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April 15, 2014

Via ECFS

Mr. Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: EX PARTE NOTICE

WC Docket No. 10-90: *Connect America Fund*
WT Docket No. 10-208: *Mobility Fund*

Mr. Chairman:

Under your leadership, the Federal Communications Commission ("Commission" or "FCC") has rightly focused on promoting competition.[1] As CCA has noted many times, competition leads to greater consumer choice, more innovative products and services, lower prices, and less regulation.[2] Realizing these benefits will depend largely on your ability to reestablish competitive and technological neutrality among all aspects of a competitive carrier's critical inputs, including Universal Service Fund ("USF") support. In light of continuing USF reform efforts, CCA asks that you enforce the Commission's prior decision to pause the phase-down of legacy support for wireless providers at 60% on June 30, 2014—as set forth in the Transformation Order.[3] CCA also urges the Commission to eliminate the discriminatory right of first refusal ("RoFR") to be made available to price-cap carriers in Phase II of the Connect America Fund ("CAF"). The RoFR was one of the most controversial parts of the Commission's reform efforts and should be carefully examined, especially if the Commission intends to declare wireless service a substitute for wireline broadband.

In a white paper recently filed with the Commission, CCA urged the FCC to implement several light-touch policies to bring the wireless industry back to a competitive place and to avoid prospective,

[1] *See, e.g.*, Chairman Tom Wheeler, Opening Day at the FCC: Perspectives, Challenges, and Opportunities, Official FCC Blog (Nov. 5, 2013) (stating that "technological innovation, growth and national economic leadership have always been determined by our networks; competition drives the benefits of those networks; and we have a responsibility to see the expansion of those networks . . . .").

[2] CCA, *A Framework for Sustainable Competition in the Digital Age: Fostering Connectivity, Innovation and Consumer Choice* (2013), *available at* http://competitivecarriers.org/wp-content/uploads/2014/01/CCA_SustainableCompetition_FINAL.pdf ("CCA Competition White Paper").

[3] *Connect America Fund*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("Transformation Order").

heavy-handed regulation necessary to artificially recreate the benefits of standalone competition.[4] Among many recommendations, CCA asked that the Commission restore competitive neutrality to its high-cost support mechanism.[5] While CCA remains hopeful that the Commission will act in furtherance of your competition mantra, the current universal service proposal under consideration in the draft Report and Order and Further Notice ("R&O" and "FNPRM", respectively) to be released later this month risks further entrenching the dominance of the legacy twin Bells at the expense of competition and consumers.

As we understand it, the R&O and FNPRM will remove most of the funding for rural wireless carriers, threatening high-quality, localized services for rural consumers. Instead, the FCC plans to provide over $2 billion to price cap carriers thereby subsidizing a monopoly provider and entrenching a technology that consumers are abandoning at an accelerated pace.[6] This proposed course of action is not consistent with your pro-competitive agenda. Nor is it consistent with Section 254 of the Communications Act (as amended), providing that rural and insular consumers "have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas" and that support mechanisms "be specific, predictable and sufficient."[7] Consumers are increasingly choosing mobile wireless service over fixed broadband service.[8] Moreover, minorities and economically challenged and impoverished communities rely more heavily on wireless as their primary or only source of Internet access.[9] However, despite this trend toward wireless services, consumers in rural America consistently have fewer choices and lower service quality than Americans in urban areas.[10]

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4 *See generally* CCA Competition White Paper.

5 CCA Competition White Paper at 17.

6 *See* Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, Local Telephone Competition: Status as of December 31, 2012 at 2 (Nov. 2013) (noting that between December 2009 and December 2012, "interconnected VoIP subscriptions increased at a compound annual growth rate of 17%, mobile telephony subscriptions increased at a compound annual growth rate of about 4%, and retail switched access lines *declined* at about 9% a year.") (emphasis added).

7 47 U.S.C. § 254(b)(3), (b)(5).

8 Ctrs. for Disease Control & Prevention, U.S. Dep't of Health and Human Servs., CDC Bull. No. 70, *Wireless Substitution: State-level Estimates from the National Health Interview Survey, 2012* 1 (Dec. 18, 2013) (finding that "[a]s of the second half of 2012, nearly two in every five American households (38.2%) had only wireless telephones," and that "this difference is expected to grow."). This figure is estimated to have increased to 39.4% in the first six months of 2013. Ctrs. for Disease Control & Prevention, U.S. Dep't of Health and Human Servs., *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2013* 1 (Dec. 2013).

9 U.S. Census Bureau, Pub. No. P20-569, *Computer and Internet Use in the United States: Population Characteristics* 12 (May 2013) (Census Study) ("When compared to percentages of home Internet use, smartphones appear to be leveling the Internet use disparities traditionally present for race and ethnicity groups. While 27 percentage points separated the highest and lowest reported rates of home Internet use . . . a smaller gap of 18 percentage points emerged once smartphone use was factored into overall connectivity rates . . . .").

10 *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, 28 FCC Rcd 3700, 3727 (2013) (finding that rural Americans have access to significantly fewer mobile broadband service providers than non-rural Americans).

It is not too late for the FCC to right-track its continuing USF reform efforts. There are several steps the FCC can take to ensure competitive and technology neutral policies that provide predictable and sufficient support. Fourth generation LTE deployments in rural, underserved, and unserved areas hang in the balance.

First, the FCC must follow the plan it established in the Transformation Order and refrain from eliminating existing support for CETCs by pausing the phase-down until Mobility Fund II is operational.[11] Continuing the phase-down without an opportunity to access funds through a Mobility Fund II mechanism is inconsistent with the universal service principles of Section 254—including the directive that the Commission provide "specific, predictable and sufficient" support.[12] The Commission cannot satisfy that sufficiency requirement if Mobility Fund II has yet to be implemented and if the support continues to be phased-down.

Further, many wireless carriers participated in Mobility Fund I based on an expectation that there would be an opportunity to compete for funds in Mobility Fund II. These carriers have relied on prior FCC statements about the benefits of a separate fund dedicated exclusively for mobile services. In the Transformation Order, for example, the Commission characterized Mobility Fund II as an opportunity to "expand *and sustain* mobile voice and broadband services in communities in which service would be unavailable absent federal support."[13] Subsequently—but not before its Mobility Fund Phase I reverse auction—the Commission released a public notice asking questions about how to administer Mobility Fund Phase II, including how to identify and prioritize areas eligible for support.[14] This public notice *again* recognized the expectation that "areas receiving one-time Mobility Fund Phase I support would still be eligible to receive Mobility Fund Phase II support."[15] Based on these ongoing representations by the Commission, carriers not only participated in Mobility Fund Phase I, but brought millions of dollars of private investment to areas where there is otherwise no business case to do so. These carriers and, more important, the rural consumers they serve, will be detrimentally impacted if not given an opportunity to seek additional funding to deploy and maintain 4G LTE service. As a result, rural consumers will not receive comparable services as their urban counterparts and will be denied a competitive choice.

This is particularly problematic as wireless consumers, through their carriers, already make significant and growing contributions into the Universal Service Fund. Universal service support, in particular the Mobility Fund, drives millions of dollars of private investment to insular, high-cost areas that the Big Two wireless carriers do not serve. AT&T and Verizon operate in some rural areas—likely by utilizing USF support—but their rural coverage typically runs only along the highways and main transportation corridors and is often not supported by backhaul sufficient to enable today's mobile broadband speed and capabilities. The record contains no information to indicate the level of service quality being provided by the largest wireline carriers in rural America. Moreover, there are many rural communities that AT&T and Verizon do not serve. The recent Tribal Mobility Fund Phase I reverse auction is a good example, where a small number of carriers submitted bids totaling $482 million in areas not covered by AT&T or Verizon.[16] Clearly, significant coverage gaps exist.

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11 Transformation Order, 26 FCC Rcd at 17832 ¶ 519.

12 47 U.S.C. § 254(b)(5).

13 Transformation Order, 26 FCC Rcd at 17675 ¶ 28 (emphasis added).

14 *Further Inquiry into Issues Related to Mobility Fund Phase II*, Public Notice, WC Docket No. 10-90, WT Docket No. 10-208, 27 FCC Rcd 14798 (WTB/WCB 2012).

15 *Id.* at ¶ 7 (citing Transformation Order, 26 FCC Rcd at 18070 n.2247).

16 *See* FCC Auctions Summary: Auction 902, http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=902 (click on "All Bids" hyperlink).

Despite the high cost of deploying and upgrading service, CCA's rural wireless carriers continue to provide high quality service in small, rural towns that are not economical to serve without support. These investments bring public safety, healthcare, education and economic development to many rural Americans. Losing support in these areas will jeopardize existing service, future deployments, and the benefits that flow from them. Several rural wireless carriers have provided detailed cost models demonstrating the high cost and limited expected revenues of serving many of these rural areas.[17] A difficult business case, coupled with inconsistent directives from the FCC and the potential failure to uphold previous commitments under the Transformation Order, leads to uncertainty in the market, discouraging private investment in rural America.

Second, to implement competitive and technology neutral reform, the FCC must eliminate the RoFR for incumbent price-cap carriers for CAF II support. Maintaining such a preference would needlessly entrench the wireline incumbents and skew the competitive landscape dramatically in their favor. Eliminating the RoFR will promote competition among wireline and wireless carriers for support, thereby increasing efficiency of the fund and promoting technology neutral competition in rural America. Alternatively, if the Commission maintains the RoFR, the Commission should not allow price-cap incumbents that decline to exercise the RoFR to participate in a subsequent competitive bidding process. Affording these carriers a "second bite at the apple" in a later auction would invite those carriers to game the process to maximize their own revenues, rather than maximizing benefits to consumers.

In addition, allowing the price-cap carrier to participate in the auction as a *wireless* provider would further exacerbate the opportunities for gaming and cherry-picking. By allowing the price-cap carriers to use a wireline cost model to deploy wireless service in the most attractive areas and without state-level commitments, the FCC is not only reviving the identical support rule, it is effectively putting the identical support rule on steroids. This proposal is inconsistent with your pro-competitive agenda and, even more critical, it is inconsistent with the FCC's USF reform efforts to reduce the inefficiencies associated with legacy universal service support. We ask that you live up to the commitment to incent competition where it exists.[18] Absent predictable and sufficient funding, competition in underserved markets disappears and service in unserved areas is turned off.

In summary, CCA urges the FCC to pause the phase-down as directed in the Transformation Order until the Mobility Fund is operational and eliminate the RoFR. If the RoFR is not eliminated, the FCC must prohibit price-cap carriers who decline the RoFR from having a second chance at competing for the funding. As voice and broadband customers continue to migrate to wireless platforms as part of the IP Transition and based on consumer preference, the continued evisceration of USF support made available to wireless providers will exacerbate the growing digital divide between urban and rural areas, putting rural consumers at risk of receiving lower-quality and less affordable services. In light of the growing demand for mobile wireless services and increased cord-cutting by wireline subscribers, the Commission should refrain from undercutting mobile broadband competition in America's rural areas and further skewing support in favor of wireline carriers by addressing CCA's concerns.

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[17] *See, e.g.*, The Brattle Group, Alaska Mobile Broadband Cost Model (Feb. 2013), attached to *Ex Parte* Letter from John T. Nakahata, Counsel to General Communications, Inc. to Marlene H. Dortch, Secretary, FCC, *et al.*, WC Docket No. 10-90, WT Docket No. 10-208 (filed Feb. 15, 2013).

[18] *See, e.g.*, Tom Wheeler, Chairman, FCC, Remarks at the Computer History Museum at 5-6 (Jan. 9, 2014).

This *ex parte* notification is being filed electronically with the Commission's Office of the Secretary pursuant to Section 1.1206 of the Commission's Rules.

Sincerely,

Steven K. Berry
President & CEO

cc (via email): Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly
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