

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

**REPLY COMMENTS
of
UNITED STATES CELLULAR CORPORATION**

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

David A. LaFuria
John Cimko

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

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

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SUMMARY

The Wireline Competition Bureau has explained that the *Public Notice* it issued on June 8, 2012, represents the next step in developing final model designs and inputs for use in providing Connect America Fund Phase II support to price cap carriers. U.S. Cellular commends the Bureau for its efforts in developing the threshold decisions presented in the *Public Notice*.

U.S. Cellular is concerned, however, that the Commission and the Bureau, in designing Phase II funding mechanisms, have taken a major step in the wrong direction. Specifically, the *Public Notice* indicates that the model design will not require price cap carriers to deploy the modeled wireline technology—they will be free to deploy any technology they choose. This choice—coupled with the incumbents' right of first refusal, which gives them the opportunity to lock down all Phase II support in their service areas for at least five years—amounts to the Commission's using a reincarnated identical support rule to award Phase II support on an exclusive basis to the incumbent price cap carrier.

Thus, the Commission has reversed field in its view of the identical support rule articulated only recently in the *CAF Order*, which repealed the rule after deciding that the rule failed to provide appropriate levels of support for the efficient deployment of mobile services. But now the *Public Notice* signals an intention to implement a CAF Phase II funding mechanism for price cap carriers that will re-create the shortcomings the Commission found in the initial identical support rule without capturing any of the pro-consumer benefits of providing the support to carriers on a competitive basis.

Price cap carriers will be able to receive support based on a model that estimates the cost of a wireline network. They then can choose to deploy a wireless technology and—capitalizing

on the greater efficiencies and lower costs associated with wireless network deployment—benefit from their exclusive receipt of excessive levels of Phase II modeled funding generated by use of wireline network costs. This scenario, enabled by the RoFR and the price cap carriers’ opportunity to use Phase II support to deploy wireless broadband networks, will harm consumers and competition, shutting down any realistic opportunity for wireless carriers to compete for Phase II support after the price cap carriers’ five-year period of exclusive funding ends.

U.S. Cellular urges the Commission to discard the RoFR mechanism, and to structure CAF Phase II funding in a way that prevents price cap carriers from gaining an insuperable marketplace advantage that ultimately would harm rural consumers.

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United States Cellular Corporation (“U.S. Cellular”), by counsel and pursuant to the *Public Notice* issued by the Wireline Competition Bureau,¹ hereby submits these Reply Comments in the above-captioned proceeding.

I. INTRODUCTION.

As a participant in the federal Universal Service Fund (“USF” or “Fund”) mechanism, both as a universal service contributor and as a recipient of high-cost support, U.S. Cellular has a significant interest in this proceeding. Over the course of many years, U.S. Cellular has advocated efficient and competitively neutral distribution of support to high-cost and remote areas, to align the public interest with carriers’ incentives to the greatest extent possible.²

¹ *Wireline Competition Bureau Seeks Comment On Model Design And Data Inputs For Phase II Of The Connect America Fund*, DA 12-911 (rel. June 8, 2012) (“*Public Notice*”), 77 Fed. Reg. 38804 (June 29, 2012).

² *See, e.g.*, U.S. Cellular Comments, WC Docket No. 10-90, *et al.*, filed Jan. 18, 2012 (emphasis in original) (citing “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”); U.S. Cellular Comments, WT Docket No. 10-208, filed Dec. 16, 2010, at 26 (internal quotation

In the upcoming years, it will become apparent that reserving high-cost support for a single carrier in rural areas through the use of an auction is not market-based, nor will it lead to rural citizens having access to advanced services that are reasonably comparable to those available in urban areas, as required by Section 254(b)(3) of the Communications Act of 1934 (“1934 Act”).³ U.S. Cellular parted ways with the Commission on a number of points, few more strenuously than the decision to provide price cap wireline carriers with a five-year right of first refusal (“RoFR”),⁴ essentially locking competitors out of the market and potentially re-creating the very “insurmountable competitive advantage” for incumbents that the Telecommunications Act

marks omitted) (emphasis added) (explaining that “a cost model reduces the possibility of anti-competitive conduct, by fixing an amount of support that *only goes to carriers that get customers*. A model confers no special advantage on any class of carrier or technology.”).

³ 47 U.S.C. §254(b)(3). In criticizing the use of a single-winner reverse auction mechanism, William P. Rogerson, Professor of Economics at Northwestern University and formerly the Commission’s Chief Economist, has explained the problems associated with limiting universal service support to a single carrier in a market:

The reverse auction approach potentially creates very powerful competition *for* the market that can be used to drive down the price of the subsidy that government pays. However, the cost of creating this very powerful competition *for* the market is that after a winner is declared, there will be a significant reduction in competition *within* the market for customers. . . . It is local competition among competing carriers that creates powerful ongoing incentives for firms to charge lower prices, to improve their quality of service and level of coverage, and to introduce new advanced services as rapidly as possible.

Ex Parte Letter from David A. LaFuria, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, *et al.*, filed Jan. 28, 2010, Enclosure, William P. Rogerson, “Problems with Using Reverse Auctions To Determine Universal Service Subsidies for Wireless Carriers,” Jan. 14, 2010 (prepared for U.S. Cellular) at 6-7 (emphasis in original).

⁴ U.S. Cellular has criticized the RoFR mechanism because it is not competitively neutral, it will have the effect of precluding competitive entry in service areas for which rural incumbent local exchange carriers (“LECs”) exercise the RoFR option, and it will “guarantee support to the incumbents (so long as they continued to meet program requirements), while, at the same time, competitive ETCs [will] not be given any comparable opportunity to secure ongoing CAF support during or after the phase-down of their existing capped high-cost support.” U.S. Cellular Comments, WC Docket No. 10-90, *et al.*, filed Apr. 18, 2011, at 16.

of 1996 (“1996 Act”) was intended to tear down.⁵ As the Commission properly noted in the *USF First Report and Order*, at the very beginning of universal service reform:

[W]e agree with the Joint Board that promoting competition is an underlying goal of the 1996 Act and that the principle of competitive neutrality is consistent with that goal. Accordingly, we conclude that the principle of competitive neutrality is “necessary and appropriate for the protection of the public interest” and is “consistent with this Act” as required by section 254(b)(7).⁶

The Commission’s new viewpoint, that universal service funding should be expended to further monopoly service⁷ rather than to promote marketplace competition in areas that would

⁵ In examining the economics of local exchange networks as part of its review of the Commission’s implementation of the 1996 Act, the Supreme Court concluded that:

It is easy to see why a company that owns a local exchange [network] would have an almost insurmountable competitive advantage . . . through its control of this local market . . . A newcomer could not compete with the incumbent carrier to provide local service without coming close to replicating the incumbent’s entire existing network, the most costly and difficult part of which would be laying down the ‘last mile’ of feeder wire, the local loop, to the thousands (or millions) of terminal points in individual houses or businesses. The incumbent company could also control its local-loop plant . . . and place conditions or fees (called “access charges”) on long-distance carriers seeking to connect with its network.

Verizon Communications v. FCC, 535 U.S. 467, 490-91 (2002) (footnote omitted).

⁶ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8803 (para. 51) (1997) (subsequent history omitted) (“*USF First Report and Order*”).

⁷ The Commission defended its decision in the *CAF Order* to award incumbent carriers the opportunity to receive Connect America Fund (“CAF”) funding on a monopoly basis for at least five years, by propounding the view that:

The fact that incumbent LECs’ [*sic*] have had a long history of providing service throughout the relevant areas—including the fact that incumbent LECs generally have already obtained the ETC designation necessary to receive USF support throughout large service areas—puts them in a unique position to deploy broadband networks rapidly and efficiently in such areas.

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, 26 FCC Rcd 17663, 17731-32 (para. 177) (2011) (“*CAF Order*”) (footnote omitted), *pets. for review pending sub nom. Direct Commc’ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and con-

not otherwise support it, rejects the underlying goal of the 1996 Act. To make matters worse, the Commission diverted support from independent wireless carriers who have been building essential wireless infrastructure in rural areas, to price cap carriers, despite the fact that price cap carriers are among the most profitable and cash rich enterprises in the Nation.

The *Public Notice* begins the “nuts and bolts” process of implementing Phase II CAF support for price cap carriers. In one major respect, U.S. Cellular strongly objects.

II. THE CAF PHASE II FUNDING MODEL RE-CREATES THE IDENTICAL SUPPORT RULE BUT MAKES IT WORSE BY PERMITTING ITS USE ONLY BY INCUMBENT PRICE CAP CARRIERS UNDER THEIR RIGHT OF FIRST REFUSAL AND THEREBY UNDERCUTS USE REFORM.

For nearly a decade, the wireline industry decried the Commission’s so-called “identical support” rule, or more properly stated, “portability,” which facilitates “a market- based process whereby each user comes to be served by the most efficient technology and carrier.”⁸ The Commission adopted portability to advance competitive neutrality, so that “no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers.”⁹

The former rule provided that competitive eligible telecommunications carriers (“CETCs”) would receive the same amount of “per-line” support as the incumbent carrier. The Commission’s rationale for the rule was to encourage efficient entry and to discourage inefficient

solidated cases). In other words, the fact that incumbent price cap carriers have long been operating as subsidized monopolists is grounds for providing additional, exclusive funding to enable them to continue operating as subsidized monopolists.

⁸ *USF First Report and Order*, 12 FCC Rcd at 8802 (para. 48). The identical support rule was codified at 47 C.F.R. § 54.307.

⁹ *USF First Report and Order*, 12 FCC Rcd at 8802 (para. 48).

entry.¹⁰ If a competitor could compete more efficiently, the identical support rule would give it an opportunity to enter, and compete with or potentially displace the incumbent carrier through the operation of a competitive marketplace. Put simply, the rule would give consumers the opportunity to choose the service or services that are most affordable and best suit their needs, with support going only to those areas that would not support competition on their own.¹¹

Key to the identical support rule is the Commission's continuing attention to the marketplace, to transition from a system providing support based on the incumbent's costs, to one that reflects the costs of building an efficient network. That process began following the 1996 Act, but stalled out in 2001, with no further substantive reforms being accomplished until a decade later, in the *CAF Order*.¹² After more than a decade of neglect, those who would declare the program "broken" were finally proven correct, because the intervening and necessary steps that needed to be taken, were not.¹³

So, to fix the broken system, the Commission among other things abandoned the identical support rule, and it did so with some force, finding (with scant underlying evidentiary support)

¹⁰ See, e.g., *id.* at 8944 (para. 311) (the Commission noted that "[w]e conclude that paying the support to a competitive eligible telecommunications carrier that wins the customer or adds a new subscriber would aid the entry of competition in rural study areas").

¹¹ In explaining its decision to adopt the identical support rule, the Commission noted that, "[i]f the CLEC can serve the customer's line at a much lower cost than the incumbent, this may indicate a less than efficient ILEC. The presence of a more efficient competitor will require that ILEC to increase its efficiency or lose customers." *Id.* at 8933 (para. 289).

¹² Until the recent *CAF Order*, the last substantive revision to the universal service distribution methodology was adopted eleven years ago. *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001).

¹³ To cite just one example, incumbent carriers were never required to disaggregate support out to the highest-cost areas so as to prevent competitors from receiving support in more densely populated areas.

that the rule bore “no relation to the efficient cost of providing mobile voice service in a particular geography.”¹⁴ The Commission went on to say that, “the per-line amounts received by competitive ETCs are a highly imperfect approximation of the amount of subsidy necessary to support mobile service in a particular geographic area and such structures have simply missed the mark.”¹⁵

The wireline industry advocated this position for a decade, complaining on innumerable occasions that, in effect, it is unfair to provide support to more efficient wireless carriers based on the cost of building a less efficient wireline network.¹⁶ Adopting that line of reasoning, the Commission concluded that “identical support does not provide appropriate levels of support for

Had the Commission simply moved support to areas of low density, the incentive to use support to build in urban and suburban areas would have evaporated.

¹⁴ *CAF Order*, 26 FCC Rcd at 17828 (para. 504). Of course, the Commission has also said that it believes the cost of deploying mobile and fixed broadband are similar. *See, e.g., id.* at 17736 (para. 191) (indicating that “the record fails to persuade us that, in general, the costs of cellular wireless networks are likely to be significantly lower than wireline networks for providing broadband service that meets the CAF Phase II speed, latency, and capacity requirements”).

¹⁵ *Id.* at 17828 (para. 504).

¹⁶ *See, e.g.,* Independent Telephone & Telecommunications Alliance Comments, WC Docket No. 05-337, *et al.*, filed Apr. 17, 2008, at 28 (noting that, “[w]hen industries use different technologies, deploy different architectures, have different regulatory regimes and expectations, continue to serve both differing (whether complementary or competing) and to some extent overlapping functions, the resulting cost structures necessarily will be very different. As a result, paying identical HCF [high-cost fund] dollars to carriers with fundamentally different cost structures and different universal service goals results in disparities that can be profoundly anti-competitive.”); National Telecommunications Cooperative Association Comments, WC Docket No. 05-337, *et al.*, filed Apr. 17, 2008, at 20 (arguing that, because of the identical support rule, “large wireless providers are able to receive substantial amounts of high-cost support tied to ‘rural telephone company’ costs that have no relationship to their wireless costs”); United States Telecom Association Comments, WC Docket No. 05-337, *et al.*, filed Apr. 17, 2008, at 16 (arguing that “[b]ecause identical support is based on the costs of an entirely different company with an entirely different technology, operating under an entirely different regulatory regime, it could only be an accurate reflection of the challenge of providing service to high cost areas in the same way that a broken watch accurately reflects the time twice a day”).

the efficient deployment of mobile services in areas that do not support a private business case for mobile voice and broadband.”¹⁷

U.S. Cellular does not seek to re-litigate here a matter that is before the Tenth Circuit. Rather, it seeks to point out that if the Commission is to be true to its word that inefficient support mechanisms are disfavored, and that carriers should receive no more than the cost of building an efficient network (as evidenced by the use of a model to distribute support)¹⁸ then the policy reflected in paragraph 13 of the *Public Notice* must be rejected.

In its entirety, paragraph 13 reads:

The Bureau emphasizes that model design choices will not obligate providers to deploy the modeled technology—providers can deploy any technology that meets the obligations laid out in the *USF/ICC Transformation Order*. The requirements laid out in the *USF/ICC Transformation Order* focus on the services delivered, not the technology used.

Footnote 21 of the *Public Notice* re-states a key provision from the *CAF Order*: “Funding recipients may use any wireline, wireless, terrestrial, or satellite technology, or a combination of technologies, to deliver service that satisfies this requirement.”¹⁹

As U.S. Cellular reads it, Verizon and AT&T, the two largest wireless carriers in the Nation, would be free to use 4G LTE networks to meet some, most, or all of the build-out obliga-

¹⁷ *CAF Order*, 26 FCC Rcd at 17827 (para. 502).

¹⁸ The Commission has stated that its objective is “to develop a robust cost model for the Connect America Fund to accurately estimate the cost of a modern voice and broadband capable network” *Id.* at 17735 (para. 184).

¹⁹ *Public Notice* at para. 13 n.21 (citing *CAF Order*, 26 FCC Rcd at 17696 (para. 91)). The requirement established in the *CAF Order* is stated as follows:

[W]e require that funding recipients offer service that is reasonably comparable to comparable services offered in urban areas. That is, the actual download and upload speeds, latency, and usage limits (if any) for providers’ broadband must be reasonably comparable to the typical speeds, latency, and usage limits (if any) of comparable broadband services in urban areas.

tions of their price cap wireline affiliates established by the Commission for CAF Phase II.²⁰ This would allow these carriers and others to enjoy a potentially large windfall because they may receive Phase II support for their 4G LTE networks, based on the higher cost of building a less efficient wireline network. To be clear, THAT is the very definition of identical support that the wireline industry has railed against for a decade.

Yet, this new identical support rule adopts none of the good features of the initial rule. Under the old rule, an incumbent faced a real threat of competition from a newcomer drawing USF support, while an efficient newcomer faced competition from the incumbent, as well as any other carrier that might win a customer, causing the newcomer to lose support associated with the customer. Under the new rule (which is derived from a proposal authored by the price cap carriers in 2011),²¹ the right of first refusal insulates incumbents from competition for five years,²² effectively preventing consumers from choosing the carrier that best suits their needs.

CAF Order, 26 FCC Rcd at 17696 (para. 91).

²⁰ To be sure, the ABC Coalition appears to disavow any such intention, noting that price cap carriers receiving CAF Phase II modeled support “will typically deploy or maintain FTTD [fiber to the DSLAM (digital subscriber line access multiplexer)] networks” United States Telecom Association, AT&T, CenturyLink, Fairpoint Communications, Frontier Communications, Verizon, and Windstream Communications (“ABC Coalition”) Comments, WC Docket No. 10-90, *et al.*, filed July 9, 2012, at 2. The ABC Coalition further indicates that, “[g]iven the substantially lower incremental capital expenditures associated with FTTD compared with FTTP [fiber to the premises], and the risk that CAF support may be discontinued after five years, it makes perfect sense that carriers receiving CAF Phase II support will likely prefer FTTD over FTTP in most cases” *Id.* at 10. Nonetheless, if, for example, price cap carriers that already have deployed, through their wireless affiliates, extensive wireless broadband technology determine that wireless broadband networks are the least-cost, most efficient technology for deploying broadband networks in high-cost areas, then the *Public Notice* makes it clear that these carriers may use funds based on modeled wireline costs to deploy least-cost wireless broadband infrastructure.

²¹ See America’s Broadband Connectivity Plan (“ABC Plan”), Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.*, filed July 29, 2011, Attach. 1, at 6.

²² The Commission explained in the *CAF Order* that “[c]arriers accepting a state-level commitment will receive funding for five years. At the end of the five-year term, in the areas where the price cap carriers have accepted the five-year state level commitment, we expect the Commission will use competitive bid-

Worse yet, should a price cap carrier determine that using LTE will be more economical than deploying wireline infrastructure, then it will have the option to deploy LTE and unfairly leverage its marketplace advantage during the RoFR period by extending its build out, or it could have the option of pocketing the excess model-driven support it receives during the five-year period that competitive entry is blocked.

The Commission has indicated that price cap carriers exercising their RoFR for the receipt of CAF Phase II funding will be “subject to robust . . . accountability standards.”²³ These standards should include mechanisms that ensure that a price cap carrier opting to use Phase II modeled support to deploy wireless advanced broadband networks is required to demonstrate (subject to audit) that its costs associated with the deployment of the wireless broadband network are at least equal to the level of Phase II support received by the carrier. If the carrier’s actual costs are less than the amount of Phase II support disbursed to the carrier, then the carrier should be required to return the excess support to the Fund.

In making policy choices involving the RoFR and the reconstituted identical support rule, the Commission could scarcely choose more poorly. While it is easy to understand the Commis-

ding to award CAF support on a going-forward basis” *CAF Order*, 26 FCC Rcd at 17729-30 (para. 172). Thus, incumbents opting into the Commission’s program will have exclusive access to Phase II funding for five years. U.S. Cellular also notes that it appears that incumbents could have this exclusive access to support for more than five years:

After the end of the five-year term of CAF Phase II, the Commission expects to be distributing all CAF support in price cap areas pursuant to a market-based mechanism, such as competitive bidding. However, if such a mechanism is not implemented by the end of the five-year term of CAF Phase II, the incumbent ETCs will be required to continue providing broadband with performance characteristics that remain reasonably comparable to the performance characteristics of terrestrial fixed broadband service in urban America, in exchange for ongoing CAF Phase II support.

Id. at 17726-27 (para. 163) (footnote omitted).

²³ *Id.* at 17727 (para. 166) (footnote omitted).

sion's rationale, *i.e.*, to promote efficient deployment, the problem is that, when viewed in the context of an RoFR and the inability of other carriers (because of the RoFR) to immediately compete for support and customers, the Commission's policy choices offend the 1934 Act, the 1996 Act, and virtually every policy the Commission has adopted since the 1996 Act was enacted.

Most offensive, the RoFR confers a potential windfall on price cap carriers who choose more efficient means of deploying network infrastructure instead of building a wireline network, without allowing competition for the CAF Phase II support. Once incumbent carriers exercise the RoFR, they will enjoy an insuperable advantage over wireless competitors in three ways:

First, the incumbents will be insulated from effective mobile wireless competition for at least five years, an eternity in the wireless world. The incumbents' networks will get built irrespective of whether they have any customers, because Phase II support is not tied to customers—it is based solely on providing service comparable to service available in urban areas and meeting price cap public interest obligations relating to the deployment of high-speed broadband to high-cost locations.²⁴

²⁴ The Commission has established the following public interest obligations:

Price cap ETCs that accept a state-level commitment must provide broadband service that is reasonably comparable to terrestrial fixed broadband service in urban America. Specifically, price cap ETCs that receive model-based CAF support will be required, for the first three years they receive support, to offer broadband at actual speeds of at least 4 Mbps downstream and 1 Mbps upstream, with latency suitable for real-time applications, such as VoIP, and with usage capacity reasonably comparable to that available in comparable offerings in urban areas. By the end of the third year, ETCs must offer at least 4 Mbps/1 Mbps broadband service to at least 85 percent of their high-cost locations—including locations on Tribal lands—covered by the state-level commitment, as described below. By the end of the fifth year, price cap ETCs must offer at least 4 Mbps/1 Mbps broadband service to all supported locations, and at least 6 Mbps/1.5 Mbps to a number of supported locations to be specified.

Second, the incumbents will gain a huge advantage over wireless competitors that have already deployed some facilities in high-cost areas. The phase-down of legacy high-cost support to these wireless carriers prevents them from aggressively competing, as high-cost support needed to build out high-cost areas goes away. By the time the RoFR expires, it will be incredibly difficult for competitive carriers to begin anew, to pry customers away from incumbents that have deployed 4G LTE networks.

Third, after a five-year head start, when the Commission conducts an auction for CAF Phase II support in year six, how on earth could a newcomer underbid AT&T or Verizon for support in an area that they have had five years of subsidization to build out?

The approach reflected in the *Public Notice* turns competitive neutrality on its head, and violates the *raison d'être* of the entire 1996 Act, to “promote competition and reduce regulation, . . . secure lower prices and higher quality services . . . and encourage the rapid deployment of new telecommunications technologies.”²⁵ Even if the Commission were to prevail under the arbitrary and capricious standard of review at the Tenth Circuit, that does not make the RoFR mechanism and the new version of the identical support rule good policy. The Tenth Circuit will only determine whether the Commission had a rational basis for adopting the RoFR, it will not

Id. at 17726 (para. 160). An incumbent exercising its RoFR also must make “a commitment to offer voice [service] across its service territory within a state . . .” *Id.* at 17727 (para. 166).

²⁵ Pub. L. No. 104-104, 110 Stat. 56, 56 (preamble). The legislative history of the 1996 Act confirms Congress’s intent “to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly the private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.” H.R. Conf. Rep. No. 488, 104th Cong., 2d Sess. 113 (1996).

inquire further to judge whether the policy harms rural citizens²⁶—that is what the Commission must do here.

Finally, it is not enough to say that Mobility Fund support will suffice for mobile wireless carriers. As shown in the National Broadband Plan, mobile broadband networks need tremendous levels of investment going forward,²⁷ yet the Commission has arbitrarily allocated roughly 90% of available funding to wired networks, which the Nation’s citizens continue to abandon in droves. With this one exception—*i.e.*, the high-cost support mechanism—the Commission fully embraces an understanding that demand for mobile broadband is exploding, and it is critical to the survival of the Nation’s rural areas.²⁸ More, not less, support must be provided to carriers willing to build mobile broadband facilities in rural areas.

²⁶ The courts lack authority to make such judgments concerning an agency’s policy choices. *See Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 866 (1984) (quoting *TVA v. Hill*, 437 U.S. 153, 195 (1978)):

When a challenge to an agency construction of a statutory provision, fairly conceptualized, really centers on the wisdom of the agency’s policy, rather than whether it is a reasonable choice within a gap left open by Congress, the challenge must fail. In such a case, federal judges—who have no constituency—have a duty to respect legitimate policy choices made by those who do. The responsibilities for assessing the wisdom of such policy choices and resolving the struggle between competing views of the public interest are not judicial ones: “Our Constitution vests such responsibility in the political branches.”

See also National Federation of Ind. Bus. v. Sebelius, slip op. at 6 (U.S. June 28, 2012) (concluding that “[m]embers of this Court are vested with the authority to interpret the law; we possess neither the expertise nor the prerogative to make policy judgments. Those decisions are entrusted to our Nation’s elected leaders, who can be thrown out of office if the people disagree with them. It is not our job to protect the people from the consequences of their political choices.”).

²⁷ The Broadband Plan estimated that \$24 billion is needed to provide access to terrestrial broadband infrastructure to 14 million people who currently do not have such access. Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010) (“Broadband Plan”), at 136. The Broadband Plan concluded that “it is unlikely that private investment alone will fill the broadband availability gap.” *Id.*

²⁸ *See, e.g., CAF Order*, 26 FCC Rcd at 17771 (para. 295) (indicating that “[m]obile voice and mobile broadband services are increasingly important to consumers and to our nation’s economy. Given the important benefits of and the strong consumer demand for mobile services, ubiquitous mobile coverage must be a national priority.”).

In sum, if the Commission wants to encourage efficient deployment of network infrastructure in a manner that best serves rural Americans, the answer is simple: Reverse course and abandon the RoFR. The RoFR is inconsistent with the statutory scheme and it is exactly the wrong policy direction.²⁹ It insulates from competition the strongest, most financially capable companies, with the deepest pool of spectrum holdings, and every marketplace advantage, disadvantaging the very carriers needed to sustain a competitive marketplace in rural America. In short, an immediate auction for support in these areas is preferable to ushering in a new era of monopoly service in rural America, abdicating the very responsibility that Congress gave to the Commission in the 1996 Act.

In addition, the Commission should base the model on the costs of building the most efficient technology. If that technology is wireless, so be it. If price cap carriers abandon the RoFR, opening up opportunities for other carriers to deliver superior services, that is the better policy choice because it will better serve the Nation's rural citizens.

III. CONCLUSION.

The entire purpose of USF reform was to increase efficiency in how funds are distributed, so as to minimize waste. To permit price cap carriers to build subsidized *wireless* networks based

²⁹ That the RoFR originated in the ABC Plan, authored by the incumbent LECs who will benefit most from it, should not go unnoticed here. *See* ABC Plan, Attach. 1, at 6 (footnote omitted):

If the incumbent LEC that serves [a] wire center has already made high-speed Internet service available to more than 35 percent of the service locations in the wire center, the incumbent LEC is given an opportunity to accept or decline the baseline support and the associated broadband service obligations in the census blocks that make up the supported area within that wire center. If it accepts the offer of the baseline support, then the incumbent LEC assumes all of the broadband service obligations for the ten-year term of CAF support. By first offering support to an incumbent LEC that has already made substantial investments in the wire center, the CAF will accelerate the deployment of broadband and avoid inefficient duplication of facilities constructed with the help of legacy high-cost universal service programs.

on the cost of building a *wireline* network is likely to prove extraordinarily wasteful for citizens who pay into the Fund. Additionally, consumers will pay much higher prices than they would in a competitive environment and there will be significant regulatory costs to administer and oversee a market that is not competitive.

For all of the reasons set forth above, U.S. Cellular urges the Commission to abandon the RoFR, a disastrous policy choice that will have far-reaching and negative consequences on rural citizens' ability to access reasonably comparable broadband services at reasonably comparable prices.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION



By: _____

David A. LaFuria
John Cimko

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

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

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