

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**COMMENTS
of
UNITED STATES CELLULAR CORPORATION**

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SUMMARY

The Wireless Telecommunications Bureau and the Wireline Competition Bureau, in the *Mobility Fund Phase II Further Inquiry Public Notice*, have singled out several issues for which they seek to “develop a more comprehensive, robust record” to inform the Commission’s task of adopting a disbursement mechanism, public interest obligations, and other rules and requirements for Mobility Fund Phase II.

U.S. Cellular applauds the Bureaus’ effort and welcomes this opportunity to contribute to the record. U.S. Cellular notes, however, that issues in addition to those identified by the Bureaus are also of critical importance in ensuring that the Mobility Fund is successful in advancing the Commission’s goals for the deployment and operation of advanced mobile broadband networks to serve consumers in rural areas. U.S. Cellular addresses these issues in its Comments, as well as commenting on numerous issues presented in the *Public Notice*.

MORE FUNDING IS NEEDED

It is not too late for the Commission to re-examine and remedy the enormous barrier it has placed in the way of its own efforts to facilitate mobile broadband deployment throughout rural America. The level of funding the Commission has established is, on its face, markedly inadequate to do the job the Commission has committed to undertake. The \$500 million in annual support for Mobility Fund Phase II (\$100 million of which is set aside for use on Tribal lands)—especially when compared to the considerably more generous Connect America Fund allocations reserved for rate-of-return and price cap local exchange carriers—simply is not enough to ensure the availability for rural consumers of affordable broadband services comparable to those available in urban America.

Before moving forward with the implementation of Phase II, the Commission should examine options for bolstering support for mobile broadband. One action is readily available: The Commission should either allocate the \$185 million in unclaimed CAF Phase I support to Mobility Fund Phase II or take other steps to open up CAF Phase I funding disbursements next year to other carriers—including mobile wireless service providers—who are able to provide qualifying service to consumers in high-cost rural areas.

MORE TIME IS NEEDED

Three considerations support U.S. Cellular's view that the Commission should not rush to make decisions regarding the design and operation of Mobility Fund Phase II. *First*, more time is needed to develop probative data concerning the effectiveness of the Phase I reverse auction in serving the Commission's objectives for mobile broadband deployment. In particular, the Commission should provide the time necessary to evaluate whether various potential deficiencies of a reverse auction mechanism identified by numerous commenters have actually materialized.

Second, the Commission currently is not in a position to make an informed comparison of reverse auctions and cost models as support disbursement mechanisms for Phase II, because the Commission has not yet fully developed the mechanics and details of a cost model that could be used for Phase II. At a minimum, the Commission should provide specific guidance regarding, and seek comment on, the components of a cost model that the Commission would tentatively consider workable for Phase II.

And, *third*, the Commission should recognize that it is not operating in a vacuum as it seeks to finalize and implement its mechanisms and rules for Phase II. The U.S. Court of Appeals for the Tenth Circuit will be ruling on arguments that challenge the Commission's statutory authority to devise and conduct single-winner reverse auctions as a means of disbursing univer-

sal service support. Rushing forward with the implementation of Phase II in the face of this pending appeal would risk an entanglement that the Commission could avoid by following a more prudent and deliberate course.

COMPARING AUCTION BIDS

If the Commission decides to use a single-winner reverse auction mechanism to disburse Mobility Fund Phase II support, it should discard a bid comparison method it used for Phase I. Specifically, the Commission should not compare all bids on a nationwide basis for purposes of awarding support to the lowest bidders. This approach to comparing bids would flout the statutory principle that consumers in all regions should have access to mobile broadband services, and instead would force a result in which higher cost areas would systematically be deprived of levels of support sufficient to enable mobile broadband deployment.

OTHER ISSUES

Defining Unserved Areas.—The Commission should treat a census block as ineligible for Phase II support only if an unsubsidized carrier is currently providing 4G broadband service in that census block. If an unsubsidized carrier is providing only 3G broadband in a service area, then the service area should be treated as eligible for Phase II support.

The Commission should be cautious in deciding whether to use Mosaik Solutions data for purposes of defining unserved areas, because there is reason to conclude that this data is not sufficiently accurate to be used for this purpose. In addition, the Commission should reject the use of the centroid method to determine the eligibility of a census block for Phase II support, and should instead use a test involving measurement of the percentage of the entire census block that is unserved.

Modifying Performance Metrics.—U.S. Cellular opposes using any pre-determined timetable for modifying public interest obligations and performance metrics over the course of the term of support. If the Commission decides that modifications may be necessary, then it should initiate a rulemaking to consider changes. If the Commission selects a reverse auction mechanism to disburse Phase II support, then it must be cognizant of the impact that mid-course modifications to obligations and metrics could have on potential bidders and auction winners. In light of the fact that this impact would likely be significant, the Commission, before adopting support mechanisms and rules for Phase II, should issue and seek comment on specific proposals regarding how it would reconcile potentially conflicting policy objectives with regard to applying and modifying public interest obligations and performance metrics during the term of support.

Coordinating Phase-Down Support and Phase II Support.—U.S. Cellular suggests that the Commission should clarify how and to what extent the required termination of eligibility for legacy phase-down support will be administered in a particular geographic area if a mobile wireless carrier becomes eligible to receive Mobility Fund Phase II support in that area. Specifically, the Commission should ensure that a carrier is not required to forgo all of its legacy support in its existing service area if it receives Phase II support only for a portion of that service area.

Other Commission Proposals.—U.S. Cellular opposes any targeting of Mobility Fund Phase II support to particular eligible service areas based on various possible criteria. U.S. Cellular, based on its experience as a participant in the Phase I reverse auction, continues to support the use of road miles for bidding units and coverage requirements, and also supports the use of a single-round bidding format. In addition, U.S. Cellular reiterates its support for a 10-year service term. The Commission should not impose a letter of credit obligation on Phase II auction winners, and should instead rely on other mechanisms to enforce compliance.

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United States Cellular Corporation (“U.S. Cellular”), by counsel, hereby submits these Comments, pursuant to the Public Notice issued by the Wireless Telecommunications Bureau and the Wireline Competition Bureau (collectively, the “Bureaus”) in the above-captioned proceeding.¹ The *Public Notice* seeks further comment in order “to develop a more comprehensive, robust record on certain of the issues related to the award of ongoing support for advanced mobile services.”²

U.S. Cellular provides cellular services and Personal Communications Service in 44 Metropolitan Statistical Areas, 100 Rural Service Areas, one Major Trading Area, and numerous Basic Trading Areas throughout the Nation. U.S. Cellular has received eligible telecommunications carrier (“ETC”) status and is currently receiving high-cost support for its operations in Illinois,

¹ *Further Inquiry into Issues Related to Mobility Fund Phase II*, WC Docket No. 10-90, WT Docket No. 10-208, FCC Public Notice, rel. Nov. 27, 2012, 77 Fed. Reg. 73586 (Dec. 11, 2012) (“*Public Notice*”). The due date for comments in response to the *Public Notice* is December 21, 2012.

² *Id.* at para. 2.

Iowa, Kansas, Maine, Missouri, Nebraska, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Tennessee, Virginia, Washington, West Virginia, and Wisconsin. U.S. Cellular has been an active and ongoing participant in the Commission’s Connect America Fund (“CAF”), Universal Service Fund (“USF”) contribution reform, Intercarrier Compensation (“ICC”), Mobility Fund, and related rulemaking proceedings since their initiation by the Commission. U.S. Cellular and its affiliates also participated in the Mobility Fund Phase I auction, placing 26 winning bids covering 2,168.42 road miles.³

U.S. Cellular commends the Bureaus for taking this latest step intended to advance the Commission’s efforts to facilitate the deployment and operation of advanced mobile broadband networks throughout rural America, and U.S. Cellular welcomes this opportunity to contribute to a more complete record to better inform the Commission’s decision-making regarding Mobility Fund Phase II.

I. LACK OF SUFFICIENT FUNDING.

Before turning to specific issues relating to the design and implementation of Mobility Fund Phase II, U.S. Cellular must again draw attention to a glaring deficiency in the Mobility Fund: It lacks funding sufficient to provide rural citizens with access to supported services that are reasonably comparable to those available in urban areas. As such, the Commission is failing to advance the Congressional principle set forth in Section 254(b)(3) of the Communications Act of 1934 (“Act”).⁴ The Commission is endeavoring “to ensure the availability of mobile broadband and high quality voice services in areas where such services would not otherwise be availa-

³ *Mobility Fund Phase I Auction Closes, Winning Bidders Announced for Auction 901*, FCC Public Notice, 27 FCC Rcd 12031, 12045-46 (Att. A) (2012) (“*Auction 901 Public Notice*”).

⁴ 47 U.S.C. § 254(b)(3).

ble[.]”⁵ but no plausible argument can be advanced that the Commission’s Mobility Fund budget will be sufficient to attain this goal any time soon, if ever.

As U.S. Cellular has previously explained, Mobility Fund Phase II funding “amounts to approximately one-third of the funding available for mobile wireless deployment and operations in rural areas under the capped high-cost funding mechanism.”⁶ And yet the Commission thus far has failed to implement USF contribution reform or any other revenue-raising measures that would ameliorate any need for the Commission’s self-imposed Phase II funding limitations.⁷ The Commission presents no credible analysis demonstrating how the availability of mobile broadband in unserved areas can be ensured by slashing the already-capped existing budget. The unavoidable conclusion is that the severely constrained Phase II budget will leave numerous areas across rural America unserved, with no access to affordable advanced mobile broadband networks, for the indefinite future.⁸

U.S. Cellular understands that bringing advanced mobile broadband services to rural consumers is a daunting task. The dimensions of the challenge are illustrated by the recently completed Mobility Fund Phase I auction. While it is true that Phase I had a narrow scope—with on-

⁵ *Public Notice* at para. 1 (footnote omitted).

⁶ U.S. Cellular Comments, WC Docket No. 06-122 *et al.*, filed July 9, 2012 (“U.S. Cellular USF Contribution Reform Comments”), at 3 (emphasis added).

⁷ U.S. Cellular Reply Comments, WC Docket No. 10-90, *et al.*, filed Feb. 17, 2012 (“U.S. Cellular USF Reform Reply Comments”), at 14 (footnotes omitted) (indicating that “[t]he Commission has adopted and proposed numerous devices to restrict the level of support (the single-winner, lowest-bid reverse auction mechanism being the prime example), it justifies these constraints by pointing to its “limited” budget, and it refuses to take revenue-raising measures that would address these self-imposed limitations”).

⁸ U.S. Cellular also notes that, while it favors the use of a 10-year support term for several reasons, see Section IV.E., *infra*, the failure of the Commission to remedy the shortfall in Mobility Fund Phase II funding would consign unserved areas with no winning bids (if the Commission opts to use a single-winner reverse auction mechanism) to having no advanced mobile broadband services throughout this support term.

ly \$300 million in one-time funding allocated “to immediately accelerate deployment of networks for mobile voice and broadband services in unserved areas”⁹—the modest accomplishments of Phase I underscore the task still facing the Commission. Phase I support will be used to provide 3G or better mobile voice and broadband services covering up to 83,494 road miles,¹⁰ which amounts to 12.83% of the 650,392.78 road miles that were eligible for support.¹¹ In addition, 14,245 geographic areas were eligible for Phase I support,¹² but only 795 biddable geographic areas actually received support.¹³

These Phase I statistics highlight the fact that the Commission still has a long way to go toward its goal of maximizing the availability of mobile broadband in rural areas. Even the most optimistic observer cannot conclude that Mobility Fund Phase II, with its limited annual budget, will be sufficient to meet this task. In fact, U.S. Cellular and other parties have argued in court that the Commission failed in the *CAF Order* to make any showing that its conclusion that the Phase II budget would “be sufficient to sustain and expand the availability of mobile broadband”¹⁴ had any basis in the record before it.¹⁵

⁹ *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, 17675 (para. 28) (2011) (“*CAF Order*” and “*CAF FNPRM*”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

¹⁰ *Auction 901 Public Notice*, 27 FCC Rcd at 12032 (para. 1).

¹¹ *Mobility Fund Phase I Auction, Release of Files with Recalculated Road Miles for Auction 8901, Mock Auction Rescheduled for September 21, 2012*, Public Notice, DA 12-1446, rel. Sept. 7, 2012, Att. A at 2.

¹² *Auction 901, Mobility Fund Phase I, Fact Sheet*, accessed at http://wireless.fcc.gov/auctions/default.htm?job=auction_factsheet&id=901.

¹³ *Auction 901 Public Notice*, 27 FCC Rcd at 12032 (para. 1).

¹⁴ *CAF Order*, 26 FCC Rcd at 17825 (para. 495).

U.S. Cellular agrees with other parties who have explained that the Commission faces “a ‘direct statutory command’ in Section 254(e)” of the Act¹⁶ to ensure that universal service support is sufficient to meet Congressional goals.¹⁷ The Commission’s Mobility Fund Phase II budget does not meet this command.

U.S. Cellular has recently argued that the Commission should act expeditiously to “allocate additional funding to wireless carriers in Phase II”¹⁸ One step in this direction, that could partially rectify the shortfall in Phase II funding, is readily at hand. More than 60% of CAF Phase I support has not been claimed by price cap carriers.¹⁹ U.S. Cellular agrees with the Competitive Carriers Association that “[t]he price cap carriers’ rejection of 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 [ETCs] will face severe challenges in meeting the needs of

¹⁵ Uncited Wireless Carrier Universal Service Fund Principal Brief at 42, *In re: FCC 11-161*, No. 11-9900 (10th Cir. Oct. 23, 2012) (“Wireless Carrier Brief”) (citing *Qwest Comm. Int’l Inc. v. FCC*, 398 F.3d 1222, 1237 (10th Cir. 2005)).

With respect to the pending appeal of the *CAF Order* in the U.S. Court of Appeals for the Tenth Circuit, U.S. Cellular notes that, while it advocates certain positions in these Comments regarding proposals the Commission has made for the use of universal service support to facilitate the deployment and operation of mobile broadband networks, this advocacy should not be construed as reflecting a view that the Commission has authority to use universal service support for broadband.

¹⁶ 47 U.S.C. § 254(e).

¹⁷ Uncited Joint Universal Service Fund Principal Brief at 30, *In re: FCC 11-161*, No. 11-9900 (10th Cir. Oct. 23, 2012) (“Joint USF Principal Brief”) (quoting *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 412 (5th Cir. 1999)).

¹⁸ Ex Parte Letter from Grant B. Spellmeyer, Executive Director – Federal Affairs & Public Policy, U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-69, *et al.*, filed Nov. 28, 2012 (“U.S. Cellular Ex Parte Letter”), at 2.

¹⁹ See *Connect America Fund*, WC Docket No. 10-90, Further Notice of Proposed Rulemaking, 27 FCC Rcd 14566, 14566 (para. 2) (2012) (“*CAF Phase I FNPRM*”).

these unserved communities.”²⁰ The Commission should either allocate the \$185 million in unclaimed CAF Phase I support to Mobility Fund Phase II or take other steps to “open up any 2013 [CAF Phase I support] distributions to other carriers who are able to provide qualifying service to consumers in high-cost rural areas.”²¹

Such action by the Commission would serve the interests of consumers in rural America more effectively than recasting the CAF Phase I rules to provide price cap carriers “with a subsidy of \$35,784 per mile”²² in support as a means of enticing these carriers to claim the remaining CAF Phase I allocation that they have turned down. Mobile wireless carriers would likely be able to deliver high-quality broadband service meeting the Commission’s performance metrics, at a per-mile cost considerably below the cost associated with CAF Phase I allocations to price cap carriers, in many areas that remain unserved after the initial CAF Phase I round.²³ Moreover, when comparing the per-mile cost of deployment, it is important to note that the point-to-multipoint nature of mobile broadband service provides greater efficiencies and coverage than the point-to-point deployment of wireline broadband.

In the following section, U.S. Cellular argues, as it has in prior phases of this proceeding, that the Commission should not rush to make decisions regarding the design and implementation of the Mobility Fund Phase II support mechanism. In addition to the factors cited below in sup-

²⁰ Ex Parte Letter from Steven K. Berry, President and CEO, and Rebecca Murphy Thompson, General Counsel, RCA–The Competitive Carriers Association (now known as the Competitive Carriers Association), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al.*, filed Aug. 3, 2012, at 1-2.

²¹ Ex Parte Letter from David A. LaFuria, Counsel for U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-90, *et al.*, filed Oct. 26, 2012, at 1.

²² *CAF Phase I FNPRM*, 27 FCC Rcd at 14571 (para. 19) (referencing an indication by Windstream Communications, Inc., that it could deploy fiber facilities in high-cost rural areas if such a subsidy were made available). *See* Windstream Election and Petition for Waiver, WC Docket No. 10-90, *et al.*, at 15 n.38 (July 24, 2012), *cited in CAF Phase I FNPRM*, 27 FCC Rcd at 14571 (para. 19 n.21).

²³ *See* NTCH, Inc. (“NTCH”), Comments, WC Docket No. 10-90, *et al.*, filed Dec. 14, 2012, at 2.

port of this view, U.S. Cellular also notes that following a more deliberate schedule for finalizing Phase II rules would enable the Commission to reassess and modify its decision to impose stringent limits on the level of Phase II funding.²⁴

II. TIMETABLE FOR ADOPTING MOBILITY FUND PHASE II RULES.

U.S. Cellular agrees with the Bureaus that commenters should have an opportunity to evaluate the impact of the Mobility Fund Phase I reverse auction before the disbursement mechanism and program details for Phase II are determined by the Commission.²⁵ Such an approach is in keeping with the Bureaus' objective to develop a more complete record on "certain of the issues related to the award of ongoing support for advanced mobile services."²⁶

While this objective is laudable, the Bureaus are mistaken in presuming that it is possible at this juncture to build on the experience gained in implementing a reverse auction to award one-time Mobility Fund Phase I support.²⁷ More time is necessary to develop an informed judg-

²⁴ A further advantage of a delay in the Commission's decision-making is that the Commission could utilize this time to complete its efforts to reform its universal service contribution mechanisms, which, in turn, could provide an additional source of support for Mobility Fund Phase II. *See Universal Service Contribution Methodology*, WC Docket No. 06-122, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357 (2012); U.S. Cellular USF Contribution Reform Comments at 2-3 (arguing that the Commission's adoption of contribution reform would help to solve the agency's self-imposed USF budget dilemma).

²⁵ *See Public Notice* at para. 2. U.S. Cellular continues to be a proponent of "the adoption of a forward-looking cost model to distribute wireless support in Phase II." U.S. Cellular Ex Parte Letter at 2.

²⁶ *Public Notice* at para. 2.

²⁷ *Id.* The Bureaus intend the *Public Notice* to be responsive to "a number of commenters [who] support having an opportunity to evaluate and learn from Mobility Fund Phase I before the program details of Phase II are finalized." *Id.* (footnote omitted). The views expressed by several commenters, however, suggest that the Bureaus' timing in issuing the *Public Notice* to seek further comments is premature. Rural Telecommunications Group, Inc. ("RTG"), for example, argues that "the Commission should hold off on setting any final details for the Phase II reverse auction until after Phase I of the Mobility Fund is complete" and that, after completion of Phase I, the Commission should issue a Further Notice of Proposed Rulemaking 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." RTG Comments, WC Docket No. 10-90, *et al.*, filed Jan. 18, 2012 ("RTG USF Reform Comments"), at 17.

ment regarding whether the implementation and operation of the Phase I reverse auction sheds any light on the advisability of using a reverse auction mechanism to disburse Phase II support.

A. Evaluating the Single-Winner Reverse Auction Mechanism.

If the Commission is committed to utilizing the experience gained from the Mobility Fund Phase I reverse auction to inform its decisions regarding Phase II, then the Commission should stop the clock long enough to enable the accumulation of pertinent data from Phase I and to provide interested parties with an opportunity to evaluate and comment on this data.

The current record raises numerous reservations regarding whether a single-winner reverse auction is an appropriate universal service funding mechanism. For example, in response to the *CAF FNPRM*, commenters expressed concerns regarding whether the Phase I reverse auction mechanism will have the effect of hampering carriers' access to private investment to support broadband deployment,²⁸ whether economically inefficient projects will be selected,²⁹ whether the reverse auction mechanism will result "in a 'race to the bottom' in terms of service quality

U.S. Cellular has also advocated delaying Phase II implementation in order to facilitate an informed evaluation of the Phase I process, suggesting that the Commission should adjust the Phase II timetable to give "itself (and interested parties) ample opportunity to evaluate the extent to which the single-winner reverse auction mechanism adopted by the Commission as the Phase I disbursement mechanism has been effective in meeting the Commission's objectives and serving the four principles" guiding the reform process. U.S. Cellular Comments, WC Docket No. 10-90, *et al.*, filed Jan. 18, 2012 ("U.S. Cellular USF Reform Comments"), at 7. The four principles involve modernizing USF and ICC for broadband; fiscal responsibility; accountability; and incentive-based policies. *CAF Order*, 26 FCC Rcd at 17670 (para. 11).

²⁸ See U.S. Cellular USF Reform Comments at 18.

²⁹ See National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, New Jersey Division of Rate Counsel, and Utility Reform Network USF Reform Comments at 67.

and will not achieve universal service[.]”³⁰ and whether the single-winner reverse auction will lead to “saddling rural consumers with high-priced, low-quality broadband services. . . .”³¹

In addition, concerns have been raised by several parties regarding the advisability of using a *single-winner* reverse auction. C Spire Wireless, for example, has argued that “[a] single-winner reverse auction, by installing an exclusive fund recipient in each eligible service area and consequently eliminating funding portability[.]”³² would overturn the Commission’s principle of competitive neutrality and undermine its commitment to facilitating competitive entry, and would also risk “saddling rural consumers with high-priced, low-quality broadband services from a single provider, precisely the problem that the Telecommunications Act of 1996 . . . was intended to solve.”³³ Although U.S. Cellular favors the use of a 10-year fixed term for Phase II support,³⁴ there is a risk that coupling a 10-year service term with a single-winner reverse auction could have the effect of installing dominant service providers in areas receiving Phase II support.

The resolution of these and other related issues is central to determining whether the use of a single-winner reverse auction in Phase I has proven to be effective in advancing the univer-

³⁰ Nebraska Public Service Commission Comments, WC Docket No. 10-90, *et al.*, filed Jan. 18, 2012, at 8.

³¹ *See* Cellular South Inc. d/b/a C Spire Wireless (“C Spire Wireless”) Comments, WC Docket No. 10-90, *et al.*, filed Jan. 18, 2012, at 3.

³² *Id.*

³³ *Id.* *See* Alaska Telephone Association Comments, WT Docket No. 10-208, filed Dec. 16, 2010, at 2; New EA, d/b/a Flow Mobile Comments, WT Docket No. 10-208, filed Dec. 16, 2010, at 4-5; Sprint Comments, WT Docket No. 10-208, filed Dec. 16, 2010, at 2; U.S. Cellular Comments, WT Docket No. 10-208, filed Dec. 16, 2010, at 20 (arguing that a single-winner reverse auction mechanism would eviscerate the principle that the market, and not government regulators, determines who will compete for and deliver services to customers “by handing the market over to a single subsidized carrier. The Commission—not the market—would determine which carrier would deliver services to customers.”).

³⁴ *See* Section IV.E., *infra*.

sal service principles articulated in the Act as well as the four principles adopted by the Commission in the *CAF Order*. The Commission has explained that “[t]he purpose of the mechanism we choose [for Phase I] is to identify those areas where additional investment can make as large a difference as possible in improving current-generation mobile wireless coverage[.]”³⁵ and that it adopted a reverse auction format “because we believe it is the best available tool for identifying such areas—and associated support amounts—in a transparent, simple, speedy, and effective way.”³⁶

In order to determine whether the facts that emerge from the implementation of Mobility Fund Phase I justify the Commission’s belief, or whether the potential problems described by commenters have materialized in Phase I, the Commission must gather and evaluate data related to the disbursement and use of Phase I support. Much of this data is not yet available, since the Commission is still in the process of reviewing Auction 901 long-form applications for Phase I support and has not yet begun to disburse any support.³⁷ If the Commission presses ahead with the selection of a reverse auction disbursement mechanism for Phase II—without allowing sufficient time for the accumulation and evaluation of Phase I data—it risks compounding problems emanating from Phase I that could have been identified and addressed.

Finally, U.S. Cellular disagrees with any suggestion that, since the Phase I reverse auction disbursed a limited amount of support only on a one-time basis, most of the probative data to be garnered from Phase I involves the implementation of the reverse auction itself, and not any

³⁵ *CAF Order*, 26 FCC Rcd at 17781 (para. 322).

³⁶ *Id.*

³⁷ AT&T has argued that a further comment cycle regarding issues related to Mobility Fund Phase II should not be commenced until “[a]fter the Commission begins disbursing support to Mobility Fund Phase I recipients” AT&T Comments, WC Docket No. 10-90, *et al.*, filed Jan. 18, 2012, at 34.

developments occurring in the wake of the auction. In U.S. Cellular’s view, a core issue that can be explored by accumulating and analyzing data from Phase I is whether and to what extent auction winners are able to comply with public interest obligations and performance metrics. The success or failure of carriers in complying with these obligations and metrics will shed light on whether a single-winner reverse auction mechanism, allocating funding to the lowest bidders on a nationwide basis, is an effective means of ensuring the achievement of network deployment and broadband service goals established by the Commission.

B. Providing Guidance Regarding a Cost Model.

In the *CAF FNPRM* the Commission sought “to develop a more detailed record . . . regarding the possible design of a forward looking economic model of costs and revenues of mobile wireless services[,]”³⁸ and proceeded to raise a series of questions regarding the design of a cost model and a framework for a model-based support disbursement process.³⁹

A useful next step, which would enhance the Commission’s ability to judge the relative merits of a cost model disbursement mechanism as compared to a reverse auction, would be for the Commission, using the existing record, to provide interested parties with specific guidance regarding the components of a cost model that the Commission would tentatively consider workable for Phase II, and the framework in which this model would be used (*e.g.*, the minimum area for offering model-based support, whether road miles would be used in estimating support, how the model would work in selecting only one mobile services provider in a given service area, what term of support would be used, and so forth).

³⁸ *CAF FNPRM*, 26 FCC Rcd at 18082 (para. 1175).

³⁹ *See id.* at 18082-85 (paras. 1175-1187).

Delaying the adoption of Phase II rules, as U.S. Cellular has advocated in the previous section, would serve to provide the time necessary for the Commission to formulate and issue this guidance regarding the use of a Phase II cost model, and would give interested parties an opportunity to comment on the advantages and possible shortcomings of the Commission's proposed approach.

C. The Pending Appeal of the CAF Order.

The Commission suggests that it may use a single-winner reverse auction as the means of disbursing Mobility Fund Phase II support, even though this action flies in the face of a pending challenge to its statutory authority to take such a step. Specifically, the Tenth Circuit Court of Appeals has been asked to rule on the argument that the Commission, in adopting the Phase I reverse auction mechanism, unlawfully preempted the authority of States to designate one or more ETCs in a given service area pursuant to Section 214(e)(2) of the Act.⁴⁰

In addition to the advantages of delay outlined in the previous sections, prudence and the objective of husbanding administrative resources would suggest that the Commission should not rush ahead with decisions regarding a Phase II disbursement mechanism until the issue of its jurisdiction and statutory authority is addressed by the Tenth Circuit.

III. COMPARING BIDS ACROSS GEOGRAPHIC AREAS.

The Commission has explained that the "Mobility Fund [Phase I] auction used an innovative, market-based competition to distribute funding, the first time such an auction had been run in the United States[,]"⁴¹ and that "[c]arriers competed against others across the country, and

⁴⁰ 47 U.S.C. § 214(e)(2). See Wireless Carrier Brief at 40-41; Joint USF Principal Brief at 39-40.

⁴¹ *FCC Announces Winners of America's First "Mobility Fund" Auction: Up to 83,000 New U.S. Road Miles on Which Millions of Americans Live, Work, or Travel Will Gain Access to Mobile Internet within 3 Years*, News Release, rel. Oct. 3, 2012 ("Mobility Fund Phase I News Release"), at 2.

winners were chosen based on the lowest cost-per-mile bids to extend coverage to unserved roads. This will maximize the impact of the new funding to speed deployment to the greatest number of unserved areas.”⁴²

The Commission took this approach for the Mobility Fund Phase I reverse auction in the face of strenuous opposition.⁴³ With the stakes higher for Phase II—a greater level of funding will be available than for Phase I, it will be disbursed on an annual basis (instead of only once), and it will be used to facilitate and sustain the deployment and ongoing operation of mobile broadband networks in rural areas—U.S. Cellular encourages the Commission to revisit this issue if it determines that a reverse auction mechanism should be used for Phase II.

As the Commission has explained, it decided to compare bids across the entire country in Phase I because of its view that this would “speed deployment to the greatest number of unserved areas.”⁴⁴ Leaving aside the issue of whether this was a reasonable assumption, there are strong arguments supporting the view that the Commission should use different criteria in deciding upon a method for comparing bids in a Phase II reverse auction. In designing a mechanism to govern ongoing support for the deployment and operation of mobile broadband networks, the Commission should place greater emphasis on the goal that “[c]onsumers in *all regions* of the Nation, including . . . those in . . . high-cost areas”⁴⁵ should have access to reasonably comparable services at reasonably comparable prices.⁴⁶

⁴² *Id.*

⁴³ See U.S. Cellular USF Reform Reply Comments at 24-25 (discussing comments criticizing the use of a nationwide bid comparison method and reiterating its own opposition to this approach).

⁴⁴ *Mobility Fund Phase I News Release* at 2.

⁴⁵ 47 U.S.C. § 254(b)(3) (emphasis added).

⁴⁶ U.S. Cellular notes, however, that Section 254(b)(3) of the Act simply sets forth principles upon which the Commission should base its universal service policies, and does not confer any jurisdiction to the

A mechanism that compares bids made by reverse auction participants across the entire country would ignore this goal, and would instead ensure that consumers in areas with higher costs are systematically shunted to the end of the line for Phase II support. Carriers proposing to serve areas with higher costs would be hard pressed to underbid carriers proposing to serve areas with lower costs. If a carrier is eligible to receive Phase II support, proposes to bring mobile broadband services to unserved areas that have higher costs, and demonstrates its capability to meet the Commission's public interest requirements and performance metrics, then it is difficult to imagine any credible public policy that would have the effect of quarantining this carrier from the receipt of Phase II support. But this is precisely what the Commission's nationwide bid comparison approach would do.⁴⁷

Carriers seeking to serve higher cost areas would enter the Phase II bidding with a handicap imposed by the Commission's bid comparison method, and the unreasonableness of this Commission-imposed disadvantage would be compounded by the fact that these carriers could lose in the auction to bidders that would deploy mobile broadband networks less efficiently than the losing carriers. Although the Commission is committed to reducing inefficiency as part of its

Commission to direct USF support to broadband or to regulate broadband. As U.S. Cellular has explained, in note 15, *supra*, its advocacy in these Comments does not reflect or imply any view that the Commission has statutory authority to use USF to support broadband.

⁴⁷ Some parties may contend that the Commission's proposed Remote Areas Fund ("RAF") could ameliorate the effects of the systematic exclusion of Mobility Fund Phase II support in higher cost areas. Any such reliance on the RAF would be misplaced. The RAF, which has not yet been implemented by the Commission, is intended to target "remote areas where the cost of deploying traditional terrestrial broadband networks is extremely high[.]" *CAF FNPRM*, 26 FCC Rcd at 18092 (para. 1223), the RAF may be limited to \$100 million, it may provide only one-time support, it is intended to take the form of a portable consumer subsidy, and it is intended to be designed to facilitate participation by providers of technologies such as next-generation satellite broadband and unlicensed localized fixed wireless networks. *Id.* at 19094-96 (paras. 1232-1240). The RAF thus would not be a plausible complement to an underfunded Mobility Fund Phase II that disburses support in a manner that freezes out higher cost areas.

transformation of USF,⁴⁸ its nationwide bid comparison method would likely result in the inefficient use of Phase II support.

A further reason for delaying final action regarding selection of a Phase II disbursement mechanism (in addition to those discussed in Section II, *supra*) is that it would provide the Commission with the time necessary to determine whether the use of its nationwide bid comparison method in Phase I has in fact resulted in the inefficient use of Mobility Fund support. The Commission's policy goals would be thwarted to the extent that less economically efficient projects were awarded funding at the expense of more economically efficient projects in Phase I. Prudent policymaking dictates that the Commission should explore this issue for purposes of making a data-driven decision regarding whether to utilize the nationwide bid comparison method if the agency selects a reverse auction as the disbursement methodology for Phase II.

Finally, U.S. Cellular has cautioned that comparing all bids on a nationwide basis for purposes of selecting auction winners would run the risk that "entire states with high-cost but economically efficient projects in eligible service areas could be left with no Phase II support at all."⁴⁹ In Phase I, bids were placed for eligible service areas in 34 states. Service areas in three of these states (Kansas, Missouri, and New Hampshire) did not receive any funding. The Commission should examine whether there is any correlation between its decision to make nationwide bid comparisons and the result that certain states with eligible service areas did not receive any

⁴⁸ See *CAF Order*, 26 FCC Rcd at 17671 (para. 11).

⁴⁹ U.S. Cellular USF Reform Comments at 10. U.S. Cellular observed that:

If a state has eligible areas with comparatively high costs, and if bids reflect those costs, then these bids would be at the high end of the bid-ranking process the Commission proposes to follow. As a result, the running sum of support for winning bidders would likely exhaust the money available in Mobility Fund Phase II before any bidders seeking to provide service in the high-cost state could "win" any support.

Phase I support, and whether such a result would likely recur in Phase II if the same bid comparison method were to be used.

IV. ISSUES RAISED IN THE PUBLIC NOTICE; OTHER RELATED ISSUES.

The Bureaus have targeted several critical issues involving Mobility Fund Phase II for further comment, including criteria and methods for defining unserved areas and the modification of Phase II public interest obligations and performance metrics. U.S. Cellular discusses these and other issues in the following sections.

A. Defining “Unserved Areas” for Purposes of Mobility Fund Phase II Support.

1. Census Blocks Served by an Unsubsidized Carrier.

The Bureaus point out in the *Public Notice* that the Commission has proposed to exclude from Mobility Fund Phase II eligibility all census blocks where an unsubsidized carrier is providing 3G or better service.⁵⁰ U.S. Cellular renews and underscores its opposition to this proposal, which serves as an example of the manner in which the Commission has reversed the priorities that should be driving its policies for promoting mobile broadband deployment.

The Commission’s first priority should be to focus on the best way to ensure the deployment of 4G mobile broadband networks in rural areas, in order to ensure that mobile broadband services in these areas are affordable and comparable to those available in urban areas. Its next priority then should be to take the actions necessary (*e.g.*, completing its efforts to reform its rules for USF contributions) to generate sufficient funding to meet the first priority.

Instead, as U.S. Cellular and other commenters have observed throughout this proceeding, the Commission has given exceptional weight to its goal of holding down the level of fund-

Id.

⁵⁰ *Public Notice* at para. 7 (citing *CAF FNPRM*, 26 FCC Rcd at 18070-71 (paras. 1123-1124)).

ing for mobile broadband.⁵¹ The promotion of mobile broadband deployment becomes a secondary objective, but—since this objective is subservient to the goal of reducing funding levels—the Commission is forced to cut corners and make compromises in setting its policies to support mobile broadband deployment.

The Commission’s proposal regarding areas served by an unsubsidized carrier is an example of how consumers in rural areas are disserved by the Commission’s insistence upon limiting support for mobile broadband technology that consumers so obviously desire, while maintaining a much higher level of support for technologies that consumers are abandoning.⁵² As U.S. Cellular has explained, the Commission’s proposal would have the effect of closing the door on any near-term prospect of 4G deployment in some rural areas.⁵³ To rectify this problem, the Commission should treat a census block as ineligible only if an unsubsidized carrier is currently providing 4G broadband service in that census block. If an unsubsidized carrier is providing only 3G broadband in a service area, then the service area should be treated as eligible for Mobility Fund Phase II support.

⁵¹ U.S. Cellular and other parties have argued that the annual funding level for Mobility Fund Phase II is the product of arbitrary and capricious decision-making by the Commission. *See* Wireless Carrier Brief at 41-44. In addition, U.S. Cellular has argued generally that the Commission’s reverse auction mechanism seems to be driven by two flawed assumptions:

First, if there is some mobile broadband service being provided in some rural areas, then the Commission has done a satisfactory job for rural America. And, *second*, because of funding constraints and the need for fiscal responsibility, the Commission cannot do any better than bringing some mobile broadband to some rural areas.

U.S. Cellular USF Reform Comments at 19 (emphasis in original).

⁵² Just yesterday, the Centers for Disease Control released yet another survey demonstrating that over 34% of households are now wireless only, over 51% of households in poverty are wireless only, and 40% of children with phone service are wireless only. *See* Stephen J. Blumberg & Julian V. Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2012*, Centers for Disease Control and Prevention, rel. Dec. 20, 2012, at 1, 3, accessed at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201212.PDF>.

⁵³ U.S. Cellular USF Reform Comments at 28.

Defining service area eligibility in this manner would help to ensure that support is provided to “fill in the holes” in the availability of mobile broadband services. The statutory principle of reasonable service comparability⁵⁴ compels that the Commission adopt measures providing a path for wireless competitive ETCs to fill in gaps in the availability of advanced broadband services, since striving for ubiquitous 4G broadband in rural communities and high-cost areas will not only advance statutory goals but will also bring important benefits to consumers and businesses in these areas.

2. Ensuring Accurate Determinations of Service Area Coverage.

The Bureaus seek further comment on the use of Mosaik Solutions (“Mosaik”) data in connection with determining eligible areas for Mobility Fund support.⁵⁵ U.S. Cellular agrees with the Blooston Rural Carriers’ concern that the Mosaik database, “[w]hile helpful for business planning, is not currently accurate enough to be used for the Commission’s purposes.”⁵⁶

One reason for this inaccuracy is that the Mosaik database includes some carrier-advertised data speeds as being available in particular geographic areas. Reliance on advertising claims—as opposed to drive test results, for example—could inherently create an upward bias in the extent of coverage.⁵⁷ Such an upward bias, by reducing the number of census blocks eligible for Phase II support, could create the erroneous impression that, even with limited Phase II fund-

⁵⁴ See 47 U.S.C. § 254(b)(3).

⁵⁵ *Public Notice* at para. 8. Mosaik Solutions was formerly called American Roamer. *See id.* at para. 7 n.7.

⁵⁶ Blooston Rural Carriers Comments, WC Docket No. 10-90, *et al.*, filed Jan. 18, 2012, at 18.

⁵⁷ *See Application of AT&T Inc. and Deutsche Telekom AG for Consent To Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65, Order, 26 FCC Rcd 16184, 16198 (para. 22 n.58) (WTB 2011) (indicating that the Wireless Telecommunications Bureau’s “analysis of coverage maps provided by American Roamer likely overstates the coverage actually experienced by consumers because American Roamer reports advertised coverage as reported to it by many mobile wireless service providers, each of which uses a different definition or determination of coverage”).

ing, the Commission’s support disbursements would be operating effectively to “speed deployment to the greatest number of unserved areas.”⁵⁸

3. Use of the Centroid Method.

The *Public Notice* seeks further comment on the Commission’s proposal to determine the eligibility of a particular census block for Mobility Fund Phase II support based on the absence of a specified level of unsubsidized service at the centroid.⁵⁹ U.S. Cellular opposes this approach, since the centroid method serves as another example of policies and funding ground rules that reduce areas that are treated as eligible for support, leading to the appearance that the Commission’s constricted Mobility Fund budget is sufficient even though it is only funding mobile broadband deployment in a shrunken universe of eligible service areas. The Commission itself has acknowledged that hinging the definition of a “served” census block on coverage at the centroid might incorrectly result in deeming the entirety of large census blocks in low-density rural areas as being served.⁶⁰

U.S. Cellular has suggested that the Commission should consider a proposal made by RTG that a census block should be treated as unserved if at least 50% is unserved (even if the centroid has coverage).⁶¹ U.S. Cellular renews this suggestion, while also urging the Commission to gather and review sufficient coverage data regarding low-density rural areas to enable the Commission to determine whether a 50% cut-off is sufficient or whether the test should be that a

⁵⁸ *Mobility Fund Phase I News Release* at 2.

⁵⁹ *Public Notice* at para. 9.

⁶⁰ *CAF Order*, 26 FCC Rcd at 17787 (para. 344).

⁶¹ RTG USF Reform Comments at 8 (cited in U.S. Cellular USF Reform Reply Comments at 35). See *Public Notice* at para. 9.

census block is treated as unserved if a lower percentage (such as at least 40%) of the area is unserved.

B. Modification of Mobility Fund Phase II Performance Metrics.

The Bureaus “seek to further develop the record on how often, and through what process, the Commission should modify the performance metrics applicable to Phase II support recipients.”⁶²

The Commission should exercise caution in deciding whether to adopt any predetermined timetable for modifying public interest obligations during the course of the Phase II term of support established by the Commission. If the Commission decides to establish a 10-year term of support, which U.S. Cellular and other commenters support, the Commission should be cognizant of the fact that the regulatory certainty that is needed by carriers to attract investment and carry out network deployment plans, and that would be provided by a 10-year term, could be seriously eroded if the Commission were to adopt a schedule for moving the performance metric goal posts over the course of the 10-year period.

While U.S. Cellular agrees that it is important for the Commission to explore ways to ensure that performance requirements evolve to keep pace with mobile broadband services available in urban areas, any modification of public interest obligations and performance metrics to accomplish this result should be undertaken through a rulemaking proceeding in which all interested parties have an opportunity to evaluate proposed revisions and raise concerns.

⁶² *Public Notice* at para. 14. *See CAF FNPRM*, 26 FCC Rcd at 18075 (para. 1144) seeking comment “on whether, and if so, in what ways [performance] metrics should be modified during the term of support to reflect anticipated advances in technology[,]” and proposing “that the performance characteristics required of Mobility Fund Phase II recipients . . . be required to evolve over time, to keep pace with mobile broadband service in urban areas”).

U.S. Cellular also observes that the Commission faces a dilemma concerning its efforts to harmonize a commitment to modify performance metrics during the term of support with the objective of providing for the efficient and productive operation of a Mobility Fund Phase II reverse auction (if the Commission selects such a disbursement mechanism for Phase II). The dilemma is this: How can the Commission ensure that auction participants are able to calculate bids that account for potential future changes in performance metrics during the term of support? Bidders would need to estimate costs that take into account the possibility of a future adjustment in performance metrics that could, for example, force the carriers to modify and upgrade deployed mobile broadband infrastructure to comply with revised minimum bandwidth or data rate requirements.

If a bidder overestimated the level of these potential new costs, it could bid itself out of the competition for Phase II support. On the other hand, if a bidder underestimated the potential additional costs, it could win the auction but then find itself with insufficient Phase II support to meet the revised performance metrics. Thus, the prospect of Commission decisions to increase performance metrics during the support term could distort the reverse auction and adversely affect auction results. For example, the uncertainties generated by the Commission's plans to make mid-course adjustments in performance metrics could suppress the level of participation in the Phase II auction, which, in turn, could reduce the extent to which mobile broadband networks are deployed and operated in unserved areas.

Attempting to solve this problem by shortening the service term⁶³ would cause a different set of problems. As U.S. Cellular discusses below,⁶⁴ a 10-year term is optimum because the level

⁶³ See *CAF FNPRM*, 26 FCC Rcd at 18074 (para. 1138).

⁶⁴ See Section IV.E., *infra*.

of regulatory certainty it would provide would promote investment and enable efficient network planning. A shorter term of support, by sacrificing these advantages of a longer term, could suppress auction participation, with attendant detrimental effects.

U.S. Cellular also agrees with an observation by a group of commenters, in a related context, that “[f]ew providers would be willing to take part [in the Commission’s funding mechanism] if they risked incurring more burdensome service obligations at some future date, particularly without any guarantee of sufficient universal service funding to satisfy those obligations.”⁶⁵ Given the fact that the level of funding currently allocated by the Commission for Mobility Fund Phase II will almost certainly be inadequate to ensure any extensive deployment of mobile broadband networks in rural and high-cost areas based upon the performance metrics presently under consideration by the Commission, any future proposal to increase those metrics during a 10-year service term should be accompanied by a plan for ensuring that sufficient Phase II support can be made available to enable funding recipients to comply with more stringent metrics.

Given the complexities associated with any attempt to accommodate both the goal of administering an efficient and successful Phase II reverse auction and the objective of ensuring that performance metrics reflect advances in technology, U.S. Cellular suggests that the Commission should put a proposal on the table before it takes any final action addressing these issues.

Up to this point, other than proposing a fixed term of support of 10 years, the Commission has raised questions and sought comment regarding these issues, but has provided no proposals or given any details regarding how it might seek to strike a balance between policy objec-

⁶⁵ Joint Comments of AT&T Services, Inc., CenturyLink, Fairpoint Communications, Inc., Frontier Communications, Verizon & Verizon Wireless, and Windstream Communications, Inc., WC Docket No. 10-90, *et al.*, filed Aug. 24, 2011, at 11 (commenting on various issues and questions raised by the Commission concerning the proposed America’s Broadband Connectivity Plan).

tives that are difficult to implement in tandem. In light of the impact that the Commission's resolution of these issues would likely have on the operation of a Phase II reverse auction, the Commission should give potential auction participants as well as other parties an opportunity to evaluate and comment on concrete proposals before adopting any final rules and requirements.

C. Prioritizing Areas Eligible for Mobility Fund Phase II Support.

The Bureaus cite the Commission's request for comment regarding whether Phase II support should be targeted to particular areas based on various possible criteria, *e.g.*, areas that lack 3G broadband service,⁶⁶ and "seek additional comment on whether and how the Commission might implement priorities for support among eligible areas."⁶⁷

U.S. Cellular reiterates its opposition to any such priorities.⁶⁸ The use of what would amount to triage criteria for disbursing Phase II support could be viewed as a further consequence of the Commission's decision to allocate an insufficient level of funding for Phase II. In U.S. Cellular's view, the approach would be an implicit concession that, since the Commission has not provided enough funding to bring mobile broadband services to rural areas that are comparable to services available in urban areas, the funding that the Commission has chosen to make available should be rationed: first, to bring areas currently with no mobile service at all up to a level of insufficient service; next, to bring areas currently with no mobile broadband service up to an insufficient level of broadband service; and so forth.

Any such prioritization of an insufficient level of Phase II funding would not serve what should be the Commission's first priority: ensuring the deployment of 4G mobile broadband net-

⁶⁶ *Public Notice* at para. 10 (citing *CAF FNPRM*, 26 FCC Rcd at 18073 (para. 1132)).

⁶⁷ *Id.* at para. 11.

⁶⁸ See U.S. Cellular USF Reform Comments at 26-28.

works throughout rural America in order to deliver affordable services that are comparable to those available in urban areas. The Commission should revise its Phase II budget to provide the funding needed to meet this priority.

D. Using Road Miles for Bidding Units and Coverage Requirements.

The Bureaus seek further comment on the use of road miles to determine bidding units and corresponding coverage requirements for use in Mobility Fund Phase II if the Commission elects to use a reverse auction disbursement mechanism.⁶⁹

U.S. Cellular's experience as a participant in the Phase I reverse auction has not caused it to alter its view that the use of road miles for establishing the number of bidding units and the corresponding coverage requirement is an effective means of extending mobile broadband services in rural areas.⁷⁰ U.S. Cellular formulated and presented 68 bids in the Phase I auction, and found that constructing these bids based on road miles worked efficiently and did not introduce unwarranted burdens or complexities. U.S. Cellular agrees that using road miles as the bidding unit has the advantage of furthering the goal "of ensuring that mobile services are available to consumers where they live, travel, and work."⁷¹ At the same time, however, U.S. Cellular is concerned that introducing other measuring elements, either in lieu of or in conjunction with the use of road miles, could lead to unnecessary complexity and imprecision that would interfere with the efficient operation of the bidding process and administration of coverage requirements.

⁶⁹ *Public Notice* at para. 13.

⁷⁰ *See* U.S. Cellular USF Reform Comments at 33.

⁷¹ CTIA–The Wireless Association[®] Comments, WC Docket No. 10-90, *et al.*, filed Jan. 18, 2012, at 7.

E. Term of Support.

The Commission has proposed a fixed term of 10 years for Mobility Fund Phase II support, while also seeking comment on the use of a shorter term,⁷² and the Bureaus seek further comment on establishing an appropriate term of support.⁷³

U.S. Cellular continues to support a fixed term of 10 years, because such a term would provide a level of regulatory certainty necessary to ensure efficient planning for the construction, upgrading, and extension of mobile broadband networks. In addition, as U.S. Cellular has previously observed, “fixed terms shorter than 10 years would make it extremely difficult for smaller wireless carriers and regional carriers serving rural areas to attract sufficient capital to assist in meeting network deployment obligations mandated by the Commission.”⁷⁴

F. Other Related Issues.

1. Letter of Credit Requirements.

In the *CAF FNPRM* the Commission proposed the use of an irrevocable standby letter of credit (“LOC”) as an alternative remedy in the event an ETC fails to comply with the Commission’s rules regarding receipt of high-cost universal support,⁷⁵ and also sought comment on alternatives to the use of financial guarantees such as LOCs.⁷⁶

U.S. Cellular agrees with Viaero’s comment, in a recent *ex parte* letter, that the Commission should not impose a LOC requirement in Mobility Fund Phase II and that “[a]lternatives to

⁷² *CAF FNPRM*, 26 FCC Rcd at 18074 (para. 1138).

⁷³ *Public Notice* at para. 15.

⁷⁴ U.S. Cellular USF Reform Comments at 35.

⁷⁵ *CAF FNPRM*, 26 FCC Rcd at 18066 (para. 1105).

⁷⁶ *Id.* at 18067 (para. 1110).

the letter of credit requirement should be explored.”⁷⁷ The LOC requirement would be burdensome, it would adversely affect capital investment by all carriers,⁷⁸ and it is unnecessary because the Commission can rely on other mechanisms to enforce compliance with Phase II public interest obligations.⁷⁹

U.S. Cellular similarly agrees with Viaero’s statement that the LOC requirement “was a significant burden for small business [in the Mobility Fund Phase I reverse auction] because obtaining a commitment letter required as much due diligence as obtaining the letter of credit.”⁸⁰ Moreover, U.S. Cellular has explained that the LOC requirement not only ties up amounts in a credit facility that otherwise could be used for investments in mobile broadband networks, but also forces auction winners to incur carrying charges imposed by banks issuing the LOCs.⁸¹

2. Single-Round Bidding Format.

The Bureaus elected to conduct the Mobility Fund Phase I auction by using a single round of bidding,⁸² and the Commission has proposed a rule for Phase II pursuant to which the auction “may be conducted in a single round of bidding or in a multiple round format, or in mul-

⁷⁷ Ex Parte Letter from David A. LaFuria, Counsel for N.E. Colorado Cellular Inc., d/b/a Viaero Wireless (“Viaero”), to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-90, *et al.*, filed Nov. 30, 2012 (“Viaero Ex Parte Letter”), at 1.

⁷⁸ U.S. Cellular has explained that “[t]he LOC requirement has the effect of reducing the amount of capital available to support recipients, and thus diminishes the value realized from the disbursement of . . . Mobility Fund support.” U.S. Cellular USF Reform Comments at 50.

⁷⁹ See U.S. Cellular Comments, WC Docket No. 10-90, *et al.*, filed Feb. 24, 2012 (“U.S. Cellular Mobility Fund Phase I Public Notice Comments”), at 3.

⁸⁰ Viaero Ex Parte Letter at 1.

⁸¹ U.S. Cellular Mobility Fund Phase I Public Notice Comments at 3.

⁸² *Mobility Fund Phase I Auction Scheduled for September 27, 2012, Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 4725, 4761 (para. 127) (WTB, WCB 2012).

multiple stages where an additional stage could follow depending upon the results of the previous stage.”⁸³

U.S. Cellular’s experience in the Phase I reverse auction leads it to conclude that the single-round bidding format worked efficiently and successfully, and U.S. Cellular therefore urges the Bureaus to retain single-round bidding if the Commission decides to use a reverse auction mechanism for Phase II. U.S. Cellular agrees with T-Mobile that “[a] single-round reverse auction would be simple and less costly for participants than multi-stage auctions and would avoid the administrative burdens of multiple-round auction models.”⁸⁴

3. Coordinating Legacy Phase-Down Support and Mobility Fund Phase II Support.

The Commission provided in the *CAF Order* that each mobile competitive ETC’s legacy high-cost support will be phased out over a five-year period, beginning July 1, 2012.⁸⁵ The Commission also provided that “any . . . carrier [receiving Mobility Fund Phase II support] will cease to be eligible for [legacy] phase-down support in the first month it is eligible to receive support pursuant to the Mobility Fund Phase II.”⁸⁶ The Commission’s rationale for this elimination of continued phase-down support was that “the amount of Mobility Fund Phase II support provided will be designed to provide a sufficient level of support for a mobile carrier to provide service”⁸⁷

⁸³ *CAF FNPRM*, 26 FCC Rcd at 18077 (para. 1155).

⁸⁴ T-Mobile USA, Inc. (“T-Mobile”), Comments, WT Docket No. 10-208, filed Dec. 16, 2010, at 16.

⁸⁵ *CAF Order*, 26 FCC Rcd at 17830-31 (paras. 513-515).

⁸⁶ *Id.* at 17831 (para. 515).

⁸⁷ *Id.* (para. 517).

U.S. Cellular requests that the Commission clarify how and to what extent this required cessation of eligibility for phase-down support will be administered in particular geographic areas for which a mobile wireless carrier has become eligible to receive Mobility Fund Phase II support. Specifically, there are likely to be mismatches between a wireless carrier's existing service area for the receipt of legacy phase-down support (*i.e.*, the existing service area is comprised of an incumbent local exchange carrier's study area or an aggregation of individual wire centers) and the census tracts for which the wireless carrier is eligible to receive Phase II support, such that the eligible census tracts will not align completely with the carrier's legacy service area.

Assume, for example, that a wireless carrier is eligible to receive Phase II support for census tracts in a given geographic area that cover 60% of that carrier's existing eligible service area in that geographic area. In U.S. Cellular's view, the *CAF Order* intends that, in such a case, the wireless carrier would not be required to lose its eligibility for the continued receipt of the entirety of its remaining phase-down support in that geographic area as a prerequisite for the receipt of its Phase II support.

The *CAF Order* states that "the receipt of support pursuant to Mobility Fund Phase II for service to a particular area will not affect a carrier's receipt of phase-down support in other areas."⁸⁸ Thus, if a wireless carrier receives Phase II support for an area that overlaps with an area for which it is receiving legacy phase-down support, such that the Phase II support will be received for an area comprising 60% of the legacy service area, then the wireless carrier should lose eligibility only for the receipt of 60% of any remaining phase-down support applicable to

⁸⁸ *Id.* at 17831-32 (para. 517) (footnote omitted) (emphasis added).

the legacy service area involved.⁸⁹ This result complies with the *CAF Order*, because the wireless carrier will lose all of its phase-down support for the “particular area” for which it received Phase II support, but will not lose legacy support in other areas. As the *CAF Order* emphasizes, carriers continue to be subject to the requirement to offer service throughout their ETC service areas.⁹⁰ The continued receipt of legacy phase-down support in the remaining 40% of the area would be essential to fulfilling this obligation.

Such an outcome is not only driven by the provisions of the *CAF Order*, but also reflects a reasonable policy for coordinating the receipt of Mobility Fund Phase II support and legacy phase-down support. A contrary approach, in which the wireless carrier would be deprived of 100% of its remaining legacy phase-down support for its existing service area, even though it is eligible to receive Phase II support in only 60% of the existing service area, could prompt the carrier to forgo participating in any reverse auction established by the Commission for the disbursement of Phase II support in that service area. This would be contrary to the objective of maximizing auction participation as a means of ensuring the widest and most efficient disbursement of Phase II support in unserved areas throughout rural America.

V. CONCLUSION.

U.S. Cellular respectfully suggests that, instead of continuing down a path that is not likely to effectively serve the interests of rural consumers by providing them access to affordable advanced mobile broadband services, the Commission should re-examine the funding allocations it has made for the Mobility Fund, and should afford itself the time necessary to ensure it is able

⁸⁹ U.S. Cellular notes that, in addition to utilizing land area, there are other various workable methods to reduce legacy support. For example, the Commission could recalculate the frozen baseline of legacy support after eliminating lines from areas in which winning bids were made in a Phase II auction. U.S. Cellular has used land area in its example for illustrative purposes.

to make informed, data-driven decisions regarding the disbursement mechanism and rules for Mobility Fund Phase II.

Pressing ahead with an early decision regarding Phase II would rob the Commission of an opportunity to review and analyze outcomes produced by the Phase I reverse auctions, and to take these outcomes into account in its decision-making regarding Phase II.

Respectfully submitted,

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⁹⁰ *CAF Order*, 26 FCC Rcd at 17832 (para. 518).