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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Wireline Competition Bureau Seeks Further Comment on Issues Regarding Service Obligations for Connect America Phase II and Determining Who Is an Unsubsidized Competitor	)	DA 13-284

REPLY COMMENTS
of
UNITED STATES CELLULAR CORPORATION

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SUMMARY

The Commission should provide that, if mobile wireless carriers are furnishing service on an ***unsubsidized*** basis in a given service area, then incumbent price cap carriers will not be entitled to receive Connect America Fund Phase II support for use in that area. This rule would advance the interests of consumers and protect and enhance competition.

In addition, such a rule would be consistent with other policies the Commission has proposed for disbursing CAF Phase II support. Specifically, if incumbent price cap carriers choose not to exercise their anti-competitive right of first refusal to receive Phase II support that the Commission has set aside for their exclusive use, then mobile wireless service carriers would be given an opportunity to compete with other service providers in a reverse auction that would be used by the Commission to disburse this residual Phase II funding.

As the Commission has previously determined, a rule enabling mobile wireless carriers to be treated as unsubsidized competitors would advance the interests of consumers and protect and enhance competition by ensuring that the unsubsidized carriers will not face competitors whose services in the same area are subsidized by CAF Phase II support. In addition, consumers would benefit from the efficient use of Phase II support because the rule would encourage and sustain entry by mobile broadband carriers in rural areas where their services are in great demand.

Further, enabling mobile wireless carriers to qualify as unsubsidized competitors for purposes of CAF Phase II is essential in order to preserve the principle of competitive neutrality. Pursuant to policies established in the *CAF Order*, price cap carriers will have the option to use Phase II support to deploy mobile wireless LTE networks. Doing so could hand a windfall to incumbents, to the extent their model-based support (driven by wireline costs) exceeds their actual

costs of deploying LTE networks. Permitting incumbents to use windfall support to enter markets in direct competition against unsubsidized mobile wireless carriers would be antithetical to the Commission's competitive neutrality principle.

The Commission's treatment of mobile wireless carriers as unsubsidized competitors would be justified because there is substantial evidence in the record that mobile broadband providers have become strong market competitors, that mobile wireless connections are continuing to grow, that significant deployment of LTE networks has been accomplished, and that wireless data traffic continues to increase dramatically. Giving mobile wireless carriers the opportunity to qualify as unsubsidized competitors, and excluding areas from support if mobile carriers are able to meet the Commission's performance and pricing requirements, would be responsive to consumers' demand for access to mobile voice and broadband services.

U.S. Cellular agrees with the argument in the record that, while making it possible for mobile wireless carriers to qualify as unsubsidized carriers is an important policy that the Commission should adopt, the policy would founder unless the Commission prescribes data-driven performance criteria that draw upon actual usage of both wireline and mobile services. Performance metrics that are not properly designed would risk excluding wireless broadband offerings that otherwise could qualify as unsubsidized services.

U.S. Cellular also supports commenters who argue that the Commission should not adopt a performance speed proxy that exceeds the 4 Mbps downstream and 1 Mbps upstream performance criterion adopted by the Commission for CAF Phase II. Using a speed proxy greater than the speed criterion adopted by the Commission would enable price cap carriers to receive support to deploy networks in areas where an unsubsidized mobile wireless carrier (or a provider using a different technology) is already offering broadband of at least 4/1 Mbps.

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REPLY COMMENTS
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United States Cellular Corporation ("U.S. Cellular"), by counsel, hereby submits these Reply Comments, in response to the Public Notice released by the Wireline Competition Bureau ("Bureau")[1] seeking comment on a number of issues relating to implementation of the Connect America Fund ("CAF") Phase II support mechanism adopted in the *CAF Order*.[2]

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[1] *Wireline Competition Bureau Seeks Further Comment on Issues Regarding Service Obligations for Connect America Phase II and Determining Who Is an Unsubsidized Competitor*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 1517 (Wireline Comp. Bur. 2013) ("*Public Notice*"). Reply comments in the proceeding are due April 12, 2013.

[2] *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 (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).

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, 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 CAF, Universal Service Fund ("USF") contribution reform, Intercarrier Compensation, 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]

I. INTRODUCTION.

The task faced by the Bureau in resolving issues identified in the *Public Notice*, relating to the implementation of CAF Phase II support, provides the Bureau with an opportunity to serve three objectives: protect the interests of consumers in rural areas; maintain the Commission's commitment to fiscal responsibility; and begin to resuscitate the Commission's principle of competitive neutrality and its promotion of pro-competitive policies.

The record supports the view that all three of these objectives will be advanced by a decision to give mobile wireless carriers an opportunity to qualify as unsubsidized competitors for purposes of determining areas eligible for CAF Phase II support. Rural consumers will benefit because treating mobile wireless carriers as unsubsidized competitors will lessen the risk of in-

[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).

cumbents using Phase II support to overbuild in areas in which consumers already have access to voice and broadband services meeting the Commission's performance criteria. Such subsidized overbuilding could undercut the ongoing provision of mobile voice and broadband services in rural areas, to the detriment of consumers.

Permitting mobile wireless providers to qualify as unsubsidized competitors will promote fiscal responsibility by contributing to the efficient use of CAF Phase II support. If the marketplace has determined that private investment is capable of efficiently bringing voice and broadband services to a given rural service area, then it would be an inefficient use of Phase II support to fund an incumbent price cap carrier's operations in that service area.

The Commission has explained that a centerpiece of its efforts to ensure the competitively neutral operation of its CAF support mechanisms is its policy of limiting support to those areas that lack unsubsidized service providers. Treating mobile wireless carriers as unsubsidized competitors will promote this pro-competitive policy.

On the other hand, the Commission's efforts to advance competitive neutrality by shielding *unsubsidized* voice and broadband service providers from *subsidized* competition would be significantly jeopardized if the Commission were to conclude that mobile wireless carriers should not be treated as unsubsidized competitors for purposes of CAF Phase II. The reason for this is that, absent a finding that mobile wireless carriers are eligible to be treated as unsubsidized competitors, incumbent price cap carriers could use CAF Phase II support to overbuild *mobile wireless LTE networks* in direct competition with mobile carriers in areas where mobile carriers have deployed unsubsidized networks.

Specifically, the Bureau has determined that CAF Phase II "[f]unding recipients may use any wireline, wireless, terrestrial, or satellite technology, or a combination of technologies, to deliver service that satisfies this requirement."[4] Under this approach, incumbent price cap carriers receiving CAF Phase II support may receive a windfall to the extent that their model-based support disbursements exceed their actual costs in deploying wireless LTE networks.[5]

Even worse, if mobile wireless carriers are not given the opportunity to be treated as unsubsidized competitors, then the incumbent price cap carriers will be in a position to use their windfall CAF Phase II subsidies to compete against mobile wireless carriers in markets where the mobile carriers are receiving no universal service support. Such a result is precisely what the Commission has sought to avoid in seeking to advance its principle of competitive neutrality by insulating unsubsidized carriers from market entry by incumbents receiving CAF Phase II support.

In addition, given that the Commission has already determined that incumbent price cap carriers have discretion to meet build-out and service obligations through the use of any technol-

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[4] *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), 77 Fed. Reg. 38804 (June 29, 2012), at para. 13 n.21 (citing *CAF Order*, 26 FCC Rcd at 17696 (para. 91)). The referenced 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.

CAF Order, 26 FCC Rcd at 17696 (para. 91). *See* U.S. Cellular Reply Comments, WC Docket No. 10-90, *et al*., filed July 23, 2012 ("U.S. Cellular July 2012 Reply"), at 7-8.

[5] *See* U.S. Cellular July 2012 Reply at 7-8 (footnote omitted):

> 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 obligations of their price cap wireline affiliates established by the Commission for CAF Phase II. 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.

ogy, so long as they meet applicable performance metrics, the Commission should take the same approach for mobile wireless carriers. Thus, rather than barring mobile wireless carriers from qualifying as unsubsidized competitors, the Commission should permit such carriers to qualify as unsubsidized competitors if they are able to meet applicable performance metrics.[6]

A decision to provide mobile wireless service providers with an opportunity to qualify as unsubsidized competitors will not only serve the various policy goals described in the preceding paragraphs, but also can be based on a solid foundation of facts. The record demonstrates that mobile wireless broadband is competing with fixed broadband. Various metrics—including the preferences of consumers—illustrate that the strength of mobile wireless carriers' market presence has emerged rapidly and continues to grow.

II. MOBILE WIRELESS VOICE AND BROADBAND PROVIDERS SHOULD BE ALLOWED TO QUALIFY AS UNSUBSIDIZED COMPETITORS IN CAF PHASE II.

To advance its competitive goals and ensure that CAF support is used efficiently to bring broadband services to rural consumers, it is important for the Commission to design CAF Phase II rules that prevent the use of support to subsidize broadband in areas already served by unsubsidized competitors. U.S. Cellular agrees with ADTRAN that "it would certainly not be a 'level playing field' if an unsubsidized service provider had to face competition from a subsidized new entrant[,]"[7] and that "the CAF Phase II support program should not subsidize the deployment of broadband service in an area already served by an unsubsidized broadband provider."[8]

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[6] See Section III., *infra*, for a discussion of how these performance metrics should be established.

[7] ADTRAN, Inc. ("ADTRAN"), Comments at 5. Unless otherwise noted, all references to comments in these Reply Comments are to those filed in response to the *Public Notice*.

[8] *Id*. at 5-6.

A key issue presented in the *Public Notice* is whether mobile wireless service providers should be given an opportunity to qualify as unsubsidized competitors for purposes of the disbursement of CAF Phase II support. U.S. Cellular agrees with the short answer to this question, provided by AT&T: "[T]he Bureau asks whether mobile providers should be permitted to participate in the challenge process, 'giving them the opportunity to qualify as unsubsidized competitors' and thereby excluding their served areas from support. . . . The answer, of course, is yes."[9] In the following sections, U.S. Cellular examines support in the record for authorizing mobile wireless carriers to be treated as unsubsidized competitors.[10]

A. Mobile Broadband Providers Have Become Strong Market Competitors.

The Commission has indicated that "the total number of mobile wireless connections now exceeds the total U.S. population[,]"[11] that "mobile wireless providers have made substantial progress in upgrading their networks with higher-speed technologies and expanding coverage with these technologies[,]"[12]and that, "[i]n some cases mobile broadband networks are being used as a replacement for wireline last-mile solutions, where location makes deployment of wire-

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[9] AT&T Inc. ("AT&T") Comments at 4 (quoting *Public Notice*, 28 FCC Rcd at 1520 (para. 11)).

[10] U.S. Cellular notes that the Commission has defined an "unsubsidized competitor" as a "facilities-based provider of residential terrestrial fixed voice and broadband service." *CAF Order*, 26 FCC Rcd at 17701 (para. 103) (footnote omitted). U.S. Cellular agrees with CTIA–The Wireless Association® ("CTIA"), however, that the Bureau nonetheless has been given the requisite authority by the Commission to treat mobile wireless broadband service providers as unsubsidized competitors for purposes of the disbursement of CAF Phase II support. *See* CTIA Comments at 8-9 (citing *CAF Order*, 26 FCC Rcd at 17729 (para. 170)).

[11] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, FCC 13-34 (Mar. 21, 2013) ("*Sixteenth Wireless Competition Report*"), at para. 244 (footnote omitted).

[12] *Id*. at para. 371 (citing *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Da-*

line facilities inefficient."[13] The Commission has also noted that, according to one study, "there were an estimated 317.3 million total mobile wireless connections at the end of 2011, up five percent from 301.8 million at the end of 2010, and up nine percent from 290.7 million at the end of 2009 . . . ."[14]

CTIA has presented additional data showing substantial investment in next generation mobile wireless networks,[15] significant deployment of 4G LTE networks,[16] increasing consumer adoption of mobile broadband services,[17] and extensive growth in mobile service usage and traffic.[18] U.S. Cellular agrees with CTIA's conclusion that, "by any metric, mobile wireless broadband is both a competitor to fixed broadband and is creating new opportunities for innovation and investment, and is often doing so without any universal service subsidy."[19]

U.S. Cellular recently presented similar data to the Commission, illustrating that "[c]onsumers have embraced mobile broadband services, applications, and devices in unprece-

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ta Improvement Act, GN Docket No. 11-121, Eighth Broadband Progress Report, 27 FCC Rcd 10342, 10344 (para. 2) (2012) ("*Eighth Broadband Report*")).

[13] *Id*.

[14] *Id*. at para. 244.

[15] CTIA Comments at 5 (indicating that, as of December 2011, there were nearly 31 million mobile wireless data connections at and above 3 Mbps download/768 kbps upload, accounting for 38 percent of all connections at that speed).

[16] *Id*. (noting that, in January 2012, estimates indicated that LTE networks covered 211 million people) (citing *Eighth Broadband Report*, 27 FCC Rcd at 10348 (para. 6)).

[17] *Id*. at 6 (noting that, by mid-2012, 78 percent of adults in the U.S. were using smartphones) (footnote omitted). CTIA also indicates that approximately 34 percent of U.S. households are now wireless-only. *Id*. at 8 (citing *Sixteenth Wireless Competition Report* at para. 367).

[18] CTIA notes, for example, that "[f]rom July 2011 to June 2012, reported wireless data traffic over all U.S. wireless devices totaled 1.16 trillion megabytes, compared to 568 billion megabytes a year before, a 104% increase year-over-year." *Id*. at 7 (footnote omitted).

[19] *Id*. at 8.

dented numbers."[20] U.S. Cellular indicated, for example, that, "[i]n the United States, wireless data traffic has increased by 486 percent from the second half of 2009 to the first half of 2012[,]"[21] that "there were 298.3 million mobile wireless subscribers at the end of 2011, an increase of 4.6 percent from the previous year[,]"[22] and that, "[b]y 2014, the number of smartphones used by consumers in the United States is projected to exceed the number of consumers' personal computers by more than 200 million units."[23]

As U.S. Cellular has previously observed, "the rapid emergence of the mobile broadband market [has] outstripped most predictions[,]"[24] and "[t]he Commission needs to adapt to this new world, especially because the growth of mobile broadband has important implications for the Commission's universal service policies."[25] One implication is that the continued extension of this growth to rural areas could be curtailed if, in the context of CAF Phase II, the Commission follows policies that enable incumbent price cap carriers to use CAF support to deploy their networks in areas in which mobile broadband service is already available, having been deployed on an unsubsidized basis. For this reason, the Bureau should "allow[ ] [mobile providers] to participate in the challenge process, giving them the opportunity to qualify as unsubsidized competitors

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[20] U.S. Cellular Comments, WC Docket No. 10-90, *et al*., filed Jan. 28, 2013, at 20.

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

[22] *Id*. (footnotes omitted). U.S. Cellular also noted that, in contrast, "there were 143.5 million wireline retail local telephone service connections at year-end 2011, a decrease of 4.1 percent from the previous year." *Id*. at 20-21 (footnotes omitted).

[23] *Id*. at 21-22 (footnote omitted).

[24] *Id*. at 23.

[25] *Id*.

and exclude areas from support if they are able to meet the performance and pricing requirements . . . ."[26]

Such an approach would be consistent with policies the Commission already is considering for CAF Phase II. Specifically, the Commission has proposed that the competitive bidding process that will be used to disburse CAF Phase II support in certain circumstances[27] "will be open to *any provider* able to satisfy the public interest obligations associated with [the CAF Phase II] support."[28] The Commission also has indicated that it "anticipate[s] . . . that mobile providers may also be eligible for support in CAF Phase II . . . , in addition to Mobility Fund Phase II support."[29]

Given that the Commission is pursuing a policy that encompasses making CAF Phase II support available for use by mobile broadband providers, there should also be a policy intended to prevent the use of CAF Phase II support by incumbent price cap carriers in areas in which mobile wireless carriers have deployed broadband networks without the use of any universal service support. As explained in the following section, such a policy will serve the Commission's pro-competitive goals and will also promote fiscal responsibility by ensuring the efficient use of Phase II support.

B. The Efficient and Competitively Neutral Operation of CAF Phase II Will Be Enhanced By Authorizing Mobile Wireless Carriers To Be Treated as Unsubsidized Competitors.

In addressing claims that its decision to give incumbent price cap carriers a right of first refusal for CAF Phase II support was precluded by the principle of competitive neutrality, the

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[26] *Public Notice*, 28 FCC Rcd at 1520 (para 11).

[27] *See CAF Order*, 26 FCC Rcd at 17725 (para. 156).

[28] *CAF FNPRM*, 26 FCC Rcd at 18086 (para. 1195) (emphasis added).

Commission stressed that it chose a different path in its adherence to this principle. Specifically, the Commission has explained that "our USF reforms generally advance the principle of competitive neutrality by limiting support to only those areas of the nation that lack unsubsidized providers. Thus, providers that offer service without subsidy will no longer face competitors whose service in the same area is subsidized by federal universal service funding."[30]

Given this central importance that the Commission has assigned to the protection of unsubsidized competition as a means of preserving its competitive neutrality principle, U.S. Cellular agrees with CTIA that "an inclusive definition of 'unsubsidized competitor' is necessary to ensure the competitive neutrality of CAF Phase II, consistent with the Commission's own finding."[31] Although U.S. Cellular disagrees with the view that initially giving incumbent price cap carriers exclusive access to CAF Phase II support can be squared with the Commission's competitive neutrality principle,[32] the anti-competitive effects of this approach could be muted somewhat—and the interests of rural consumers could be advanced—by enabling mobile broadband providers to qualify as unsubsidized competitors.

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[29] *CAF Order*, 26 FCC Rcd at 17825 (para. 495).

[30] *Id*. at 17731 (para. 177), *cited in* CTIA Comments at 3. U.S. Cellular has expressed its disagreement with the notion that the Commission's approach is a sufficient means of sustaining and promoting its competitive neutrality principle, especially because other mechanisms adopted by the Commission are in substantial conflict with the principle. *See*, *e.g*., U.S. Cellular Comments, WC Docket No. 10-90, *et al*., filed Jan. 18, 2012, at 22, 39 (arguing that the Commission should not use a single-winner reverse auction mechanism to disburse residual CAF Phase II support, explaining that "a single-winner reverse auction mechanism, by its very nature, is not competitively neutral because, instead of encouraging competitive entry and natural price competition, a single-winner reverse auction mechanism installs a government-selected monopoly service provider in each geographic service area").

[31] CTIA Comments at 3.

[32] *See*, *e.g*., U.S. Cellular Comments, WC Docket No. 10-90, *et al*., filed Aug. 24, 2011, at 31 (arguing that a right of first refusal mechanism "would be inimical to competitive neutrality" and would have the effect of "catastrophically stunting entry by competitive wireless carriers").

U.S. Cellular also agrees with CTIA that permitting mobile wireless carriers to qualify as unsubsidized competitors would enhance the efficient use of CAF Phase II support. As CTIA explains, it would not be efficient to give Phase II support to incumbents to enable them to deploy networks in areas where consumers already have access to voice and broadband services provided by unsubsidized competitors.[33]

C. The Commission Must Adopt Clear and Effective Standards for the Challenge Process.

The Bureau seeks comment on whether mobile service providers allowed to participate in the CAF Phase II challenge process should have the burden of demonstrating that "they are able to meet the performance and pricing requirements . . . ."[34] U.S. Cellular, like CTIA, has no objection to requiring mobile carriers to make this affirmative showing.[35]

The task for the Commission, however, is to provide as much clarity and certainty as possible in defining the showing that mobile wireless service providers would be required to make in order to qualify as unsubsidized competitors.[36] Vague or ambiguous requirements would increase the burdens faced by mobile carriers seeking to qualify as unsubsidized competitors, and would prolong the process in which the determination of eligibility is made. If the Commission agrees with U.S. Cellular and other commenters in this proceeding that both consumers and competition would benefit from enabling mobile broadband providers to qualify as unsubsidized competitors, then the Commission should be diligent in clearing the path toward the realization of these benefits by adopting unambiguous and precise qualifying criteria.

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[33] CTIA Comments at 3-4.

[34] *Public Notice*, 28 FCC Rcd at 1520 (para. 11).

[35] *See* CTIA Comments at 9.

[36] *See id*. at 9-10.

U.S. Cellular also agrees with AT&T's argument that carriers seeking to demonstrate that they are unsubsidized competitors in particular census blocks should not be required to use their service offerings as of June 2012 as the basis for their challenge. AT&T suggests that the Bureau "should permit these challengers to rely on their most recent current service offerings to make the demonstration.[37] The Bureau should accept AT&T's suggestion, since it would produce a more current and accurate depiction of the nature and extent of service available in census blocks that are subject to challenge.

D. Arguments Opposing the Qualification of Mobile Wireless Carriers as Unsubsidized Competitors Are Unpersuasive.

ACS argues that "mobile wireless providers should not interfere in the determination of supported census blocks for fixed terrestrial broadband services"[38] because the Commission has not deemed mobile wireless providers to be effective competitors to incumbent wireline carriers[39] and the Commission "holds mobile wireless providers to a lower standard for broadband services."[40]

The Commission should not be persuaded by ACS's arguments for several reasons. *First*, as U.S. Cellular has discussed, there is strong and growing consumer demand for wireless mobile voice and broadband services,[41] and the Commission in fact has made the finding that, in some cases, mobile broadband networks are replacing wireline for last-mile solutions.[42] Given the budgetary restrictions the Commission has adopted in the *CAF Order*, it makes sense for the

[37] AT&T Comments at 1-2 n.2.

[38] Alaska Communications Systems ("ACS") Comments at 12.

[39] *Id*.

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

[41] See Section II.A., *supra*.

[42] *Eighth Broadband Report*, 27 FCC Rcd at 10344 (para. 2).

Commission to promote, as much as possible, the unsubsidized deployment of mobile services in rural areas. One way to promote and sustain this deployment and ongoing availability of mobile services is for the Commission to permit mobile wireless providers to qualify as unsubsidized competitors for purposes of CAF Phase II.

Second, the concerns raised by ACS regarding performance standards can be addressed by treating mobile wireless carriers in the same manner that the Bureau proposes to treat fixed wireless providers. Specifically, the Bureau suggests that "[a] fixed wireless provider could demonstrate it is an unsubsidized competitor by making an affirmative showing that it meets the necessary speed, latency, capacity, and price criteria."[43]

These criteria applied to mobile wireless carriers should be clear and unambiguous and, as U.S. Cellular discusses in the following section, they should not be set in an arbitrary manner that would have the effect of excluding mobile wireless broadband offerings. Subject to these reasonable qualifications, the Commission could devise performance standards for mobile wireless providers that do not disserve rural consumers or unfairly disadvantage incumbent price cap carriers.

And, *third*, the restrictive approach advocated by ACS conflicts with the Commission's budgetary goals and policies. The Commission's decision to place an annual cap on the high-cost budget[44] places a premium on the efficient use of the limited support the Commission has chosen

[43] *Public Notice*, 28 FCC Rcd at 1520 (para. 11).

[44] *CAF Order*, 26 FCC Rcd at 17710 (para. 123). U.S. Cellular has been critical of the budget decisions made by the Commission in the *CAF Order*, arguing, for example, that:

> There are grounds for concluding that the Commission's new principle of fiscal responsibility has swallowed up other universal service objectives, most notably the statutory principle that support mechanisms established by the Commission must be sufficient to meet statutorily mandated universal service goals. The Commission has capped the budget at a level that does not seem designed to accommodate the effective deployment of

to make available. One way to promote this efficient use of limited funding is to reserve CAF Phase II support for distribution to incumbent price cap carriers only in areas in which consumers do not already have any access to voice or broadband services that meet performance criteria established by the Commission.

Such a policy enables the targeting of support to areas in which consumers lack any access to such services. Thus, if an unsubsidized competitor is operating in census blocks that otherwise would be eligible for the receipt of CAF Phase II support, the presence of such a competitor, including a mobile wireless provider, should make the areas involved ineligible for Phase II support. This rule benefits consumers, by directing Phase II support as much as possible to areas lacking any advanced broadband service. The rule also benefits competition by freeing unsubsidized competitors from the prospect of facing entry by subsidized price cap carriers.[45]

III. PERFORMANCE CRITERIA FOR UNSUBSIDIZED COMPETITORS SHOULD BE DATA-DRIVEN AND SHOULD PROMOTE COMPETITION AND THE EFFICIENT USE OF CAF PHASE II SUPPORT.

U.S. Cellular agrees with commenters who suggest that, for purposes of the administration of CAF Phase II, the performance criteria applied by the Commission for unsubsidized competitors should rely to the extent practicable on empirical data reflecting consumers' usage

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> fixed and mobile broadband networks in rural areas, and the Commission has further handicapped mobile broadband deployment by adopting a budget that disproportionately provides support for wireline carriers and significantly underfunds mobile broadband.

U.S. Cellular Reply Comments, WC Docket No. 10-90, *et al*., filed Feb. 17, 2012, at 3.

[45] ITTA opposes including mobile wireless carriers as potential unsubsidized competitors for purposes of CAF Phase II, arguing that the "Mobility Fund is designed to supplement, not compete with, the Connect America Fund." Independent Telephone & Telecommunications Alliance ("ITTA") Comments at 5 n.10. This argument is not persuasive because the issue here does not involve the relationship between the CAF and Mobility Fund support mechanisms. Instead, the question is whether the presence of *unsubsidized* mobile service providers in particular census blocks should make those census blocks ineligible for CAF Phase II support. As U.S. Cellular and other commenters have explained, there are strong policy reasons for the Commission's taking such an approach.

and preferences and also should be carefully crafted to promote the efficient and competitively neutral use of Phase II support.

A. The Commission Should Base Performance Metrics on Actual Usage of Both Wireline and Mobile Services.

As a general matter, the Commission should ensure that performance metrics (*e.g.*, broadband speed, pricing, usage allowances, and latency) applicable to unsubsidized competitors are based on empirical data and are adopted on a competitively- and technologically-neutral basis.[46] Reliance on empirical data will improve the accuracy of the Commission's determinations in the challenge process, and adherence to principles of technological and competitive neutrality will benefit rural consumers by promoting the efficient use of CAF Phase II support.

Further, U.S. Cellular agrees with CTIA that any decision by the Commission to permit mobile wireless service providers to qualify as unsubsidized competitors for purposes of CAF Phase II "will be a hollow exercise if the performance metrics for the program are set arbitrarily to exclude mobile wireless broadband offerings."[47]

CTIA proposes that the Commission should take two steps to avoid this problem. *First*, "the Commission should base its metrics on analysis of real-world usage and products adopted by consumers in the marketplace . . . ."[48] And, *second*, given the fact that consumers in substantial numbers are adopting mobile wireless broadband,[49] the Commission should include data re-

[46] *See* ViaSat, Inc., Comments at 2.

[47] CTIA Comments at 10.

[48] *Id*.

[49] See the discussion in Section II.A., *supra*.

lating to mobile wireless broadband in developing performance criteria for unsubsidized competitors.[50]

U.S. Cellular joins CTIA in urging the Commission not to base performance criteria on data drawn "entirely from providers and users of fixed services."[51] As CTIA points out, the *Sixteenth Wireless Competition Report* has already compiled considerable data that would be relevant to the development of performance criteria.[52] Relying on actual data—instead of hypothetical approximations—would improve the precision of the performance criteria, thus producing more accurate decisions regarding whether mobile wireless carriers should be treated as unsubsidized competitors in particular cases.

B. The Commission Should Not Adopt a Performance Speed Proxy That Exceeds 4 Mbps Downstream and 1 Mbps Upstream.

The Commission has determined that price cap carriers exercising their right of first refusal for the receipt of CAF Phase II support must offer, by the end of the third year following the commencement of support, at least 4 Mbps upstream and 1 Mbps downstream broadband service to at least 85 percent of their covered high-cost locations. By the end of the fifth year, the incumbents must offer at least 4 Mbps/1 Mbps broadband service to all supported locations, and at least 6 Mbps/1.5 Mbps broadband service to a number of supported locations to be specified by the Commission.[53]

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[50] CTIA Comments at 10.

[51] *Id*.

[52] *Id*. at 11.

[53] *Public Notice*, 28 FCC Rcd at 1517-18 (para. 4) (citing *CAF Order*, 26 FCC Rcd at 17726 (para. 160)).

The Bureau, acknowledging that the Commission has indicated that a proxy must be used for purposes of the CAF Phase II speed threshold, seeks comment on this issue.[54] U.S. Cellular agrees with the National Cable & Telecommunications Association ("NCTA") and other commenters that the current 3 Mbps/768 kbps proxy should be maintained and the Commission should not instead adopt a 6 Mbps/1.5 Mbps proxy. As NCTA explains:

> Increasing the proxy would contravene the Commission's requirement that CAF support not be available in areas served by unsubsidized competitors offering broadband at 4/1 Mbps. Use of the higher speed tier proxy would enable support to go to areas where an unsubsidized provider is offering broadband of at least 4/1 Mbps but not 6/1.5 Mbps.[55]

Using 3 Mbps/768 kbps as the proxy for the performance standard applicable to unsubsidized competitors would serve more effectively to promote the Commission's pro-consumer and pro-competition policies. As WISPA explains, shifting the standard for unsubsidized competitors to 6 Mbps/1.5 Mbps "would allow further government subsidies to flow undeservedly to ETCs at the expense of citizens in other areas who currently have no broadband service at all[,]"[56] and imposing a 6 Mbps/1.5 Mbps standard on current unsubsidized competitors, while not requiring incumbents to meet the same standard "for five years or more in the future is both unfair and contrary to the public interest."[57]

IV. CONCLUSION.

The record supports a decision to allow mobile wireless carriers to participate in the challenge process so that they have an opportunity to qualify as unsubsidized competitors for purposes of CAF Phase II. U.S. Cellular respectfully urges the Commission to act accordingly, and also

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[54] *Id*. at 1519 (para. 9).

[55] NCTA Comments at 7.

[56] Wireless Internet Service Providers Association ("WISPA") Comments at 6.

to adopt Phase II performance criteria that are not in conflict with a decision to treat mobile wireless service providers as unsubsidized competitors.

Respectfully submitted,

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[57] *Id*.