RCA
The Competitive Carriers Association

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August 3, 2012

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: 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 a 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

Dear Ms. Dortch:

On behalf of RCA – The Competitive Carriers Association ("RCA"), we write in response to the Commission's news release and recent press reports regarding the decision of wireline price cap carriers to forego approximately $185 million of the $300 million allocated for broadband deployment as part of Phase I of the Connect America Fund ("CAF").[1] These carriers' willingness to turn down the lion's share of the available funding[2]—notwithstanding the inflated offer of $775 per location in initial funding and the astounding $1.8 billion annual budget for providing ongoing CAF Phase II support in the areas served by price cap carriers[3]—unfortunately validates RCA's longstanding concerns about the *CAF Order*'s wrongheaded allocation of funding to particular industry segments on a non-neutral, technology-defined basis. The price cap carriers' rejection of

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1 *See* Press Release, FCC, FCC Kicks-Off 'Connect America Fund' with Major Announcement: Nearly 400,000 Unserved Americans from Rural Communities in 37 States Will Gain Access to High-Speed Internet Within Three Years (July 25, 2012), *available at* http://thedcoffice.com/late_releases_files/07-25-2012/DOC-315413A1.pdf; Matthew S. Schwartz, *Telcos Accept Less Than Half of Available FCC Connect America Funds*, COMMUNICATIONS DAILY, July 25, 2012, at 3-4.

2 The following six carriers declined all or a portion of CAF Phase I funding allotted to them: AT&T (declined all $47.9 million); CenturyLink (declined $54 million of $89.9 million); FairPoint Communications (declined $2.8 million of $4.9 million); Virgin Islands Telephone (declined all $255,231); Verizon (declined all $19.7 million); and Windstream (declined $59.7 million of $60.4 million).

3 *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 ¶¶ 144, 159 (2011) ("*CAF Order*" or "*CAF FNPRM*").

this Phase I funding will prevent hundreds of thousands of consumers from obtaining prompt access to broadband services, and because the *CAF Order* arbitrarily limits the funding available to mobile wireless carriers that serve high-cost areas, wireless eligible telecommunications carriers ("ETCs") will face severe challenges in meeting the needs of these unserved communities. As RCA argued in response to the *CAF FNPRM*, the Commission should restore competitive neutrality to the high-cost support mechanisms by reducing the amounts earmarked for incumbent local exchange carriers ("LECs") and commensurately increasing the support available to wireless ETCs.[4] The price cap carriers' refusal to take advantage of the funding made available to them—and the adverse consumer impact that will result—confirms the urgent need for such a course correction.

In response to the *CAF FNPRM*, RCA and its members have explained that stark preferences for wireline carriers in the allocation of future high-cost support threaten substantial harm to consumers; indeed, if allowed to stand, such preferences will imperil the integrity of the universal service program.[5] RCA has consistently championed principles of competitive and technological neutrality, but if the Commission insists on separate funding mechanisms for different industry segments, the *CAF Order*'s preferential treatment of wireline carriers is entirely backwards. The number of wireline connections is plummeting in rural areas, while the number of wireless connections (both voice and broadband) continues to increase sharply.[6] In spite of consumers' demonstrated preference for mobile wireless technology, the *CAF Order* inexplicably sets aside the vast bulk of funding for incumbent LECs (some $3.85 billion annually) and sharply limits the funding available to wireless ETCs (only $400 million in non-tribal Mobility Fund Phase II support). While the inequities inherent in this disparate treatment are troubling in the abstract, they are made far worse by the reality that the $400 million in annual non-tribal support budgeted for Mobility Fund Phase II will be grossly inadequate to achieve the universal service goals established by

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4 *See generally* Comments of RCA—The Competitive Carriers Association, WC Docket No. 10-90 *et al.*, at 5 (filed Jan. 18, 2012) ("RCA Comments"); Reply Comments of RCA—The Competitive Carriers Association, WC Docket No. 10-90 *et al.*, at 8 (filed Sept. 6, 2011) ("RCA Reply Comments").

5 *See* RCA Comments at 2-7; *see also* 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, WC Docket No. 10-90 *et al.*, at 28-29 (filed Feb. 17, 2012); Reply Comments of United States Cellular Corporation, WC Docket No. 10-90 *et al.*, at 16 (filed Feb. 17, 2012) (urging the Commission to "at a minimum … redirect its limited funding as much as possible to the Mobility Fund … [to] correct a glaring imbalance in the Commission's current budget and … [to] be responsive to the growing demand from rural consumers for affordable, high-quality mobile broadband service").

6 *See*, *e.g.*, Industry Analysis and Technology Division, Wireline Competition Bureau, INTERNET ACCESS SERVICES: STATUS AS OF DECEMBER 31, 2010, at 1 (rel. Oct. 2011) (noting that "[g]rowth [in Internet access connections] is particularly high in mobile Internet subscriptions," where "mobile subscriptions exceeded 84 million by December 2010 – up *63%* for the year") (emphasis added); Letter of Steven K. Berry, President and CEO, RCA, to Julius Genachowski, Chairman, FCC, WC Docket No. 10-90 *et al.*, at 3 (filed Oct. 19, 2011) (citing multiple studies demonstrating "that consumers are cutting the cord and that growth of mobile services is dramatically outpacing the growth of fixed services").

Congress and the Commission.[7] Such arbitrary, technology-based favoritism is a recipe for frustrating consumer preferences and needs, not for meeting them.

In an effort to mitigate these harms, RCA proposed that, if the Commission maintains the basic framework established by the *CAF Order*, it should reallocate funds unclaimed by price cap carriers to create comparable funding opportunities for wireless carriers. In particular, RCA argued that where a price cap carrier declines to exercise its statewide right of first refusal with respect to Phase II CAF support, the foregone funding should be transferred to the Mobility Fund to enable wireless carriers to meet consumers' needs.[8] Moreover, RCA argued that such price cap carriers should be barred from participating in any subsequent competitive bidding for high-cost support, as it would contravene the public interest to give them a second bite at the apple and to enable the cherry-picking of available support.[9]

The price cap carriers' recent refusal of the majority of Phase I support underscores the concerns RCA has identified and the need for corrective action. Had the Commission established a competitively neutral funding mechanism rather than setting up separate funding pools based on legacy service categories—while creating dramatic disparities in the projected availability of annual Phase II support for wireline and wireless carriers—there would have been a far lower likelihood that support would be refused and that unserved locations would be left out in the cold.[10] Under the existing rules, however, wireless carriers are unable to take advantage of the $185 million in funding

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[7] *See*, *e.g.*, RCA Comments at 5; RCA Reply Comments at 8; Letter of Steven K. Berry, President and CEO, and Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.*, at 2 (filed Oct. 21, 2011); Letter of Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA, and Scott K. Bergman, Assistant Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (filed Sept. 22, 2011); CTIA CostQuest Mobility Study, WC Docket No. 10-90 *et al.* (filed Sept. 22, 2011) ("CTIA CostQuest Mobility Study"); Comments of United States Cellular Corp., WC Docket No. 10-91, at v (filed Aug. 24, 2011); Comments of MTPCS, LLC d/b/a Cellular One, WC Docket No. 10-90 *et al.*, at 15 (filed Aug. 24, 2011).

[8] *See* RCA Comments at 3-7.

[9] *Id.* at 7.

[10] To the extent that Mobility Fund Phase I support ends up underutilized, that would not reflect an absence of interest or need for such support among wireless ETCs; rather, it would result from wireless carriers' serious concern that the *CAF Order*'s provision of woefully inadequate Mobility Fund Phase II support will curtail their ability to recover their costs after making the initial investments enabled by Phase I support. *See* Letter of Matthew A. Brill, Counsel for RCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.*, at 1 (filed Apr. 18, 2012) (explaining that "inadequate funding levels for recurring operational expenses [through Phase II] would jeopardize competitive carriers' ability to participate in Phase I of the Mobility Fund in light of significant uncertainties regarding future cost recovery"). Indeed, the fact that price cap carriers not only are slated to receive $1.8 billion in CAF Phase II support annually but will be assured of sufficient support from a forward-looking cost model—while the *CAF FNPRM* proposes to relegate wireless carriers to a reverse auction mechanism that may be vulnerable to gaming and anticompetitive conduct—only increases the risk that Mobility Fund Phase I will not live up to its potential.

refused by price cap carriers. That should change. Just as the Commission should reallocate CAF Phase II support foregone by price cap carriers to the Mobility Fund, it should make the $185 million in declined Phase I support available to wireless ETCs.[11] Although an additional $185 million in support is unlikely to ensure sufficient funding for mobile wireless services, any additional support would help ameliorate the $500-$700 million annual shortfall that otherwise will occur.[12]

In addition, the price cap carriers' refusal of the majority of Phase I support should prompt the Commission to reduce the planned $1.8 billion annual budget for Phase II support. That $1.8 billion budget was based on the assumption that price cap carriers would use available Phase I funding to extend the reach of their broadband networks. The Commission designed CAF Phase I with the intention of "expand[ing] voice and broadband availability *as much and as quickly as possible*."[13] The decision of six price cap carriers to forego most or all such build-out funding necessarily has implications for the level of ongoing support they should receive. In particular, these price cap carriers should not be allowed to receive CAF Phase II support for census blocks in which they declined Phase I support. Such funding instead should be redirected to wireless ETCs through Mobility Fund Phase II, and the Commission's forward-looking cost model for price cap carriers should be adjusted accordingly.

As RCA and its members have repeatedly emphasized, a chief flaw of the *CAF Order* is its overcompensation and preferential treatment of incumbent LECs and concomitant underfunding of wireless carriers. Now that price cap carriers have declined more than half of the CAF Phase I funding offered to them—under a funding mechanism for which *they* were the primary architects—the Commission should seize this opportunity to adopt a more rational funding strategy for the CAF and Mobility Fund, including by adopting a more competitively and technologically neutral approach and allocating increased funding to more cost-efficient wireless ETCs.

Respectfully submitted,

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Steven K. Berry, President and CEO
Rebecca Murphy Thompson, General Counsel

RCA – The Competitive Carriers Association

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[11] Unfortunately, the fact that the Commission already has accepted applications for Mobility Fund Phase I support makes reallocation of the $185 million to that near-term mechanism a practical impossibility. Accordingly, the Commission should reallocate the $185 million that price cap carriers have refused to Mobility Fund Phase II.

[12] *See* CTIA CostQuest Mobility Study.

[13] *CAF Order* ¶ 145 (emphasis added).