embrace policies that allow for the expansion of communications networks as rapidly and efficiently as possible, by allowing for residents and businesses in rural, insular, and high-cost areas to select the services, technologies and service providers of their choice.

In light of these trends and given the growing reliance of the population on wireless services, the Commission’s decision to limit the available pool of Mobility Fund support to \$300 million annually for Phase I and \$500 million annually for Phase II is underwhelming, a mere fig leaf used by the Commission to claim consumer needs are being addressed.¹⁴ As noted by the USA Coalition in prior filings in this docket, with such a small fund size and the Mobility Fund’s proposed prioritization scheme, it is likely that the program would result in the creation of only a few hundred additional towers, expanding the Nation’s existing wireless coverage by only a fraction of a percent.¹⁵ Simply put, this level of funding plainly is not “sufficient” to deliver rural America with reasonably comparable access to the services available in urban areas, as required by the Act.

The Commission’s stated desire to expand wireless network into areas where the deployment would not have occurred but for the injection of federal funds is the appropriate

¹³ Statement of Commissioner Robert M. McDowell, *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; *Mobility Fund*, WT Docket No. 10-208.

¹⁴ *USF/ICC Reform Order* ¶ 495.

¹⁵ See Comments of the USA Coalition, WC Docket Nos. 10-208, at 22-23 (filed December 16, 2010) (“*USA Coalition Mobility Fund Comments*”); Comments of the USA Coalition, WC Docket Nos. 10-208, at 12 (filed January 18, 2011) (“*USA Coalition Mobility Fund Reply Comments*”).

outlook.¹⁶ Unfortunately, the FCC’s chosen funding allocations will actually function contrary to that vision. Operating expenses such as backhaul and maintenance associated with high cost areas are significant, but they are explicitly excluded from Phase I of the Mobility Fund.¹⁷ Meanwhile, legacy high cost support is being aggressively phased out, which puts the viability of some sites at risk and creates the distinct possibility that existing facilities may eventually become stranded for lack of adequate support, as recognized by the Commission.¹⁸

While Phase II of the Mobility Fund *may* allow for ongoing operating expense support, the relatively small size (\$500 million as compared to current wireless support distributions of approximately \$1 billion) and late arrival (support will not come online until 2014 at the earliest¹⁹) of the fund ensure that it is neither “predictable” or “sufficient” to preserve, let alone expand, existing networks. The possibility of obtaining a limited waiver from the phase down is of little solace to most carriers, especially given the Commission’s foreboding statement that “we do not expect to routinely grant requests for additional support, and any company that seeks additional funding will be subject to a thorough total company earnings review.”²⁰ It is worth noting that the FCC has let similar waivers sit unanswered at the Commission for years and, thus, there is little reason to believe the FCC would act on waivers promptly, particularly given the failure to consider the budget implications of granting a waiver request especially in light of the hard cap that has been placed on the total size of the fund and its individual high cost components. The Act requires more, and the Commission should take steps to ensure that the

¹⁶ 47 U.S.C. § 254(b)(5) (“There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”) .

¹⁷ *USF/ICC Reform Order* ¶ 300 (establishing Phase I of the Mobility Fund and the dedicated Tribal Mobility Fund, “each providing for one-time support[.]”)

¹⁸ *Id.* ¶ 496 (recognizing that some currently served “geographic areas may be served by a single wireless ETC, which might reduce coverage if it fails to win ongoing support within our \$500 million budget. “).

¹⁹ *Id.* ¶ 299 (“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[.]”).

²⁰ *Id.* ¶ 202.

combination of distribution mechanisms provide truly sufficient and predictable support to achieve the Act's goals.

Equally disappointing is the Commission's outright abandonment of its commitment to competitive and technological neutrality. Specifically, the Commission has proposed disproportionate set-asides for wireline incumbents to deliver services that have yet to be adopted by a "substantial majority" of residential consumers, as is required by the Act, while simultaneously stripping CETCs of support for services that have been so adopted.²¹ While challenges to the Order will continue for some time to come, the USA Coalition urges the Commission to ensure that all further reforms, if any, do not unfairly advantage one type of provider over another, or one set of technologies over another. Where savings are realized elsewhere in the Commission's reform efforts, such as when an incumbent declines to make a state-level commitment,²² serious consideration should be given to providing additional funding under Phase I or Phase II of the Mobility Fund.

The Commission should consider other approaches to directing additional funding towards the deployment of wireless services in rural areas. Without careful consideration and the judicial application of additional resources, the FCC risks condemning rural areas to monopolistic communications backwaters that offer consumers only limited options for service by artificially inhibiting, rather than facilitating, the development of competition both in supported and surrounding un-supported areas.

²¹ 47 U.S.C. § 254.

²² *Id.* ¶ 1188 (considering competitive mechanisms to distribute support in a way that maximizes the extent of robust, scalable broadband service and minimizes total cost when the incumbent declines to make the state-level broadband commitment).

II. LIMITING SUPPORT TO A SINGLE PROVIDER WOULD CONTRADICT THE ACT REGARDLESS OF THE CHOSEN DISTRIBUTION MECHANISM

The Commission's proposal to limit both Phase I and Phase II Mobility Fund support to only one provider in each area is not only fundamentally inconsistent with the Act but would also be unwise. Specifically, if the conditions in a particular market are such that subsidies are necessary to bring one provider to the area, limiting subsidies to a single provider would only increase market entry barriers and insulate the subsidized provider from the threat of competitive entry, if market conditions were to change to otherwise attract additional entrants. Under these circumstances, the subsidized provider would have little to no incentive to become more efficient or to provide better service over time – a necessary prerequisite for industry growth and job creation. Consequently, consumers would suffer, and continued support would likely be necessary in the area indefinitely. Rather than double-down on this strategy, which seems destined to systematically dismantle competition that currently exists in many places in rural America, the Commission should ensure that Phase II of the Mobility Fund facilitates competition or, at a minimum, the possibility of future competitive entry.

The USA Coalition and other industry members have consistently challenged the creation of a single-winner support system as inconsistent with the requirements of the Act and the Commission's own pro-competition statements.²³ Any proposal that would award support to only one auction winner is fundamentally inconsistent with the Act's goal of promoting competition and technological innovation.²⁴ Indeed, by its own terms, any mechanism that limits support to a

²³ See Comments of the USA Coalition, WC Docket Nos. 10-90 *et al* at 34-40 (filed July 12, 2010); Reply Comments of the USA Coalition, WC Docket Nos. 10-90 *et al* (filed Aug. 11, 2010); Comments of Rural Cellular Association, WC Docket Nos. 10-90 *et al*. at 14 (filed July 12, 2010); Reply Comments of SouthernLINC Wireless, WC Docket Nos. 05-337 *et al*. at 9-11 (filed Dec. 22, 2008).

²⁴ See Preamble, Telecommunications Act of 1996, P.L. 104-104, 100 Stat. 56 (1996) (stating that the purpose of the Act is “to promote competition ... regardless of where [Americans] live and work.”); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Order and Report, 11 FCC Rcd 15499 ¶ 1 (1996)

single carrier would ultimately award a regulatory monopoly to the supported provider, which is an anti-competitive result that is fundamentally inconsistent with the letter and the spirit of the Act.

A single-provider support mechanism, such as that proposed in the FNPRM, would also artificially insulate the supported carrier from market forces that would otherwise compel the carrier to become more efficient over time, thereby harming consumers. The pricing power enjoyed by the winning provider would essentially preclude competition in supported areas, resulting in lower standards of service and higher prices. Indeed, the reverse auction system creates perverse incentives for participating carriers, who may be willing to temporarily serve an area at a loss, in the expectation of receiving additional support or resorting to monopoly pricing down the road. To prevent this from happening in wireless markets, the Commission would have to monitor subsidized providers and, in some cases, engage in intrusive and burdensome regulation regarding performance characteristics, service quality, and rates.²⁵

The pricing power enjoyed by the recipient of a single-provider support mechanism is best illustrated with an example of the harm caused by awarding support to a single carrier in order to bring 4G services to an area where only 3G services are available today (and only with support from the legacy high-cost fund). For the purposes of this example, assume that

- Carriers A, B, and C, are all competitive ETCs that currently provide 3G services in a rural high-cost service area, with an average cost-per-line of \$11, \$12, and \$13 respectively.
- It would cost each carrier an additional \$5 per line per month to upgrade to 4G services.
- Within the area, there are currently 1,000 USF supported lines.

²⁵ (“By reforming the collection and distribution of universal service funds, the states and the Commission would ensure that the goals of affordable service and access to advanced services are met by means that enhance, rather than distort competition.”). See *Mobility Fund NPRM*, ¶¶ 35, 37-38 (requesting comment on how to reconcile proposed single-carrier support mechanism with baseline performance expectations and requirement that rates for such services remain reasonably comparable to rates charged in urban areas).

- Under the identical support rule, each of the three ETCs had received \$5 in monthly support for each line they serve in the area. As such, the legacy fund currently provides a total of \$5,000 in support to competitive ETCs serving the area.
- Competition had driven all of the competitive ETCs to charge a monthly rate of \$10.

Based on these assumptions, the following consequences would result from implementing a distribution methodology that subsidizes a single carrier:

- **Under a single-winner support mechanism, assume Carrier A is selected (either via reverse auction or a beauty contest utilizing a cost model) to receive a monthly support amount of \$10 per line in return for deploying 4G services in the area. All legacy support (i.e., \$5 per line) is eliminated for all carriers.**
- **Carriers B and C (now unsubsidized) must increase the prices they charge consumers for 3G services to uncompetitive levels (i.e., to \$13 and \$14, respectively) or cease providing service altogether.** Denied support, Carriers B and C must pass on their full costs to consumers, and they are no longer competitive with winning Carrier A, which receives \$10 support for each line served and can provide service profitably by charging the consumer \$7 or more (i.e., the total cost of \$16 per line minus \$10 subsidy plus \$1 profit).
- **Carrier A can now maximize its profits by increasing its price up to \$18, reaping almost \$8 more per line than under the current system.** Carrier A can increase its price to maximize its profit potential (regardless of the consumers served)²⁶ up to \$18, which represents the next lowest bidder's costs to provide similar 4G service (i.e., Carrier B, which needs revenue of \$18 per line of revenue to provide 4G service in the area without any subsidies).²⁷

²⁶ Some consumers may choose to forgo 4G service at the rates that Carrier A could theoretically charge. If enough consumers choose to forgo the \$18 service rate that Carrier A's profits begin to decline, Carrier A will reduce its rate to the point that its profits are maximized. Unless mandated by regulation, however, Carrier A would not have to reduce its rate below \$13, which is the lowest rate that Carrier B could charge for 3G service.

²⁷ Carrier B's minimum service price can be calculated by adding the \$1 charged to the end user with Carrier B's unsubsidized per-line cost necessary to provide 4G service (\$17) or 3G service (\$12).

Revenue Comparison			
A's Revenues Under the Identical Support Rule		A's Revenues As the Recipient of a Single-Winner Support Mechanism	
Customer charge:	\$ 10	Customer charge:	\$ 18
<u>USF Support</u>	+ \$ 5	<u>Mobility Fund Support</u>	+ \$ 10
A's Gross Revenues:	\$ 15	A's Gross Revenues:	\$ 28
<u>A's Per line costs</u>	- \$ 11	<u>A's Per line costs</u>	- \$ 16
A's Net Income:	\$ 4	A's Net Income:	\$ 12

- **Although customers would now have access to 4G service, the benefits of USF support would flow mostly to Carrier A in the form of increased profits rather than to rural consumers in the form of lower rates and more choices among service providers, services and devices.**
- **However, rural consumers would see a price increase of \$8 per month, from the previous \$10 per month to the new rate of \$18 per month. Carrier A would also see an increase in net income of \$8 per line (i.e., \$12 - \$4 = \$8 from Table).²⁸**

This example highlights that the proposals to phase out all legacy support for 3G or slower services while providing support to only one provider of 4G services constitutes a deal with the devil whereby consumers are forced to sacrifice choice and lower rates in order to have the right to buy faster services that they may not want or need. Customers who can afford to pay substantially more for service may gain access to 4G services, but they likely will pay substantially more for those services than they would have paid if their provider faced

²⁸ This profiteering can be mitigated somewhat by requiring carriers to provide service at government established rates. *See FNPRM ¶¶ 384-85, 1149.* However, setting rates via regulatory fiat runs counter to the Commission's pro-competitive commitment and the vision of the 1996 Act.

competition, or the threat of competition. Customers who cannot afford to pay the higher prices for 4G service will have to pay higher rates for the same 3G services they were already receiving. Moreover, the overall fund size will be no lower, so nobody benefits from lower contributions, not even consumers in non-subsidized areas. This result is fundamentally inconsistent with the requirements of the Act and the public interest. The threat of competitive entry is crucial to prevent these types of harm, and this can only be accomplished by making subsidies available to more than one carrier in each area.

Instead of reverting to an outdated monopoly system with all of its inherent drawbacks, the Commission should recognize, as Chairman Genachowski noted in his statement accompanying the release of the Commission's Fourteenth Wireless Competition Report, that "[c]ompetition in the wireless voice market over the past 15 years has spurred investment, innovation, and in many cases higher quality for lower prices for American consumers."²⁹ The Commission should heed the lessons of its own regulatory experience that competition, not monopolistic regulation, will propel the affordability and innovation of wireless services in high cost areas. Therefore, the Commission should ensure that every distribution mechanism facilitates competition by refusing to limit support to a single provider.

A) Any Reverse Auction Would Have To Be Designed To Facilitate Entry in a Manner that Does Not Harm Consumers or Competition

Given the anti-competitive harm that a single winner reverse auction would cause, the Commission should ensure that no carrier could abuse the system to gain competitive advantage not only in the supported area but also in surrounding unsupported areas.

²⁹ Statement of Chairman Julius Genachowski, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 09-66.

First and foremost, to the extent the FCC elects to rely upon reverse auctions, a minimum of two service packages should be auctioned in each area. This approach would ensure that consumers in supported areas enjoy the benefit of competitive choice and that the Commission would not inadvertently exacerbate consolidation by making it impossible for regional and smaller carriers to compete in the wireless marketplace. Indeed, the Act, and nearly all of the Commission's policies adopted after 1996, reflect the recognition that competition creates better incentives than Commission regulation ever could for carriers to compete for customers based on technological innovation, lower prices, and quality service. By contrast, a single winner reverse auction would create incentives for bidders to engage in a "race to the bottom," limited only by whatever regulatory requirements that the Commission imposes, based on their knowledge that consumers in the bidding area have no alternative to the winning bidder.

Second, as parties like SouthernLINC Wireless have urged in past filings, carriers should not be required to submit a single lowest-possible bid.³⁰ Rather, the Commission should facilitate iterative bidding across self-selected aggregations of census blocks within each state using a clock-proxy auction.³¹

Finally, the FCC will have to carefully monitor the compliance of winning bidders with the build out and regulatory requirements in order to prevent larger carriers from gaming the system to gain competitive advantage. Indeed, as explained in more detail below, the Commission should consider permitting carriers with more than 50 million subscribers to participate just in a second auction round only if no smaller carriers have submitted any qualifying bids in the initial round since the largest carriers can already subsidize entry with revenues from their large customer base. To the extent that a winning bidder subsequently fails

³⁰ See SouthernLINC Wireless *Mobility Fund NPRM Reply Comments*, WC Docket No. 10-208 at 6-10 (filed Jan. 18, 2011).

³¹ *USF/ICC Reform Order* ¶ 1155.

to meet the obligations, support for the area should be re-auctioned as soon as is practical so as to ensure that consumers are not denied needed service.

B) Any Model-Based Distribution Mechanism Would Have To Be Based on a Competitively- and Technologically-Neutral Model that Has Yet to Be Developed

The Commission also seeks comment on whether a forward looking economic model of costs and revenues of mobile wireless services could be used in place of competitive bidding for the second phase of the Mobility Fund or as a means of setting a minimum reserve price.³² The USA Coalition is not opposed to reliance upon a model. However, it remains unclear at this date how a technologically- and competitively-neutral model could be built and applied evenly across census blocks. Further, a model-based distribution mechanism will have to be accompanied by a mechanism for selecting the ETC eligible to receive support based on that model, which again has yet to be proposed. The efforts to develop an acceptable model are complicated by the fact that a greenfield model likely would not be efficient given the purpose of achieving the maximum impact for minimum investment. Simply put, the Commission would generally not be providing support on a “greenfield” blank canvas.³³ As such, the FCC would have to develop an appropriate brownfield model that considers, among other things, an ETC’s existing investment in the area, its historical reliability, and its financial wherewithal. Carriers have existing plant and facilities in many areas, which may be leveraged by the Commission to provide greater expansion of coverage, but at the cost of complicating the model and making distribution less efficient.

If the Commission chooses to explore the use of a model to determine support amounts or reserve prices, it should collaborate with industry in a follow-on rulemaking to develop further a working model that can be applied at the census block and/or census block tract level. Simply

³² *Id.* ¶¶ 1185, 1188.

³³ *Id.* ¶ 1178.

put, no model with sufficient publicly-available information is available, and thus interested parties are unable to provide meaningful comment at this stage, making this discussion a hypothetical one at best.

Until the FCC or a private party has developed a specific model, made the model available for public inspection, and proposed a specific distribution methodology for which the model would be used, it will be impossible for any party to provide meaningful input regarding the potential benefits and detriments of using a model. For example, there is no need to develop a sophisticated model if its only use would be to set reserve prices for reverse auctions, but a model could, in theory, serve an effective role in a different type of distribution mechanism. For example, the Commission could rely upon a model solely to determine the comparative costs of serving the average urban area and serving the supported areas, and then provide each ETC with that percentage of the costs that the ETC has actually incurred to serve the supported area. In this way, the Commission could rely upon a model to determine the amount of necessary support in a technologically- and competitively-neutral manner.³⁴

If the Commission decides to further pursue the cost model concept, the USA Coalition recommends that the Commission take the following steps:

- First, the Commission should release the model itself as well as any source code and inputs in order to allow parties to freely examine the model further for a reasonable period of time. The release of the CAF CQBAT models in September 2011 came far too late in the rulemaking process of the instant *Order* for adequate consideration by interested parties.
- Second, since Phase II of the Mobility Fund will support operating expenses as well as capital expenditures, the model must be capable of accounting for both types of costs.

³⁴ The USA Coalition has proposed framework whereby ETCs are reimbursed for at a uniform, specified percentage of the costs they actually incur to serve a given area. See USA Coalition, *A New Approach to Universal Service Reform*, filed in this docket on August 24, 2011 and attached hereto. Variations of the USA Coalition's alternative framework has been filed in this docket on several occasions, including October 27, 2009, January 28, 2010, July 12, 2010, and April 18, 2011.

- Third, the model must also take into account for the cost of spectrum and backhaul, an essential input to wireless service costs, especially in rural areas.
- Finally, once the model has been developed in this manner, the model must be opened up to further testing and review by the parties. Only through full disclosure and an iterative, collaborative testing process can the Commission ensure that the model has been properly reviewed and vetted.

Before the Commission decides whether to invest the time and resources to both create, as well as continually update a cost model, it should consider whether these costs outweigh the prospective benefits, especially if an alternative distribution mechanism is eventually selected. Under a market-based bidding mechanism, for example, carriers would base their bids on their own cost structures and projected revenues, not on hypothetical cost structures embodied in a model. In the event that Commission decides that a model is a superior method for apportioning support, the USA Coalition agrees with the Commission's proposal that any phase down in support currently available to ETCs should be frozen at 60% of the 2011 support baseline rather than continue to phase down legacy support,³⁵ since there exists no guarantee that the necessary operating support associated with Phase II of the Mobility Fund will be forthcoming.

III. SUPPORT SHOULD BE PROVIDED ON A CENSUS-BLOCK BASIS IN A MANNER THAT MAXIMIZES EFFICIENCY WITHOUT HARMING COMPETITION

A) The FCC Should Use Census Blocks to Define Supported Areas but Include Population Data in Addition to Road Miles Covered to Determine Prioritization of Funding

The USA Coalition agrees with proposals to provide support on a census block basis.³⁶ Census blocks provide a reasonable, competitively neutral basis for performing an analysis of whether an area requires support. However, the Commission should avoid grouping census blocks into larger groups, as the Commission risks unnecessarily interfering in the market. To the

³⁵ *USF/ICC Reform Order* ¶ 519.

³⁶ *Id.* ¶ 1129.

greatest extent possible, carriers responding to market forces, and not the Commission, should be responsible for determining the service areas they are willing, and able, to serve.

The USA Coalition agrees with the Commission's proposal to allow the carriers to seek support based on self-specified sets of census blocks to be covered and, depending upon the distribution mechanism at issue, the total amount of support needed to serve those blocks.³⁷ To the extent the Commission uses reverse auctions as the means for distributing support to providers, it should make use of available technology to choose the most efficient result from proposed service areas defined by the bidding carriers. For instance, using a clock-proxy auction, carriers would bid for the minimum amount of support necessary to provide service on each individual supported area. To capture economies of scale, carriers would also be permitted to bid on groups of census blocks, with the FCC choosing the combination of bids that best achieves the desired outcome.

The Commission should also reconsider its proposal to rely primarily on unserved road miles as the key metric for determining coverage.³⁸ Simply put, rural areas are more than just by-ways between major population centers. Although road miles may, in some areas, serve as a proxy for population, the reliance primarily on road miles may lead the FCC inadvertently to discount some rural areas where needs are great. To address this issue, the Commission should consider relying instead primarily on total population served as necessary to compare competing proposals. By adopting a hybrid approach, the Commission would be more likely to identify areas where support would likely have the greatest impact.

³⁷ *USF/ICC Reform Order* ¶ 1129.

³⁸ *Id.* ¶ 1122.

B) Support Should Be Prioritized For Areas Where There is No 2G or 3G Service

The purpose of the universal service mechanisms, as envisioned by the Act, is to bring all Americans up to a baseline of communications services that are reasonably comparable to those available in urban areas. The Act requires the Commission to ensure that consumers throughout the nation should have reasonably comparable access to services that have been adopted by the substantial majority of residential subscribers. At this time, the substantial majority of residential subscribers have yet to adopt 4G services, but they have adopted 2G and 3G services. As such, the Act requires the Commission “to prioritize support to areas that also lack 2G coverage[.]”³⁹ Indeed, it is unclear that the Act authorizes the Commission to prioritize support for 4G services to the extent that doing so would have a detrimental impact, due to budgetary concerns, on the network deployment needed in order to ensure reasonably comparable access to 2G and 3G services.

The USA Coalition also favors the proposal to prioritize 2G services due to the fact that the infrastructure deployed using Mobility Fund could potentially benefit multiple carriers (in light of the collocation and data roaming requirements associated with such funding). Thus, the USA Coalition agrees that both Phase I and Phase II of the Mobility Fund should support the deployment of 2G services where appropriate in order to extend networks into greenfield locations, enable a competitive ecosystem to evolve, and pave the way for future upgrades.

C) Unavailability Should Not Be Defined Solely in Terms of the Availability of 3G Services

The Commission should strongly resist any proposal that would define service unavailability *solely* in terms of advanced 3G services for either Phase I or Phase II of the Mobility Fund. As CTIA has noted, many areas that are “unserved” by the Commission’s

³⁹ *Id.* ¶ 1124.

definition of 3G services are currently being served by providers “offering something less than 3G.”⁴⁰ Indeed, many areas that currently lack access to advanced 3G services enjoy access to basic mobile services, often from multiple service providers.

As the Commission itself has noted, “[c]ompetition among mobile wireless providers using incompatible wireless network technologies has... advantages that can benefit consumers, including increased product variety and differentiation of services, more technological competition, and tougher price competition.”⁴¹ However, if Mobility Fund support were directed towards an area with existing competition, providers of basic mobile services would find it difficult, if not impossible, to compete with a subsidized provider of advanced 3G services. This danger becomes all the more acute now that all legacy high-cost subsidies for basic mobile services are to be phased out. Under this scenario, it is difficult to imagine how an unsubsidized provider would be able to successfully compete against a subsidized provider offering superior advanced services. Subsidizing a single carrier under these circumstances would not only create barriers to entry, it could also destroy competition that currently exists. As a result, the USA Coalition urges the Commission not to define “unavailability” solely in terms of 3G services since doing so would have a devastating impact on existing providers of basic mobile services in the area, and thereby their customers, especially in light of the phase down of CETC support.

D) Phase II Mobility Fund Support Should Eventually Be Available for Areas Where There is No Business Case for the Deployment of 4G Service, But Only After Such Services Have Been Adopted by a Substantial Majority of the Nation’s Consumers

Today, 4G service is being deployed but is not yet ubiquitous, even in urban areas, and the Act makes clear that the Commission’s duty is to focus on providing support for services that have already been adopted by a “substantial majority of residential consumers” rather than for

⁴⁰ CTIA *Mobility Fund NPRM* Comments at 7.

⁴¹ Fifteenth Wireless Report ¶ 107.

services the Commission believes that the substantial majority of residential consumers *should* adopt.⁴² That is, until the requisite level of adoption has been achieved, as determined by the nation’s consumers, the Commission should refrain from expending limited resources to inefficiently “push” a given level of service upon rural consumers. The Commission cannot meet its statutory obligation to provide services in rural, insular and high-cost areas that are “reasonably comparable” to services in urban areas by denying support to carriers in areas where outdated technology and wireless broadband services remain the standard.

While the desire to provide a given level of service is laudable, it is questionable whether the limited resources available for the Mobility Fund are best targeted to areas lacking 4G coverage as opposed to 2G or 3G coverage. Instead, during Phase I of the Mobility Fund, the Commission should work to improve the services to match those currently available to a substantial majority of consumers (*i.e.* - less than 4G services). Once the substantial majority of residential subscribers have adopted 4G services, the FCC should then shift the focus of support to ensure the reasonable comparability of access to 4G services. Until that time, the Commission has no authority to subsidize a single provider of 4G services based on the justification that the size of the fund is not large enough to adopt a distribution mechanism that would facilitate competition and the threat of competitive entry. The Commission instead should adopt policies that facilitate competitive entry for services that have been adopted by the substantial majority of residential subscribers.

E) Challenges to “Unserved” or “Served” Determinations Should be Entertained As Long as American Roamer Data Is Used to Identify Areas Eligible for Support

The USA Coalition also supports the Commission’s proposal to challenge that specific areas identified as unserved are actually served and/or that additional unserved areas should be

⁴² 47 U.S.C. § 254(c)(1)(B).

included.⁴³ As the Commission correctly notes, American Roamer data is a synthesis of self-reported information provided by existing providers that may exaggerate the extent of existing coverage.⁴⁴ With the threat of potential competition from a Mobility Fund applicant looming there may be an increased incentive to over-report coverage with the intent to eliminate given areas as eligible for support. Thus, rather than entertaining challenges to determinations for a particular area during a “limited timeframe only,”⁴⁵ as currently proposed, the USA Coalition submits that the availability of the challenge process should be extended indefinitely whenever the Commission publishes a list of “unserved” areas as a part of the pre-auction process.

IV. THE FCC SHOULD LIMIT INITIAL ELIGIBILITY TO PARTICIPATE IN THE MOBILITY FUND TO CARRIERS WITH LESS THAN 50 MILLION SUBSCRIBERS AND PROVIDE A BIDDING CREDIT FOR SMALL CARRIERS

In designing and implementing the Mobility Fund, the Commission, as well as the carriers and customers who fund this support mechanism, have a vital interest in ensuring that Mobility Fund support obtains the most “bang for the buck” in terms of additional wireless deployment. An efficient distribution mechanism should not provide scarce resources to carriers who do not need the support (*i.e.* - who would not reduce coverage or fail to expand coverage in the absence of support). Similarly, it would be inefficient and risky to provide support to entities who have not demonstrated a capability to provide service while complying with the obligations associated with the receipt of support. Thus, the two segments of Mobility Fund participants most likely to inefficiently utilize support would be large carriers who can effectively cross-subsidize markets and unproven new entrants who may bid aggressively in order to gain a market toehold only to fail to deliver on their obligations, wasting scarce resources in the process.

⁴³ *USF/ICC Reform Order* ¶ 337.

⁴⁴ *USF/ICC Reform Order* ¶ 336; *see also* Alaska Commission *Mobility Fund NPRM Reply* at 11; Benton *et al. Mobility Fund NPRM Reply* at 9.

⁴⁵ *USF/ICC Reform Order* ¶ 336.

A) The Commission Should Exclude Carriers With More Than 50 Million Subscribers From Mobility Fund Eligibility

The Commission should exclude Verizon, AT&T, and Sprint from participating in the Universal Service Fund unless other carriers are unable or unwilling to serve specific areas. In the USF/ICC Reform Order, the Commission established a budget of \$500 million for the Mobility Fund based on the \$579 million that “flowed to regional and small carriers.”⁴⁶ In doing so, the Commission noted the commitments of Verizon and Sprint to forgo USF support as part of their merger conditions. The Commission further noted that there is nothing in the record to suggest that these carriers “would reduce coverage or shut down towers in the absence of ETC support.”⁴⁷ In making these recommendations, the Commission acknowledged that the core of the Mobility Fund must be the regional and small carriers with a historic commitment to providing service within a regional or local footprint without the benefit of cross-subsidization from the nation’s urban areas.

Carriers with more than 50 million subscribers have a revenue base that is large enough to subsidize their own entry into rural, insular and high-cost areas. Competitive forces between the three carriers play a role in determining where they choose to deploy their resources. The prevalence of a single, national rate offering among large carriers attests to this fact. Regional and local carriers, by contrast, lack the same ability to subsidize entry into rural, insular and high-cost areas, and yet the presence of regional and local carriers is an important competitive counterbalance to the national carriers. In addition, regional and local carriers also may be harmed by large carriers making aggressive reverse auction bids made possible due to the large subscriber base, which would force unsubsidized regional and local carriers to compete on a uneven playing field that could cause some to reduce service offering of unsubsidized services

⁴⁶ *ICC/USF Reform Order* ¶ 495.

⁴⁷ *Id.*

(e.g., 2G and 3G), raises prices which may hurt their ability to effectively compete, or leave the market altogether.⁴⁸ For this reason, the Commission should consider permitting carriers with more than 50 million subscribers to receive support only for areas where no smaller carriers are willing or able to provide service using subsidies from the fund. As a related corollary, the Commission should consider making support available where there are no carriers with more than 50 million subscribers offering unsubsidized 3G service.

B) Participation In The Selection Process Should Be Limited To ETCs With a Proven Capability To Meet The Obligations Associated With The Receipt Of Support

At the other end of the spectrum are potential entrants who do not have a proven track record in the telecommunications industry and may be willing to participate in the Mobility Fund in order to gain a toehold into a given market or, in some instances, attempt to exploit the funding mechanism by engaging in forms of regulatory arbitrage to submit a bid within the letter of the rules but nevertheless inconsistent with the goal of sustainable deployment. Unfortunately, the history of the USF program suggests that with every support program comes a novel approach to bending the rules to produce large support awards without a concurrent contribution towards the underlying goals of the program. There is little reason to believe that creative minds will fail to devise means to produce similar results here.

The best antidote to this problem is to ensure that only carriers with a proven track record of delivering services to the supported area be eligible to participate in the Mobility Fund. The Commission should require that only ETCs designated to provide supported services within a given supported area should be permitted to participate in bidding within that supported area. Existing ETCs have already been approved by the states or the Commission to provide service for the legacy high-cost fund, along with the set of public interest obligations associated with

⁴⁸ See Cellular South *Mobility Fund NPRM* Comments at 8.

receiving such support. As the Commission correctly notes, limiting auction participation to only already designated ETCs “may help ensure that the pool of bidders is serious about seeking support and meeting the obligations that receipt of support would entail.”⁴⁹

Thus, the USA Coalition supports the Commission’s proposal to require that “applicants for [Mobility Fund] support be designated as ETCs covering the relevant geographic area *prior* to participating in an auction”⁵⁰ in addition have access to spectrum and be able to certify that it is financially and technically capable of providing service within a specified timeframe.⁵¹

C) The Commission Should Adopt a Bidding Credit for Small Businesses

As Chairman Genachowski recently reiterated, “a competitive mobile marketplace... drives innovation and investment, creates jobs and benefits consumers.”⁵² Unfortunately, the structure of the proposed Mobility Fund, whereby only a single wireless provider will be eligible for support, creates a significant risk of monopolistic or anti-competitive behavior that the Commission must carefully guard against. The inclusion of a small business bidding credit in the structure of the Mobility Fund would counter this tendency, by injecting additional competition into the fund auctions and enabling the regional and local carriers who have historically concentrated on rural and high cost areas to continue to serve their historic customers. Therefore, the USA Coalition agrees that the Commission should extend the policy present in its spectrum auction process, wherein the Commission typically awards small business bidding credits ranging from 15 to 35 percent, to the Mobility Fund as has been proposed.⁵³

In the Commission’s spectrum auction context, which the structure of the Mobility Fund is modeled after, both Congress and the Commission have recognized the value of providing

⁴⁹ *USF/ICC Reform Order* ¶ 392.

⁵⁰ *Id.* ¶¶ 388, 1199.

⁵¹ *Id.* ¶¶ 388; proposed Rule § 54.1013.

⁵² STATEMENT FROM FCC CHAIRMAN JULIUS GENACHOWSKI REGARDING AT&T INC.’S ABANDONMENT OF ITS PROPOSED ACQUISITION OF T-MOBILE USA INC. (Dec. 9, 2011).

⁵³ *USF/ICC Reform Order* ¶¶ 1156-1157.

economic opportunity and competition in the wireless communications industry and affirmatively mandated that auctions should be structured to enable participation by small businesses. Specifically, Congress directed the Commission to:

promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.⁵⁴

The same issues addressed in the spectrum context apply equally to the Mobility Fund auctions. As a result, the Commission should take affirmative steps to encourage small businesses to participate in the auction. As the Commission itself has noted: “[t]he structural and behavioral characteristics of a competitive market are desirable not as ends in themselves, but rather as a means of bringing tangible benefits to consumers such as lower prices, higher quality and greater choice of services.”⁵⁵ The competition provided by such entities works as an effective counter to the national carriers, especially their ability to cross-subsidize service, deploy additional resources to the auction bidding process, and enjoy economies of scale providing alternatives to and needed to compete effectively in an auction for support and within the industry in general. A small business bidding credit would ensure that the Mobility Fund auctions would be truly competitive, rather than inherently tilted in favor of the largest carriers and increase the likelihood that rural areas will not be denied the salutary benefits of competition.

⁵⁴ 47 U.S.C. § 309(j).
⁵⁵ Fifteenth Wireless Report ¶ 156.

V. IN ORDER TO PROTECT COMPETITION IN SUPPORTED AREAS, THE COMMISSION MUST VIGILANTLY ENFORCE THE MOBILITY FUND'S COLLOCATION AND DATA ROAMING OBLIGATIONS

To be clear, the USA Coalition strongly opposes any distribution mechanisms that limit support to a single wireless provider, as discussed in detail above. The USA Coalition supports distribution mechanisms that permit competitors to enter the market under the same terms and conditions, which would eliminate the need for the types of conditions that supporting a single provider necessitate in order to protect consumers. However, to the extent that the Commission ignores these concerns, it must be prepared to vigilantly enforce the public interest obligations associated with the Mobility Fund auctions, particularly the collocation and data roaming requirements, as an antidote to the anti-competitive structure inherent in both Phase I and Phase II of the Mobility Fund. These conditions prevent the supported carrier from leveraging the unfair advantage it has gained as the sole recipient of universal service funding to prevent other ETCs from serving the supported area and should be applied to both phases of the Mobility Fund equally.

For both Phase I and Phase II of the Mobility Fund and the CAF, the Commission should condition support upon the requirement that the supported carrier make any service or facility that it owns or controls in the supported area (*e.g.*, tower space, backhaul, collocation, roaming) available to any other ETC at rates, terms and conditions that are equal to that which the support carrier provides itself or any other party, whether affiliated or not. The condition should also prevent the supported carrier from frustrating the *de facto* availability of covered services and facilities through onerous requirements or eligibility criteria. The Commission should police these requirements vigorously in order to ensure that they permit consumers in the supported area to enjoy some of the benefits of competition despite supporting only a single ETC, which is inherently anti-competitive. By developing and enforcing these conditions, the Commission can

mitigate (but not alleviate) some of the problems associated with providing support to only a single carrier.

VI. THE FCC SHOULD RATIONALIZE SEVERAL OF THE PUBLIC INTEREST REPORTING OBLIGATIONS AND LETTER OF CREDIT REQUIREMENT FOR MOBILITY FUND AND LEGACY HIGH COST FUND RECIPIENTS

A) The Commission Should Eliminate the Need for Existing ETCs to Post Security as a Condition of Receiving Support

In creating the Mobility Fund, the Commission required winning bidders for Mobility Fund support to provide an irrevocable stand-by Letter of Credit in the amount equal to the support proposed to be received, regardless of the size of the supported carrier.⁵⁶ The USA Coalition respectfully submits that this requirement would be unduly burdensome. At most, a LOC could be requested of new carriers that lack a history of regulatory compliance and financial stability. Indeed, the ETC designation process should be sufficiently robust to ensure that only qualified participants are allowed to compete for Universal Service Fund subsidies. Therefore, carriers with a history of providing supported services in neighboring areas and complying with applicable regulatory obligations should not be required to provide additional surety since the risk is far less that an established carrier will be unable to expand its network into neighboring areas that lack coverage.

To the extent that the Commission nonetheless decides to require a deposit, it should be scaled to a proportion of the amount of support the ETC will receive. It should also be of a size and structure that will not discourage smaller regional and local carriers from participating in the fund.

⁵⁶ *USF/ICC Reform Order* Appendix O ¶ 99.

B) The Commission Should Reduce Support Available To Carriers That Do Not Meet Their Commitment To Provide Supported Service

In order to dissuade carriers from bidding for support in areas and then subsequently failing to deliver service to those areas within the build-out period, the Commission should reduce the support received by ETCs for failure to meet the service obligations by an amount equal to 125% of the percentage of the area the ETC committed to cover with qualifying service and which it failed to do. In addition, ETCs that fail to meet their obligation to provide supported services across a supported area should be placed on parole for a period of two years. If the ETC fails to fully rectify the problem after two years, the Commission should hold a new auction for support, with the original ETC excluded from participation.

C) The Commission Should Reduce And/Or Eliminate ETC Obligations In the Event That the ETC Does Not Receive USF Support

An ETC should only be subject to ETC obligations in areas in which it is currently receiving support. Maintaining the requirement that ETCs meet all obligations to serve (which vary from state to state) even in areas where the ETC does not receive support will discourage participation in the Mobility Fund auctions.⁵⁷ Further, it would create incentives for ETCs to relinquish their ETC status, reducing competition in future USF-support selection processes. Further, the Commission's proposal to address the need for waivers from ETC requirements for non-supported ETCs *via* forbearance petitions is likely to be both burdensome and slow, and could conceivably require ETCs to bear burdens for which they are no longer receiving support. Alternatively, ETCs should be permitted, without seeking permission of the FCC or a state PUC, to relinquish ETC status in a service territory upon completion of the selection process for Phase II of the Mobility Fund if the ETC does not receive funding for the service territory. Thus, the

⁵⁷ *Id.* ¶ 1096.

Commission should clarify that a Mobility Fund recipient is only required to meet its ETC obligations for the areas that it receives support.

D) The Commission Should Minimize The Burden Associated With The Reporting Obligations Contained In The Order And In The *FNPRM*

Mobility Fund participants should be only required to certify to USAC that they meet the minimum metrics for support. Any information not essential to the determination of whether support is being used appropriately should not be required to be submitted. While build-out plans and certifications are surely fair game for reporting, other requirements are burdensome and intrusive. To the extent that it is necessary, USAC could request evidence of compliance by making a specific request for supporting information from the ETC, rather than requiring the submission of price offerings and network performance test data. In either event, the Commission should make clear that such information should be protected from disclosure. Finally, the Commission should not increase the reporting burdens of ETCs who do not receive any funding from the newly-created funding mechanisms. Rather, their reporting obligation should be grandfathered during the time period in which the support they receive is phased out. Indeed, the USA Coalition supports the proposal to eliminate ETC obligations as reductions in funding occur.⁵⁸

VII. THE REMOTE AREAS FUND SHOULD BE STRUCTURED IN A MANNER THAT SUPPLEMENTS, RATHER THAN COMPETES WITH, THE MOBILITY FUND AND CONNECT AMERICA FUND

The USA Coalition recognizes that the principles of the Act require that *all* consumers have reasonably comparable access to the communications services available in urban areas, which includes the Nation’s hardest to access “remote” areas.⁵⁹ However, as was recognized in the *National Broadband Plan*, serving the most difficult to reach housing units would account

⁵⁸ *Id.* ¶ 1095.

⁵⁹ *Id.* ¶¶ 1223-1225.

for a disproportionate share of funding if these areas are to receive the same level of service as the less remote, but still rural or otherwise high cost, areas of the country.⁶⁰ The USA Coalition applauds the creation of the Remote Areas Fund (“RAF”) as a significant first step in addressing the unique challenges associated with these particular areas of the country.

While the challenges of connecting Remote Areas represent a difference in kind from the challenges facing much of rural America, many of the safeguards present in the Mobility Fund and Connect America Fund provide a helpful foundation for the appropriate regulatory structure. For example, the USA Coalition agrees that the Commission should require participants in the Remote Area Fund to be designated as ETCs and should require them to provide all supported services.⁶¹ Further, the allowance that ETC grants be conditional upon the receipt of funding makes sense, especially given the fact that support is structured as a portable consumer subsidy.⁶² However, once an RAF applicant receives funding they should be required to meet the same service quality metrics as participants in the CAF program, as is currently proposed.

The most difficult challenge facing the Commission is determining the definition of “Remote Areas” eligible for RAF funding. All of the issues raised by using a forward-looking cost model discussed in Section II-C above apply equally here. The use of the National Broadband Map, as currently constructed is insufficient to the task since it is, as the Commission notes, “is reported voluntarily by broadband providers” who may have competitive incentives to over-report their coverage footprint.⁶³ The USA Coalition submits that the best means to determine RAF support may be to use the auction results from the Mobility Fund auctions to

⁶⁰ See *National Broadband Plan*, Chapter 8, Exhibit 8-C (“serving the 250,000 housing units with the highest gaps accounts for \$14 billion of the broadband availability gap. As Exhibit 8-C depicts, this represents less than two-tenths of 1 % of all housing units in the United States. The average amount of funding per housing unit to close the gap for these units with terrestrial broadband is \$56,000.”).

⁶¹ See 47 C.F.R. § 54.1203.

⁶² *USF/ICC Reform Order* ¶ 1225.

⁶³ *Id.* ¶ 1230.

derive an idea where deployment is least likely to flow as the result of private investment. That is, assuming the Mobility Fund auctions receive a sufficient number of bids (which would be more likely if funding was raised to a genuinely attractive level), the Commission will be provided with a significant amount of data regarding high cost of service areas. The Commission could use the bidding data to determine which areas were the least attractive to mobile providers and designate the tail end of the curve as well as areas designated as “unserved” for Mobility Fund purposes that received no bids at auction as eligible for RAF support.

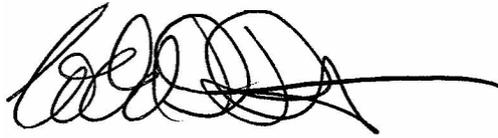
The Commission must be careful, however, to ensure that the RAF is structured in a way that it will not inhibit the deployment of traditional wireline and/or wireless services. As such, to the extent that a terrestrial wireline and/or wireless carrier enters a designated Remote Area and offers qualifying services, that entering ETC should be entitled to collect the Remote Area Fund subsidy under the same conditions as any existing Remote Area Fund providers until the next round of RAF auctions and/or model analysis. This approach would provide an incentive for the expansion of terrestrial networks over time, while ensuring that RAF-subsidized providers face at least the threat of competitive entry and therefore remain accountable to market forces in their pricing and service offerings.

* * *

CONCLUSION

The USA Coalition urges the Commission to base any of its reforms upon the requirements of the Act and to pursue rational and sustainable methods to ensure that all Americans have access to reasonably comparable telecommunications and information services at reasonably comparable rates.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Todd D. Daubert', with a long horizontal flourish extending to the right.

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