

**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 RCA—THE COMPETITIVE CARRIERS ASSOCIATION

Steven K. Berry
Rebecca Murphy Thompson
RCA—THE COMPETITIVE CARRIERS ASSOCIATION
805 Fifteenth Street, N.W., Suite 401
Washington, DC 20005

January 18, 2012

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RCA—The Competitive Carriers Association (“RCA”) submits these comments in response to *Further Notice of Proposed Rulemaking* issued in the above-captioned proceeding.¹

RCA is the principal association representing competitive wireless telecommunications providers across the United States. RCA represents the interests of more than 100 members, including many regional and rural wireless carriers. Most of RCA’s carrier members currently receive

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 (rel. Nov. 18, 2011) (“*CAF Order*” or “*FNPRM*”).

high-cost support provided by legacy Universal Service Fund (“USF”) mechanisms, and such support enables these members to construct and upgrade high-quality networks and to provide affordable service to rural consumers. RCA’s members stand to lose a substantial portion of this critical funding as a result of “reforms” adopted in the *CAF Order* that eschew competitive and technological neutrality in favor of unwarranted preferences for wireline technology. While the key foundations of such wireline preferences will require correction through the appellate and/or reconsideration process, RCA urges the Commission to use this further rulemaking proceeding, to the greatest extent possible, as an opportunity to put USF policy on a more competitively neutral and pro-consumer footing.

INTRODUCTION AND SUMMARY

As RCA and its members repeatedly emphasized in the rulemaking leading to the *CAF Order*, the Commission should pursue consumer-oriented, competitively and technologically neutral policies in distributing high-cost USF support, rather than favoring particular technologies or classes of providers and thus undermining competition. Unfortunately, the *CAF Order* includes wrongheaded preferences for wireline incumbent LECs—both price cap carriers and rate-of-return carriers—and it relatedly imposes artificial and unjustified limits on the amount of funding available to wireless carriers. Among other things, the *CAF Order* overcompensates price cap incumbent local exchange carriers (“ILECs”) (at an inflated rate of \$775 per line) for building out broadband facilities during Phase I of the Connect America Fund (“CAF”) and gives those carriers a unilateral right of first refusal to take \$1.8 billion in Phase II CAF support annually; it contemplates more than \$2 billion in annual funding for rate-of-return ILECs without any mechanism to make such funding available to more efficient competitive providers; and it establishes an overall budget for high-cost support that inexplicably would direct nearly *ten times* more support to wireline carriers than to wireless carriers, notwithstanding

business and residential consumers' demonstrated preference for increasingly fast mobile wireless services.

Although RCA has long espoused an integrated, technology-neutral funding mechanism in lieu of separate wireline and wireless funds, and it supports those reconsideration petitions that seek to address the concerns identified above, RCA also has explained that the problems associated with separate funds could be mitigated if the relative budgets for wireline and wireless support were not skewed so dramatically in favor of wireline carriers. To that end, the Commission should determine that where a price cap carrier declines to exercise its statewide right of first refusal with respect to Phase II CAF support, the relevant amounts that would have been distributed to that price cap carrier will instead be transferred to the Mobility Fund (and the annual Mobility Fund budget will be increased accordingly) to enable wireless carriers to efficiently build, provide, and upgrade broadband service to the public with the available funding. When a price cap ILEC has passed on its exclusive option to receive Phase II CAF support in a given state, the Commission should turn to wireless ETCs serving that state to meet consumers' needs based on the same rationale asserted in support of the ILECs' right of first refusal—namely, ensuring rapid broadband deployment by providers that are well-situated to meet that challenge.²

In the same vein, the Commission should take aggressive action to minimize the wasteful dedication of excessive USF funding to rate-of-return ILECs. Even apart from its grossly inflated level vis-à-vis the Mobility Fund budget, the proposed \$2 billion-plus annual budget for supporting rate-of-return carriers is premised on a host of excessive revenue requirements and cost estimates. By reducing the prescribed rate of return and limiting reimbursable expenses,

² See *CAF Order* ¶ 177.

among other measures, the Commission can significantly reduce the budget for supporting rate-of-return carriers and devote the savings to ameliorating the substantial underfunding of wireless ETCs.

Finally, RCA supports the imposition of meaningful public interest obligations on all recipients of high-cost support, but at the same time those obligations should account for the particular circumstances of various ETCs and should be no more burdensome than necessary. For example, while RCA has consistently supported build-out and performance requirements for ETCs, such requirements should be sufficiently flexible to account for challenges including funding limitations, spectrum constraints, and a lack of available equipment (such as in the Lower A Block of the 700 MHz band). Moreover, the Commission should ensure that any new reporting requirements do not duplicate information that is otherwise available or seek data (such as retail pricing information) that would quickly become stale and thus would be of limited value to the public.

DISCUSSION

I. THE COMMISSION SHOULD IDENTIFY WAYS TO REDIRECT EXCESSIVE SUPPORT BUDGETED FOR ILECs TO THE MOBILITY FUND

A. Where a Price Cap Carrier Declines the State-Level Commitment, the Commission Should Transfer the Available Support to the Mobility Fund and Increase the Fund's Budget Accordingly.

As noted above, a chief flaw of the *CAF Order* is its preferential treatment of wireline carriers and concomitant underfunding of wireless ETCs. Although that issue is likely to be addressed in the pending Tenth Circuit appeal and in response to various reconsideration petitions, the *FNPRM* provides an important opportunity to mitigate the unwarranted funneling of funding to ILECs and to ameliorate the associated competitive and consumer harms. At a

minimum, the Commission should determine that funds unclaimed by price cap carriers pursuant to their right of first refusal should be redirected to wireless ETCs through the Mobility Fund.

The record compiled previously demonstrates that the \$400 million in annual non-tribal support budgeted for the Phase II Mobility Fund will be grossly inadequate.³ At the same time, consumers have demonstrated a strong, sustained, and growing preference for mobile wireless services,⁴ and the President has advanced the goal of providing at least 98 percent of Americans with access to 4G high-speed wireless service.⁵ Additionally, studies have shown that consumers are inclined to adopt mobile rather than landline technologies when given the opportunity. Although the Phase II CAF funds declined by price cap carriers are unlikely to ensure *sufficient* funding for wireless carriers, as required under the Act (or consistent with the demands of consumers and the goals of the President),⁶ additional support plainly would help

³ See, e.g., Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.*, at 1-2 (filed Oct. 19, 2011); Letter of Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA, and Scott K. Bergman, Assistant Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (filed Sept. 22, 2011); Reply Comments of RCA—The Competitive Carriers Association, WC Docket No. 10-90 *et al.*, at 8 (filed Sept. 6, 2011) (“RCA USF Public Notice Reply Comments”); Comments of United States Cellular Corp., WC Docket No. 10-91, at v (filed Aug. 24, 2011); Comments of MTPCS, LLC d/b/a Cellular One, WC Docket No. 10-90 *et al.*, at 15 (filed Aug. 24, 2011).

⁴ See, e.g., Industry Analysis and Technology Division, Wireline Competition Bureau, INTERNET ACCESS SERVICES: STATUS AS OF DECEMBER 31, 2010, at 1 (rel. Oct. 2011) (“2011 INTERNET ACCESS SERVICES REPORT”) (noting that “[g]rowth [in Internet access connections] is particularly high in mobile Internet subscriptions,” where “mobile subscriptions exceeded 84 million by December 2010 –up 63% for the year”) (emphasis supplied).

⁵ Press Release, The White House, President Obama Details Plan to Win the Future through Expanded Wireless Access (Feb. 10, 2011), <http://www.whitehouse.gov/the-press-office/2011/02/10/president-obama-details-plan-win-future-through-expanded-wireless-access>.

⁶ 47 U.S.C. § 254(d) (mandating the establishment of “specific, predictable, and sufficient mechanisms ... to preserve and advance universal service”).

ameliorate the shortfalls that otherwise will occur. And if greater-than-anticipated amounts were made available, such supplemental funding could even cure some of the key legal defects that may well jeopardize the *CAF Order* on review.

The *FNPRM* proposes instead to auction funds where a price cap carrier declines to exercise the right of first refusal established by the *CAF Order* and to make the ILEC in question eligible to participate in such competitive bidding.⁷ Just as the Commission determined in the *CAF Order* that its interest in spurring rapid broadband deployment justified a right of first refusal for ILECs (as opposed to a more competitively neutral funding mechanism under which competitors would have been eligible for support in the first instance),⁸ it should rely on that same rationale to give wireless ETCs the opportunity to build out broadband networks in states where the price cap carrier declines to use available CAF support for that purpose. In contrast to parties that are not designated as ETCs, wireless ETCs serving the relevant geographic areas have already been approved and have permits, established vendor relationships, and service capabilities in the relevant areas. Indeed, RCA's members have offered advanced wireless services in rural areas since the inception of cellular technology. Existing wireless ETCs thus are ready, willing, and able to meet the challenge of deploying broadband networks and services to rural consumers.

⁷ *FNPRM* ¶¶ 1190, 1198. In fact, no such right of first refusal should be given. Consumers have demonstrated more interest in wireless technology, because landline subscriptions are increasing more slowly than wireless subscriptions. The Commission should not pick winners and losers but instead should be guided by its obligation to serve the public interest and, as a result, by consumers' demonstrated preference for wireless technology.

⁸ See *CAF Order* ¶ 177 (justifying the provision of a right of first refusal to price cap carriers because they "have had a long history of providing service throughout the relevant areas" and "generally have already obtained the ETC designation necessary to receive USF support throughout large service areas," which purportedly "puts them in a unique position to deploy broadband networks rapidly and efficiently").

Moreover, there is no sound reason to give ILECs a second bite at the apple after they decline their preferential right of first refusal. To the contrary, such an approach would invite those carriers to game the system in order to secure the best deal for *themselves*, rather than for *consumers*. In particular, if a price cap carrier that declines the state-level commitment nevertheless were allowed to secure CAF support for certain census blocks within that state, the Commission effectively would create opportunities for the incumbent provider “to cherry pick the most attractive areas within its service territory” and bypass the less desirable areas.⁹ Indeed, this proposal would allow the price cap carrier to avoid the “state-level” aspect of the state-level commitment, thus eviscerating the negotiated commitment. The Commission’s statutory obligations under Section 254 strongly militate against proposals that would allow ILECs to engage in such cherry picking.¹⁰ It would make far more sense to give wireless ETCs access to the funding that the ILEC already has rejected.

As discussed below, supplemental funding should be distributed to wireless carriers pursuant to a forward-looking cost model, along with other Phase II Mobility Fund support. But even if the Commission rejects the proposed cost models and insists on a reverse-auction approach, increasing the Mobility Fund budget by the amounts freed up through foregone Phase II CAF support would represent a significant improvement over the status quo, as addressing the severe underfunding of wireless carriers is an even more critical objective than selecting an optimal method for distributing high-cost support to such carriers.

⁹ *Id.* ¶ 173.

¹⁰ *See FNPRM* ¶ 1195 (acknowledging that the Commission’s “statutory obligation runs to consumers, rather than carriers, and that [it] must target ... limited funds for support in a way that expands and sustains the availability of mobile broadband services and to maximize consumer benefits”).

B. Eliminating Wasteful Support for Rate-of-Return Carriers Can Further Remedy the Underfunding of Wireless Carriers.

The *FNPRM* proposes a separate new support mechanism for rate-of-return carriers with an annual budget starting at \$2.05 billion (and potential increases thereafter) based on the Rural Associations' proposal to create a broadband-focused CAF mechanism under which rate-of-return carriers would be the exclusive beneficiaries.¹¹ As RCA explained in its comments in response to the Commission's *August 3rd Public Notice*, such an approach would lock in excessive funding for an inefficient class of providers with disastrous long-term consequences for the USF program and rural consumers.¹² Rather than adopting the Rural Associations' self-serving plan, the Commission should recognize that earmarking more than \$2 billion annually for rate-of-return carriers, while allocating only 20 percent of that amount for rural wireless carriers operating outside tribal areas, would be a backward-looking and unjustifiably discriminatory approach.

When consumers are demonstrating a strong and growing preference for mobile services (both narrowband and broadband alike), at the same time that rate-of-return carriers are losing customers in droves, it would be entirely upside down to devote the lion's share of high-cost funding exclusively to wireline carriers. That approach also would be grossly anticompetitive. Rate-of-return carriers should not be insulated from competition in the interest of ensuring affordable and ubiquitous voice and broadband services; rather, the Commission should focus on ensuring the provision of service to the consumer in the most cost-effective manner possible,

¹¹ See *id.* ¶¶ 1032-34 & App. G.

¹² Comments of the Rural Cellular Association, WC Docket No. 10-90 *et al.*, at 3 (filed Aug. 24, 2011) ("RCA USF Public Notice Comments") (explaining that "the principles of maintaining technological neutrality and harnessing the benefits of competition are nowhere to be found in the ILECs' ... USF reform proposals"); see also RCA USF Public Notice Reply Comments at 9-13.

which must include embracing more efficient technologies than wireline networks. Indeed, the Commission's continued policy of preferring legacy providers to the exclusion of wireless and other more popular and emerging technologies runs contrary to Congress's fundamental goal of promoting competition in the local communications marketplace.¹³

Even apart from whatever changes may flow from the appellate and/or reconsideration process, the Commission can use the further rulemaking to identify ways to substantially reduce the inflated budgets planned for rate-of-return funding and then redirect the available support to the Mobility Fund, as with Phase II CAF funds foregone by price cap carriers. For example, one key means of reducing the inflated budgets for supporting rate-of-return carriers is to lower the 11.25 percent prescribed rate of return, pending the elimination of rate-of-return regulation altogether. Assuring that level of return on investment in the modern economic climate is entirely unwarranted, as other competitors enjoy no guarantee of *any* profit margin and 11.25 percent far exceeds any reasonable estimate of the cost of capital in today's marketplace. The *FNPRM* thus acknowledges that the current 11.25 percent rate of return is no longer appropriate and suggests that the interstate rate of return be reduced to "no more than 9 percent."¹⁴ At the same time, the *FNPRM* notes that the State Members have proposed that the prescribed rate of return "be reduced further to 8.5 percent."¹⁵ Based on estimates from a wide range of carriers, the Commission itself found that 6 to 8 percent would be a reasonable estimate of the weighted average cost of capital.¹⁶ RCA urges the Commission to adopt the lowest rate of return

¹³ See, e.g. *Verizon Cal. v. FCC*, 555 F.3d 270, 274 (D.C. Cir. 2009); *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 576 (D.C. Cir. 2004); *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 761 (8th Cir. 2000).

¹⁴ *FNPRM* ¶ 1057.

¹⁵ *Id.* ¶ 1046.

¹⁶ See *id.* ¶ 1057.

supported by the record and to redirect to the Mobility Fund whatever funds are made available through reduced ILEC revenue requirements.

By the same token, the Commission should diminish wasteful spending on gold-plated, inefficient ILEC infrastructure and overhead by limiting reimbursements of asserted capital and operating costs and redirecting the savings to the Mobility Fund.¹⁷ RCA therefore urges the Commission to identify reasonable benchmarks for such costs—using actual cost data submitted to NECA with a more rigorous audit control process. Further, the Commission should not presume that rate-of-return carriers’ past expenditures are an appropriate gauge of reasonable spending levels. To the contrary, as the Commission has acknowledged, rate-of-return regulation creates incentives for carriers to “make imprudent investment decisions” and maintain a “bloated corporate overhead[] ... [and] an inefficient operating structure” so as to maximize available subsidies.¹⁸ Accordingly, the Commission should adopt a methodology for limiting capital and operating expense reimbursements that is based on spending levels driven by market forces that are objectively reasonable and efficient.

II. THE COMMISSION SHOULD DISTRIBUTE PHASE II MOBILITY FUND SUPPORT THROUGH A FORWARD-LOOKING COST MODEL

As RCA has long argued, forward-looking cost models offer the most efficient and competitively neutral means of distributing high-cost support. In particular, such models appropriately base support on the costs an efficient carrier would incur in providing the required minimum level of broadband service for each area. As the Commission has long recognized,

¹⁷ See *id.* ¶¶ 1079-88.

¹⁸ *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 an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 ¶ 171 (2011). See also *id.* ¶ 178.

forward-looking cost models “best approximate[] the costs that would be incurred by an efficient carrier in the market” and thus “send the correct signals for entry, investment, and innovation.”¹⁹ Moreover, “a forward-looking economic cost methodology creates the incentive to operate efficiently and does not give carriers any incentive to inflate their costs or to refrain from efficient cost-cutting.”²⁰ In keeping with these long-held principles, the Commission determined in the *CAF Order* that it “should use a forward-looking model to assist in setting support levels in price cap territories” in order to “maximize[] the number of locations that will receive robust, scalable broadband within the budgeted amounts” for Phase II of the CAF.²¹ RCA agrees with this assessment. Use of a forward-looking cost model is most likely to produce efficient use of the limited resources of the CAF.

RCA urges the Commission to pursue development of a wireless cost model for Phase II of the Mobility Fund with equal vigor. The *FNPRM* offers the opportunity to build on and refine the proposals submitted before adoption of the *CAF Order*. In particular, as the *FNPRM* notes,²² Cellular One and US Cellular each submitted a detailed cost model for wireless networks developed by CostQuest.²³ Those models provide a good foundation for establishing a cost model for awarding Mobility Fund Phase II support.

¹⁹ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 ¶ 224 (1997).

²⁰ *Id.* ¶ 226.

²¹ *CAF Order* ¶¶ 184, 187.

²² *See FNPRM* ¶ 1176.

²³ *See* Comments of MTPCS, LLC d/b/a Cellular One, WC Docket No. 10-90 *et al.* (filed Aug. 24, 2011) (attaching CostQuest Associates, MTPCS USF MODEL DOCUMENTATION (Aug. 23, 2011) and Cost Quest Associates, MTPCS USF MODEL OUTPUT (Aug. 23, 2011)); Letter of David A. LaFuria, Counsel for US Cellular, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (filed Aug. 6, 2011) (attaching CostQuest Associates, U.S. CELLULAR USF MOBILITY MODEL REPORT (Aug. 5, 2011)).

Critically, such a model-based approach would better serve the Commission's goal of "maximiz[ing] the reach of mobile broadband services supported with[in] ... [the] established budget in areas where there is no private sector business case for providing such services" than the proposed competitive bidding framework.²⁴ As an initial matter, reverse auctions are inherently anticompetitive.²⁵ While carriers would "compete" to be selected as support recipients, a single-winner approach would entrench the auction winner for as long as the support is provided. In rural areas in particular, where the unsubsidized costs of offering service exceed available revenues, single-winner auctions likely would *preclude* the development of competition for the foreseeable future.

In addition, there is a significant risk that large carriers like AT&T and Verizon would participate in auctions as a means of squelching competition from rural and regional providers. In particular, AT&T and Verizon, unlike smaller wireless providers, can rely on urban revenues that they can use to subsidize rural service. As RCA previously explained, reverse auctions thus would enable these providers to leverage the higher returns they receive in more populous areas to block or deter competition going forward by accepting artificially low support levels, including support below cost in some circumstances.²⁶

Moreover, by sacrificing any potential for ongoing competition, an auction process likely would leave some areas unserved altogether, as bidders would target the lowest high-cost census

²⁴ *FNPRM* ¶ 1174.

²⁵ See Comments of Cellular South, Inc., NE Colorado Cellular, Inc. d/b/a Viaero Wireless, Rural Cellular Association, Westlink Communications, LLC, WT Docket No. 10-208 *et al.*, at 7-9 (filed Dec. 16, 2010).

²⁶ Reply Comments of the Rural Cellular Association, WC Docket No. 10-90 *et al.*, at 10-12 (filed May 23, 2011).

blocks under the *FNPRM*'s proposed "bidder-defined approach."²⁷ Thus, while RCA supports the Commission's efforts to target support to granular, competitively neutral geographic areas, reverse auctions simply would fail to provide incentives for carriers—even the largest ones with the most diverse cost structures—to serve the highest-cost areas, whereas a cost model would provide such incentives by linking funding to a customer using a forward-looking estimate of the cost of serving that customer. Relatedly, as the *FNPRM* acknowledges, winner-take-all auctions would require the Commission to sacrifice a market-based approach that allocates support that is truly portable.²⁸ Expressly tying support payments to a carrier's success in capturing customers would allow the Commission to reduce funding needs while simultaneously promoting competition and operational efficiency. Particularly in light of the shoestring budget currently allocated for Phase II of the Mobility Fund, the Commission would be better served in reaching its goal of maximizing the availability of mobile broadband services by modifying its single-winner approach to enable *multiple* providers to compete for subsidies on an ongoing basis. Carriers can establish appropriate business models and deployment plans based on their projected penetration levels and the corresponding per-customer support payments.

If the Commission ultimately rejects wireless modeling proposals and insists on implementing competitive bidding in spite of the concerns set forth above, it at least should implement appropriate safeguards to ensure that large national carriers do not thwart the public interest goals at stake. For example, any auction process should include bidding credits for rural and regional carriers, and/or eligibility restrictions or negative bidding credits for large national

²⁷ *FNPRM* ¶¶ 1129-31.

²⁸ *See id.* ¶ 1136.

carriers, to ensure that competition can survive alongside universal service.²⁹ As RCA has argued elsewhere, the wireless industry is verging on a national duopoly, and auction procedures that enable AT&T and Verizon to foreclose participation by smaller rivals would greatly exacerbate existing concerns about market concentration and the deleterious effects on consumers.

III. THE COMMISSION SHOULD ADOPT PUBLIC INTEREST OBLIGATIONS FOR REGIONAL AND RURAL WIRELESS CARRIERS THAT ARE COMMENSURATE WITH THEIR OPPORTUNITIES TO PARTICIPATE IN USF FUNDING MECHANISMS

A. The Commission Should Require Mobility Fund Phase II Recipients To Comply with Voice and Data Roaming and Compatibility/Interoperability Requirements.

RCA has long supported tying awards of high-cost support to public interest obligations that are within the carrier's control, including data roaming, compatibility, open access, interconnection, and build-out requirements that take into account the realities of the marketplace. RCA has supported the Commission's proposals to impose similar obligations on providers receiving broadband connectivity subsidies.³⁰ Indeed, as RCA has stated throughout these proceedings, RCA's members stand willing and able to meet all reasonable obligations that the Commission may choose to impose as a condition of receiving support under the CAF or Mobility Fund.

²⁹ See *id.* ¶¶ 1157-60 (proposing to provide bidding preferences to small businesses).

³⁰ See, e.g., RCA USF Public Notice Comments at 9-10; Comments of Rural Cellular Association, WT Docket No. 10-208, at 13-14 (filed Dec. 16, 2010); Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.*, at 2 (filed Oct. 17, 2011); Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.*, at 2 (filed Sept. 27, 2011); Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.*, at 1-2 (filed Feb. 4, 2011) (“RCA Roaming/Interoperability Ex Parte”).

RCA thus endorses the *FNPRM*'s proposal to extend to Phase II of the Mobility Fund the collocation and voice and data roaming obligations adopted for Phase I.³¹ In particular, requiring funding recipients to provide roaming on reasonable terms and conditions will be particularly important to promoting competition, innovation, and investment in wireless voice and data services in rural areas. Especially if the Commission eschews a competitively neutral forward-looking cost model in favor of single-winner reverse auctions, a voice and data roaming requirement will be essential to help mitigate the anticompetitive effects of funding a monopoly mobile broadband provider.

RCA also supports the imposition of construction requirements. But the Commission must be careful not to impose impossible-to-meet build-out requirements on Mobility Fund recipients. As the Commission is aware, licensees in the Lower 700 MHz A Block, including a number of RCA members, have been significantly hindered in planning for, securing financing for, and purchasing the necessary equipment and infrastructure for building out the Lower A Block spectrum in their geographic areas due to a lack of interoperable devices.³² The current dearth of interoperable devices and equipment highlights the need for flexibility in the construction benchmarks the Commission imposes. Such benchmarks should be flexible enough to take account of carriers' limited access to spectrum, equipment, and devices. With respect to the proposed three-year construction deadline in particular, rollout of 4G service by 2016 may not be feasible unless the Commission addresses the roadblocks currently facing Lower A Block

³¹ See *FNPRM* ¶ 1148.

³² See *Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks*, Petition for Rulemaking, RM-11592 (filed Sept. 29, 2009); *Application of AT&T Inc. and Qualcomm Incorporated For Consent To Assign Licenses and Authorizations*, Order, WT Docket No. 11-18, FCC 11-188, ¶ 70 (rel. Dec. 22, 2011) (agreeing “that the lack of interoperability in the 700 MHz band raises important public interest concerns”).

licensees.³³ Moreover, in light of the inadequate funding allocated in the *CAF Order* to the Mobility Fund (Phase I and Phase II) and the significant reduction in legacy support that CETCs will face beginning later this year,³⁴ flexibility for wireless carriers is now more critical than ever. It should go without saying that the ability of rural wireless carriers to meet the Commission's public interest obligations necessarily will depend on their access to funding in the near term. To the extent the Commission maintains such limited opportunities for wireless carriers to participate in new USF funding mechanisms at the same time it cuts off support on which many rural wireless carriers rely, the service obligations should be adjusted accordingly.

B. Small Regional and Rural Wireless Carriers, Already at a Significant Funding Disadvantage to Other USF Participants, and Lacking Any Guaranteed Funding, Should Not Be Subject to Burdensome New Reporting Obligations.

Relatedly, the Commission should avoid placing burdensome and duplicative reporting obligations on wireless carriers. The *CAF Order* adopted a “uniform national oversight framework” that requires recipients of CAF or Mobility Fund support to report, among other things, “the results of network performance tests” of speed and latency, build-out plans, and “pricing information for both voice and broadband offerings.”³⁵ The *CAF Order* delegated authority to the Wireline Competition and Wireless Telecommunications Bureaus “to determine

³³ See *FNPRM* ¶¶ 1121, 1145 (stating that disbursements from Phase II of the Mobility Fund may occur “as early as the third quarter of 2013” and proposing to require recipients of such disbursements “to construct a network ... within three years”).

³⁴ See *CAF Order* ¶¶ 314, 494 (setting the overall budgets for Mobility Fund Phase I and Phase II at \$300 million and \$500 million, respectively); *id.* ¶ 519 (describing the scheduled phase down of legacy CETC support, which will begin July 1, 2012).

³⁵ *Id.* ¶¶ 569, 585, 587, 594.

the form in which recipients of support must report this information,”³⁶ and, as a result, the *FNPRM* seeks comment on how the Bureaus should require compliance.³⁷

RCA encourages the Commission to exercise restraint in adopting new data reporting requirements that would impose onerous burdens on carriers—particularly small regional and rural wireless carriers—and instead identify alternative sources of information that would provide the Commission with more updated and reliable broadband data. As an initial matter, formal reporting requirements are not always the most effective way to collect up-to-date information regarding broadband services, as the data reported often becomes stale even before it is submitted (or shortly thereafter). For example, broadband pricing reporting requirements cannot accurately capture the state of the marketplace, as providers constantly are making adjustments to prices and the composition of service offerings in order to respond to dynamic competitive conditions.

RCA notes that broadband service providers already are subject to a number of overlapping (and often duplicative) reporting and disclosure requirements at the federal and state levels. These obligations—including the Commission’s recently revamped Form 477 and obligations imposed by the *Open Internet Order*, among others—impose substantial costs on carriers.³⁸ Much of the information that the Commission proposes to require USF recipients to

³⁶ *Id.* ¶ 584.

³⁷ *See FNPRM* ¶¶ 1012-27. *See also id.* ¶ 1173 (proposing “to apply to Mobility Fund Phase II the same rules for accountability and oversight that will apply to all recipients of CAF support,” including “the same reporting, audit, and record retention requirements”).

³⁸ *See* Federal Communications Commission, *Public Information Collections Approved by Office of Management and Budget*, OMB Control No. 3060-0816, 74 Fed. Reg. 6407 (Feb. 9, 2009); *Preserving Open Internet*, Report and Order, 25 FCC Rcd 17905, App. A, § 8.3 (2010) (“A person engaged in the provision of broadband Internet access service shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient

report already is disclosed vis-à-vis compliance with these other data collection obligations and thus already is at the Commission's disposal. Moreover, a number of third parties, including Consumer Reports and J.D. Power, regularly compile data pertaining to service quality and pricing that would satisfy the Commission's requirements. And as the Commission has acknowledged, most broadband providers already make available a great deal of useful information on their websites.³⁹ Particularly in light of the overall lack of funding available to wireless carriers pursuant to the *CAF Order*, as discussed above, RCA urges the Commission to look to these alternative sources of data to the greatest extent possible to satisfy its information needs. At a minimum, the Commission should exempt regional and rural wireless carriers from any burdensome reporting or data collection requirements in recognition of their marginalized role as contemplated under the *CAF Order*.

CONCLUSION

The Commission should use the opportunity of this further rulemaking proceeding to mitigate the significant harms caused by the wireline preferences reflected in the *CAF Order*, including by finding ways to redirect wireless services the excessive funding allocated to wireline providers, distributing Phase II Mobility Fund support using a forward-looking economic cost model, and refraining from imposing burdensome reporting requirements on regional and rural wireless carriers.

for consumers to make informed choices regarding the use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.”). In addition, mobile wireless subscribership data is submitted at the state level. See 2011 INTERNET ACCESS SERVICES REPORT at 8 n.8 (“Mobile wireless providers report the number of service subscriptions they have sold, and the speeds of those service subscriptions, at the state level only.”).

³⁹ *PRA Calculations for Disclosure of Network Management Practices, Preserving the Open Internet and Broadband Industry Practices Report and Order, GN Docket No. 09-191 and WC Docket No. 07-52, FCC Report to OMB, at 1 (Feb. 2011).*

Respectfully submitted,

/s/

Steven K. Berry
Rebecca Murphy Thompson
RCA—THE COMPETITIVE CARRIERS ASSOCIATION
805 Fifteenth Street, N.W., Suite 401
Washington, DC 20005

January 18, 2012