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
CELLULAR SOUTH, INC., d/b/a C SPIRE WIRELESS, DOCOMO PACIFIC, INC., EAST KENTUCKY NETWORK, LLC d/b/a APPALACHIAN WIRELESS, N.E. COLORADO CELLULAR, INC., d/b/a VIAERO WIRELESS, PR WIRELESS, INC., and UNION TELEPHONE COMPANY d/b/a UNION CELLULAR

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SUMMARY

Appalachian Wireless, C Spire Wireless, Docomo Pacific, PR Wireless, Union Cellular, and Viaero Wireless (collectively, the "Wireless Parties") join with numerous commenters responding to the *Further Notice* in the Connect America Fund rulemaking proceeding, in urging the Commission to shift its universal service policies in a direction that will better serve the interests of rural consumers. These consumers will be disadvantaged by choices the Commission has already made, and by proposals the Commission has now put on the table.

The *Order* adopted by the Commission reflects an ill-considered policy choice that favors parsimony over promoting the timely deployment of advanced broadband networks. The record makes a strong case that the Commission's further actions in this rulemaking, based on the *Further Notice*, should be better crafted to meet the Commission's own goals for bringing broadband to rural America.

■ MOBILITY FUND PHASE II

There is substantial support in the record for the adoption of a forward-looking economic cost model as the disbursement mechanism for Mobility Fund Phase II support. The Wireless Parties agree with commenters who explain that mobile wireless service costs are well suited for economic modeling, and that a cost model would maximize the reach of mobile broadband services, advance the Commission's principles of competitive neutrality and fiscal responsibility, encourage the efficient use of Phase II support, establish proper incentives for investment in mobile broadband networks, and provide flexibility and the ability to adjust support disbursements in response to changed circumstances.

In contrast, the record documents numerous drawbacks of using a single-winner reverse auction. Commenters share the Wireless Parties' concern that the reverse auction mechanism is untested, and that the proposal to compare all auction bids across all geographic areas would guarantee that areas with lower unit costs would receive the bulk of Mobility Fund Phase II support. Commenters agree with the Wireless Parties that reverse auctions would not prove to be an economical means of extending coverage to unserved areas, in part because deceptively low winning bids would likely require an influx of support in the longer term to replace inferior network facilities. In addition, larger carriers could engage in low-ball bidding and other tactics to deprive smaller carriers of Phase II support.

Numerous commenters join the Wireless Parties in opposing the Commission's proposal to provide support to only one auction winner in each eligible service area, arguing that this approach, by jettisoning funding portability, is anti-competitive and inconsistent with the governing statute. A winner-take-all auction also would insulate subsidized auction winners from the threat of competitive entry, and would give these subsidized providers no incentive to become more efficient or to provide better quality service.

In addition to supporting a cost model on the merits, commenters observe that it makes little sense for the Commission to press ahead with a decision regarding the disbursement mechanism for Mobility Fund Phase II before both the Commission and interested parties have had an opportunity to evaluate the results of the Phase I reverse auction. The Wireless Parties agree that such a delay, and an opportunity for public comment, would help ensure that the Commission makes an informed, data-driven decision regarding the Phase II support mechanism.

■ **THE COMMISSION'S UNIVERSAL SERVICE BUDGET**

Virtually every category of stakeholders criticizes the Commission's budget decisions. A consumer group, for example, argues that the budget may not provide an adequate level of funding, and that the Commission should finally carry out its long-promised contribution reform instead of imposing a budget that may fail to support a ubiquitous broadband network and enable rural rates and services to be comparable to those in urban areas. In particular, the Mobility Fund budget is woefully deficient, failing to sufficiently support the goal of ubiquitous mobile broadband coverage, and ignoring the fact that line counts for rural incumbent carriers are shrinking rapidly, and that consumers' preference for mobile services continues to increase.

There also is substantial opposition in the record to the Commission's suggestion that any savings realized from the operation of the CAF support mechanisms should be funneled to rate-of-return carriers as an accommodation to help make up the difference between the budget proposed by these carriers' representatives and the budget adopted by the Commission. Numerous commenters agree with the Wireless Parties' view that any such savings should instead be repurposed to the Mobility Fund, as a means of offsetting to some extent the dramatic difference in the levels of funding for fixed and mobile broadband in the Commission's budget.

■ **RATE-OF-RETURN CARRIERS**

The Wireless Parties support prompt Commission action to lower the authorized rate-of-return from 11.25 percent (the rate that has been in place for more than 20 years) to a rate more consistent with present marketplace conditions. There is substantial agreement with this position in the record.

Commenters point to substantial reductions in interest rates, as well as several factors suggesting that investment risks faced by rural rate-of-return carriers have been mitigated, as a basis for concluding that the authorized rate of return should be reduced at least to 9 percent (the rate conservatively suggested by the Commission as a result of its preliminary analysis), if not lower. Many commenters also agree that there are no grounds for delaying a Commission proceeding to represcribe the rate of return.

Several commenters also agree with the Wireless Parties that, while reducing the rate of return is an important interim step, the Commission's main effort should be to act expeditiously to fundamentally reform rate-of-return regulation. Commenters recite previous Commission findings that the embedded cost mechanism used to disburse high-cost support to rural incumbent carriers rewards inefficient carrier operations that inflate the level of subsidies, and argue that the Commission should bury this bankrupt system and instead subject rate-of-return carriers to the same funding standards and mechanisms that apply to other support recipients.

■ **OTHER ISSUES**

The Wireless Parties support proposals in the record that, if the Commission adopts a rule requiring recipients of Mobility Fund Phase II support to provide data roaming on their broadband networks, then this requirement should be made reciprocal. A non-reciprocal data roaming obligation would impose a significant disadvantage on smaller carriers serving rural areas, while making such an obligation reciprocal would provide an important benefit to rural consumers.

There is support in the record for the Wireless Parties' proposal that the Commission should allow more time than three years for Mobility Fund Phase II support recipients to deploy 4G broadband networks covering 75 percent of road miles in unserved areas. Commenters cite various difficulties faced by smaller rural and regional carriers that make the Commission's proposed timetable problematic, such as the difficulties these carriers are encountering in deploying broadband networks in the Lower 700 MHz A Block due to a lack of interoperable devices.

Several commenters join the Wireless Parties in advocating that the Commission should place limitations on package bidding in order to prevent a single bidder from dominating an auction and to ensure that less desirable, higher-cost areas are included in packages. Commenters also agree with the Wireless Parties' suggestion that the Commission should not impose a requirement that carriers receiving CAF Phase II auction-based support must finance a fixed percentage of any deployment with non-CAF or private funds.

Numerous parties agree with the Wireless Parties' proposal that, if a carrier's rates and terms for service are the same in rural areas and urban areas, then these rates and terms for rural service should be presumed to be in compliance with the statutory principle of reasonable comparability.

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Cellular South, Inc., d/b/a C Spire Wireless ("C Spire Wireless"), Docomo Pacific, Inc. ("Docomo Pacific"), East Kentucky Network, LLC d/b/a Appalachian Wireless ("Appalachian Wireless"), N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless ("Viaero Wireless"), PR Wireless, Inc. ("PR Wireless"), and Union Telephone Company d/b/a Union Cellular ("Union Cellular") (collectively, "Wireless Parties" or "Parties") by counsel, hereby jointly submit these Reply Comments, pursuant to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

I. INTRODUCTION.

In responding to the issues raised in the *Further Notice,* commenters deliver three core messages to the Commission.

First, the Commission should revisit its decision to use a single-winner reverse auction to award universal service support, and take a different path in selecting its support disbursement mechanism for Mobility Fund Phase II. The Commission has yet to deliver a reasoned and con-

[1] *Connect America Fund,* WC Docket No. 10-90, *A National Broadband Plan for Our Future,* GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers,* WC Docket No. 07-135, *High-Cost Universal Service Support,* WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, *Lifeline and Link-Up,* WC Docket No. 03-109, *Universal Service Reform – Mobility Fund,* WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011), 76 Fed. Reg. 73830 (Nov. 29, 2011), 76 Fed. Reg. 78384 (Dec. 16, 2011), 76 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 deadline for reply comments on sections of the *Further Notice* addressed in these Reply Comments is February 17, 2012. The *Further Notice* continues the exploration of inquiries and proposals made by the Commission in *Connect America Fund,* WC Docket No. 10-90, *A National Broadband Plan for Our Future,* GN Docket No. 09-51, *High-Cost Universal Service Support,* WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657 (2010); *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) ("*August 3 Public Notice*"). The Wireless Parties note that C Spire Wireless, Docomo Pacific, and PR Wireless have filed Petitions for Review of the *Order*. *See C Spire Wireless v. FCC,* No. 11-9590 (10th Cir. filed Jan. 17, 2012); *Docomo Pacific v. FCC,* No. 12-1067 (D.C. Cir. filed Jan. 30, 2012); *PR Wireless v. FCC,* No. 12-1066 (D.C. Cir. filed Jan. 30, 2012).

vincing defense of its preference for reverse auctions, and now the record in response to the *Further Notice* rehearses the significant and numerous deficiencies of this disbursement mechanism, while also explaining the advantages of relying on a forward-looking economic cost model as a basis for distributing Phase II support.

The consensus in the record is that, while the Commission may be convinced that single-winner reverse auctions fit well with its apparent mission to reduce the level of funding for its universal service programs, reverse auctions will not work as well as a cost model in accomplishing the efficient and effective use of support for broadband deployment.

Numerous parties also counsel the Commission to stop its rush toward putting a Mobility Fund Phase II mechanism in place, so that it can gather and evaluate data relating to the operation of the reverse auction in Phase I. The Commission's commitment to data-driven decision-making should make this an easy call: Providing interested parties with an opportunity to analyze and comment on Phase I auction results would enable the Commission to make a better informed choice between a cost model and a reverse auction for Phase II support disbursement.

Second, the Commission needs to fix the budget. The Commission's commitment to its newly-adopted principle of fiscal responsibility does not necessitate the wholesale underfunding of broadband deployment initiatives. Many commenters criticize the Commission's budget choices, arguing that they will severely handicap efforts to accomplish the timely deployment of affordable, high-quality fixed and mobile broadband networks in rural America.

The record also points to an obvious—but heretofore ignored—solution to the budget dilemma: The Commission should reform the contribution system in order to expand the contribution base. This would generate greater levels of funding and would increase the Commission's ability to achieve the Congressional directive that support mechanisms should be sufficient to provide rural areas with services that are reasonably comparable to those available in our urban areas.

And, *third*, the Commission needs to dismantle its rate-of-return regulatory regime. Numerous commenters join the Wireless Parties in questioning the Commission's continued use of embedded cost as a basis for disbursing support to rural rate-of-return incumbents. The Commission should stop tinkering with a support mechanism that the Commission itself has repeatedly criticized because it creates the wrong incentives and results in the inefficient use of inflated levels of support disbursements. Instead, the Commission should invest its effort in shifting rate-of-return carriers as quickly as possible into Connect America Fund ("CAF") mechanisms that are better designed to ensure that eligible telecommunications carriers ("ETCs") use funding efficiently and effectively.

II. DISCUSSION.

In the following sections the Wireless Parties focus on several key issues that are raised in the *Further Notice* and explored in the record. The Parties urge the Commission to adopt a cost model for use in disbursing Mobility Fund Phase II support, while also stressing the advisability of the Commission's delaying any further action on its proposals for a Phase II support mechanism, until the Commission and interested parties have had an opportunity to review the results of the Mobility Fund Phase I reverse auction mechanism.

The Wireless Parties join numerous commenters in criticizing the Commission's CAF and Mobility Fund budget decisions, and in opposing the Commission's proposal to utilize any savings from its CAF mechanisms to beef up the level of support for rate-of-return carriers. The Parties support prompt interim action by the Commission to lower the authorized rate of return, while also encouraging the Commission finally to abandon its reliance upon the broken rate-of-return regulatory regime.

A. Mobility Fund Phase II.

Several commenters support the Wireless Parties' view that the Commission should delay its selection of a disbursement mechanism for Mobility Fund Phase II until such time as the Commission and interested parties have had a sufficient opportunity to review and analyze the results of the Phase I reverse auction. The record also supports the Parties' position that the Commission ultimately should adopt a forward-looking economic cost model as the mechanism to be used to identify costs associated with providing broadband in eligible service areas and to disburse Phase II support to ETCs.

The Wireless Parties also join other commenters in advocating that, if the Commission requires carriers receiving Phase II support to provide data roaming on their networks, then this requirement should be applied reciprocally to carriers that roam on the funding recipients' networks. In addition, other commenters support the Parties' position that the Commission should extend the period of time allocated to Phase II support recipients for their deployment of 4G broadband networks, and other commenters also agree with the Parties that the Commission should establish some limits on the use of package bidding, if the Commission decides to adopt a reverse auction mechanism for Phase II and to allow package bidding.

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

The Wireless Parties are strong advocates in favor of the Commission's using a forward-looking economic cost model for the disbursement of Mobility Fund support. C Spire Wireless, for example, argues in its Comments that a cost model—when combined with funding portability—would serve the Commission's principle of competitive neutrality while also ensuring the efficient use of funding by Mobility Fund Phase II support recipients.[2]

Other commenters join the Wireless Parties in supporting a cost model, while also joining with the Parties in documenting the disadvantages of the Commission's proposed single-winner reverse auction mechanism.

a. Advantages of a Cost Model.

Although the Commission has selected a single-winner reverse auction to disburse Mobility Fund Phase I support,[3] and has proposed to take the same approach for Phase II support,[4] numerous commenters point to the advantages of using a cost model for Mobility Fund Phase II.

RCA, for example, points out that the Commission itself has long been a proponent of cost models as the most effective and efficient means of utilizing funds to support universal service,[5] and then urges the Commission to pursue the design of a wireless cost model for Phase II with the same vigor as that applied by the Commission in adopting a cost model for CAF Phase I support.[6] RCA concludes that a cost model would better serve the Commission's goal of max-

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[2] C Spire Wireless Comments at iii; *see id*. at 7-24.

[3] *Order* at para. 322.

[4] *Further Notice* at para. 1122.

[5] RCA notes, for example, that:

> In keeping with these long-held principles, the Commission determined in the *CAF Order* that it "should use a forward-looking model to assist in setting support levels in price cap territories" in order to "maximize[ ] the number of locations that will receive robust, scalable broadband within the budgeted amounts" for Phase II of the CAF.

RCA–The Competitive Carriers Association ("RCA") Comments at 11 (footnote omitted) (quoting *Order* at paras. 184, 187).

[6] *Id*.

imizing the reach of mobile broadband services supported within the established budget in areas where there is no private sector business case for providing such services.[7]

T-Mobile lends further support for the Wireless Parties' view that a cost model is the Commission's best option for disbursing Mobility Fund Phase II support, arguing that "[t]he tremendous economies of scale that mobile wireless networks have generated . . . render mobile wireless service costs well suited for predictive economic modeling[,]"[8] and that "a properly constructed cost model . . . could promote competitive neutrality, provide proper investment incentives and increase competition."[9] GCI agrees, noting that "a singular advantage of the model-based approach is that it does not require the elimination of competition as a driver of service improvements in subsidized areas."[10]

In addition, the Wireless Parties agree with T-Mobile's argument that Mobility Fund Phase II support should be fully portable:

> [S]upport based on a forward-looking economic cost model should be distributed in a manner that ensures that a single subsidized provider could not drive out unsupported competitors, thereby depriving consumers of desired choices. The success of the independent wireless sector demonstrates the value of competition in bringing better services to the widest base of consumers at the lowest cost. To address any concerns that multiple ETCs in an area would increase the total amount

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[7] *Id*. at 12. The Wireless Parties agree with RCA's analysis, but also note that the "established budget" for Mobility Fund Phase II is glaringly inadequate. This issue is discussed in Section II.B., *infra*.

[8] T-Mobile USA, Inc. ("T-Mobile") Comments at 3-4.

[9] *Id*. at 4.

[10] General Communication, Inc. ("GCI") Comments at 21. GCI explains that:

> Under such an approach, providers would be able to build a business case around a predicable level of support. However, if the support amount would justify only a single network, only a single network will arise. If a dozen distinct supported networks were to arise in a particular area, the area likely would not need support, and it would be indication that support could be ratcheted downward, but that would be no reason to artificially limit the number of competitors everywhere.

Id. at 21-22.

> of Mobility Fund support, a predetermined level of support for a given area could be divided evenly among the ETCs serving that area, as proposed by MTPCS.[11]

United States Cellular Corporation ("U.S. Cellular") discusses several advantages of using a cost model as the Mobility Fund Phase II disbursement mechanism. Specifically, U.S. Cellular explains that a cost model would promote fiscal responsibility, it would serve as an effective means of creating incentives for investment in mobile broadband deployment, it would encourage the efficient use of Fund Phase II support, it has characteristics that would enable the Commission to make adjustments to address changed circumstances, and it would operate in a manner that is competitively and technologically neutral.[12]

Finally, MTPCS has explained in earlier comments in this proceeding that the cost model it has developed "will avoid the elimination of support from an unpredictable patchwork of small areas. Instead, the model permits several carriers to serve overlapping portions of applicable areas, without increasing costs for the Fund."[13] In addition, MTPCS explains that, under its proposed model, "the existence of several companies drawing support does ***not*** increase costs for the Fund. A CETC may be required to divide its support with other CETCs, and collectively the entities could never exceed the total modeled support for the area."[14]

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[11] *Id*. at 4 (footnote omitted) (citing MTPCS, LLC, d/b/a Cellular One and its affiliates (collectively, "MTPCS") *August 3 Public Notice* Comments at 20).

[12] U.S. Cellular Comments at 15-17. USA Coalition indicates that it is not opposed to reliance upon "a forward looking economic model of costs and revenues of mobile wireless services[,]" but notes that several issues would need to be addressed to ensure the workability of a model. *See* Universal Service for America Coalition ("USA Coalition") Comments at 14. The Wireless Parties discuss in a later section steps the Commission could take to ensure a sufficient opportunity for the Commission and interested parties to explore issues related to the use of a cost model for Mobility Fund Phase II. See Section II.A.2., *infra*.

[13] MTPCS *August 3 Public Notice* Comments at 20. *See id*., Attachment (CostQuest Associates, *MTPCS USF Model Output* (Aug. 23, 2011), CostQuest Associates, *MTPCS USF Model Documentation* (Aug. 23, 2011)).

[14] *Id*. at 20 (emphasis in original).

b. Disadvantages of a Single-Winner Reverse Auction.

C Spire Wireless, after discussing numerous problems associated with single-winner reverse auctions, concludes in its Comments that the mechanism does not fare well in any comparison with a cost model.[15] Numerous commenters agree, demonstrating that the advantages of using a cost model to disburse Mobility Fund Phase II support are even more pronounced when such a comparison is made.

Consumer Advocates, for example, bluntly declare that "[t]he auction process is fundamentally flawed[,]"[16] and that they "strongly oppose various aspects of the FCC's proposed auction process."[17] Consumer Advocates are concerned, for example, that the Commission's reliance on a reverse auction mechanism will increase the risks related to the use of ratepayer funds. "By simultaneously redirecting support to both fixed and mobility broadband services and applying untested auction methods, the risks of waste, fraud and abuse are expanded."[18]

Consumer Advocates also conclude that the proposed reverse auction actually is not an auction at all, because there would be no head-to-head bidding competition to provide service within a given geographic area. Instead, all bids across the entire country would be compared, with Phase II support going to the lowest bidders based on the nationwide comparisons.[19] The

[15] C Spire Wireless Comments at 11-14.

[16] National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, New Jersey Division of Rate Counsel, and Utility Reform Network (collectively, "Consumer Advocates") Comments at 64.

[17] *Id*. *See* MTPCS *August 3 Public Notice* Comments at 23-28 (criticizing the Commission's proposal to rely on a single-winner reverse auction mechanism for the disbursement of Mobility Fund Phase II support); Rural Telecommunications Group, Inc. ("RTG") Comments at 3 (noting that it "does not believe that a reverse auction is the correct manner to award ongoing support to rural areas").

[18] Consumer Advocates Comments at 67.

[19] *Id*. Consumer Advocates also argue that (1) criteria for distributing support could result in areas receiving support that would have been built out anyway; (2) the Commission has failed to provide a reasonable

Wireless Parties agree with U.S. Cellular that this mechanism for reviewing all bids on a nation-wide basis is problematic because 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."[20]

U.S. Cellular argues that, while reverse auctions may serve the Commission's principle of fiscal responsibility by awarding support to the lowest bidder and driving down costs, this approach does not serve the interests of rural consumers because reverse auctions "would create a significant risk that these consumers would be short-changed with regard to rates, service quality, and the extent of deployment."[21]

U.S. Cellular also indicates that a major problem with reverse auctions is that they are untested.[22] The Wireless Parties believe it is useful to note that U.S. Cellular commissioned a study two years ago regarding the use of reverse auctions for universal service subsidies and, in that study, Professor William P. Rogerson reviewed the existing literature and concluded that "[t]he uniform and consistent observation of all of these papers is that successful use of reverse auctions in the international context has almost entirely been limited to extremely simple situations where the sorts of difficulties presented in the American context of subsidies for wireless broadband services do not arise."[23]

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set of guidelines for the development of final auction rules; and (3) the Commission leaves many significant auction-related issues unresolved, choosing instead to "punt" these issues to the Wireline Competition and Wireless Telecommunications Bureaus. *Id*. at 67-68. The Wireless Parties in general support Consumer Advocates' analysis and the conclusions they reach.

[20] U.S. Cellular Comments at 9.

[21] *Id*. at 18.

[22] *Id*. at 6.

[23] Ex Parte Letter from David A. LaFuria, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket No. 05-337 (Jan. 28, 2010), Enclosure, William P. Rogerson,

The Rogerson Paper explained that all the problems associated with using reverse auctions might be more manageable in a simpler context, such as the installation of public payphones in a developing country:

> Since the product would be easy to describe and the price that the winner is allowed to charge could easily be specified in the contract, there would be little need to attempt to create competing payphone providers. The contract could easily specify exactly what the winner was required to provide and the price the winner was allowed to charge. Since no bidders would have any existing facilities, there would be no problem with creating a level playing field. Finally, since there would be no incumbent, there would be no problem with attracting potential bidders because of the incumbent's advantage.[24]

The Rogerson Paper cited numerous studies that conclude that, although reverse auctions to provide subsidies for payphone deployment in foreign countries have experienced some success, these auctions have little relevance to the use of reverse auctions as a mechanism to provide universal service support in the United States.[25]

The Wireless Parties agree with Blooston's concern that "reverse auctions are susceptible to a number of shortcomings that ultimately undermine the Commission's intention of extending coverage to unserved areas in the most economic way possible[,]"[26] and 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."[27] T-Mobile points to the fact that "the largest carriers do not need addi-

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"Problems with Using Reverse Auctions To Determine Universal Service Subsidies for Wireless Carriers," Jan. 14, 2010 (prepared for U.S. Cellular) ("Rogerson Paper"), at 21.

[24] *Id*. at 20-21.

[25] *Id*. at 21-22.

[26] Blooston Rural Carriers ("Blooston") at 6 (footnote omitted).

[27] *Id*. (footnote omitted). *See* Nebraska Public Service Commission Comments at 8 (focusing on the CAF Phase II auction and arguing that reverse auctions will result in a "race to the bottom" in terms of service quality).

tional 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."[28]

Some of the most severe criticism of the Commission's proposed reverse auction mechanism is reserved for its plan to award support to only one auction winner in each eligible service area. U.S. Cellular explains that "any restriction of universal service support to a single provider in a service area cannot be squared with the judicial interpretation that USF support mechanisms, *in order to comply with the statute*, must not only be sufficient to preserve and advance universal service, but also must be competitively neutral[,]"[29] and that a federal appellate court has held that "[t]he [USF funding] program must treat all market participants equally—for example, *subsidies must be portable*—so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers . . . ."[30]

RCA contends that "reverse auctions are inherently anticompetitive [because, while] carriers would 'compete' to be selected as support recipients, a single-winner approach would entrench the auction winner for as long as the support is provided."[31] RCA also argues that the Commission is making a mistake in sacrificing funding portability in favor of a rigid commit-

[28] T-Mobile Comments at 5.

[29] U.S. Cellular Comments at 22 (footnote omitted) (emphasis in original) (citing U.S. Cellular *USF-ICC Reform NPRM* Comments at 75-76).

[30] *Alenco Communications, Inc. v. FCC,* 201 F.3d 608, 616 (5th Cir. 2000) (emphasis added), *quoted in* U.S. Cellular Comments at 22.

[31] RCA Comments at 12. *See* USA Coalition Comments at 8. Moreover, MTPCS has demonstrated that the single-winner auction mechanism flies directly in the face of congressional intent. The Conference Committee considering legislation ultimately enacted as the Telecommunications Act of 1996 cited the purpose of the legislation as being to establish a "pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening up all telecommunications markets to competition." Joint Explanatory Statement of the Committee of Conference, Senate Rep. No. 104-230, 104th Cong., 2d Sess. (Feb. 1, 1996), at 113, *quoted in* MTPCS *August 3 Public Notice* Comments at 23

ment to winner-take-all auctions. RCA explains that funding portability, by "[e]xpressly tying support payments to a carrier's success in capturing customers[,] would allow the Commission to reduce funding needs while simultaneously promoting competition and operational efficiency."[32] T-Mobile agrees, arguing that "[r]everse auctions . . . could encourage a more competitive market if more than one bidder could be awarded support in a given area under certain conditions."[33]

Finally, MTPCS has observed in earlier-filed comments that, if the Commission employs a single-winner reverse auction mechanism, then:

> [C]arriers aside from the winner may decide not to serve those high cost areas, and the carrier that won the auction would have little incentive to provide adequate service—to the contrary, in light of its low bid, it would be motivated to build as little as possible and provide as low a quality of customer service, retail presence and service options as [it] could.[34]

(citing H.R. Rep. No. 458). The single-winner reverse auction mechanism has the opposite effect, closing down telecommunications markets to competition.

[32] RCA Comments at 13.

[33] T-Mobile Comments at 6.

[34] MTPCS *August 3 Public Notice* Comments at 21. The Wireless Parties note that Consumer Advocates, in their discussion of the Commission's suggestion that a multiple-winner auction may be considered for awarding Remote Areas Fund support, conclude that efforts to promote after-auction, in-market competition are undesirable. Consumer Advocates Comments at 108. *See Further Notice* at para. 1280. Consumer Advocates cite studies by academic researchers that identify two potential problems with multiple-winner reverse auctions. First, theoretical modeling suggests that, to the extent auction winners face competition for both supported and non-supported services, this competition will reduce profits for the non-supported services, thus "rais[ing] the equilibrium subsidy that is demanded by the bidders." Consumer Advocates Comments at 107 (internal quotation marks omitted) (emphasis omitted) (quoting J. Laffont & J. Tirole, COMPETITION IN TELECOMMUNICATIONS 251 (2000)). Consumer Advocates conclude that "[t]hus, in-market competition after an auction does not necessarily lead to a superior outcome for consumers . . . ." *Id*. Second, Consumer Advocates note that some academic researchers claim that there is an "increased likelihood of collusion associated with auctions that support in-market competition . . . ." *Id*. at 108. In the Wireless Parties' view, these concerns are far too speculative to serve as a basis for driving the Commission's decision regarding whether to adopt a single-winner or multiple-winner reverse auction. In any event, the Commission can avoid the speculative disadvantages of multiple-winner auctions—as well as the very real deficiencies of single-winner auctions—by opting for the use of a cost model as the Mobility Fund Phase II disbursement mechanism.

In the Wireless Parties' view, the Commission has yet to address in any detail these various criticisms of the single-winner reverse auction mechanism that the Commission has adopted for Mobility Fund Phase I and is proposing to use for Phase II. As the Parties discuss in the following section, the Commission—even though it has already adopted a reverse auction mechanism in this proceeding—still has time to embrace the weight of arguments in the record and decide that a cost model is a better approach.

2. The Commission Should Analyze the Results of the Mobility Fund Phase I Reverse Auction Before Deciding Whether To Use a Cost Model or a Reverse Auction for Phase II.

C Spire Wireless argues in its Comments that "[t]he Commission should wait for the results of the Phase I reverse auction, and should allow interested parties to comment on the results of the auction, before taking any final action regarding the Phase II mechanism[,]"[35] concluding that "[s]uch an approach would help to ensure a decision regarding the Phase II disbursement mechanism that is driven by the data produced by the Phase I auction."[36]

Commenters agree that the prudent course for the Commission is to allow the operation of the Mobility Fund Phase I auction to provide data and evidence enabling the Commission to address and evaluate the numerous arguments and criticisms in the record regarding the wisdom of the Commission's decision in adopting the single-winner reverse auction mechanism. Only then, these commenters argue, after giving interested parties an opportunity to analyze and comment on the Phase I results, would it be appropriate for the Commission to move to a decision regarding the Phase II disbursement mechanism.

[35] C Spire Wireless Comments at 4.

[36] *Id*.

RTG suggests, for example, that the Commission should initiate a further rulemaking proceeding to "give parties a chance to explain what worked and why and how improvements to the distribution mechanism processes should be transferred over to Phase II."[37] AT&T makes a similar point, suggesting that the Commission could provide for 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."[38]

Given the numerous disadvantages of the single-winner reverse auction mechanism that have been identified in the record,[39] as well as the fact that the mechanism is completely untested,[40] the Wireless Parties agree with U.S. Cellular that the Commission should "paus[e] its decision-making process regarding Mobility Fund Phase II until the results from the use of the Phase I reverse auction mechanism are available, [so that] the Commission could accumulate and evaluate empirical evidence regarding whether the concerns voiced by . . . interested parties have materialized."[41] The Commission should view this evaluation as a necessary prerequisite to making a choice between a cost model and a single-winner reverse auction mechanism for Phase II disbursements.

Finally, the Wireless Parties also note that NTCH, Inc. ("NTCH") has proposed that, instead of awaiting the results of the Mobility Fund Phase I reverse auction, the Commission should make a more fundamental change to its design and operation of the Mobility Fund support mechanism.

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[37] RTG Comments at 17.

[38] AT&T Comments at 34. *See* CTIA–The Wireless Association® ("CTIA") Comments at 4-5.

[39] These disadvantages have been summarized in Section II.A.1.b., *supra*.

[40] *See, e.g.*, Consumer Advocates Comments at 67.

[41] U.S. Cellular Comments at 8.

Specifically, NTCH suggests a holistic approach in which the Commission would "consolidate the Phase I and Phase II Mobility Funds into a single support process . . . ."[42] NTCH criticizes the Commission's current approach because "split[ting] the funding for mobility operations and support into two distinct phases . . . leave[s] a prospective carrier in the dark as to what level of support it will have, . . . effectively guarantee[ing] failure of the program."[43]

NTCH explains that "a prudent prospective operator would need to know how much money it could count on from the Connect America Fund to meet the anticipated expenses of constructing and operating the system."[44] To solve this problem, NTCH suggests that the Commission should "permit applicants to apply for both Phase I and Phase II funding in an integrated way. Indeed, they could be consolidated into a single phase in which a bidder's application for both construction money and operating money would be weighed together in determining the low bidder to provide service."[45]

The Wireless Parties believe that the combined approach suggested by NTCH merits the Commission's consideration. In the Parties' view, the Commission would better serve the interests of rural consumers, who desire affordable access to high-quality mobile broadband services, if the Commission were to combine all funding for mobile broadband into a single Mobility Fund (without any phases for the disbursement of funding), and to select a forward-looking economic cost model as the basis for disbursing support from the unitary Mobility Fund.

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[42] NTCH Comments at 1. NTCH has made the same proposal in a pending petition for reconsideration of the *Order*. NTCH, Petition for Reconsideration, WC Docket No. 10-90, *et al*. (filed Dec. 29, 2011) ("NTCH Petition"), at 10.

[43] NTCH Comments at 2.

[44] *Id*.

[45] NTCH Petition at 10.

3. If the Commission Imposes Data Roaming Obligations on Mobility Fund Phase II Support Recipients, It Should Make These Obligations Reciprocal.

The Commission has required Mobility Fund Phase I support recipients to allow the collocation of additional equipment under certain circumstances, and has conditioned the receipt of support on compliance with voice and data roaming requirements.[46] The Commission sought comment on adopting similar requirements for Phase II recipients.[47] There are arguments in the record that any such requirements, if adopted by the Commission, should be made to apply on a reciprocal basis.[48] The Wireless Parties agree with these arguments.

The problem with the Commission's collocation and data roaming proposal—which does not include any reciprocal application of the obligations—is that the proposal would be ineffectual in promoting competitive choice for consumers in rural areas[49] and would also place additional burdens on that part of the wireless industry that is most in need of a level playing field.

The proposed data roaming requirement illustrates this problem. The Commission proposes to require a Mobility Fund Phase II reverse auction winner to provide data roaming to other carriers, without requiring that roaming obligations be reciprocal. Smaller carriers generally do not object to allowing larger carriers to have access to their networks for data roaming pur-

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[46] *Order* at para. 320.

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

[48] *See*, *e.g*., U.S. Cellular Comments at 32. *But see* RCA Comments at 15 (supporting imposition of a data roaming requirement as a condition on the receipt of Phase II support, arguing that "requiring funding recipients to provide roaming on reasonable terms and conditions will be particularly important to promoting competition, innovation, and investment in wireless voice and data services in rural areas[,]" but not addressing the reciprocal application of any roaming requirement); T-Mobile Comments at 6.

[49] *See*, *e.g*., C Spire Wireless Comments at 23-24.

poses. In fact, it is the larger carriers who have opposed the imposition of data roaming requirements.[50]

The availability of data roaming is a significant cost driver in rural areas. Smaller wireless carriers serving rural areas are in a position to offer more affordable and higher quality services to their customers if these carriers have access to the networks of larger carriers for data roaming purposes. Consequently, a reciprocal data roaming obligation (which would provide certainty that data roaming revenues will be available to these smaller carriers) would enable these carriers to place lower bids in the Phase II reverse auction.

A one-way data roaming requirement—applied only to Phase II support recipients but not to other carriers gaining access to the recipients' networks for data roaming purposes—would provide a significant advantage to larger carriers (who, ironically, repeatedly advocate that wireless carriers should be required to build their own networks[51]) and a significant disadvantage to smaller carriers who are licensed primarily in rural areas.

To illustrate, a smaller carrier facing one of the "Big Two" carriers in a rural area competes for high-end customers by offering rate plans that allow a customer to originate and terminate calls from anywhere within the continental United States without paying roaming charges. A rural customer of AT&T, for example, can access AT&T's network for data when travelling

[50] *See*, *e.g.*, AT&T Inc. Comments, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265 ("*Data Roaming Rulemaking*") (filed June 14, 2010) ("AT&T *Data Roaming Rulemaking* Comments"); Verizon Wireless Comments, *Data Roaming Rulemaking* (filed June 14, 2010) ("Verizon *Data Roaming Rulemaking* Comments").

[51] *Cf*. AT&T *Data Roaming Rulemaking* Comments at 39 (opposing any common carriage data roaming rule that would require wireless operators to open their networks to other providers "when those other providers could have built their own networks, but, for whatever reason, chose not to"); Verizon *Data Roaming Rulemaking* Comments at 7 (arguing that a data roaming requirement is not necessary because "there is intense competition among wireless broadband services providers and . . . all classes of carriers are investing billions of dollars to implement broadband technology in their networks").

through any major city or suburban area, or on any major highway in the U.S. Conversely, a customer of the smaller carrier cannot use his or her mobile device when travelling through any major city or suburban area, or on any major highway, unless the smaller carrier has a data roaming agreement with a large national carrier. That is a huge disadvantage for the smaller carrier when competing against the Big Two for high-end customers.

The Commission's proposal to require one-way data roaming in rural areas—by imposing a non-reciprocal data roaming obligation on Phase II support recipients—would not assist smaller carriers in convincing the large national carriers to provide data roaming. Moreover, such a non-reciprocal requirement would provide additional advantages to larger carriers that they clearly do not need and should not have in the current marketplace environment.

The Wireless Parties are concerned that a non-reciprocal data roaming rule would provide an unnecessary and largely irrelevant benefit to the customers of the Big Two carriers, but would impose a huge disadvantage on the customers of smaller carriers serving rural areas. A very small proportion of big city subscribers will travel to rural Kansas, for example, in any one year for business or tourism. However, a significant number of rural Kansans may travel to a big city for these purposes. Thus, imposing a non-reciprocal data roaming obligation on Mobility Fund Phase II support recipients would provide a marginal benefit to the big city customers of one of the large national carriers, while depriving rural customers in Kansas of a significant benefit.

The Wireless Parties urge the Commission to adopt a 4G data roaming requirement applicable to all carriers in a rulemaking proceeding of general applicability.[52] Tying roaming to

[52] *See* U.S. Cellular Comments at 32 (arguing that a reciprocal roaming obligation "is especially important in view of the critical need for the Commission to ensure that carriers outside the 'Big Two' have access to 4G roaming on commercially reasonable terms going forward" and suggesting that the Commission "defer final action on its Phase II roaming proposal until it provides opportunity for comment on making

universal service support will not increase competition, serve rural customer interests, or increase the availability of services in rural areas.

4. The Commission Should Extend the Schedule for Mobility Fund Phase II Support Recipients To Deploy 4G Networks.

In its Comments, C Spire Wireless expresses concern that the Commission's proposal to require Mobility Fund Phase II support recipients to complete network build-out within three years might not provide carriers with sufficient time to deploy 4G broadband networks covering 75 percent of road miles in unserved areas, especially since the use of a single-winner reverse auction mechanism (if adopted by the Commission) "would likely compromise the ability of carriers to obtain the private investment that could be combined with Phase II support to accelerate broadband deployment . . . ."[53]

RCA shares these concerns, arguing that "the Commission must be careful not to impose impossible-to-meet build-out requirements on Mobility Fund recipients."[54] RCA points to issues associated with the Lower 700 MHz A Block as an example of problems faced by its member carriers in developing and implementing broadband network deployment plans. RCA notes that carriers "have been significantly hindered in planning for, securing financing for, and purchasing the necessary equipment and infrastructure for building out the Lower A Block spectrum in their geographic areas due to a lack of interoperable devices[,]"[55] and concludes that "rollout of 4G

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any roaming obligation reciprocal"); RTG Comment at 4 (emphasis added) (supporting "data roaming regulations that actually *compel low rates across the board* while at the same time incentivizing small and rural carriers' network build-out").

[53] C Spire Wireless Comments at 27.

[54] RCA Comments at 15.

[55] *Id*. (footnote omitted). C Spire Wireless, as a member of the 700 MHz Block A Good Faith Purchasers Alliance, has observed that "the unavailability of affordable mobile devices for customers of Lower A Block licensees is threatening to interfere with the ability of small rural and regional carriers to invest in

service by 2016 may not be feasible unless the Commission addresses the roadblocks currently facing Lower A Block licensees."[56]

In addition to the Lower 700 MHz A Block issues, RCA also argues that the significant reduction in support provided to competitive ETCs pursuant to the Commission's CAF and Mobility Fund budgets should be taken into account in establishing service obligations.[57]

The Wireless Parties understand the Commission's preference to establish build-out schedules that facilitate the availability of mobile broadband services in rural communities as quickly as possible. Nonetheless, deployment requirements cannot wish away factors that will likely make it difficult for Mobility Fund Phase II support recipients to meet the Commission's proposed schedule.

The Wireless Parties urge the Commission to take into account the factors enumerated in the record that will impair deployment within the Commission's proposed timeframe, and to make adjustments to its deployment requirements accordingly. Specifically, as C Spire Wireless has suggested in its Comments, "[a] more reasonable approach would be to require attainment of

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the deployment of 4G broadband infrastructure." *700 MHz Mobile Equipment Capability, Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment To Be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks*, RM No. 11921, Reply Comments of 700 MHz Block A Good Faith Purchasers Alliance (filed Apr. 30, 2010), at 16. This threat leads to the prospect that:

> [T]he digital divide between rural and urban consumers will likely be made much more severe unless the Commission takes action to ensure that the 700 MHz band class plan and the equipment procurement practices of the Big Two [AT&T and Verizon] do not interfere with the deployment of 4G services in rural and smaller regional markets.

Id. at 17 (footnote omitted).

[56] RCA Comments at 15-16 (footnote omitted).

[57] *Id*.

the Commission's 75 percent build-out requirement within five years, perhaps with an interim three-year deadline for achieving deployment of 50 percent of road miles in unserved areas."[58]

5. The Record Supports a Proposal That the Commission Should Place Restrictions on Package Bidding.

The Commission has tentatively concluded that some form of package bidding would enhance Mobility Fund Phase II auctions,[59] and C Spire Wireless has argued that there should be some limitations established to ensure that larger carriers do not have the capability to manipulate reverse auctions by packaging bids that cover extensive geographic areas.[60]

Several commenters agree that it would be advisable for the Commission to place some limits on package bidding. T-Mobile, for example, suggests that, if the Commission adopts a "bidder-defined" approach[61] to package bidding, then "it also should impose restrictions on the packages that bidders could select, both in order to preclude a single entity and its affiliates from dominating an auction and to ensure that less desirable, higher-cost areas are included in packages."[62]

Blooston agrees with C Spire Wireless and T-Mobile, arguing that "the ability to accumulate census blocks into one large bid proposal will create an apples-to-oranges comparison that will heavily favor large carriers."[63] Blooston proposes that the maximum package area should

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[58] C Spire Wireless Comments at 27.

[59] *Further Notice* at para. 1156.

[60] C Spire Wireless Comments at 26.

[61] Under a bidder-defined approach, the Commission "would not specify a minimum aggregation of census blocks but would provide bidders with considerable flexibility to aggregate the specific census blocks they propose to serve. Bidders would be able to make bids that specify a set of census blocks to be covered, and a total amount of support needed." *Further Notice* at para. 1129.

[62] T-Mobile Comments at 5 (footnote omitted).

[63] Blooston Comments at 12.

not exceed a Census Tract,[64] and U.S. Cellular suggests that package bidding should be restricted "so that such bids are permitted only with respect to aggregations of geographic areas that are within the boundaries of a county[,]"[65] reasoning that, without such a limitation, larger carriers could use package bidding to make bids covering large geographic areas and "[s]maller rural carriers and regional carriers would find it difficult to match such bidding strategies, which would place them at a competitive disadvantage in the auctions."[66]

In the Wireless Parties' view, given that the Commission's winner-take-all reverse auction proposal could severely handicap the efforts of smaller rural carriers to match the bidding strategies of the larger carriers, the Commission should not compound this outcome by adopting a package bidding mechanism without any limitations.

B. The Commission's Universal Service Budget.

Numerous stakeholders—including consumer representatives—express concern that the CAF and Mobility Fund budgets adopted by the Commission will not be sufficient to meet the Commission's objectives for the deployment of fixed and mobile broadband networks in high-cost areas. There also is considerable support in the record for the Wireless Parties' suggestion that the Commission should deposit any savings realized from the operation of its CAF mechanisms into the Mobility Fund, as a means of helping to reduce the imbalance in budgeted support between fixed and mobile broadband.

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[64] *Id*.

[65] U.S. Cellular Comments at 38.

[66] *Id*.

1. Numerous Parties Agree That the Commission's Overall Budget Is Insufficient and Short-Sighted.

C Spire Wireless, in its Comments, criticizes the Commission for making "decisions in the *Order* [that] have shortchanged funding for the deployment of mobile broadband networks."[67] The Commission's budget decisions regarding mobile broadband are particularly nettlesome in light of the fact that, as MTPCS has pointed out, "consumers are increasingly adopting mobile broadband. Mobile data traffic grew four times faster than fixed traffic from 2009 to 2010, and is anticipated to increase 26 times from 2010 to 2015[,]"[68] and the fact that the burgeoning popularity of smartphones has led to significant job growth.[69]

Other parties agree with these concerns, and also raise more fundamental problems with the Commission's budget decisions. USTelecom, for example, argues that, "[u]nfortunately the Order established the budget without concurrently determining how a CAF for price cap and

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[67] C Spire Wireless Comments at 21 (footnote omitted).

[68] MTPCS *August 3 Public Notice* Comments at 8. *See* USA Coalition Comments at 4.

[69] A recent news report indicates that the development of services and tools built to operate on smartphones (as well as on computer tablets and the Facebook online social network) has created 466,000 jobs in the United States since 2007:

> The [application] economy began to percolate in 2007—the year that Apple introduced the iPhone and Facebook turned its website into a platform for other programs designed for its rapidly growing audience. . . . The seeds for even more job growth have been planted by a proliferation of other mobile devices designed to run on operating systems made by Google Inc., Research in Motion Ltd. and Microsoft Corp.

Study Concludes Growth in Mobile, Facebook Applications Has Created 466,000 US Jobs Since 2007, WASH. POST, Feb. 7, 2012, accessed at http://www.washingtonpost.com/business/technology/study-concludes-growth-in-mobile-facebook-applications-has-created-466000-us-jobs-since-2007/2012/02/07/gIQAnnlYvQ_story.html?wpisrc=nl_tech. *See* RCA, Press Release (rel. Jan. 18, 2012), accessed at http://rca-usa.org/press/rca-press-releases/new-study-shows-investing-in-mobile-broadband-will-create-jobs/917182 (discussing a recent study showing that "investments and innovation in the transition from 3G to 4G technologies could add more than 231,000 new jobs to the U.S. economy in less than a year").

rate-of-return companies could be established that would provide sufficient funding to meet universal service obligations."[70]

The same criticism applies to Mobility Fund Phase II, since the Commission erroneously found it sufficient to set the budget at $400 million annually, without engaging in any detailed analysis of the level of funding that would be necessary to bring advanced mobile broadband networks to unserved rural areas. As U.S. Cellular indicates, the Mobility Fund budget fails to take several relevant factors into account, including the fact that line counts for rural incumbent rate-of-return carriers are shrinking significantly, and that consumers' preference for mobile voice and broadband services continues to increase.[71]

Rural Associations mirror the concerns raised by USTelecom, pointing out that the Commission's budget (for total CAF, the existing high-cost fund mechanism budget, and intercarrier compensation restructuring) is limited to the approximate size of the current high-cost fund budget,[72] even though "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."[73]

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[70] United States Telecom Association ("USTelecom") Comments at 3. USTelecom complains that:

> In essence, the Commission impermissibly bootstraps a broadband deployment and maintenance obligation onto carriers that only receive federal universal service funding for the provision of voice telephony service in their geographic service areas, while turning a blind eye to the sufficiency of the support necessary to satisfy this obligation.

Id. at 4-5 (footnoted omitted).

[71] U.S. Cellular Comments at 52.

[72] 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.

[73] *Id*. at 5-6 (emphasis in original) (footnote omitted).

Tellingly, a consumer group also expresses concern that the Commission's budget decisions may not provide an adequate level of funding: Consumer Advocates note 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."[74]

After expressing these reservations concerning the sufficiency of the Commission's budget, Consumer Advocates propose a simple solution: "[T]he FCC [should] increase the USF contribution base to include the broadband services."[75] The Wireless Parties agree. It is difficult to conclude that the Commission has advanced the interests of rural consumers by locking in its parsimonious budget decisions, including the imposition of an overall cap on support, while at the same time failing to undertake any universal service contribution reform. The Commission's principle of sufficiency should include a fiscally responsible commitment to carry out contribution reforms that make it unnecessary for the Commission to impose support restrictions that handicap carriers' efforts to deploy broadband networks in rural areas.

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[74] Consumer Advocates Comments at 23. The indicators cited by Consumer Advocates are: (1) price cap carriers initially indicated the need for $5.9 billion and rate-of-return carriers estimated a need for $3.8 billion in support, "levels that substantially exceed the $1.8 billion price cap budget and the $2.0 billion rate-of-return budget[;]" (2) a Commission broadband study suggested that customers in very remote areas "would need $13.4 billion in support compared to the annual $100 million allocated to these customers by the budget adopted in the USF Order[;]" and (3) rate-of-return carriers currently receive $2.0 billion in support plus intercarrier compensation revenue, "while in the future, terminating intercarrier compensation revenue will be eliminated and support, including the support that replaces terminating intercarrier compensation revenue, will be limited to $2.0 billion." *Id.* (citing FCC, "The Broadband Availability Gap," Omnibus Broadband Initiative Technical Paper 1 (Apr. 2010), at 5).

[75] *Id*. Consumer Advocates explain that "[t]his increase in the contribution base is reasonable because the federal universal service fund is supporting broadband services. This is especially important if the . . . indicators [listed by Consumer Advocates] are correct and the budget for support is too small." *Id.* C Spire Wireless criticizes the Commission for imposing various funding constraints in the *Order* based on the Commission's assertion that these constraints are necessary because of the limits of the "available budget." C Spire Wireless points out in its Comments that these limitations are self-imposed "because [the

2. There Is Support in the Record for the Argument That the Commission Should Not Allocate to Rate-of-Return Carriers Any Savings Generated by Operation of the CAF Support Mechanisms.

The Commission asks in the *Further Notice* whether any savings realized in other components of CAF should be used to increase funding for rate-of-return carriers, in light of the fact that the budget target presented by Rural Associations exceeded the annual budget for rate-of-return carriers adopted by the Commission in the *Order*.[76]

C Spire Wireless opposes any such accommodation of rate-of-return carriers by the Commission, suggesting instead that the Commission "should allocate these [CAF] savings to the Mobility Fund, so that consumers can receive increased access to the services that they most want and desire in the 21st Century."[77] Numerous other parties also object to the Commission's suggested repurposing of CAF savings to provide further support for rate-of-return carriers.

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[,]"[78] and Time Warner also objects to any accommodation of rate-of-return carriers, pointing to the mismatch in funding provided by the Commission's budget for rate-of-return carriers on the one hand and wireless (and satellite) carriers on the other:

> 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

Commission] has avoided any effort to reform the universal service contribution mechanism . . . ." C Spire Wireless Comments at 21.

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

[77] C Spire Wireless Comments at 30.

[78] Windstream Communications, inc. ("Windstream") Comments at 36. Windstream argues in favor of redirecting any CAF savings to carriers operating in price cap areas. *Id*.

> ILECs—without any plausible basis to assume that ILECs will better advance universal service objectives.[79]

RCA, U.S. Cellular, and USA Coalition all oppose transferring any CAF savings to rate-of-return carriers. Criticizing the Commission's "preferential treatment of wireline carriers and concomitant underfunding of wireless ETCs[,]"[80] RCA argues that, "[a]t a minimum, the Commission should determine that funds unclaimed by price cap carriers pursuant to their right of first refusal should be redirected to wireless ETCs through the Mobility Fund."[81] RCA explains that the record demonstrates that "the $400 million in annual non-tribal support budgeted for the Phase II Mobility Fund will be grossly inadequate[,]"[82] especially given the fact that "consumers have demonstrated a strong, sustained, and growing preference for mobile wireless services."[83]

U.S. Cellular argues that using CAF savings to increase allocations to rate-of-return carriers "would serve to exacerbate the already substantial discrepancy between the Commission's funding allocations for rate-of-return carriers and mobile broadband providers . . . ."[84] USA Coalition argues that the Commission's decision to limit Mobility Fund support to $300 million for

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[79] Time Warner Cable Inc. ("Time Warner") Comments at 11. Time Warner also points out that, despite imposing a two-thirds reduction in support available to competitive ETCs, the Commission "acknowledges that even with its new budget target in place, 34 percent of rate-of-return carriers will experience 'no reductions whatsoever' in their high-cost universal service receipts, while more than 12 percent will actually see an ***increase***." *Id*. (emphasis in original) (footnotes omitted).

[80] RCA Comments at 4.

[81] *Id*. at 4-5.

[82] *Id*. at 5.

[83] *Id*. (footnote omitted). RCA cites a Commission report indicating that "[g]rowth [in Internet access connections] is particularly high in mobile Internet subscriptions," where "mobile subscriptions exceeded 84 million by December 2010—up 63% for the year." Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, INTERNET ACCESS SERVICES: STATUS AS OF DECEMBER 31, 2010, (rel. Oct. 2011), at 1, *quoted in id*. at 5 n.4.

[84] U.S. Cellular Comments at 53.

Phase I and $500 million annually for Phase II "is underwhelming, a mere fig leaf used by the Commission to claim consumer needs are being addressed."[85]

Finally, the Wireless Parties cannot agree with the Wisconsin PSC's position that any CAF savings "should be diverted to the rural fund [*i.e.*, the fund for rate-of-return carriers] for additional support to rural networks."[86] This suggestion is based on the fact that the Wisconsin PSC "has heard from some Wisconsin providers that [the] amount of support [budgeted by the Commission in the *Order*] may be insufficient to both maintain existing networks and build out new networks to un-served customers."[87]

While the Wireless Parties agree that the capped CAF and Mobility Fund may be insufficient to meet the Commission's goals for both fixed and wireless broadband deployment, the most glaring shortfalls in the budget adversely affect mobile wireless broadband carriers, not fixed carriers. As U.S. Cellular has noted, "rate-of-return carriers are slated by the Commission to receive *five times as much funding* as mobile broadband providers."[88]

The Wisconsin PSC also points out that, "[u]ltimately, the size of the USF needs to be determined based on whether the funds are sufficient, but not excessive, to meet the [Commission's] universal service goals[,]"[89] and that the Commission must at some point take steps to determine whether the size of its funding mechanisms is sufficient.[90] The Wireless Parties agree with this assessment, except that, in the Parties' view, there is already enough evidence in the

[85] USA Coalition Comments at 5 (footnote omitted).

[86] Public Service Commission of Wisconsin ("Wisconsin PSC") Comments at 10.

[87] *Id*. (footnote omitted).

[88] U.S. Cellular Comments at 52 (emphasis in original) (footnote omitted).

[89] Wisconsin PSC Comments at 10.

[90] *Id*.

record to conclude that the budget adopted by the Commission is a mistake, and that the Commission's priority now must be to proceed with contribution reform and to take other appropriate steps to free its fixed and mobile broadband deployment goals from the jeopardy created by the Commission's current budget.

C. Rate-of-Return Carriers.

Several commenters join the Wireless Parties in urging the Commission to act expeditiously to represcribe the authorized rate of return, arguing that there is strong support for reducing the rate of return to a level considerably lower than the existing 11.25 percent rate of return, which has been in place for more than two decades. There also is support in the record for the Wireless Parties' view that the Commission's priority should be to cease relying on rate-of-return regulation and the embedded cost methodology for the provision of support to rural incumbent carriers, and instead to integrate these carriers into the new disbursement mechanisms used for CAF support.

1. There Is Strong Support in the Record for Lowering the Authorized Interstate Rate of Return.

The Commission indicates in the *Further Notice* that its preliminary analysis conservatively suggests that the authorized interstate rate of return should be reduced to no more than 9 percent.[91] C Spire Wireless agrees with this analysis in its Comments, and suggests that the represcribed rate of return should be at the lower end of a range between 7 and 9 percent.[92]

The weight of the comments in response to the *Further Notice* supports the Wireless Parties' view that the Commission should act promptly to reduce the rate of return, which has not

[91] *Further Notice* at para. 1057.

[92] C Spire Wireless Comments at 31.

been modified for more than two decades and currently is set at a level that bears no relationship to marketplace realities.

Time Warner supports elimination of rate-of-return regulation altogether, "in light of its well-established inefficiencies,"[93] but argues that, in the near term, the Commission should lower the authorized rate of return.[94] Time Warner expresses its support for "the adoption of the lowest figure that can be justified by the record, as no provider in today's communications marketplace should receive regulatory guarantees of profitability that undermine incentives to operate efficiently."[95]

NCTA argues that, "[g]iven the drastic reductions in interest rates since the Commission prescribed the 11.25 percent rate of return, even [the Commission's] preliminary finding [of a reduction to no more than 9 percent] may prove too generous."[96] Ad Hoc agrees with the Commission's tentative conclusion that the current rate of return is no longer consistent with the Communications Act of 1934 ("Act") and current financial conditions.[97] T Mobile argues that "the authorized RoR should be reduced from its current excessive 11.25 percent to market levels, which the Commission's preliminary analysis shows is about six to eight percent."[98] CTIA agrees, "support[ing] the FCC's efforts to bring the prescribed rate of return in line with market levels. There is clear agreement that the current 11.25 percent rate-of-return 'is no longer reflec-

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[93] Time Warner Comments at 12. The issue of reforming the Commission's rate-of-return regulatory regime is discussed in Section II.C.2., *infra*.

[94] Time Warner Comments at 12.

[95] *Id*.

[96] National Cable & Telecommunications Association ("NCTA") Comments at 9.

[97] Ad Hoc Telecommunications Users Committee ("Ad Hoc") Comments at 2 (citing *Order* at para. 638).

[98] T Mobile Comments at 8 (footnote omitted).

tive of the cost of capital,' and that public data would support cutting the rate-of-return significantly to approximately seven percent."[99]

Some parties argue that the Commission's preliminary findings regarding the weighted average cost of capital ("WACC")[100] should be discounted because it is not evident that the Commission has sufficiently taken into account the elevated levels of risk faced by rural incumbent rate-of-return carriers.[101]

Ad Hoc, however, observes that "the process for determining the WACC also relies on inputs that can be quite subjective—in particular, assessments of the risks associated with the business[,]"[102] and cautions that "[t]he Commission must distinguish between the desire to promote Broadband deployment (as it is doing through the CAF) and, in the alternative, over-rewarding eligible providers for participating in the CAF, at the expense of consumers, by accepting unsubstantiated claims that the providers' investment risks remains high."[103]

The Wireless Parties agree with Ad Hoc that several factors suggest that investment risks faced by rural rate-of-return carriers have been mitigated. Ad Hoc points out that actions taken by the Commission in the *Order*, and proposed in the *Further Notice*, "will allow incumbent LECs to earn a reasonable return on investment[,]"[104] and that additional CAF support, which will become available by using a reduced rate of return in calculating historical high-cost sup-

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[99] CTIA Comments at 16 (footnote omitted) (citing *Further Notice* at paras. 1047, 1057).

[100] *See Further Notice* at para. 1049 (describing WACC as the rate of return required to maintain the current value of a firm).

[101] *See, e.g.*, GVNW Consulting, Inc., Comments at 9; Moss Adams Companies Comments at 26; Parrish, Blessing & Associates, Inc. ("PBA") Comments at 12; Rural Associations Comments at 50.

[102] Ad Hoc Comments at 8-9.

[103] *Id*. at 9.

[104] *Id*. at 10 (footnote omitted).

port, "should mitigate the potential risk of setting a rate so low that carriers will not be incented to invest in Broadband."[105]

Ad Hoc also argues persuasively that:

> [T]he very structure of the CAF neutralizes most of the risk associated with an ETC's Broadband investment. CAF funds are allocated only to locations where competitive deployment has not occurred; only one ETC per area qualifies for the support, and CETC identical support has been eliminated. Thus, risk associated with actual or potential competition is virtually non-existent.[106]

Moreover, the Wireless Parties agree with Ad Hoc's observation that many smaller rate-of-return carriers have an opportunity to minimize their financial risk by obtaining debt financing through the Rural Utilities Service or similar agencies.[107]

The analysis presented by Ad Hoc has a bearing on how the Commission should proceed in represcribing the authorized rate of return. The Wireless Parties agree with Ad Hoc's suggestion that, in light of the various factors discussed by Ad Hoc that affect an evaluation of risk, "[i]f the ultimate results of the Commission's investigation reveal a 'zone of reasonableness' for the WACC of between 6% and 8%, then the interstate rate of return should fall within, not above or below, that range."[108]

Although the Wireless Parties believe that analyses presented in the record and described in the preceding paragraphs support a conclusion that the represcribed authorized rate of return should be at the lower end of a range between 7 and 9 percent, the Parties recognize that there is

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[105] *Id*. *But see* Washington Independent Telecommunications Association, Oregon Telecommunications Association, Idaho Telecom Alliance, Montana Telecommunications Association, and Colorado Telecommunications Association (collectively, "Western Associations") Comments at 14-16 (arguing that the Commission should not engage in any rate-of-return represcription at the present time because the *Order* creates additional substantial risk that has not yet been taken into account).

[106] Ad Hoc Comments at 10.

[107] *Id*.

[108] *Id*. at 9.

room for debate. Consumer Advocates, for example, argue that the Commission must not only consider factors that reduce the WACC, but must also reflect on factors that may increase the WACC,[109] and Consumer Advocates, following this approach, arrive at the view "that the total WACC could approach 8 or 9 percent."[110]

There should be no doubt, however, that, as Consumer Advocates observe, it is well past time for the Commission to re-examine the authorized rate of return.[111] The Wireless Parties applaud the Commission for initiating the represcription process and for "waiv[ing] certain procedural requirements in the Commission's rules relating to rate represcriptions to streamline and modernize this process to align it with the current Commission practice."[112] The Parties disagree with those commenters advocating further delay,[113] since such proposals for maintaining the *status quo* are not tenable in view of the fact that "[t]he Commission has not revisited the current 11.25 percent rate of return for over 20 years."[114]

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[109] Consumer Advocates Comments at 31.

[110] *Id*. at 37. *See* Rural Associations Comments at 56-61 (arguing that the WACC applicable to rural rate-of-return carriers, based on analyses of cost of capital and taking into account marketplace and regulatory changes and uncertainties, justifies an authorized rate of return of at least 11.25 percent).

[111] Consumer Advocates Comments at 31. *See* NCTA Comments at 9 (observing that "as long as the Commission retains a ROR regime, it must move forward with re-prescribing the rate of return"); Time Warner Comments at 12 (arguing that the Commission should act in the near term to represcribe the authorized rate of return).

[112] *Order* at para. 638.

[113] *See* PBA Comments at 12 (recommending that "the Commission should table the represcription proceeding for the time being"); Rural Associations Comments at 48 (opposing the Commission's approach for represcribing the authorized rate of return because the Commission must first fix existing represcription rules and establish a clear replacement methodology); Western Associations Comments at 16 (arguing that "[t]he bottom line is that there is too much uncertainty at the present time to be able to forecast what is the appropriate rate of return for small rural telecommunications carriers").

[114] *Order* at para. 638.

2. The Commission Should Act Expeditiously To Reform Its Support Mechanisms for Rate-of-Return Carriers.

While it is important for the Commission to take action in the near term to represcribe the authorized rate of return, it is equally critical for the Commission to act expeditiously to fundamentally reform rate-of-return regulation. The Wireless Parties believe that the Commission's reliance on embedded cost as the mechanism for providing high-cost support to rate-of-return carriers harms competition, and disserves consumers in rural areas because it provides no incentives for ETCs to deliver supported services at the minimum possible cost.

C Spire Wireless argues in its Comments that the embedded cost mechanism used to disburse high-cost support to rural incumbents is bankrupt and should have been discarded long ago, and urges the Commission to limit as much as possible the duration of its near-term reliance upon embedded cost disbursement mechanisms for rate-of-return carriers. C Spire Wireless urges the Commission "to move as quickly as possible to disbursement mechanisms based on the use of forward-looking economic cost models"[115] and to establish a specific timetable for completing the transition to a more incentive-based form of regulation.[116]

Several commenters agree with the Wireless Parties that the Commission should act quickly to reform the existing support mechanism for rural incumbents. Given the Commission's own longstanding indictment of the utilization of rural incumbents' embedded cost as a basis for awarding universal service support, there is no evident basis for the Commission's protracted delay in coming to grips with this issue. RCA, for example, points out that "the Commission has acknowledged [that] rate-of-return regulation creates incentives for carriers to 'make imprudent

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[115] C Spire Wireless Comments at 35.

[116] *Id*.

investment decisions' and maintain a 'bloated corporate overhead[ ] . . . [and] an inefficient operating structure' so as to maximize available subsidies."[117]

As noted earlier, Time Warner supports the elimination of rate-of-return regulation "in light of its well-established inefficiencies[,]"[118] and urges the Commission to "follow through with its longstanding interest in reforming rate-of-return regulation . . . ."[119] Time Warner criticizes the Commission for "set[ting] the stage for rate-of-return carriers to lock in the inflated revenue streams to which they have become accustomed under the broken legacy regime—a preservation of the status quo that is antithetical to the Commission's reform goals."[120] The Wireless Parties endorse Time Warner's proposal that the Commission should subject rate-of-return carriers "to the same standards that apply to other funding recipients and critically examine their claimed need for ongoing support."[121]

In addition to creating incentives for inefficient investment and operations that ultimately are harmful to rural consumers, rate-of-return regulation and the use of embedded cost as a mechanism for disbursing support to rural incumbent carriers also cut against the grain of the Commission's principle of competitive neutrality.[122] CTIA points out, for example, that

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[117] RCA Comments at 10 (footnote omitted) (citing *USF-ICC Reform NPRM*, 26 FCC Rcd at 4614 (para. 171)).

[118] Time Warner Comments at 12.

[119] *Id*.

[120] *Id*. at 9.

[121] *Id*. at 10.

[122] *See 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), *cited in Order* at para. 176.

"[r]etaining support mechanisms that insulate certain providers from competitive pressure is unfair, and potentially distorts the development of competition."[123]

The Wireless Parties agree with CTIA's suggestion that the Commission should "complete the important work of reforming rate-of-return regulation as soon as practicable."[124] Specifically, CTIA suggests that the Commission should "establish a fixed timetable to transition legacy support for rate-of-return carriers to the newly established Connect America Fund. While the Order's reforms are an improvement, retaining legacy rate-of-return funding is inconsistent with the forward-looking approach underlying the Order and competitive realties."[125]

The Wireless Parties also support CTIA's proposal that "[r]ate-of-return carriers should be folded into the existing CAF as soon as practicable, rather than expending a significant amount of effort (and time) adopting a different CAF mechanism for rate-of-return carriers."[126] Moreover, the Parties agree with GCI that "the Commission should not adopt a long-term CAF for RoR ILEC-served areas that ignores competitive alternatives in favor of continued support for unnecessarily expensive services that consumers themselves are abandoning."[127]

The Commission, in the Wireless Parties' view, should focus on applying incentive-based, pro-competitive universal service policies across the board to all recipients. Whether the Commission selects a cost model-based or a reverse auction-based disbursement mechanism, the Commission's goal should be to ensure that *<u>all support recipients</u>* have the same incentives to utilize funding efficiently to bring affordable and high-quality fixed and mobile broadband ser-

[123] CTIA Comments at 15. *See* T-Mobile Comments at 8.

[124] CTIA Comments at 14.

[125] *Id*. at 15-16.

[126] *Id*. at 16.

[127] GCI Comments at 32.

vices to rural communities. The Commission should pursue this goal now, rather than continuing to "stop[ ] short of taking the action most consistent with its findings and eliminating legacy rate-of-return support altogether."[128]

D. Other Issues.

The Wireless Parties are joined by other commenters in advocating that the Commission should not require winning bidders to rely on funding sources other than CAF for a fixed percentage of the total costs of their network deployments, and that the Commission should establish a presumption that, if rural rates for services provided by a support recipient are identical to (or within a fixed percentage of) urban rates charged by that recipient, then the recipient's rural rates are reasonably comparable to its urban rates.

1. Commenters Agree That CAF Phase II Auction Winners Should Not Be Required To Finance a Portion of Network Deployment from Non-CAF Funding Sources.

C Spire Wireless argues in its Comments that the Commission should not require that any carrier receiving CAF Phase II auction-based support must finance a fixed percentage of any build-out with non-CAF or private funds, indicating that such a requirement would disadvantage smaller carriers.[129] Other parties support this view.

ITTA opposes any fixed-percentage investment requirement,[130] and argues that such a requirement could discourage participation in CAF Phase II auctions by potential support recipients that might be "in the best position to extend service to the area for which CAF support is

[128] CTIA Comments at 14.

[129] C Spire Wireless Comments at 36-37.

[130] Independent Telephone and Telecommunications Alliance ("ITTA") Comments at 16.

available based on their existing network deployment."[131] U.S. Cellular also opposes the proposed requirement, arguing that the Commission's proposals for funding recipients' certification of their financial and technical capabilities should be sufficient to ensure that these recipients will meet applicable public interest obligations,[132] and pointing out that the Commission has already rejected a fixed-percentage investment requirement for Mobility Fund Phase I.[133]

2. Several Commenters Support the View That the Commission Should Adopt a Presumption Regarding the Comparability of Rural and Urban Rates.

There is support in the record for C Spire Wireless's position that the Commission should adopt a presumption that, if a service provider is offering the same rates, terms, and conditions to both urban and rural customers, then the provider's offering will be treated as sufficient to meet the statutory requirement that services should be reasonably comparable. C Spire Wireless argues in its Comments that rural consumers would be well served by the presumption because it would ensure that "services they obtain from a carrier receiving CAF or Mobility Fund support are effectively the same as services provided by the carrier to its customers in urban areas."[134]

AT&T favors adoption of the presumption, arguing that the Commission should rely on the presumption in lieu of attempting to apply its "no more than two standard deviations above the national average" measurement for reasonable comparability.[135] AT&T argues that the standard deviation measurement is not an appropriate tool in light of the "dramatically changed mar-

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[131] *Id*.

[132] U.S. Cellular Comments at 42.

[133] *Id*. (citing *Order* at para. 404).

[134] C Spire Wireless Comments at 36.

[135] AT&T Comments at 24. Both CenturyLink and U.S. Cellular also support adoption of the presumption. *See* CenturyLink Comments at 7; U.S. Cellular Comments at 45-46.

ketplace for voice service,"[136] and that "creating separate standard deviation measurements based on the discrete type of service and technology could be infeasible because there might not be sufficient data points to produce statistically meaningful results."[137]

The Wireless Parties agree with AT&T's suggestion that the presumption should also apply if rates in rural areas do not exceed urban rates by some percentage, "since the statute does not demand identical rates but, rather, provides for a 'reasonable' comparability of rates."[138]

III. CONCLUSION.

The Commission now has a record before it in this proceeding that demonstrates a strong case for Commission action on several central issues relating to universal service reform. Many parties agree that, based on the strength of arguments and evidence in the record, the Commission should select a forward-looking economic cost model as the Mobility Fund Phase II disbursement mechanism. The Wireless Parties also agree with commenters suggesting that the Commission not to make a decision regarding the Phase II support mechanism until after the Commission and stakeholders have had a sufficient opportunity to evaluate the results of the Phase I reverse auction.

The Wireless Parties also respectfully urge the Commission to revise its budget for CAF and Mobility Fund support, taking into account the considerable concern expressed in the record that the existing budget will not be sufficient to achieve the Commission's goals for fixed and

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[136] AT&T Comments at 25.

[137] *Id*.

[138] *Id*. *See* Alaska Communications Systems Group, Inc., Comments at 9 n.14 (emphasis in original) (arguing that the "presumption should only demand ***reasonable*** comparability, as required by the statute, because not all plans may be offered in all areas due to lack of demand").

mobile broadband deployment. The Commission also should reform its universal service contribution rules so that additional funding can be made available to support broadband deployment.

Finally, the Wireless Parties respectfully urge the Commission to follow recommendations in the record to repeal the existing rate-of-return regulatory regime, making rural incumbent carriers subject to CAF mechanisms that are intended to ensure efficient use of universal service support.

Respectfully submitted,

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