

**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

**REPLY COMMENTS  
of  
UNITED STATES CELLULAR CORPORATION**

Grant B. Spellmeyer  
Executive Director – Federal Affairs &  
Public Policy

David A. LaFuria  
John Cimko

UNITED STATES CELLULAR CORPORATION  
8410 West Bryn Mawr  
Chicago, Illinois 60631  
(773) 399-4280

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

February 17, 2012

## TABLE OF CONTENTS

SUMMARY .....	iii
I. INTRODUCTION .....	2
II. DISCUSSION .....	7
A. Numerous Parties Are Critical of the Commission’s Budget Decisions and Proposals.....	8
1. Various Stakeholders Argue That the Commission’s CAF and Mobility Fund Budgets Do Not Reflect a Sufficient Commitment To Achieve the Commission’s Broadband Goals. ....	8
2. The Commission Should Not Take Any Further Steps To Enhance Support Allocations to Rate-of-Return Carriers. ....	14
B. There Is Strong Support for U.S. Cellular’s View That Implementation of Mobility Fund Phase II Should Await Evaluation of Phase I Auction Results. ....	17
C. Various Commenters Support a Cost Model To Disburse Mobility Fund Phase II Support, and Criticize the Proposed Reverse Auction Mechanism. ....	20
D. The Commission’s Proposal for Comparing Reverse Auction Bids Across All Geographic Areas Would Freeze Out Higher Cost Areas from Mobility Fund Support.....	24
E. Other Issues. ....	27
1. Broadband As a Supported Service.....	27
2. Mobility Fund Phase II.....	29
a. There Is Support in the Record for a Ten-Year Term of Support for Mobility Fund Phase II Funding Recipients. ....	29
b. The Record Supports Placing Limits on Package Bidding. ....	30
c. The Commission Should Not Give Funding Priority to Areas with No Mobile Service or with Mobile Service Below Certain Speed Levels.....	32
d. There Is Support for U.S. Cellular’s Position That Road Miles Should Be Used To Determine Bidding Units and Coverage Requirements. ....	33
e. The Commission Should Not Use the Centroid Method To Determine If Service Is Available in Particular Census Blocks. ....	35
3. CAF Phase II. ....	35

a.	Other Commenters Agree with U.S. Cellular That the Commission Should Permit CAF Phase II Bids with Variable Prices and Performance Levels.....	35
b.	There Is Support in the Record for U.S. Cellular’s View That the Commission Should Not Require Carriers To Finance a Fixed Percentage of Network Deployment from Non-CAF Sources.....	38
c.	The Record Supports U.S. Cellular’s Argument That Incumbents That Turn Down Model-Based CAF Phase II Support Should Be Barred from the CAF Phase II Auction.....	39
4.	Funding Recipient Obligations.....	43
a.	The Commission Should Adopt a Presumption Regarding the Comparability of Rural and Urban Rates.....	43
b.	Mobile Wireless Broadband Providers Should Be Subject to Separate Speed Testing and Reporting Requirements. ....	44
c.	The Commission Should Account for Differences in Fixed and Mobile Broadband Services in Establishing Public Interest Requirements for CAF Phase II Support Recipients.....	47
d.	The Commission Should Not Create Unfunded Mandates, But It Should Refrain from Modifying or Eliminating Any Generally Applicable Service Requirements.....	51
e.	The Commission’s Accountability Requirements Should Properly Balance Ensuring the Efficient Operation of CAF and Mobility Fund Mechanisms with Minimizing Burdens on Support Recipients.....	53
f.	Other Commenters Agree with U.S. Cellular That the Commission’s Reporting Requirements Should Reflect Basic Differences in the Nature and Purpose of Support Provided for Mobile Services. ....	56
III.	CONCLUSION.....	59

## SUMMARY

There is widespread agreement in the record with U.S. Cellular's concern that the *Order* adopted by the Commission has plotted the wrong course for universal service reform in several respects, and that several proposals made in the *Further Notice* would continue to take the Commission's universal service program down the wrong path. Numerous parties agree with suggestions made by U.S. Cellular in its Comments regarding steps the Commission should take to move universal service reform in a more productive direction.

### **The Budget Is Insufficient and Misallocated**

Many commenters agree with U.S. Cellular's criticism that the Commission's budget allocates a disproportionately small amount of support for the deployment of mobile broadband networks, allocating an insufficient level of funding for the Mobility Fund and cutting against the Commission's announced objectives for supporting mobile broadband deployment. Several commenters indicate that the Commission's overall budget will not be sufficient to bring affordable, high-quality broadband services, comparable to services available in urban areas, to consumers throughout rural America.

Numerous parties also agree with U.S. Cellular's argument that, if the Commission realizes any savings from the operation of its Connect America Fund support mechanisms, then these savings should not be allocated to rate-of-return carriers as an accommodation to narrow the gap between these carriers' overall budget requests and the level of support actually budgeted by the Commission. Several commenters support U.S. Cellular's suggestion that any such savings instead should be shifted to the Mobility Fund, to help offset the substantial gap in funding between fixed and mobile broadband networks.

## **Mobility Fund Phase II Should Be Delayed**

Commenters suggest that a significant problem with the Commission's proposal for its Mobility Fund Phase II disbursement mechanism is that the Commission apparently plans to select a mechanism before evaluating the results of the Phase I reverse auction process. Commenters agree with U.S. Cellular that the Commission would be in a better position to make a data-driven and well-informed choice if it delayed its selection.

Such a delay would give the Commission—and interested stakeholders—an opportunity to assess whether the single-winner reverse auction mechanism works as the Commission intends, or whether the many deficiencies of a reverse auction mechanism described in the record have materialized in the Phase I results. Several commenters make the same point as U.S. Cellular: It would be prudent for the Commission to study the Phase I auction results before making any decision regarding Phase II.

## **A Cost Model Should Be Used for Phase II**

There is strong support in the record for U.S. Cellular's recommendation that the Commission should use a cost model to disburse Mobility Fund Phase II funding. Although the Commission has selected a single-winner reverse auction mechanism for use in disbursing Phase I support, numerous parties join U.S. Cellular in urging the Commission to change course for Phase II, arguing that a single-winner reverse auction is untested and fundamentally flawed, and that the mechanism is anti-competitive, will compromise the quality of service provided to rural consumers, and will actually increase the price of services offered to rural consumers.

Numerous commenters agree with U.S. Cellular's position that a cost model would be more effective in bringing affordable, high-quality mobile broadband services to rural communities, observing that predictive economic modeling would work especially well in the context of

mobile broadband networks. Commenters point out that—unlike a reverse auction—a cost model is capable of functioning as an efficient and competitively-neutral means of disbursing Phase II support.

If the Commission does opt to use a single-winner reverse auction mechanism for Mobility Fund Phase II support, then the record supports U.S. Cellular’s position that the Commission should not compare all bids, across all geographic areas, as the means for awarding Phase II support. Commenters agree that such a “low to high” ranking auction process would eliminate any bidding competition within specific geographic areas, would tend to favor larger carriers, and would prevent any nexus between funding awards and the efficient use of funds.

Comparing all bids across all geographic areas would direct Phase II support to the lowest-cost service areas across the country, risking the absence of any Mobility Fund support for higher-cost areas, and the Commission would make no assessment regarding the efficient use of support by winning bidders serving these lowest-cost areas.

### **Other Issues**

Commenters provide support for positions taken by U.S. Cellular in its Comments on a range of additional issues.

#### ***Broadband As a Supported Service***

Several parties agree with U.S. Cellular’s view that the Commission’s decision to refrain from classifying broadband as a supported service has serious consequences. Commenters observe, for example, that it is unclear how the Commission can apply the statutory principle of reasonable comparability to broadband if it has not classified broadband as a supported service. Parties also argue that, since broadband is an information service and is not classified as a sup-

ported service, the Commission lacks statutory authority to impose mandatory broadband deployment and maintenance obligations.

### ***Mobility Fund Phase II***

There is support in the record for U.S. Cellular's suggestion that the Commission should establish a ten-year term for Phase II support, that some limits should be placed on package bidding in any Phase II reverse auction to safeguard against larger carriers dominating the auction, and that the Commission should not establish any funding priority for areas currently without any mobile service (or with access only to service at slower speeds), because such a priority would interfere with the Commission's goal of maximizing broadband service and minimizing the level of costs to the extent practicable.

Commenters join U.S. Cellular in supporting the use of road miles as the basis for determining bidding units and coverage requirements, explaining that this is an effective means of ensuring that mobile services are available to consumers where they live, travel, and work. Parties also support U.S. Cellular's criticism of the proposed use of the centroid method to determine whether service is available in a census block, suggesting other measuring methods to avoid the pitfalls of the centroid method, which tends to treat large census blocks in low-density rural areas as "served" even if large portions of the blocks are not receiving a sufficient level of mobile broadband service.

### ***CAF Phase II***

There is support in the record for U.S. Cellular's position that the Commission should permit CAF Phase II bids with variable prices and performance levels. U.S. Cellular's main concern is that, if the Commission does not permit variable prices and performance levels, then mobile broadband service providers could be precluded from participating in the CAF Phase II re-

verse auction, which would be detrimental to rural consumers seeking access to mobile broadband service.

The record also supports U.S. Cellular's view that it would be a mistake for the Commission to require CAF Phase II auction winners to finance a fixed percentage of network deployments with non-CAF or private funds, and commenters also agree with U.S. Cellular that price cap carriers turning down the Commission's right of first refusal should not be permitted to participate in the CAF Phase II reverse auction. Commenters express concern that allowing price cap incumbents to bid in the reverse auction, after deciding not to exercise their right of first refusal, would give the incumbents the opportunity to cherry pick the most attractive areas in their service territories.

#### ***Funding Recipient Obligations***

Several commenters agree with U.S. Cellular that the Commission should establish a presumption that a fund recipient's rural rates and terms of service are reasonably comparable to its rates and service in urban areas if the rural and urban rates and terms of service are the same. Some commenters also suggest that the two sets of rates and terms should not be required to be identical in order to be presumed to be reasonably comparable.

Parties also agree with U.S. Cellular that the Commission should adopt separate speed testing and reporting requirements for mobile broadband providers, arguing that separate requirements are appropriate because mobile wireless networks, and the provisioning and management of service over these networks, differ substantially from wireline networks.

U.S. Cellular disagrees with one commenter who argues that the Commission should apply the same public interest obligations to all CAF support recipients, regardless of whether they provide fixed or mobile broadband service. U.S. Cellular argues in part that the imposition of

wireline-centric public interest obligations on mobile broadband providers would rob these providers of any realistic opportunity to compete for CAF Phase II funding, thus depriving rural consumers of access to mobile broadband services comparable to those available in urban areas.

U.S. Cellular generally supports numerous commenters who argue that the Commission should avoid creating unfunded mandates by declaring that eligible telecommunications carriers have no ETC service obligations in those geographic areas where they receive no federal high-cost support. U.S. Cellular, however, cautions that any action by the Commission to relieve carriers of unfunded mandates must not modify or remove any regulatory obligations that apply to carriers irrespective of their receipt of any federal universal service support.

Numerous parties agree with U.S. Cellular that the Commission should not impose a letter of credit obligation on CAF or Mobility Fund support recipients, and instead should continue to rely on existing enforcement mechanisms, including the Commission's investigative and complaint processes, to impose penalties for any violations of its rules. Several commenters explain that a LOC requirement would impose unwarranted burdens on support recipients.

Finally, there is support in the record for U.S. Cellular's position that reporting requirements applicable to mobile broadband providers should be tailored to the specific characteristics and benefits of mobile service. Other parties encourage the Commission to address these reporting requirements in a separate proceeding already begun by the Commission, and also to identify alternative sources of information, which would provide more updated and reliable broadband data, instead of adopting new data reporting requirements that would impose onerous burdens on small regional and rural wireless carriers.

**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

**REPLY COMMENTS  
of  
UNITED STATES CELLULAR CORPORATION**

United States Cellular Corporation (“U.S. Cellular”), by counsel, hereby submits these Reply Comments, pursuant to the Commission’s Further Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup>

---

<sup>1</sup> *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.

## I. INTRODUCTION.

The Commission, in adopting the *Order* in this proceeding, has completed a major step in its efforts to reform its universal service program, and, in issuing the *Further Notice*, the Commission also has set the stage for further decisions in the development and implementation of its Connect America Fund (“CAF”) and Mobility Fund support mechanisms.

This is an appropriate juncture to take stock of the decisions the Commission has made, and the actions still to be taken. Unfortunately, there is considerable agreement in the record that the Commission’s decisions and proposals are not adding up to a new universal service regime that will be effective in providing sufficient support mechanisms, in assisting mobile broadband carriers to bring affordable high-quality broadband service to rural consumers, and in promoting a competitive broadband marketplace in rural communities.<sup>2</sup>

---

96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011), 76 Fed. Reg. 73830 (Nov. 29, 2011), 76 Fed. Reg. 78384 (Dec. 16, 2011), 76 Fed. Reg. 81562 (Dec. 28, 2011) (“*Order*” and “*Further Notice*”), *recon.*, FCC 11-189 (rel. Dec. 23, 2011), Erratum (WCB, WTB, rel. Feb. 6, 2012), *further recon. pending, petitions for review pending, Direct Commc’ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases). The due date for reply comments on sections of the *Further Notice* addressed in these Reply Comments is February 17, 2012. The *Further Notice* extends inquiries and builds on proposals made by the Commission in *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *High-Cost Universal Service Support*, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657 (2010) (“*CAF NOI/NPRM*”); *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716 (2010); *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011) (“*USF-ICC Reform NPRM*”); and *Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, Public Notice, DA 11-1348 (WCB rel. Aug. 3, 2011). U.S. Cellular notes that it has filed a Petition for Review of the *Order*. See *United States Cellular Corporation v. FCC*, No. 12-1065 (D.C. Cir. filed Jan. 30, 2012).

<sup>2</sup> Numerous parties have sought reconsideration of various aspects of the *Order*. See *Petitions for Reconsideration of Action in Rulemaking Proceeding*, Public Notice, Rep. No. 2945 (rel. Jan. 12, 2012) (listing

■ **The Budget.**—Virtually every category of stakeholders is concerned regarding the implications and likely effects of the Commission’s universal service budget. The conclusion reached by several commenters is that the budget sends two hopelessly inconsistent messages: The Commission wants to reduce universal service spending down to the barest minimum while making commitments regarding deployment of rural mobile broadband networks that cannot be met with the funds the Commission has allocated to make this deployment happen.

There are grounds for concluding that the Commission’s new principle of fiscal responsibility has swallowed up other universal service objectives, most notably the statutory principle that support mechanisms established by the Commission must be sufficient to meet statutorily mandated universal service goals. The Commission has capped the budget at a level that does not seem designed to accommodate the effective deployment of fixed and mobile broadband networks in rural areas, and the Commission has further handicapped mobile broadband deployment by adopting a budget that disproportionately provides support for wireline carriers and significantly underfunds mobile broadband.

U.S. Cellular suggests that the Commission should explore actions it can take to rectify the missteps reflected in its budget decisions. For example, the record supports the view that the Commission should stop dealing with only one half of the universal service support equation—*outgoing funds* disbursed to eligible telecommunications carriers (“ETCs”)—and start addressing the other half of the equation—*incoming funds* received from universal service contributors. The Commission’s defense of its austerity budget, in which the goal appears to be to drive down the

---

petitions for reconsideration filed with respect to the *Order*). A number of parties, in addition to U.S. Cellular, have filed petitions for review of the *Order*. See, e.g., Consolidation Order, Case MCP No. 108, U.S. Judicial Panel on Multidistrict Litigation (Dec. 14, 2011) (listing petitions for review filed as of that date).

level of support as much as possible, rings hollow as the Commission fails to move forward with contribution reform.

A more immediate step the Commission should take, to start realigning the misallocation of support between fixed and mobile broadband service providers, is to abandon its suggestion that any savings from the operation of its CAF mechanisms could be given to rate-of-return carriers as a means of offsetting the mismatch between the level of funding these carriers sought and the funding they receive in the Commission's budget. Numerous commenters criticize the Commission for considering such an accommodation, urging the Commission to shift any such savings to the Mobility Fund as a small but important step toward improving the capability of the Mobility Fund budget to provide sufficient support to meet broadband deployment objectives.

■ **Mobility Fund Phase I Results.**—One of the central issues in the *Further Notice* involves the mechanism the Commission will select to disburse Mobility Fund Phase II funding. A reasonable approach for the Commission to take in weighing this decision would be to conduct the single-winner reverse auction it has adopted for Mobility Fund Phase I, to provide interested parties with an opportunity to review and comment on the results, and then to evaluate and rely upon this data in selecting and crafting the Phase II disbursement mechanism.

Unfortunately, the Commission's announced timetable for the provision of Phase II support does not seem designed to accommodate utilizing inputs from the Phase I auction process as part of the Commission's deliberations regarding the Phase II support mechanism.<sup>3</sup> This scheduling anomaly has not gone unnoticed in the record, with several commenters urging the Commis-

---

<sup>3</sup> The Commission plans to conduct the Phase I reverse auction in the third quarter of 2012, and to adopt its Phase II mechanism before the end of 2012, with implementation in 2013. *Order* at para. 28.

sion to delay its Phase II decision until there has been sufficient time to complete the Phase I reverse auction and analyze its results.

Given the intensity of the debate in this rulemaking regarding whether a cost model or a reverse auction is the better mechanism for disbursing Mobility Fund support, and given the extensive criticisms leveled against single-winner reverse auctions as being an inappropriate and ineffective mechanism for disbursing universal service support, it would seem imprudent for the Commission to move forward with a decision before it completes its Phase I reverse auction experiment.

What would be the basis for rushing to a speculative, predictive judgment regarding a Phase II mechanism, given the fact that the Commission has the means of making a decision driven by Phase I data? In U.S. Cellular's view, commenters are correct in urging the Commission to steer a more reasonable course that will produce a well-supported decision regarding the Phase II mechanism.

■ **A Cost Model for Phase II.**—There is convincing evidence in the existing record that a forward-looking economic cost model will be an effective, efficient, and economical mechanism for disbursing Mobility Fund Phase II support. In U.S. Cellular's view, this evidence will be strengthened by the results of the Phase I reverse auction.

A cost model is capable of producing accurate measures of cost—untainted by “low ball” bidding and other tactics that may be followed by participants in reverse auctions—and then allocating support based upon those costs within the framework of whatever budget the Commission has established. A reverse auction runs the substantial risk of pushing actual disbursed support below the level of funding necessary to sufficiently support mobile broadband deployment.

A cost model avoids this outcome by accurately setting the level of support necessary to meet the costs of deployment.

■ **Structuring a Phase II Auction.**—If the Commission does decide to adopt a single-winner reverse auction mechanism for Mobility Fund Phase II, the record provides a strong argument that the Commission should discard one of its proposals regarding how the auction should be structured. The Commission is weighing the advisability of lumping together all bids, across all geographic areas, ranking all the bids from low to high, and then disbursing support, starting with the lowest bid, until funds run out.

Using this structure for awarding Phase II support might enable the Commission to claim that it has ensured the widest distribution of a limited amount of support. In other words, the argument would be that universal service goals are better served by disbursing support to more lower-cost areas, rather than to fewer higher-cost areas. But there are significant disadvantages to spreading Phase II support very wide, but very thin.

Several parties observe, for example, that the Commission’s proposed “all bids across all areas” approach will have the likely effect of dramatically reducing the level of support flowing to higher-cost areas. This is not a desirable outcome, in part because lower-cost areas do not have any unique and relevant attributes that make them inherently more “qualified” as candidates for Phase II support. Moreover, the reverse auction mechanism—unlike a cost model—does not attempt to define the costs of a particular service area, but instead leaves that task to the auction bidders. In other words, the actual costs needed to deploy mobile broadband in a given service area may be higher than the bid amount—because of “low ball” bidding strategies or other inefficiencies in the operation of the auction process.

Awarding support to the lowest bidder in these circumstances is problematic in itself, since the winning bidder will not receive sufficient funding to meet its broadband deployment obligations, and is also problematic because it is diverting funds away from higher-cost areas where bidders are prepared to use Phase II support to efficiently accomplish the Commission's deployment goals.

This will likely result in some states with undeniably high-cost areas bereft of mobile broadband coverage receiving no support whatsoever. U.S. Cellular believes that this deficiency in the reverse auction model will reveal itself in the results from the Mobility Fund Phase I disbursements, which is another reason why it would be unwise for the Commission to proceed with designing the construct of the Phase II disbursement model without the benefit of the Phase I data, as U.S. Cellular argues in these Reply Comments.<sup>4</sup> For all of these reasons, U.S. Cellular joins those commenters urging the Commission to abandon this proposal.

## **II. DISCUSSION.**

U.S. Cellular in the following sections focuses on several key issues that have drawn the attention of numerous commenters in this proceeding. These issues include the shortcomings of the CAF and Mobility Fund budgets adopted by the Commission, the advisability of delaying any decisions regarding implementation of Mobility Fund Phase II until the Commission and interested parties have had an opportunity to review and evaluate the results of the Phase I reverse auction, the desirability of using a forward-looking economic cost model to disburse Phase II support, and the deficiencies of the Commission's proposal to structure a Phase II reverse auction (if the Commission were to adopt such a disbursement mechanism) by comparing all bids

---

<sup>4</sup> See Section II.B., *infra*.

across all geographic areas and then awarding support to the lowest bidders in this national ranking of bids.

U.S. Cellular also addresses the issue of whether the Commission should classify broadband as a supported service, and discusses a range of other issues addressed in the comments concerning Mobility Fund Phase II, CAF Phase II, and funding recipients' public interest and service obligations.

**A. Numerous Parties Are Critical of the Commission's Budget Decisions and Proposals.**

In its Comments, U.S. Cellular draws attention to the fact that the Commission's disproportionately meager budget allocations for mobile broadband services are not congruent with the Commission's goals for achieving ubiquitous mobile broadband deployment, and that these budget allocations fail to heed growing consumer preferences for mobile broadband service.<sup>5</sup>

There is support for U.S. Cellular's position that, in light of the CAF and Mobility Fund budget imbalances the Commission has chosen to create, no further steps should be taken to enhance support allocations to rate-of-return carriers and that, in fact, efforts should be made to redirect any savings realized from the operation of CAF mechanisms to the Mobility Fund. There also is widespread concern that the Commission's budget is woefully inadequate to achieve the effective and timely deployment of broadband services across rural America.

**1. Various Stakeholders Argue That the Commission's CAF and Mobility Fund Budgets Do Not Reflect a Sufficient Commitment To Achieve the Commission's Broadband Goals.**

The record reflects fundamental concerns with the Commission's universal service budget decisions: The message from virtually every category of stakeholders is that the Commission's

---

<sup>5</sup> U.S. Cellular Comments at 52.

capped \$4.5 billion annual budget will disserve rural America because it will likely fall well short of enabling deployment of affordable, high-quality fixed and mobile broadband networks in rural communities.

Before turning to concerns raised in the record regarding the Commission's budget, U.S. Cellular observes that the budget exposes a disconnect between the Commission and President Obama regarding the importance of mobile wireless broadband and the need for effective government initiatives to promote mobile broadband deployment. For example, the *FY 2013 Budget*, submitted by the Obama Administration to Congress earlier this week, indicates that “[h]igh-speed, wireless broadband is fast becoming a critical component of business operations and economic growth. The United States needs to lead the world in providing broad access to the fastest networks possible.”<sup>6</sup>

Recognizing the importance of mobile broadband deployment, and committing to bring next-generation, wireless broadband to all parts of the country,<sup>7</sup> the *FY 2013 Budget* supports a National Wireless Initiative aimed at providing \$10 billion in total resources from spectrum auction proceeds to help build an interoperable public safety network<sup>8</sup> and to “reallocate Federal agency and commercial spectrum bands to greatly increase wireless broadband access and innovation opportunities nationwide using auctions . . . .”<sup>9</sup>

A universal service program designed to generate sufficient support to facilitate extensive deployment of mobile broadband in rural areas could work in tandem with the National Wireless

---

<sup>6</sup> Office of Management and Budget, FISCAL YEAR 2013 BUDGET OF THE U.S. GOVERNMENT 57 (rel. Feb. 13, 2012) (“*FY 2013 Budget*”).

<sup>7</sup> *Id.* at 56.

<sup>8</sup> *Id.* at 73.

<sup>9</sup> *Id.*

Initiative, and could relieve some of the difficulties associated with the Obama Administration's efforts to find funding resources to meet its goals for bringing next-generation, wireless broadband to all Americans. In U.S. Cellular's view, however, the Commission's CAF and Mobility Fund budgets do not answer this call.<sup>10</sup>

Turning to the comments responding to the *Further Notice*, NASUCA concludes that "there are indicators that the \$4.5 billion overall high-cost USF budget may not be sufficient to support a ubiquitous broadband network and allow for rural rates and services to be comparable to urban rates and services."<sup>11</sup> NASUCA notes that, "as a general proposition, the Commission assumes that it can use auctions to solve the broadband deployment problem using the existing \$4.5 billion budget, which is based on an assessment on telecommunications services alone[.]"<sup>12</sup> and then observes that this annual budget is not likely to be sufficient to bridge the broadband

---

<sup>10</sup> It now appears that Congress may move forward with the authorization of spectrum auctions as a means of raising revenues and "eventually [enabling] faster connections for smartphones, iPads and other data-hungry mobile devices." Edward Wyatt & Jennifer Steinhauer, *Congress Will Auction Public Airwaves to Pay for Benefits*, N.Y. TIMES, Feb. 17, 2012, accessed at [http://www.nytimes.com/2012/02/17/business/media/congress-to-sell-public-airwaves-to-pay-benefits.html?\\_r=1&hp](http://www.nytimes.com/2012/02/17/business/media/congress-to-sell-public-airwaves-to-pay-benefits.html?_r=1&hp). Chairman Genachowski has applauded this congressional initiative, noting that incentive auctions have been a key Commission strategy to meet the spectrum challenge and to promote "goals [that] have included developing fair, effective mechanisms for providing all carriers an opportunity to obtain spectrum, promoting world-leading innovation, free-market competition, and mobile broadband access for consumers throughout the country." *Statement from FCC Chairman Julius Genachowski on Incentive Auction Legislation*, FCC Press Release (rel. Feb. 16, 2012), at 1. As U.S. Cellular and other commenters have illustrated, the Commission's universal service budget fails to promote the goal of providing rural citizens with access to mobile broadband that is reasonably comparable to that available in the Nation's urban areas.

<sup>11</sup> National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, New Jersey Division of Rate Counsel, and Utility Reform Network (collectively, "NASUCA") Comments at 23. Indicators cited by NASUCA include the fact that a Commission broadband study has shown that customers in very remote areas would need \$13.4 billion in support, and that industry filings have suggested that price cap carriers would need \$5.9 billion and rate-of-return carriers would need \$3.8 billion to achieve broadband deployment. *Id.*

<sup>12</sup> *Id.* at 66.

gap identified in the Broadband Plan.<sup>13</sup> NASUCA concludes by pointing to an obvious remedy: “[T]he FCC [should] increase the USF contribution base to include the broadband services.”<sup>14</sup>

USTelecom joins NASUCA in criticizing the Commission’s budget, accusing the Commission of “turning a blind eye to the sufficiency of the support necessary to satisfy [the Commission’s imposed broadband deployment and maintenance] obligation.”<sup>15</sup> USTelecom points out that “[u]nfortunately the Order established the budget without concurrently determining how a CAF for price cap and rate-of-return companies could be established that would provide sufficient funding to meet universal service obligations.”<sup>16</sup>

RCA raises similar objections to the inadequacies of the Commission’s budget, observing that the Commission “imposes artificial and unjustified limits on the amount of funding available to wireless carriers . . . notwithstanding business and residential consumers’ demonstrated preference for increasingly fast mobile wireless services.”<sup>17</sup>

---

<sup>13</sup> Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010) (“Broadband Plan”).

<sup>14</sup> *Id.* at 23.

<sup>15</sup> United States Telecom Association (“USTelecom”) Comments at 5 (footnote omitted). GVNW levels a similar criticism at the Commission’s efforts to limit its budget outlays:

When the Commission signaled its original intent to pursue a National Broadband Plan, many areas of rural America expected that a comprehensive strategy that was focused to the needs of all Americans would follow. Sadly, that has not been the case. The Commission has focused instead in its *Transformation Order* on how to restrict funds for the highest cost to serve areas via exclusions, phase-outs and caps. We respectfully submit that a Connect America Fund mechanism will not be successful unless residents in the highest cost to serve areas have the ability to access reasonably comparable broadband services at a reasonably comparable price.

GVNW Consulting, Inc. (“GVNW”) Comments at 7 (emphasis added).

<sup>16</sup> USTelecom Comments at 3.

<sup>17</sup> RCA–The Competitive Carriers Association (“RCA”) Comments at 2-3.

The Rural Associations express similar concerns, pointing out that the total CAF and existing high-cost mechanism budget, including intercarrier compensation restructuring, is roughly the size of the current high-cost fund budget.<sup>18</sup> The Rural Associations indicate:

That approach *might* be logical had the Commission engaged in a detailed examination of the budget question and determined, based upon review of the evidence, that true “universal service” with respect to broadband-capable network deployment could be achieved with precisely that amount of support. To the contrary, however, the Commission’s own initial estimates demonstrated that robust broadband deployment throughout the nation requires an ambitious commitment *not* reflected in the budget or CAF plan the Commission has adopted.<sup>19</sup>

The Commission’s budget choices lead the Rural Associations to conclude that “it is questionable whether investors and lenders can reasonably be expected to provide funding for *any* significant broadband deployment efforts by RLECs in 2012.”<sup>20</sup> The Rural Associations support addressing this problem through “contribution reform that reduces *pro rata* obligations while ensuring that more who benefit from the networks contribute to their deployment, maintenance, and improvement.”<sup>21</sup>

The Moss Adams Companies also are critical of the Commission’s annual budget for rate-of-return carriers, pointing out that “[s]imply stating that there is a \$2 billion annual budget does not ensure sufficient funding for the deployment of the mandated network. Essentially, the FCC has put the cart (the budget) before the horse (the network).”<sup>22</sup> The Moss Adams Compa-

---

<sup>18</sup> National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance (collectively, “Rural Associations”) Comments at 5.

<sup>19</sup> *Id.* at 5-6 (emphasis in original) (footnote omitted) (citing Broadband Plan at 136-38, 143-48).

<sup>20</sup> *Id.* at 11 (emphasis in original).

<sup>21</sup> *Id.* at 32.

<sup>22</sup> Moss Adams Companies Comments at 19. *See id.* at 23-24 (observing that “[w]hile the FCC has established an estimated budget of \$2.0 billion for rate-of-return carriers, approximately the size of the current fund for voice services, there is nothing in the record that indicates that this level of support is sufficient

nies conclude that, “[p]roperly done, the FCC would first identify the cost of deploying the mandated network and then determine the amount of funding necessary to build such a network.”<sup>23</sup>

PBA observes that, while the Commission’s “arbitrary cap”<sup>24</sup> of \$4.5 billion annually “is the same level of funding that was estimated for fiscal year 2011, it is intended to support the added burden of building and operating broadband capable networks.”<sup>25</sup> PBA expresses concern regarding the fact that, “[i]n the event funding exceeds the \$4.5 billion cap, the Commission states that it would adopt an action plan to reduce federal USF expenditures, the likely source being additional reductions in federal USF distributions to carriers.”<sup>26</sup>

These criticisms of the Commission’s budget—which are presented from all quarters—reflect a troubling fact: The Commission has given priority to keeping down the cost of its universal service reforms, even at the expense of ensuring sufficient mechanisms to bring advanced broadband networks to rural consumers. Moreover, the criticisms in the record cannot be dismissed as predictable complaints from carriers and industry groups. NASUCA has joined in this chorus:

The FCC has not heeded recommendations to broaden the base for universal service contributions to include broadband services, which means that the funds available to achieve broadband goals of deployment and affordability are unduly limited, and require telephone services alone to bear the burden of supporting broadband deployment.<sup>27</sup>

---

to continue providing supported voice services and to ensure the provision of broadband services, which will become newly supported services”).

<sup>23</sup> *Id.* at 19-20.

<sup>24</sup> Parrish, Blessing & Associates, Inc. (“PBA”) Comments at 5. PBA is an economic consulting firm representing small local exchange carriers (“LECs”).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> NASUCA Comments at 5 (emphasis added).

Thus, the message from an informed group of consumer advocates is clear: The Commission should raise more money so that it can do a proper job.

The Commission's inexplicable refusal to proceed with contribution reform<sup>28</sup> lends a certain Alice in Wonderland quality to the budget dilemma: The Commission has adopted and proposed numerous devices to restrict the level of support (the single-winner, lowest-bid reverse auction mechanism being the prime example),<sup>29</sup> it justifies these constraints by pointing to its "limited" budget,<sup>30</sup> and it refuses to take revenue-raising measures that would address these self-imposed limitations.

## **2. The Commission Should Not Take Any Further Steps To Enhance Support Allocations to Rate-of-Return Carriers.**

Given the budget shortcomings described in the previous section, it is difficult to escape the conclusion that rural consumers will not fare well under the Commission's universal service agenda. Rather than addressing or acknowledging the funding gaps created by its budget decisions, the Commission instead focuses on ways to allocate limited funds in a manner that would

---

<sup>28</sup> Commissioner McDowell has expressed disappointment that the Commission failed to act on contribution reform in the *Order*:

[W]e are only addressing part of the distribution, or spending, side of the Universal Service program. In fact, despite all of the exhaustive efforts to get to this point, our work on comprehensive Universal Service reform is not even half finished. Equally important is the need to reform the contribution methodology, or how we are going to pay for all of this. It is no secret that for years I have been pushing for contribution reform to be carried out at the same time as distribution reform. Obviously, that is not happening today; therefore we must act quickly.

*Order* and *Further Notice*, Statement of Commissioner Robert M. McDowell Approving in Part, Concurring in Part. GVNW points out that the Commission has focused almost exclusively on funding restrictions "as it has been unable to utilize a decade long record to reform the USF contribution mechanism." GVNW Comments at 7.

<sup>29</sup> The Commission notes that, "[i]mportantly, establishing a CAF budget ensures that individual consumers will not pay more in contributions due to the reforms we adopt today." *Order* at para. 124.

benefit certain categories of service providers at the expense of others. Specifically, the Commission contemplates the use of any savings realized from CAF components to accommodate the asserted funding needs of rate-of-return carriers.<sup>31</sup> In its Comments, U.S. Cellular objects to any such accommodation,<sup>32</sup> and its position finds support in the record.

For example, Windstream “strongly opposes any suggestion that savings realized in other components of the CAF should be used to increase funding for rate-of-return carriers[,]”<sup>33</sup> pointing out that “[a]reas served by rate-of-return carriers often have access to state-of-the-art broadband because the system has incentivized rate-of-return carriers to increase their loop spending rather than limit costs to operate more efficiently.”<sup>34</sup>

USA Coalition suggests that, where savings are realized, “such as when an incumbent declines to make a state-level commitment, serious consideration should be given to providing additional funding under Phase I or Phase II of the Mobility Fund[,]”<sup>35</sup> arguing that “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.”<sup>36</sup> Similarly, RCA argues that

---

<sup>30</sup> See, e.g., *id.* at para. 398 (emphasis added) (indicating that “[t]he Mobility Fund is designed to provide support in areas where it is cost effective to do so with the limited available funds. Thus, its ultimate goal is to maximize the number of units covered given the funds available.”).

<sup>31</sup> See *Further Notice* at para. 1034.

<sup>32</sup> U.S. Cellular Comments at 51-52.

<sup>33</sup> Windstream Communications, Inc. (“Windstream”) Comments at 36 (footnote omitted).

<sup>34</sup> *Id.* at 37 (footnote omitted).

<sup>35</sup> Universal Service for America Coalition (“USA Coalition”) Comments at 7 (footnote omitted).

<sup>36</sup> *Id.* at 4. USA Coalition is critical of the Commission’s funding choices, noting that “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.” *Id.* at 7 (footnote omitted).

“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.”<sup>37</sup>

Thus, there is strong support in the record for U.S. Cellular’s view that, if the Commission persists in sidestepping contribution reform, then, at a minimum, it should redirect its limited funding as much as possible to the Mobility Fund. Doing so would correct a glaring imbalance in the Commission’s current budget and would also be responsive to the growing demand from rural consumers for affordable, high-quality mobile broadband service.<sup>38</sup>

A contrary view is presented by some commenters. The Moss Adams Companies argue that “shifting [CAF savings] to rate-of-return carriers would be a very appropriate use, as it would help to accomplish the broadband universal service goal in the highest cost areas of the country.”<sup>39</sup> This argument overlooks the fact that shifting CAF savings to the Mobility Fund would accomplish the same goal, while at the same time helping to rectify the substantial funding mismatch between fixed and mobile broadband service providers.

---

<sup>37</sup> RCA Comments at 5. *See* Time Warner Cable Inc. (“Time Warner”) Comments at 10 (urging the Commission “to reject any proposed increase to funding for rate-of-return carriers”).

<sup>38</sup> *See* Time Warner Comments at 11:

The FNPRM’s apparent inclination to protect rate-of-return carriers’ revenue flows is particularly troubling given the stark contrast in the treatment of lower-cost competitive providers. The Report and Order budgets only \$500 million annually for all wireless carriers and satellite providers (including to support the most remote areas of the nation)—in contrast to the nearly \$4 billion slated for ILECs—without any plausible basis to assume that ILECs will better advance universal service objectives. To the contrary, making all support available to whichever provider can build out the requisite facilities and provide quality service at affordable rates would both advance competition and prevent excessive support.

<sup>39</sup> Moss Adams Companies Comments at 20.

NRIC argues that “the only logical and sustainable public interest conclusion” regarding the use of any CAF savings is to use them to increase funding for rate-of-return carriers.<sup>40</sup> NRIC supports this view by claiming that rate-of-return carriers are facing cost recovery constraints as a result of the Commission’s actions in the *Order*, and that rate-of-return carriers “have demonstrated the desire to push broadband capability deep into their networks.”<sup>41</sup>

Mobile broadband service providers, of course, have the same desire, which in part is a product of the increasing demand among rural consumers for mobile broadband service. Moreover, mobile broadband carriers, as U.S. Cellular has indicated, are constrained by the fact that the Commission has prescribed a budget that provides , rate-of-return carriers with *five times as much funding* as mobile broadband providers.<sup>42</sup>

**B. There Is Strong Support for U.S. Cellular’s View That Implementation of Mobility Fund Phase II Should Await Evaluation of Phase I Auction Results.**

U.S. Cellular argues in its Comments that it makes little sense for the Commission to take final action regarding Mobility Fund Phase II disbursement mechanisms and related issues before the Commission and interested parties are able to assess the operation of the Commission’s mandated single-winner reverse auction mechanism in Mobility Fund Phase I.<sup>43</sup> There is strong support for this position in the record.

T-Mobile, for example, points out that both the Commission and the industry will have an opportunity to learn from the results of the Mobility Fund Phase I reverse auction, and argues that “[t]hose lessons can usefully be applied in determining whether and how reverse auctions

---

<sup>40</sup> Nebraska Rural Independent Companies (“NRIC”) Comments at 88-89.

<sup>41</sup> *Id.* at 89 (footnote omitted).

<sup>42</sup> U.S. Cellular Comments at 52.

<sup>43</sup> *Id.* at 6-8.

should be used in distributing Mobility Fund Phase II support next year.”<sup>44</sup> T-Mobile therefore “urges the Commission to delay a final decision to use reverse auctions for Mobility Fund Phase II until after it completes the Mobility Fund Phase I auctions.”<sup>45</sup>

While CTIA appears to presume that the Commission will use a reverse auction mechanism for the disbursement of Mobility Fund Phase II support,<sup>46</sup> it argues that, since “the fact remains that the Phase I auction will be the first universal service auction that the Commission has ever held[,]”<sup>47</sup> final decisions “on the appropriate structure of Phase II should be deferred until both the Commission and affected stakeholders have the opportunity to evaluate the Phase I auction mechanism.”<sup>48</sup>

U.S. Cellular endorses a procedural approach suggested by RTG. After pointing out that “[t]he Commission will not know with certainty whether it correctly designed the Phase I reverse auction until sometime after it has ended[,]”<sup>49</sup> RTG suggests that “[t]he Commission should release a Phase II further notice of proposed rulemaking sometime after the completion of the Phase I auction. The FNPRM will then give parties a chance to explain what worked and why

---

<sup>44</sup> T-Mobile USA, Inc. (“T-Mobile”) Comments at 2 (footnote omitted). *See* General Communication, Inc. Comments at 14 (arguing that any decision to use a reverse auction model to allocate Mobility Fund Phase II support “requires the development of far more data and support than exists today”); Verizon Comments at 25 (arguing that “the Commission should be prepared to learn and adjust as competitive bidding is introduced into the universal service program for the first time”).

<sup>45</sup> T-Mobile Comments at 5.

<sup>46</sup> U.S. Cellular refrains from making such a presumption, since the Commission has sought comment on “why a model-based approach would better serve this purpose [*i.e.*, maximizing the reach of mobile broadband services supported with the Commission’s budget in areas where there is no private sector business case for providing these services] than our [reverse auction] proposal . . . .” *Further Notice* at para. 1174.

<sup>47</sup> CTIA–The Wireless Association® (“CTIA”) Comments at 4-5.

<sup>48</sup> *Id.* at 4. CTIA notes that the Commission itself has acknowledged that “[t]he first phase of the Mobility Fund . . . will provide the Commission with experience in running reverse auctions for universal service support.” *Order* at para. 299, *quoted in id.* at 4.

and how improvements to the distribution mechanism processes should be transferred over to Phase II.”<sup>50</sup> In U.S. Cellular’s view, such a further rulemaking proceeding should also provide an opportunity to continue the Commission’s assessment of whether it would be advisable to adopt a cost model rather than a reverse auction mechanism for the disbursement of Phase II support.

Finally, U.S. Cellular agrees with NASUCA’s criticism that “the Commission has essentially punted the critical auction design issue to the [Wireline Competition and Wireless Telecommunications] Bureaus, leaving the Commission to apparently wash its hands of the details of how billions of dollars in ratepayer funds will be distributed[,]”<sup>51</sup> and that “[t]he failure of the Commission to provide to the Bureaus anything more than the general and conflicting instructions contained in the Order and Notice is likely to pave the way to an epic policy failure.”<sup>52</sup>

One way to cure the Commission’s lapse, at least with respect to Mobility Fund Phase II if the Commission decides to use a reverse auction mechanism for Phase II, would be for the Commission to engage in a further rulemaking proceeding that not only would provide the Commission and interested parties with an opportunity to evaluate the operation of the Phase I auction (if the Commission decides to use an auction mechanism), but also would enable the Commission itself to adopt rules addressing critical auction design issues instead of delegating this task to the Bureaus.

---

<sup>49</sup> Rural Telecommunications Group, Inc. (“RTG”) Comments at 17.

<sup>50</sup> *Id.* See AT&T Comments at 34 (suggesting that the Commission “could commence an expedited comment cycle, seeking targeted comment on changes it should make to both CAF Phase II and Mobility Fund Phase II based on experience from the Mobility Fund Phase I auction”).

<sup>51</sup> NASUCA Comments at 84.

<sup>52</sup> *Id.*

**C. Various Commenters Support a Cost Model To Disburse Mobility Fund Phase II Support, and Criticize the Proposed Reverse Auction Mechanism.**

As discussed in the preceding section, an important issue concerning the operation of Mobility Fund Phase II involves the Commission’s selection of a mechanism to disburse support to qualifying mobile wireless broadband service providers. While the Commission has proposed to use a single-winner reverse auction mechanism,<sup>53</sup> U.S. Cellular suggests in its Comments that a forward-looking economic cost model would be a more effective mechanism “to direct support, in a manner consistent with the Commission’s principle of fiscal responsibility, to bring high-speed broadband service to dead zones that lack access to high-speed broadband.”<sup>54</sup> U.S. Cellular also argues that various flaws associated with a single-winner reverse auction mechanism would make it a poor choice as a disbursement mechanism for Phase II support.<sup>55</sup>

Numerous commenters support the position taken by U.S. Cellular regarding the drawbacks of a reverse auction process.<sup>56</sup> Their objections are summed up by NASUCA’s observation that “[t]he auction process is fundamentally flawed.”<sup>57</sup> NASUCA argues that “there are numerous problems with the proposed auction process, the consequence of which is to harm consumers through excessive subsidies and inadequate broadband deployment. The auction process should at least be modified consistent with these comments, if not abandoned altogether.”<sup>58</sup> NASUCA

---

<sup>53</sup> *Further Notice* at para. 1122.

<sup>54</sup> U.S. Cellular Comments at 13-14.

<sup>55</sup> *Id.* at 17-25.

<sup>56</sup> *See, e.g.*, Cellular South, Inc., d/b/a C Spire Wireless (“C Spire Wireless”) Comments at 11-22 (discussing various disadvantages of reverse auctions as a mechanism for disbursing Mobility Fund Phase II support); RTG Comments at 3 (stating that it “does not believe that a reverse auction is the correct manner to award ongoing support to rural areas and is concerned that many rural areas will lose service unless safeguards are in place to ensure that existing services are not lost”).

<sup>57</sup> NASUCA Comments at 64.

<sup>58</sup> *Id.* at 65.

argues, *inter alia*, that auctions are untested,<sup>59</sup> that they are not designed to select economically efficient projects, that they may result in disbursing funds for areas “that would have been built out anyway[,]”<sup>60</sup> and that the Commission has failed to provide any guidelines for final auction rules.<sup>61</sup>

Other parties express concerns similar to those raised by NASUCA. The Nebraska PSC, for example, points out “that the use of a competitive bid process will result in a ‘race to the bottom’ in terms of service quality and will not achieve universal service.”<sup>62</sup> T-Mobile focuses on the likely anti-competitive effects of reverse auctions, explaining that “the largest carriers do not need additional support and might submit ‘low-ball’ bids that would not cover their forward-looking costs, or even zero bids, in an effort to deprive smaller rivals of any Mobility Fund support.”<sup>63</sup> C Spire Wireless examines the deficiencies of a *single-winner* reverse auction, concluding that their disadvantages include the fact that they are anti-competitive and they would likely result on high-priced, low-quality service.<sup>64</sup> RCA explains that:

---

<sup>59</sup> *Id.* at 66-67 (noting that “[b]y simultaneously redirecting support to both fixed and mobility broadband services and applying untested auction methods, the risks of waste, fraud and abuse are expanded”).

<sup>60</sup> *Id.* at 67 (footnote omitted).

<sup>61</sup> *Id.*

<sup>62</sup> Nebraska Public Service Commission (“Nebraska PSC”) Comments at 8. The Nebraska PSC’s comments focus on the Commission’s CAF Phase II auction, but the concerns expressed are pertinent to any use of reverse auctions to disburse universal service funds. *See* Blooston Comments at 6 (arguing “that construction and equipment quality short-cuts and other gaming strategies can result in deceptively low ‘winning bids’ and are likely to require larger disbursements of high-cost support in the long term to replace inferior facilities”).

<sup>63</sup> T-Mobile Comments at 5. *See* C Spire Wireless Comments at 8; USA Coalition Comments at 13 (noting that “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”).

<sup>64</sup> C Spire Wireless Comments at 3:

A single-winner reverse auction, by installing an exclusive fund recipient in each eligible service area and consequently eliminating funding portability, not only overturns the

[T]here 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. . . . [R]everse 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.<sup>65</sup>

RCA also agrees that a critical flaw of the single-winner reverse auction mechanism is that it is inherently anti-competitive, explaining that, “[w]hile 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.”<sup>66</sup> RCA concludes that “single-winner auctions likely would *preclude* the development of competition for the foreseeable future.”<sup>67</sup>

There also is support in the record for U.S. Cellular’s view that a cost model is an effective mechanism to facilitate the delivery of affordable, high-quality mobile broadband services to rural communities. T-Mobile, for example, explains that a properly constructed cost model “could promote competitive neutrality, provide proper investment incentives and increase com-

---

Commission’s longstanding commitment to a universal service program that promotes competitive entry and adheres to the Commission’s principle of competitive neutrality, but also risks saddling rural consumers with high-priced, low-quality broadband services from a single provider, precisely the problem that the Telecommunications Act of 1996 . . . was intended to solve.

*See* USA Coalition Comments at 8-9 (footnote omitted) (arguing that “[a]ny proposal that would award support to only one auction winner is fundamentally inconsistent with the Act’s goal of promoting competition and technological innovation. Indeed, by its own terms, any mechanism that limits support to a 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.”).

<sup>65</sup> RCA Comments at 12.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* (emphasis in original).

petition.”<sup>68</sup> U.S. Cellular also agrees with T-Mobile’s analysis that predictive economic modeling would work effectively in the context of mobile wireless broadband networks.<sup>69</sup>

C Spire Wireless describes numerous advantages of using a cost model for the disbursement of Mobility Fund Phase II support,<sup>70</sup> and RCA reiterates its long-held view that “forward-looking cost models offer the most efficient and competitively neutral means of distributing high-cost support.”<sup>71</sup> RCA also enlists findings made by the Commission in the *Order* as further support for the use of a cost model for the disbursement of Mobility Fund Phase II support, noting that “the Commission determined . . . 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.”<sup>72</sup>

In sum, commenters have made the case that any head-to-head comparison of cost modeling and single-winner reverse auctions will produce a conclusion that cost models offer a better means of bringing affordable, high-quality mobile broadband service to rural consumers. U.S. Cellular understands that some may have the view that this no longer is an open issue, especially in light of the fact that the Commission has already adopted a reverse auction mechanism for

---

<sup>68</sup> T-Mobile Comments at 4 (footnote omitted).

<sup>69</sup> T-Mobile explains that, although the Commission has been reluctant to use a cost model to determine support in rural areas because of its concern that the higher costs and diversity of rural incumbents make it difficult for cost models to predict rural service costs, the fact is that “[t]he tremendous economies of scale that mobile wireless networks have generated . . . render mobile wireless service costs well suited for predictive economic modeling.” *Id.* at 3-4.

<sup>70</sup> See C Spire Wireless Comments at 7-14. C Spire Wireless concludes that “[t]he evidence, which the Commission largely chose to overlook in the *Order*, presents a compelling case that a cost model would be more effective than the untested and criticized single-winner reverse auction approach, in meeting the Commission’s objectives.” *Id.* at 8.

<sup>71</sup> RCA Comments at 10.

Mobility Fund Phase I and CAF Phase II. Nonetheless, U.S. Cellular is confident that the Commission will give fair and sufficient consideration to the arguments of “commenters advocating for a model . . . .”<sup>73</sup>

Any such fair and sufficient consideration must proceed by, *first*, awaiting the results of the Mobility Fund Phase I auction, *second*, providing sufficient time for the Commission and interested parties to evaluate the results of the Phase I auction, *third*, issuing a further rulemaking notice to explore the details of using a cost model and to make further proposals regarding the operation of a reverse auction based upon the lessons learned from the Phase I auction, and, *fourth*, arriving at a decision that sufficiently addresses the record, including arguments and analyses regarding the advantages of a cost model, and the disadvantages of a single-winner reverse auction, for use in disbursing Phase II funding.

**D. The Commission’s Proposal for Comparing Reverse Auction Bids Across All Geographic Areas Would Freeze Out Higher Cost Areas from Mobility Fund Support.**

Although the “Notice offers little insight into the actual operation of any proposed auction, or the ranking of auction bids—deferring these ‘details’ to the Bureaus[.]”<sup>74</sup> it appears that the Commission is considering a structure for the Mobility Fund Phase II auction pursuant to which all bids, across all geographic areas, would be compared against all other bids. The bids would be ordered from lowest-price-per-unit bid to highest, and support would be allocated first

---

<sup>72</sup> *Id.* at 11 (quoting *Order* at paras. 184, 187).

<sup>73</sup> *Further Notice* at para. 1174.

<sup>74</sup> NASUCA Comments at 75.

to the bidder making the lowest per-unit bid, and then to bidders with the next lowest per-unit bids in turn, until awarded amounts have exhausted available Phase II support.<sup>75</sup>

U.S. Cellular addresses the use of such a mechanism in its Comments, concluding that “[a] central difficulty with the Commission’s proposal is that it would virtually guarantee that areas with lower unit costs would receive the bulk of Mobility Fund Phase II support, while eligible service areas with higher unit costs would face the prospect of being frozen out of any Phase II funding.”<sup>76</sup> Several parties agree with this view.

NASUCA, a critic in its earlier pleadings of any mechanism that would compare all bids across all geographic areas,<sup>77</sup> exposes the Commission’s proposed approach as a “type of ‘low to high’ ranking auction process [that] does not provide any reliable information regarding the economic cost of serving an area, and [that] will likely result in the excessive distribution of funds precisely because of the lack of bidding competition within specific areas.”<sup>78</sup> Blooston also opposes the use of a mechanism that would compare all bids across all geographic areas because it would “unduly and inequitably favor[ ] large carriers.”<sup>79</sup>

---

<sup>75</sup> See U.S. Cellular Comments at 8-9 (citing *USF-ICC Reform NPRM*, 26 FCC Rcd at 4649-50 (para. 286)). NASUCA argues that the Commission’s proposal in the *Further Notice* to provide bidding credits to carriers seeking to deploy broadband in unserved areas is positive—albeit indirect—proof that the Commission intends to rank auction bids across all geographic areas in a Mobility Fund Phase II auction. NASUCA Comments at 75 (citing *Further Notice* at para. 1193). NASUCA explains that any such bidding credit could not be applied in the case of competing bids made in the same geographic area, and concludes that “[t]he only way that a bidding credit for unserved areas will be applicable is if support is distributed in a non-competitive manner, i.e., where various bids are compared across geographic areas, as opposed to the determination of auction winners based on head-to-head bidding competition in a single geographic area.” *Id.* at 75-76.

<sup>76</sup> U.S. Cellular Comments at 9.

<sup>77</sup> See, e.g., NASUCA *USF-ICC Reform NPRM* Comments at 59.

<sup>78</sup> NASUCA Comments at 76.

<sup>79</sup> Blooston Rural Carriers (“Blooston”) Comments at 9 (footnote and internal quotation marks omitted).

The Commission’s proposed approach finds some support from CenturyLink. In its discussion of proposals for the CAF Phase II reverse auction, CenturyLink argues that the Commission “should prioritize awards based on a nationwide ranking of the bids that will provide broadband for the most subscribers at the lowest cost.”<sup>80</sup> CenturyLink does not explain its claim, and it does not appear to be intuitively correct. Ranking nationwide bids from low to high, and awarding support to the lowest bids, would not seem to ensure that broadband would be provided to the most subscribers since geographic areas with the lowest bids would not necessarily have the greatest number of subscribers.

Moreover, awarding support by comparing all bids across all geographic areas would not seem to produce the lowest cost, because the level of disbursements is dictated by the Commission’s funding cap. In other words, if the Commission set the funding cap at \$*n* billion, and then compared all bids across all geographic areas, the Commission would disburse no more than \$*n* billion, regardless of how many bids it awarded or how many subscribers ultimately were served by winning bidders.

In fact, it appears that the only guaranteed result from the use of a mechanism that compares all bids across all geographic areas is that, as NASUCA has explained, there would be no nexus between funding awards and the efficient use of funds. The proposed mechanism would drive funds to the lowest cost service areas across the entire country, without the Commission’s engaging in any analysis regarding the efficiencies that winning bidders would achieve in serving these lowest-cost areas. It is difficult to discern the public policy benefits of a disbursement mechanism that would ignore efficiencies and that could result in “entire states with high-cost

---

<sup>80</sup> CenturyLink Comments at 13.

eligible service areas [being] shut off from any access to Mobility Fund Phase II funding for a decade.”<sup>81</sup>

Finally, ACA opposes the use of a single, nationwide auction, suggesting instead “that the Commission should hold separate auctions for four to six regions across the country.”<sup>82</sup> ACA argues that such an approach “should facilitate greater participation, especially by smaller providers who operate in various regions[, and] will increase the efficient distribution of support since the Commission can refine the reserve price based on prior auction results.”<sup>83</sup> In U.S. Cellular’s view, ACA’s proposal may warrant consideration. Such an approach would not cure the problems associated with the Commission’s proposal to compare all bids across the entire country, but it would minimize the damage by restricting these comparisons to regions.

## **E. Other Issues.**

### **1. Broadband As a Supported Service.**

U.S. Cellular observes in its Comments that the Commission has managed to entangle itself in a legal conundrum to the extent it purports to fashion policies to promote the comparability of both fixed and mobile broadband services available in rural and urban areas, while at the same time refusing to classify broadband as a supported service.<sup>84</sup>

Numerous commenters agree that this issue discussed by U.S. Cellular constitutes a significant problem with the Commission’s approach. The Rural Associations, for example, point out that “[i]t is . . . questionable from a legal perspective how the Commission can port the con-

---

<sup>81</sup> U.S. Cellular Comments at 10. The reference to a decade is based on the Commission’s proposal to award Mobility Fund Phase II support for 10-year terms. *See Further Notice* at para. 1138.

<sup>82</sup> American Cable Association (“ACA”) Comments at 12.

<sup>83</sup> *Id.*

<sup>84</sup> U.S. Cellular Comments at 46-47.

cept of ‘reasonable comparability’ under section 254 over from voice to broadband service when it has expressly and purposefully attempted to steer clear from making broadband a ‘supported service’ under the statute.”<sup>85</sup> AT&T extends this problem to its logical, albeit unsatisfactory, conclusion by arguing that “the Commission has no statutory obligation to ensure that broadband service rates in rural and urban areas are reasonably comparable *unless it makes broadband service a supported service*.”<sup>86</sup> USTelecom explains that this problem extends beyond issues concerning rate and service comparability, noting that:

Broadband is an information service regulated under Title I, and section 3(51) of the Act expressly precludes the Commission from imposing common-carrier regulations on broadband. Mandatory broadband deployment and maintenance obligations are precisely the type of common-carrier regulation precluded by section 3(51). Broadband public interest obligations are merely a subset of deployment and maintenance obligations.<sup>87</sup>

Thus, parties spanning three major categories of service providers directly involved in utilizing universal service support to bring broadband networks to rural America—mobile wireless carriers, price cap carriers, and rate-of-return carriers—agree that the Commission has constructed a framework for universal service reform that is marred by serious deficiencies. In U.S. Cellular’s view, given the stakes involved in bringing advanced fixed and mobile broadband

---

<sup>85</sup> Rural Associations Comments at 37.

<sup>86</sup> AT&T Comments at 27 (emphasis added). *See* USA Coalition Comments at 3 (footnote omitted):

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) 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.

<sup>87</sup> USTelecom Comments at 5.

networks to rural consumers,<sup>88</sup> the Commission should follow a more prudent course. Fortunately, as U.S. Cellular observes in its Comments, there is a simple solution to the dilemma the Commission has created: The Commission should take the “more straightforward and legally defensible approach [of including] broadband on the list of supported services.”<sup>89</sup>

## **2. Mobility Fund Phase II.**

### **a. There Is Support in the Record for a Ten-Year Term of Support for Mobility Fund Phase II Funding Recipients.**

In its Comments, U.S. Cellular supports the Commission’s proposal for a fixed term of 10 years for Mobility Fund support, arguing that a shorter term would cause difficulties for smaller wireless carriers and regional carriers serving rural areas in their attempts to attract sufficient capital to assist in meeting network deployment requirements.<sup>90</sup>

Having said this, the Commission needs to understand that an award of 10 years to winning bidders of an overall inadequate level of funding dooms all other unserved eligible high-cost areas not lucky enough to receive an award to going without mobile broadband for at least that period of time, if not longer. This is not a criticism of the 10-year term, but rather is a further

---

<sup>88</sup> As the Commission has explained:

[T]oo many Americans today do not have access to modern networks that support broadband. Approximately 18 million Americans live in areas where there is no access to robust fixed broadband networks. And millions of Americans live, work, or travel in areas without access to advanced mobile services. There are unserved areas in every state of the nation and its territories, and in many of these areas there is little reason to believe that Congress’s desire “to ensure that all people of the United States have access to broadband capability” will be met any time soon with current policies.

*Order* at para. 4.

<sup>89</sup> U.S. Cellular Comments at 47.

<sup>90</sup> *Id.* at 35.

indication that the inadequacy of the Commission’s budget for Mobility Fund Phase II has detrimental collateral effects.<sup>91</sup>

RTG agrees that the Commission should establish a 10-year term of support for Mobility Fund support recipients, arguing that such a term is necessary to enable service providers to establish long-term business plans and forecast the long-term development and improvement of broadband networks.<sup>92</sup> U.S. Cellular supports RTG’s view that “[s]etting the term of support at ten years will place Phase II disbursements in line with the way rural carriers plan and set up their networks.”<sup>93</sup>

**b. The Record Supports Placing Limits on Package Bidding.**

U.S. Cellular argues in its Comments that, if no limits are imposed on package bidding in any Mobility Fund Phase II reverse auction, this failure could further enhance the ability of larger carriers to manipulate reverse auction outcomes to their advantage. These carriers could package bids that cover extensive geographic areas, making it difficult for smaller rural carriers and regional carriers to match such bidding strategies, placing them at a competitive disadvantage in the auctions.<sup>94</sup> As discussed below, other parties have expressed similar concerns. As a remedy,

---

<sup>91</sup> *See id.* at 10 (explaining that, if the Commission were to compare all Mobility Fund Phase II auction bids across all geographic areas in the country, and award support to the lowest bidder based on this national comparison, then entire states with eligible service areas might not receive any funding for 10 years).

<sup>92</sup> RTG Comments at 19. *See* Alaska Communications Systems Group, Inc. (“ACS”) Comments at 20 (supporting a term of 10 years); ADTRAN Inc. (“ADTRAN”) Comments at 18-19 (arguing that “the Commission should adopt a ten year term of support for recipients under both the Mobility Fund and CAF Phase II”).

<sup>93</sup> RTG Comments at 19.

<sup>94</sup> U.S. Cellular Comments at 38.

U.S. Cellular suggests in its Comments that the Commission should limit package bids to aggregations of geographic areas that are within the boundaries of a county.<sup>95</sup>

T-Mobile suggests that, as a safeguard against a single entity and its affiliates dominating an auction, the Commission should impose restrictions on the packages that bidders would be permitted to select.<sup>96</sup> Similarly, Blooston argues that “the Commission should restrict the use of package bidding, as the ability to accumulate census blocks into one large bid proposal will create an apples-to-oranges comparison that will heavily favor large carriers.”<sup>97</sup> Blooston concludes that, “[i]f package bidding is to be allowed, it should be restricted to service area sizes that will allow rural carriers and other small businesses to realistically compete in the auction.”<sup>98</sup> Blooston suggests that package bids should be limited to census tracts.<sup>99</sup>

The Commission proposes that the Bureaus may consider various procedures for grouping geographic areas within a bid, tailored to the needs of prospective bidders as indicated during a pre-auction notice and comment period.<sup>100</sup> Given the convincing arguments in the record supporting the view that package bidding could be harmful to smaller rural carriers and regional carriers seeking to participate in Mobility Fund Phase II auctions, the Commission should constrain the discretion of the Bureaus in their consideration of these procedures by adopting a rule limiting package bids to aggregations of geographic areas that are within the boundaries of a county.

---

<sup>95</sup> *Id.*

<sup>96</sup> T-Mobile Comments at 5.

<sup>97</sup> Blooston Comments at 12.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* See C Spire Wireless Comments at 26 (expressing support for “limiting package bids to aggregations of geographic areas that are within the boundaries of a county”).

<sup>100</sup> *Further Notice* at para. 1155.

**c. The Commission Should Not Give Funding Priority to Areas with No Mobile Service or with Mobile Service Below Certain Speed Levels.**

U.S. Cellular takes the position in its Comments that targeting areas currently without any mobile service (or with access only to mobile service at speeds lower than current generation or 3G levels) for priority treatment under Mobility Fund Phase II would not be the best way to ensure rate and service comparability between urban and rural areas.<sup>101</sup> ACA agrees with this approach, arguing that, “[s]ince the Commission’s overarching goal is to maximize broadband service and minimize the cost to the fund, no particular areas should be prioritized.”<sup>102</sup>

USA Coalition argues that the Commission should give priority to areas with no 2G or 3G service because—unlike 4G service—a substantial majority of residential subscribers has adopted 2G and 3G service,<sup>103</sup> thus satisfying one of the criteria established in Section 254(c)(1) of the Act<sup>104</sup> for treating a telecommunications service as a supported service. U.S. Cellular is not convinced, however, that this distinction between 2G and 3G services on the one hand, and 4G service on the other, has any relevance, in light of the fact that, under the Commission’s decision in the *Order*, none of these services is eligible to be treated as a supported service.<sup>105</sup>

---

<sup>101</sup> U.S. Cellular Comments at 26-27.

<sup>102</sup> ACA Comments at 7.

<sup>103</sup> USA Coalition Comments at 18.

<sup>104</sup> 47 U.S.C. § 254(c)(1).

<sup>105</sup> See Section II.E.1., *supra*. USA Coalition seems to subscribe to this view, having argued that “the Act does not authorize the Commission to identify independent goals (*i.e.*, ubiquitous availability of fast broadband information services) and then design the distribution mechanism to achieve those goals . . . .” USA Coalition Comments at 3. The Commission’s conclusion that broadband is not treated as a supported service leads to the conclusion that all broadband services—at any speed—are on an equal footing, and that USA Coalition is incorrect in maintaining that “the Act *requires* the Commission to prioritize support to areas that also lack 2G coverage . . . .” *Id.* at 18 (emphasis added) (internal quotation marks omitted).

RTG argues that “[s]ome form of priority should be given to those areas that have no coverage[.]”<sup>106</sup> but also cautions that “[t]he FCC’s first priority when distributing Phase II support should be to not harm existing coverage in hard-to-serve areas throughout the United States [and that areas] that already have some form of coverage should not be put at risk of losing that coverage.”<sup>107</sup> RTG’s concerns, and its efforts to balance competing priorities, crystallize a dilemma that U.S. Cellular discusses in its Comments: The Commission’s Mobility Fund budget—which seems designed to do less with less—forces the consideration of priorities that are inherently problematic. As U.S. Cellular has explained:

[T]he Commission’s self-imposed budget constraints create a serious dilemma with regard to meeting the statutory principle of reasonable comparability, and, given these constraints, there is no rational basis for establishing the priority suggested by the Commission [regarding areas with no coverage or coverage at speeds below certain levels]. Rather than tinkering with disbursement priorities, the Commission would better serve consumers in rural areas by establishing a Phase II budget sufficient to ensure rate and service comparability across all eligible service areas.<sup>108</sup>

**d. There Is Support for U.S. Cellular’s Position That Road Miles Should Be Used To Determine Bidding Units and Coverage Requirements.**

Arguing that the use of road miles takes into account mobile services as well as business locations, recreation areas, and work sites, U.S. Cellular supports in its Comments using the number of road miles in each eligible service area as the basis for determining the number of

---

<sup>106</sup> RTG Comments at 10. *See* ACS Comments at 16 (supporting the goal of targeting mobility support to areas that lack 2G or better coverage, but not addressing the merits of the issue).

<sup>107</sup> RTG Comments at 10.

<sup>108</sup> U.S. Cellular Comments at 27-28 (footnote omitted).

bidding units and the coverage requirement that must be met by Mobility Fund Phase II funding recipients.<sup>109</sup>

CTIA supports this approach, stating that “[u]sing road miles as, at minimum, an element in the bidding unit equation recognizes the importance of ensuring that mobile services are available to consumers where they live, travel, and work.”<sup>110</sup> RTG expresses the same view, and U.S. Cellular agrees with RTG’s further suggestion that “the FCC should allow for all types of roads to be included, including unpaved roads . . . .”<sup>111</sup>

NASUCA expresses concern that using road miles as the exclusive means for establishing bidding units could leave “unserved areas with higher population and a smaller number of road miles without service[.]”<sup>112</sup> and suggests that the Commission should weight road miles by population as a means of generating “a more reasonable basis for determining the number of unserved units.”<sup>113</sup> NASUCA’s proposal may have merit, although U.S. Cellular suggests that, if the Commission is inclined to modify the use of road miles (in the manner suggested by NASUCA) as the basis for determining bidding units, it should seek further comment on the issue of how such a hybrid population/road mile mechanism could be developed.<sup>114</sup>

---

<sup>109</sup> *Id.* at 33.

<sup>110</sup> CTIA Comments at 7.

<sup>111</sup> RTG Comments at 9. Blooston expresses concern that the use of road miles could favor large carriers proposing to cover highways, but suggests that the cure for this problem would be to ensure that the definition of “road miles” is not limited to interstate highway miles. Blooston Comments at 15.

<sup>112</sup> NASUCA Comments at 83.

<sup>113</sup> *Id.* (footnote omitted).

<sup>114</sup> USA Coalition suggests an approach similar to the proposal advanced by NASUCA, arguing that “the Commission should consider relying . . . 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.” USA Coalition Comments at 17.

**e. The Commission Should Not Use the Centroid Method To Determine If Service Is Available in Particular Census Blocks.**

U.S. Cellular opposes in its Comments the use of the “centroid” method to ascertain whether service is available in a census block, arguing that a disadvantage of this proposed method is that it incorrectly treats large census blocks in low-density rural areas as “served” even if large geographic portions of the blocks are not receiving a level of mobile broadband service that is reasonably comparable to service available in urban areas.<sup>115</sup>

RTG also expresses reservations concerning the proposed use of the centroid method, and suggests that the Commission should consider “allowing bids for areas where large portions of a census block would otherwise be considered ineligible because the centroid is covered.”<sup>116</sup> RTG proposes that, in areas in which an unsubsidized carrier is providing service that is “spotty at the outer edges,”<sup>117</sup> and in which at least 50 percent of the census block is uncovered even though the centroid is covered, the Commission should treat the census block as uncovered. This proposal may have sufficient merit to warrant consideration in further Commission proceedings.<sup>118</sup>

**3. CAF Phase II.**

**a. Other Commenters Agree with U.S. Cellular That the Commission Should Permit CAF Phase II Bids with Variable Prices and Performance Levels.**

If the Commission, against the weight of arguments and analysis in the record, decides not to adopt non-uniform performance standards for CAF Phase II, then a related proposal ad-

---

<sup>115</sup> U.S. Cellular Comments at 26.

<sup>116</sup> RTG Comments at 8.

<sup>117</sup> *Id.*

<sup>118</sup> ACS also opposes the use of the centroid method, arguing that “this will lead to absurd results, especially in the many parts of Alaska where small population centers are interspersed among unpopulated land masses or island groupings.” ACS Comments at 16.

vanced by the Commission in the *Further Notice*, which U.S. Cellular supports, takes on added significance. Specifically, the Commission makes an alternative proposal to relax minimum performance requirements for CAF Phase II support recipients, by permitting service providers to propose different prices at which they would offer services at different performance levels, and then to select winning bids based on both prices and performance scores assigned by the Commission after taking into account “quality” differences in its evaluation of bids.<sup>119</sup>

While T-Mobile agrees with U.S. Cellular that the Commission should adopt its alternative approach,<sup>120</sup> other commenters express opposition. ACA argues that relaxing CAF Phase II performance requirements would “result in service that is ineffective to allow consumers to access critical applications and content, and inadequate to meet the requirements of the Communications Act.”<sup>121</sup> Windstream claims that it would be “nonsensical” for the Commission to reject lower performance requirements in the *Order*—as it has done—and then to find that a lower performance requirement would be acceptable for CAF Phase II, since consumers in high-cost areas would be shortchanged by such a relaxation of standards.<sup>122</sup> ADTRAN argues that reduced performance requirements would deprive consumers access to real-time applications such as streaming video,<sup>123</sup> and that “relaxing the minimum performance standards would mean that the Commission would not be making an ‘apples-to-apples’ comparison amongst competing bids.”<sup>124</sup>

---

<sup>119</sup> *Further Notice* at para. 1204. See U.S. Cellular Comments at 43.

<sup>120</sup> T-Mobile Comments at 7 n.23.

<sup>121</sup> ACA Comments at 33.

<sup>122</sup> Windstream Comments at 29.

<sup>123</sup> ADTRAN Comments at 23.

<sup>124</sup> *Id.* at 24.

One of the broadband performance characteristics adopted by the Commission for CAF Phase II is an initial minimum broadband actual speed benchmark of 4 Mbps downstream and 1 Mbps upstream, applicable to all supported locations.<sup>125</sup> If the Commission were to refrain from relaxing this requirement for purposes of enabling bidders to demonstrate their ability to deliver high-quality broadband services (albeit at speeds below the benchmark) with characteristics that meet consumer demand, then it would be likely that at least some mobile wireless broadband service providers would be precluded from participating in the CAF Phase II reverse auction.

U.S. Cellular submits that such a result would be detrimental to the interests of consumers in rural areas, because shutting off CAF Phase II funding for mobile broadband providers would likely deny consumers in many rural communities of any access to mobile broadband service.<sup>126</sup> Since the Commission's policy is to provide any broadband provider that has been designated as an ETC with an opportunity to participate in the CAF Phase II reverse auction,<sup>127</sup> it is incumbent upon the Commission to take steps to ensure that this opportunity is a realistic one for mobile broadband providers.

The Commission's proposal to relax minimum performance requirements for CAF Phase II support recipients constitutes such a step. It is also important to keep in mind that relaxing the speed metric would enable a "trade-off" that should be offered to consumers in rural areas:

---

<sup>125</sup> *Order* at paras. 94, 105.

<sup>126</sup> U.S. Cellular recognizes that Mobility Fund Phase II support will help to alleviate this problem to some degree, but, as U.S. Cellular has discussed, the budget allocated by the Commission for Mobility Fund Phase II has not been set at a level that would enable extensive deployment of mobile broadband networks to serve communities throughout rural areas. See Section II.A., *supra*.

<sup>127</sup> See *Order* at para. 25 (emphasis added) (indicating that "any broadband provider that has been designated as an ETC for the relevant area may participate" in CAF Phase II auctions that will distribute up to \$1.8 billion annually).

broadband that performs at speeds below 4 Mbps, but that also is *mobile*. Consumer demand for mobile demand suggests that many rural consumers would find such a trade-off attractive.

Finally, NASUCA raises a concern regarding the Commission's alternative proposal that warrants attention. Specifically, NASUCA is worried that, if the performance standards for CAF Phase II auction-based support are permitted to be lower than those for CAF Phase II model-based support, then this would provide incentives for incumbent price cap LECs to opt out of the model-based CAF Phase II support, but to participate in the CAF Phase II auction in order to take advantage of the lower performance standards.<sup>128</sup> As NASUCA itself suggests, however, these incentives would be made irrelevant if price cap LECs were barred from participating in the CAF Phase II auction.<sup>129</sup>

**b. There Is Support in the Record for U.S. Cellular's View That the Commission Should Not Require Carriers To Finance a Fixed Percentage of Network Deployment from Non-CAF Sources.**

U.S. Cellular argues in its Comments that auction winners receiving CAF Phase II support should not be required to finance a fixed percentage of any network build-out with non-CAF or private funds, as the Commission suggests in the *Further Notice*, because the Commission has established other requirements that should be sufficient to ensure that these funding recipients will meet applicable CAF Phase II obligations.<sup>130</sup>

---

<sup>128</sup> NASUCA Comments at 78-79.

<sup>129</sup> *Id.* at 79. There is support in the record for barring incumbent price cap carriers from bidding in the CAF Phase II auction. See Section II.E.3.c., *infra*.

<sup>130</sup> U.S. Cellular Comments at 42.

ITTA agrees with U.S. Cellular’s position,<sup>131</sup> and also points out that the requirement suggested by the Commission “would be extremely difficult for publicly-traded companies and may discourage participation by potential recipients that may actually be in the best position to extend service to the area for which CAF support is available based on their existing network deployment.”<sup>132</sup> U.S. Cellular reiterates its view that the Commission should not adopt such a requirement, especially in light of the fact that the Commission has already rejected this requirement in connection with the Mobility Fund Phase I reverse auction.<sup>133</sup>

**c. The Record Supports U.S. Cellular’s Argument That Incumbents That Turn Down Model-Based CAF Phase II Support Should Be Barred from the CAF Phase II Auction.**

U.S. Cellular argues in its Comments that there is no public policy basis for giving incumbent price cap LECs the opportunity to weigh their self-interest and then select the CAF funding mechanism—either right of first refusal or the reverse auction mechanism—that would better solidify their competitive advantage.<sup>134</sup>

RCA agrees that the Commission should deny price cap incumbents this “second bite at the apple . . . .”<sup>135</sup> RCA reasons that, if the Commission were to allow an incumbent that declines the state-level commitment to obtain CAF support for certain census blocks within the state involved, “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

---

<sup>131</sup> Independent Telephone and Telecommunications Alliance (“ITTA”) Comments at 16.

<sup>132</sup> *Id.*

<sup>133</sup> *Order* at para. 104, *cited in* U.S. Cellular Comments at 42.

<sup>134</sup> U.S. Cellular Comments at 44.

<sup>135</sup> RCA Comments at 7.

areas. 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.”<sup>136</sup>

A number of parties argue in favor of permitting incumbent price cap carriers to participate in the CAF Phase II auction. USTelecom suggests that, since a price cap carrier “would not assume the risk of moving to competitive bidding” if exercising its right of first refusal would produce “sufficient net revenues for its operations[,]” there could be no “rational reason” for penalizing the carrier by barring the carrier from the Phase II auction if it determines that the right of first refusal will not produce enough revenue.<sup>137</sup>

Commission policy decisions should not be driven by whether a policy will maximize the revenues of incumbent price cap carriers (or any other service providers). Decisions made by the Commission in the *Order* give incumbent price cap carriers exclusive access to \$300 million in CAF Phase I incremental support, and exclusive access (*via* the right of first refusal) to an additional \$1.8 billion in annual CAF Phase II funding. That should be enough.

Given the substantial advantages that incumbents are in a position to realize from being the exclusive recipients of Phase II support in their service areas—with all other carriers being deprived of any opportunity to compete for this funding if the incumbent exercises its right of first refusal—there is no credible basis for maintaining that it would be “unfair” to exclude incumbents from the Phase II auction process if they decide that the right of first refusal will not produce sufficient revenues for them.

---

<sup>136</sup> *Id.* (quoting *Order* at para. 173).

<sup>137</sup> USTelecom Comments at 23. *See* Frontier Communications Corporation (“Frontier”) Comments at 14 (noting that the level of funding and the obligation terms presented by the right of first refusal may not make business sense); ITTA Comments at 15 (indicating that there may be sound business reasons for declining the right of first refusal).

Windstream argues that the Commission should not restrict the eligibility of incumbent price cap carriers to participate in the CAF Phase II reverse auction process if they decline model-based support for the area that will be auctioned,<sup>138</sup> because such a restriction would hinder the Commission's ability "to leverage the experience and advantages of some larger providers[.]"<sup>139</sup> and because "[a] competitive bidding process unencumbered by such restrictions would permit willing participants to compete on equal terms to serve the Commission's goals . . . ."<sup>140</sup>

Neither of these arguments is persuasive. As U.S. Cellular has discussed, decisions already taken by the Commission in the *Order*, which give incumbent price cap carriers exclusive access to billions of dollars in CAF support, should be more than sufficient to accomplish the "leveraging" that Windstream describes, provided that (according to Windstream's reasoning) these carriers find it worth their while to offer up their "experience and advantages."

Windstream's second argument is a convincing brief for simply disbursing all CAF Phase II support through a reverse auction, rather than first giving incumbent price cap carriers an exclusive opportunity to lock up the Phase II support. That train, however, has left the station. The strength of Windstream's advocacy for the opportunity of incumbents "to compete on equal terms [with other service providers in an auction] to serve the Commission's goals"<sup>141</sup> is diluted by the fact that the Phase II auction will not take place until after these same incumbents decide whether they want to claim Phase II funding without having to compete for it on any terms with anyone.

---

<sup>138</sup> Windstream Comments at 25.

<sup>139</sup> *Id.* at 26.

<sup>140</sup> *Id.* at 25. See ADTRAN Comments at 21-22.

<sup>141</sup> Windstream Comments at 25.

CenturyLink argues in favor of permitting incumbent price cap carriers to participate in the CAF Phase II reverse auction, after they turn down support by not exercising their right of first refusal, because “[i]f price cap carriers are excluded, consumers will lose out on a potential provider who could have met the CAF obligations at the lowest cost for an area.”<sup>142</sup> This claim is speculative at best, especially in light of the fact that, as U.S. Cellular has discussed, the low bids of large incumbent price cap carriers may in fact be “low-ball” bids aimed at depriving smaller rivals of CAF Phase II support.<sup>143</sup>

Finally, in U.S. Cellular’s view, NASUCA has cogently summed up the problem with the Commission’s proposal to permit incumbent price cap carriers to participate in the CAF Phase II reverse auction:

The ability of a price cap ILEC to “opt out” of the model-based support but nonetheless participate in the auction undermines the usefulness of the model, and opens up the possibility of gaming on the part of the price cap ILECs. As a general proposition, if the Commission wants to increase the credibility of the model-based support offer, it should preclude the price cap ILEC from participating in the CAF Phase II auction.<sup>144</sup>

In other words, if the Commission wants its CAF Phase II model-based support mechanism to work the way the Commission intends, and if it wants to guard the integrity of the Phase II auction, it should keep the incumbents out of the auction.

---

<sup>142</sup> CenturyLink Comments at 15.

<sup>143</sup> See page 21 & n.63 *supra*.

<sup>144</sup> NASUCA Comments at 79.

#### 4. Funding Recipient Obligations.

##### a. The Commission Should Adopt a Presumption Regarding the Comparability of Rural and Urban Rates.

If the Commission is able to solve the problems discussed in an earlier section of these Reply Comments regarding its rate comparability policies and its refusal to designate broadband as a supported service—in short, how can the Commission lawfully require ETCs to establish reasonably comparable rates for an unsupported service?<sup>145</sup>—then it can turn to a comparability issue raised in the *Further Notice* regarding the creation of a presumption.<sup>146</sup> In its Comments, U.S. Cellular addresses this issue by arguing that, if a carrier demonstrates that its service offerings to rural customers do not differ from the offerings the carrier makes to urban customers, then the carrier should not be required to make any further showing to establish that its services in rural areas are reasonably comparable to those provided to urban customers.<sup>147</sup>

Numerous commenters support this approach. CenturyLink, for example, concludes that there should be a presumption of reasonable comparability if a service provider offers the same rates, terms, and conditions (including any capacity limits) to its customers in both rural and urban areas.<sup>148</sup> C Spire Wireless agrees, noting that such an approach would be sensible from an administrative perspective because, if a service provider is able to demonstrate that the voice and broadband services it provides in rural areas are the same as the offerings it provides to urban customers, “then there should be no need to require the service provider to do anything fur-

---

<sup>145</sup> See Section II.E.1., *supra*.

<sup>146</sup> *Further Notice* at para. 1027.

<sup>147</sup> U.S. Cellular Comments at 45-46.

<sup>148</sup> CenturyLink Comments at 7.

ther.”<sup>149</sup> U.S. Cellular also agrees with AT&T’s suggestion that the presumption “also should apply if rural rates do not exceed the urban rates by some percentage since the statute does not demand identical rates but, rather, provides for a ‘reasonable’ comparability of rates.”<sup>150</sup>

**b. Mobile Wireless Broadband Providers Should Be Subject to Separate Speed Testing and Reporting Requirements.**

The Commission asks whether it should adopt a uniform methodology for measuring broadband performance, and, if so, whether the methodology should be uniform across all technologies.<sup>151</sup> There is support in the record for U.S. Cellular’s argument that the Commission should adopt speed measurement criteria that take into account the unique characteristics of mobile broadband networks.<sup>152</sup>

U.S. Cellular agrees with CTIA’s argument that there is no basis for applying the same measurement and performance obligations to both fixed and mobile broadband offerings because “[f]undamentally, mobile wireless networks—and the provisioning and management of service over them—are completely different than wireline networks.”<sup>153</sup> CTIA explains that wireless networks have several layers of complexity that are not present in wireline networks, and that, since all users in a wireless cell site share capacity in the cell, a user’s actual speed will vary de-

---

<sup>149</sup> C Spire Wireless Comments at 36. *See* ACS Comments at 9 & n.14.

<sup>150</sup> AT&T Comments at 25. In addition, U.S. Cellular agrees with AT&T’s observation that it would be impossible for commenters to suggest a particular percentage “[u]ntil parties know how much high-cost support will be available in [a] given area and what their costs of providing service are in that area . . . .” *Id.* at 25-26.

<sup>151</sup> *Further Notice* at para. 1014.

<sup>152</sup> U.S. Cellular Comments at 44.

<sup>153</sup> CTIA Comments at 9. *See* ADTRAN Comments at 9-10 (arguing that “the parameters and methodology used to measure any given service (*e.g.*, fixed broadband access) should be uniform across all technologies used to deliver that service (*e.g.*, DSL, cable, fiber, fixed wireless, or satellite)[,]” but that “a test methodology that requires large volumes of test traffic may not be appropriate for mobile access services, where relatively low volume caps are common and where radio performance in a cell may be very sensitive to traffic load”).

pending on several factors.<sup>154</sup> U.S. Cellular endorses CTIA’s indication, based upon the factors it discusses, that it does not believe that “any metric for measuring mobile wireless broadband speeds would provide any better information than the current practice of reporting peak and average data rates to customers.”<sup>155</sup>

AT&T also makes a suggestion that U.S. Cellular encourages the Commission to consider. Specifically, AT&T argues that the Commission should seek input from standards bodies regarding whether any particular methodology for measuring broadband performance (whether a uniform methodology is used or more than one methodology is selected as a means of accounting for different network characteristics) “is both technically sound and cost effective.”<sup>156</sup>

In the interim, AT&T suggests that the Commission should give service providers the flexibility (within certain parameters the Commission could define) “to measure their broadband service in a manner that makes sense for that provider’s particular broadband network, while still giving the Commission the assurance that its high-cost dollars are being used appropriately.”<sup>157</sup> Such an approach, in U.S. Cellular’s view, would establish a useful process for determining

---

<sup>154</sup> CTIA Comments at 9-10 (citing FCC, “The Broadband Availability Gap,” Omnibus Broadband Initiative Technical Paper 1 (Apr. 2010), at 66).

<sup>155</sup> *Id.* at 10. Other commenters make similar arguments and proposals, further supporting U.S. Cellular’s view that speed measurement criteria should take into account the unique characteristics of mobile broadband networks. *See* ACS Comments at 3 (observing that “measurement of speed and latency will differ between wireline and mobile wireless platforms”); Frontier Comments at 4 (suggesting that “the Commission should evaluate several [currently available] tests and provide ETCs with a choice of measurement tests that meet the ETCs’ individual requirements”); Windstream Comments at 11-12 (emphasis added) (arguing that the Commission should apply any broadband measurement methodology it adopts uniformly across all wired and *fixed* wireless CAF support recipients, and also “should accelerate its efforts to develop a standardized process for measuring the performance of *mobile* broadband services”).

<sup>156</sup> AT&T Comments at 19.

<sup>157</sup> *Id.*

whether differing methodologies are necessary (which U.S. Cellular believes is the case), and for providing an appropriate level of flexibility to service providers in the meantime.

NASUCA supports “adoption of uniform measurement and reporting requirements[.]”<sup>158</sup> and endorses a conclusion reached in the Measuring Broadband America Report that measurements could be standardized across a range of technologies.<sup>159</sup> NASUCA argues that comparable data is essential so that government policymakers as well as consumers can benefit from ETCs broadband measurement reports.<sup>160</sup>

U.S. Cellular does not disagree with NASUCA as a general matter, but the fact remains that the unique components and characteristics of mobile wireless broadband networks would make it extremely difficult and counterproductive to attempt to include these networks in any uniform measurement requirement. The Commission acknowledged this in the Measuring Broadband America Report, indicating that “[m]obile broadband services, which are increasingly important to consumers, were not included in this study due to the special challenges inherent in measuring the actual performance of mobile networks.”<sup>161</sup> Thus, the range of technologies discussed in the Report as suitable for a standardized measurement methodology did not include mobile broadband networks.

---

<sup>158</sup> NASUCA Comments at 14.

<sup>159</sup> *Id.* (citing Measuring Broadband America, A Report on Consumer Wireline Broadband Performance in the U.S., FCC’s Office of Engineering and Technology and Consumer and Governmental Affairs Bureau, 2011 WL 3343075 (Aug. 2, 2011) (“Measuring Broadband America Report” or “Report”), at 28).

<sup>160</sup> *Id.*

<sup>161</sup> Measuring Broadband America Report at 8.

**c. The Commission Should Account for Differences in Fixed and Mobile Broadband Services in Establishing Public Interest Requirements for CAF Phase II Support Recipients.**

Windstream, as noted in the preceding section, argues that the Commission should apply a broadband performance measurement methodology uniformly to “both wired and *fixed* wireless”<sup>162</sup> CAF support recipients and should also develop a standardized measurement process specifically for *mobile* broadband services.<sup>163</sup> Windstream also argues more generally, however, that the Commission should apply the same public interest obligations “to all CAF recipients, regardless of whether they provide wired or wireless, fixed or mobile broadband service.”<sup>164</sup>

Windstream contends that technology-neutral standards would ensure that consumers have access to comparable networks, that separate treatment regarding public interest obligations would distort competition for CAF Phase II support, and that attempting to differentiate between wireline and wireless technologies would ignore marketplace realities that reflect “technological lines [that] are becoming increasingly blurred.”<sup>165</sup>

U.S. Cellular disagrees with Windstream’s arguments. Although a better approach to universal service reform would be for the CAF Phase II reverse auction to provide for at least one fixed service provider and one mobile wireless provider in each eligible service area,<sup>166</sup> U.S. Cellular’s view is that, since the Commission has adopted a single-winner auction mechanism, this mechanism must be designed in a manner that realistically enables both fixed and mobile wire-

---

<sup>162</sup> Windstream Comments at 12 (emphasis added).

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* at 7.

<sup>165</sup> *Id.*; *see id.* at 7-11.

less carriers to compete for Phase II support.<sup>167</sup> Given the meager budget the Commission has allocated for Mobility Fund Phase II,<sup>168</sup> if mobile broadband providers do not have a realistic opportunity to compete for CAF Phase II funding, then a substantial number of consumers across rural America would face the prospect of being deprived of access to mobile broadband services comparable to those available in urban areas.

Any realistic opportunity for mobile broadband service providers to compete for CAF Phase II funding would be shattered if the Commission were to follow Windstream's approach and impose wireline-centric public interest obligations that do not take into account the unique characteristics of wireless broadband networks and operations.<sup>169</sup> The harms to consumers resulting from Windstream's suggested approach would be compounded if the Commission were to adopt its proposal to permit incumbent price cap carriers to participate in the CAF Phase II auction if they do not exercise their right of first refusal for CAF Phase II support.<sup>170</sup>

---

<sup>166</sup> See U.S. Cellular Comments at 38-39 (arguing that the CAF Phase II reverse auction mechanism should support more than a single provider in each eligible service area).

<sup>167</sup> The Commission has proposed that any carrier that has been designated as an ETC covering the relevant geographic area will be eligible to participate in the CAF Phase II reverse auction. *Further Notice* at para. 1199. See *Order* at para. 25 (emphasis added) (indicating that, in the second phase of CAF, “any broadband provider that has been designated as an ETC for the relevant area may participate” in the reverse auction); *id.* at para. 299 (footnote omitted) (stating that the “dedicated support for mobile service [in the Mobility Fund] supplements the other competitive bidding mechanisms under the Connect America Fund”).

<sup>168</sup> See U.S. Cellular Comments at 52.

<sup>169</sup> See *id.* at 47 (supporting the development of different fixed broadband and mobile broadband benchmarks for purposes of measuring reasonable comparability, in order to “avoid the risk of imposing wireline-centric benchmark requirements on mobile broadband service providers that would have little or no relevance to the deployment and operation of mobile broadband networks, and that would compromise the ability of mobile broadband providers to comply with the ill-suited benchmarks”).

<sup>170</sup> See *Further Notice* at para. 1201. See the discussion in Section II.E.3.c., *supra*.

U.S. Cellular disagrees with Windstream’s claim that the absence of uniform public interest obligations “would distort competition for CAF support.”<sup>171</sup> The Windstream argument is flawed because it incorrectly assumes that non-uniform public interest obligations would inherently confer a competitive advantage to mobile wireless broadband providers. Contrary to Windstream’s view, public interest obligations can be designed by the Commission that are different for wireline and mobile wireless broadband providers, but that also are reasonable and fair for both categories of providers because they take into account the unique and differing characteristics of wireline and mobile wireless broadband networks and operations.

The Commission has explained that universal service mechanisms “should not ‘unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another[.]’”<sup>172</sup> and that the competitive neutrality principle “does not require all competitors to be treated alike, but ‘only prohibits the Commission from treating competitors differently in “unfair” ways.’”<sup>173</sup> Thus, the adoption of public interest obligations that reasonably, fairly, and effectively take into account differing network and operational characteristics would not produce the distortional effects feared by Windstream, but rather would promote competitive participation in the CAF Phase II reverse auction.

Finally, U.S. Cellular disagrees with Windstream’s assertion that technological convergence in the broadband marketplace compels uniform public interest obligations.<sup>174</sup> While it is true that more and more consumers are utilizing the unique benefits provided by mobile telepho-

---

<sup>171</sup> Windstream Comments at 9.

<sup>172</sup> *Order* at para. 176 (quoting *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 (para. 47) (1997) (subsequent history omitted)).

<sup>173</sup> *Id.* (quoting *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095, 1104 (D.C. Cir. 2009)).

<sup>174</sup> *See* Windstream Comments at 10-11.

ny and mobile broadband networks,<sup>175</sup> this blurring of technological lines is not a basis for adopting uniform public interest requirements.

This technological convergence, in the Commission’s view, has not progressed to the point that mobile wireless broadband has become a complete substitute for fixed broadband service. The Broadband Plan concluded that “[w]ireless broadband may not be an effective substitute in the foreseeable future for consumers seeking high-speed connections at prices competitive with wireline offers[,]”<sup>176</sup> and the Commission has characterized mobile service as playing a “complementary role” in recent years.<sup>177</sup> Thus, while the essential characteristic of mobile broadband—its *mobility*—makes it an extremely attractive product for consumers, the current state of technological convergence does not provide a basis for the adoption of uniform public interest obligations.

Windstream’s arguments concerning technological convergence are also unpersuasive because, regardless of the extent of convergence, the pertinent inquiry, as U.S. Cellular has discussed, is whether the components, attributes, and characteristics of mobile wireless networks and operations make it appropriate for the Commission to develop public interest requirements for mobile broadband that, while not being any less stringent than requirements applied to wire-

---

<sup>175</sup> See, e.g., USA Coalition Comments at 3, 4 n.12 (noting that 83 percent of Americans have cell phones, approximately 35 percent of Americans have smart phones, and approximately 30 percent of Americans live in households without any wireline phone).

<sup>176</sup> Broadband Plan at 41 (footnote omitted). The Broadband Plan also concluded that “terrestrial, *fixed* wireless access solutions have already been deployed as a substitute for wired access technologies . . . .” *Id.* (emphasis added).

<sup>177</sup> *Order* at para. 498 n.826. See Vermont Public Service Board Comments at 2 (arguing that wireless and fixed services are not comparable, and noting that more consumers are finding wireless services to be an adequate substitute for wireline services, but that most consumers still use both types of services, demonstrating that the services are generally considered complementary and not alternative services).

line broadband networks, take these technological considerations into account. U.S. Cellular agrees with ITI Council’s analysis of this issue:

[M]obile broadband services should have different [performance] benchmarks than fixed or wireline broadband services. While mobile broadband service is capable of providing data rates and latencies that support advanced applications, wireless networks are susceptible to many additional variables that could affect their performance. The requirements should take into consideration the technical, operational, commercial, capacity and other differences between wireless and other broadband Internet access platforms.<sup>178</sup>

The Commission should conclude, based on the record, that the unique characteristics of mobile wireless broadband networks warrant separate public interest requirements.

**d. The Commission Should Not Create Unfunded Mandates, But It Should Refrain from Modifying or Eliminating Any Generally Applicable Service Requirements.**

In the *Further Notice* the Commission sought comment “on what Commission action may be appropriate to adjust ETCs’ existing service obligations as funding shifts to . . . new, more targeted mechanisms.”<sup>179</sup>

A number of commenters have responded by indicating that the Commission must prevent unfunded mandates. AT&T, for example, urges the Commission to take steps “to declare that ETCs have no ETC service obligations in those geographic areas where they receive no federal high-cost support.”<sup>180</sup> AT&T argues that the Commission’s decision in the *Order* to provide CAF support to only one provider in an eligible service area will result in making some existing

---

<sup>178</sup> Information Technology Industry Council Comments at 2-3 (unpaginated).

<sup>179</sup> *Further Notice* at para. 1089. The Commission also indicated that “competitive ETCs that bid for Mobility Fund Phase I support will be required to offer advanced mobile service in specific unserved census areas, but their state or federally-defined service territory may be substantially larger than their bid areas[,]” *id.* at para. 1096, and sought comment on whether, and what, adjustments may be appropriate in these situations. *Id.* at paras. 1096-1097.

<sup>180</sup> AT&T Comments at 3.

ETCs ineligible to receive federal universal service support.<sup>181</sup> A further result of the Commission's action, according to AT&T, is that "by funding the ILEC's competitor alone while perpetuating the ILEC's ETC service obligations, the Commission is creating an anticompetitive marketplace, placing its thumb on the scale in favor of the new entrant."<sup>182</sup> Other commenters have expressed similar concerns.<sup>183</sup>

U.S. Cellular reiterates its indication in its Comments that it is generally sympathetic to the view that the Commission should define service areas so that the imposition of CAF and Mobility Fund public interest obligations apply only in areas for which carriers are receiving CAF or Mobility Fund support.<sup>184</sup> U.S. Cellular continues to hold the view, however, that any action taken by the Commission to relieve carriers of unfunded mandates, as advocated by AT&T and other commenters, must stop short of reducing or eliminating any regulatory obligations that apply to carriers irrespective of their receipt of any legacy high-cost, CAF, or Mobility Fund support.<sup>185</sup> The best policy for rural consumers is for the Commission to avoid any deregulatory action that would threaten to curtail the access of these consumers to affordable, high-quality voice telecommunications services.

---

<sup>181</sup> *Id.* at 4-5.

<sup>182</sup> *Id.* at 5.

<sup>183</sup> *See, e.g.*, CenturyLink Comments at 9 (arguing that "[f]ederal universal service obligations should be consistent with federal universal service support"); ITTA Comments at 9 (contending that "[t]he elimination of ongoing federal universal service support should correspond to an elimination of a carrier's voice service obligations in the geographic area in which the ETC was receiving such support"); USTelecom Comments at 7 (footnotes omitted) (arguing that "[i]t is neither sensible nor lawful for the Commission to retain its existing interpretation of section 214(e) or its ETC rules, which require ETCs to offer legacy services throughout their designated ETC service areas"); Windstream Comments at 32 (suggesting that "ETCs should automatically be relieved of their legacy ETC obligations and ETC designations in those geographic areas in which they do not receive either legacy high-cost support or new CAF support, and remaining service obligations should apply only to the individual geographic units that receive support").

<sup>184</sup> U.S. Cellular Comments at 49-50.

**e. The Commission’s Accountability Requirements Should Properly Balance Ensuring the Efficient Operation of CAF and Mobility Fund Mechanisms with Minimizing Burdens on Support Recipients.**

U.S. Cellular argues in its Comments that the Commission, instead of imposing letter of credit (“LOC”) requirements, should rely upon forfeiture penalties as a means of enforcing compliance with public interest obligations applicable to CAF and Mobility Fund support recipients.<sup>186</sup> There is widespread support in the record for U.S. Cellular’s position, with numerous commenters arguing the a LOC requirement should not be adopted because it is too burdensome and is not necessary.

ITTA, for example, argues that the Commission “should continue to rely on existing enforcement mechanisms, including its investigative and complaint processes, to police and punish violations of its rules.”<sup>187</sup> ITTA explains that a LOC requirement is not necessary because the ETC designation process serves as a more reasonable accountability mechanism,<sup>188</sup> and that the requirement would be burdensome and expensive for a number of reasons, including the fact that “[f]or publicly-traded companies, LOCs are viewed as outstanding debt by investors and analysts, which affects the company’s debt ratings and likelihood of default.”<sup>189</sup>

The Rural Associations also express concerns regarding the unwarranted burdens that a LOC requirement would impose, pointing out that rural LECs generally lack the resources and

---

<sup>185</sup> *See id.* at 50.

<sup>186</sup> *Id.* at 50-51.

<sup>187</sup> ITTA Comments at 14.

<sup>188</sup> *Id.* at 11-12.

<sup>189</sup> *Id.* at 11. *See* ADTRAN Comments at 16 (footnote omitted) (pointing out that “requiring all recipients to obtain a [LOC] will impose a not insignificant cost—both in terms of the fees assessed (typically an annual fee of from 1-8% of the amount of the credit), as well as the opportunity cost, because the bank normally requires that the client also maintain funds on deposit to cover the amount of the LOC”).

relationships with major banks “that would enable them to obtain anything remotely resembling the Commission’s model LOC.”<sup>190</sup> The Rural Associations conclude that “[i]f such LOCs are mandated as a condition for receiving high-cost support, many RLECs whose rural service areas and customers need federal support the most will be precluded from participation in the USF program.”<sup>191</sup>

Commenters also criticize the proposed LOC requirement because it is unnecessary. Frontier, for example, points out that the Commission has already determined that “in the majority of cases . . . the Commission’s existing enforcement procedures and penalties will adequately deter noncompliance with the Commission’s rules, as herein amended, regarding high-cost and CAF support[.]”<sup>192</sup> which leads Frontier to conclude that “it is not clear why additional remedies for noncompliance are necessary, particularly for ILECs that have a long history of regulatory compliance.”<sup>193</sup>

---

<sup>190</sup> Rural Associations Comments at 42.

<sup>191</sup> *Id.* at 43. Rural Associations also argue that, in the rare cases in which rural LECs would be able to obtain LOCs, they would be very expensive because of substantial bank fees and legal fees, and that the proposed LOC requirement would make it more difficult and expensive for rural LECs to qualify for future infrastructure investment loans. *Id.* at 43-44. Several other commenters oppose a LOC requirement and describe burdens and other problems that would be caused by the proposed LOC obligation. *See, e.g.*, ACS Comments at 14 (recommending that the Commission “reverse the LOC requirement for Mobility I and forego any such requirement for any universal service fund”); Frontier Comments at 12 (discussing additional costs that would result from a LOC requirement); USA Coalition Comments at 27; USTelecom Comments at 22 (arguing that a LOC requirement could have a negative effect on a CAF recipient’s credit rating, that some ETCs have a limited capacity to issue LOCs under existing credit agreements, that a LOC requirement could affect carriers’ business flexibility by inhibiting their ability “to transact business with other entities that may require a LOC if inadequate capacity exists[.]” and that LOCs reduce a company’s liquidity). CTIA notes that, as a general matter, it “supports the imposition of reasonable measures for accountability but, if the obligations are excessive, wireless carriers may find that the costs do not outweigh the benefits and forego participation altogether.” CTIA Comments at 11.

<sup>192</sup> *Order* at para. 617, *quoted in* Frontier Comments at 11.

<sup>193</sup> Frontier Comments at 11.

USTelecom expresses a similar view, arguing that “[i]t is not necessary for the Commission to impose new remedies for ETC noncompliance with rules [because regulations] currently in place in the high-cost program have proved their adequacy[,]”<sup>194</sup> and Windstream concludes that “it would be unnecessary for the Commission to impose additional measures beyond those currently in place in the high-cost program.”<sup>195</sup>

Finally, if the Commission decides to adopt a LOC requirement, then U.S. Cellular agrees with commenters suggesting that modifications in the Commission’s proposal should be considered. CenturyLink, for example, argues that, “[i]f the Commission pursues a LOC requirement, then it should be restricted to carriers who have a limited operating history and do not have . . . a track record of compliance[,]”<sup>196</sup> and USA Coalition suggests that, “[a]t most, a LOC could be requested of new carriers that lack a history of regulatory compliance and financial stability.”<sup>197</sup> AT&T argues that a LOC requirement is unnecessary in most cases and that, if the Commission adopts such a requirement, it should be narrowly tailored so that it applies “only to CAF recipients that are awarded high-cost support to perform Commission-specified actions within Commission-specified periods of time”<sup>198</sup> and “only to those recipients that do not satisfy certain bright line criteria . . . .”<sup>199</sup>

U.S. Cellular urges the Commission to keep in mind the fact that, especially in the case of mobile wireless broadband providers, any LOC requirement adopted by the Commission would

---

<sup>194</sup> USTelecom Comments at 21.

<sup>195</sup> Windstream Comments at 31.

<sup>196</sup> CenturyLink Comments at 11.

<sup>197</sup> USA Coalition Comments at 27.

<sup>198</sup> AT&T Comments at 29.

<sup>199</sup> *Id.*

not be imposed in a vacuum. The Commission has already placed severe limits on the Mobility Fund budget, especially when compared to its allocations for other broadband service providers. Further, the Commission’s right-of-first-refusal mechanism for price cap incumbents could significantly reduce the pool of CAF Phase II funding for which mobile broadband providers may have an opportunity to compete.<sup>200</sup>

In these circumstances, the imposition of a burdensome and expensive LOC requirement on mobile broadband providers would further undermine the Commission’s efforts to facilitate the deployment of mobile broadband networks in rural communities. Moreover, as numerous commenters contend, creating this additional hurdle is unnecessary in light of other requirements and remedies already in place that will ensure compliance with CAF and Mobility Fund public interest obligations. For these reasons, U.S. Cellular renews its suggestion that the Commission refrain from adopting its proposed LOC requirement.<sup>201</sup>

**f. Other Commenters Agree with U.S. Cellular That the Commission’s Reporting Requirements Should Reflect Basic Differences in the Nature and Purpose of Support Provided for Mobile Services.**

U.S. Cellular makes the case in its Comments that the Commission should avoid adopting wireline-centric reporting requirements that could lead to inadvertent results and unnecessary burdens if applied to mobile broadband service providers.<sup>202</sup> The record supports this view.

---

<sup>200</sup> See U.S. Cellular Comments at 52 n.140.

<sup>201</sup> WISPA proposes that the Commission should adopt a performance bond requirement instead of an LOC obligation. See Wireless Internet Service Providers Association (“WISPA”) Comments at 15-17. U.S. Cellular, as discussed, supports reliance upon forfeiture penalties to enforce compliance with public interest obligations, and therefore opposes the adoption of either a performance bond or LOC requirement.

<sup>202</sup> U.S. Cellular Comments at 53-54.

U.S. Cellular agrees with CTIA that reporting obligations “should be tailored to the specific characteristics and benefits of mobile service.”<sup>203</sup> In addition, while the Commission asks questions in the *Further Notice* regarding mobile service providers’ reporting of service outages,<sup>204</sup> CTIA makes a reasonable suggestion, which U.S. Cellular supports, that this issue should be addressed in a separate proceeding already initiated by the Commission,<sup>205</sup> since that proceeding has produced a record that will enable the Commission to “take account of the complex technical issues involved in outage reporting and appropriately balance the significant costs of granular reporting against the benefits and goals to be achieved.”<sup>206</sup>

U.S. Cellular also endorses RCA’s suggestion that, instead of adopting new data reporting requirements that would impose onerous burdens on carriers (particularly small regional and rural wireless carriers), the Commission should “identify alternative sources of information that would provide the Commission with more updated and reliable broadband data.”<sup>207</sup> RCA concludes that, “[p]articularly in light of the overall lack of funding available to wireless carriers

---

<sup>203</sup> CTIA Comments at 11. *See* ACS Comments at 15 (supporting the modification of reporting requirements applicable to mobile service providers in certain respects).

<sup>204</sup> *Further Notice* at para. 1119.

<sup>205</sup> *See The Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, Notice of Proposed Rulemaking, 26 FCC Rcd 7166 (2011), *cited in* CTIA Comments at 11.

<sup>206</sup> CTIA Comments at 11 (citing Joint Letter from ACA, AT&T, CenturyLink, Comcast Corporation, CompTel, CTIA, Frontier, ITTA, Level 3 Communications, LLC, National Cable and Telecommunications Association, Sprint Nextel Corporation, Time Warner Cable, T-Mobile, United States Internet Service Provider Association, USTelecom, Verizon, VON Coalition, Windstream, and XO Communications, to James Arden Barnett, Jr., Rear Admiral (Ret.), Chief, Public Safety and Homeland Security Bureau, FCC, PS Docket No. 11-82 (filed Nov. 14, 2011)).

<sup>207</sup> RCA Comments at 17.

pursuant to the *CAF Order*, . . . the Commission [should] look to these alternative sources of data to the greatest extent possible to satisfy its information needs.”<sup>208</sup>

U.S. Cellular supports Verizon’s assertion that “any data collection should be streamlined and narrowly tailored to what the Commission actually needs to administer the CAF”<sup>209</sup> and urges the Commission to take the same approach with regard to the Mobility Fund. Verizon focuses specifically on pricing data, and U.S. Cellular agrees with Verizon’s conclusion that, “[d]ue to the variety of offers and pricing plans available and the dynamism of broadband pricing, consumers and third-party data sources—rather than providers—are the best sources of information on pricing and, in particular, its impact on broadband demand and adoption.”<sup>210</sup>

NASUCA cautions that the Commission should not “reduce reporting requirements for mobile service providers without clear evidence that particular reporting requirements have no value or are irrelevant for the Mobility Fund.”<sup>211</sup> While U.S. Cellular does not disagree with NASUCA’s formulation, and also finds reasonable NASUCA’s assertion that consumers “should be able to hold providers fully accountable for the use of [CAF] public monies[,]”<sup>212</sup> the Commission must also strive to develop annual reporting requirements for mobile wireless broadband providers that are specifically tailored to the objectives of the funding mechanisms supporting mobile broadband, so as to avoid the imposition of wireline-centric reporting requirements that create unnecessary burdens and expense for mobile broadband carriers without generating any useful or relevant data for the Commission or for consumers.

---

<sup>208</sup> *Id.* at 18.

<sup>209</sup> Verizon Comments at 20.

<sup>210</sup> *Id.* See RCA Comments at 17.

<sup>211</sup> NASUCA Comments at 62 (footnote omitted).

<sup>212</sup> *Id.*

### III. CONCLUSION.

U.S. Cellular respectfully requests the Commission to give due consideration to the record in this proceeding, which delivers several strong messages regarding the course already taken by the Commission, as well as choices the Commission still must make in the next phases of the rulemaking. Numerous commenters, for example, object to the Commission’s budget decisions because they reflect the Commission’s preference to keep the lid on spending—and to avoid addressing contribution reform—rather than to adopt sufficient support mechanisms that will effectively enable the timely deployment of affordable, high-quality fixed and mobile broadband services to rural consumers.

The record also reflects concern that the Commission appears intent on selecting a disbursement mechanism for Mobility Fund Phase II support as quickly as possible, even though a more prudent course for the Commission would be to delay its decision until both the Commission and interested parties have a sufficient opportunity to evaluate the results of the Mobility Fund Phase I reverse auction. Given the fact that the Commission still has not adequately addressed arguments and analyses in the record concerning the advantages of using a cost model for Mobility Fund Phase II support, and concerning the deficiencies of the single-winner reverse

*[Remainder of page intentionally left blank]*

//

//

//

//

auction mechanism, delaying its decision regarding the Phase II support mechanism would enable the Commission to make an informed, data-driven choice.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION



By: \_\_\_\_\_

David A. LaFuria  
John Cimko

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

Grant B. Spellmeyer  
Executive Director – Federal Affairs &  
Public Policy  
UNITED STATES CELLULAR CORPORATION  
8410 West Bryn Mawr  
Chicago, Illinois 60631  
(773) 399-4280

February 17, 2012