

**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
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

**COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION**

Steven K. Berry  
Rebecca Murphy Thompson  
C. Sean Spivey  
COMPETITIVE CARRIERS ASSOCIATION  
805 15th Street, NW, Suite 401  
Washington, DC 20005

August 8, 2014

**TABLE OF CONTENTS**

INTRODUCTION AND SUMMARY .....2

I. THE COMMISSION SHOULD IMPLEMENT PHASE II OF THE MOBILITY FUND IN A MANNER THAT RECOGNIZES BOTH THE UNIQUE BENEFITS OF MOBILE BROADBAND SERVICES AND THE FULL EXTENT TO WHICH LARGE PORTIONS OF THE COUNTRY LACK ACCESS TO SUCH SERVICES .....4

    A. The FNPRM Significantly Overstates the Existing Level of Mobile Broadband Penetration.....6

    B. The FNPRM Also Fails To Account for the Increasingly Essential Nature of Mobile Broadband Services.....9

    C. Given the Actual State of Mobile Broadband Deployment and Increasingly Essential Nature of Mobile Broadband Services, Section 254 of the Act *Requires* the Commission to Preserve—And Increase—the Level of Support Earmarked for the Mobility Fund .....14

    D. There Is No Valid Justification for Restricting the Types of Mobile Wireless Technologies that May Be Employed by Mobility Fund Support Recipients.....15

II. THE COMMISSION SHOULD TAKE STEPS TO IMPROVE EFFICIENCY AND MINIMIZE THE DISTORTIVE EFFECTS OF CAF PHASE II FUNDING .....16

    A. Phase II Funding Should Be Made Available to Competitive Providers Regardless of the Technology They Use .....17

    B. The Commission Should Be Consistent in Deciding Whether CAF Phase II Funding Should Facilitate Service by Both Fixed and Mobile Providers in a Given Area .....18

    C. The Commission Should Define Any Evolving Performance Criteria in a Manner Achievable by a Wide Variety of Mobile and Fixed Technologies .....20

    D. The Commission Should Utilize Auction Mechanics that Ensure that “Winners” Are Selected Using Objective Criteria.....21

III. THE COMMISSION SHOULD ENSURE THAT THE TRANSITION FROM LEGACY SUPPORT TO CAF PHASE II DOES NOT IMPOSE UNDUE HARDSHIP ON RURAL WIRELESS PROVIDERS .....22

**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
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

**COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION**

Competitive Carriers Association (“CCA”) submits these comments in response to the Further Notice of Proposed Rulemaking adopted by the Commission on April 23, 2014 in the above-captioned proceeding (the “FNPRM”). The FNPRM broadly proposes measures “to update and implement further the framework adopted by the Commission in 2011” for the Connect America Fund (“CAF”).<sup>1</sup> As the principal association representing competitive wireless providers across the United States, CCA welcomes this opportunity to provide its views. For the reasons set forth herein, CCA urges the Commission to: (i) implement Phase II of the Mobility Fund in a manner that recognizes the unique benefits that mobile broadband services provide to consumers and reflects the full extent to which large portions of the country still lack access to such services; (ii) implement Phase II of the CAF in a manner that increases efficiency and

---

<sup>1</sup> Connect America Fund, *et al. Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 *et al.*, FCC 14-54 ¶ 10 (rel. June 10, 2014) (“FNPRM”).

minimizes competitive distortions; and (iii) ensure that the transition from legacy high-cost support does not impose undue hardship on wireless providers and their customers.

## **INTRODUCTION AND SUMMARY**

CCA is the principal association representing competitive wireless providers across the United States, representing the interests of more than 100 members—including rural, regional, and national wireless carriers, many of which rely on high-cost universal service support. CCA's members support the Commission's efforts to make broadband available to all Americans. At the same time, CCA has expressed significant concerns regarding the Commission's development of the CAF program to date, because it has been unjustifiably skewed in favor of inefficient incumbents at the expense of competition and consumers.

CCA continues to believe that the most effective approach to achieving the universal service objectives underlying the CAF would be to distribute support on a competitively neutral basis through a single funding mechanism. As CCA has explained previously, that approach would harness market forces to allocate high-cost support in an efficient manner that is responsive to consumer preferences. Instead of placing artificial constraints on the amount of support for which wireless carriers are eligible, such a mechanism would direct funding to whichever providers—wireless or otherwise—can deliver the required service levels to a given geographic area most efficiently.

Nevertheless, CCA recognizes that the Commission has chosen to establish the primary CAF funding mechanism and a Mobility Fund mechanism as distinct programs, awarding funding to incumbent local exchange carriers (“ILECs”) through measures such as a right-of-first-refusal for price cap ILECs under the CAF program, and other exclusive access mechanisms for rate-of-return ILECs. Despite CCA's ongoing concern with the Commission's current

approach to high-cost universal service support, CCA hopes to remain part of a constructive dialogue about changes that at least would limit the extent of preferential treatment for wireline incumbents under the Commission's currently structured programs.

To that end, CCA also urges the Commission to structure and implement Phase II of the Mobility Fund in a manner that recognizes the unique benefits that mobile broadband services provide to consumers and reflects the full extent to which large portions of the country still lack access to such services. In particular, the Commission should increase the funding available to mobile providers through the Mobility Fund to reflect the true state of mobile broadband deployment in the United States—which is far more limited than the Commission assumes in the FNPRM—and the increasingly essential nature of mobile broadband services. In addition, the Commission should allow providers that receive Mobility Fund support to use any technologies and protocols that satisfy the Commission's broadband performance requirements, rather than mandating the use of 4G LTE technology.

The Commission also should ensure that Phase II of the CAF is implemented in a manner that increases efficiency and minimizes competitive distortions—particularly given the FNPRM's acknowledgement that the total Phase II budget will be insufficient to serve all high-cost and extremely high-cost areas.<sup>2</sup> More specifically, the Commission should: (i) make funding available irrespective of the technology platform used by a potential support recipient, provided the Commission's broadband performance requirements are satisfied; (ii) adopt a consistent approach to whether both mobile and fixed providers should be supported in a given area; (iii) define performance requirements in a manner achievable by a wide variety of fixed and

---

<sup>2</sup> FNPRM ¶ 229.

mobile technologies; and (iv) utilize auction mechanics for CAF II that select “winners” based on objective criteria.

Finally, the Commission should ensure that the transition from legacy high-cost support does not impose undue hardship on wireless providers that receive legacy support – hardship that is ultimately borne by the customer. More specifically, the Commission should abandon its proposal to accelerate the phase-down of legacy high-cost support provided to wireless carriers. The Commission also should ensure that the phase-down of legacy support does not resume until after: (i) Phase II of the Mobility Fund is fully implemented and support available under that program has been distributed, and (ii) the Commission has taken concrete action to reform its universal service fund (“USF”) contribution policies—including by expanding the USF contribution base.

**I. THE COMMISSION SHOULD IMPLEMENT PHASE II OF THE MOBILITY FUND IN A MANNER THAT RECOGNIZES BOTH THE UNIQUE BENEFITS OF MOBILE BROADBAND SERVICES AND THE FULL EXTENT TO WHICH LARGE PORTIONS OF THE COUNTRY LACK ACCESS TO SUCH SERVICES**

The FNPRM acknowledges the continuing importance of the Mobility Fund in advancing the “universal availability of ‘mobile networks capable of delivering mobile broadband and voice service in areas where Americans live, work, or travel.’”<sup>3</sup> The FNPRM also notes that Phase I of the Mobility Fund was completed successfully,<sup>4</sup> although demand for available support far exceeded the supply of available funding.<sup>5</sup> In other words, the FNPRM recognizes the Mobility Fund’s value but implies that its effectiveness was limited by budgetary factors.

---

<sup>3</sup> FNPRM ¶ 235 (quoting *USF/ICC Transformation Order* ¶ 53).

<sup>4</sup> *Id.* ¶ 237.

<sup>5</sup> *Id.* ¶ 241.

If anything, this experience suggests the need to *increase* the level of annual support earmarked for Phase II of the Mobility Fund. Yet the FNPRM proposes the opposite, suggesting that the Commission should *decrease* that support.<sup>6</sup> The FNPRM attempts to justify this approach by asserting that “the areas requiring support to preserve and advance mobile services appear to be less extensive than the Commission anticipated in 2011.”<sup>7</sup> But this conclusion is grounded in a flawed analysis that the Commission itself admits is of limited value.<sup>8</sup> In other words, the factual premise underlying the FNPRM’s proposals—namely, that virtually all U.S. households already have access to mobile broadband service—is plainly false. In actuality, significant portions of the United States still lack access to mobile broadband services and the unique benefits it delivers, including areas beyond “households” such as some highways, many rural roads, and numerous logging routes and nature preserves. Implementation of Phase II of the Mobility Fund should reflect as much and ensure “reasonable comparability” between the services available in urban and rural areas, which simply does not exist today.

The FNPRM also proposes to provide Phase II funding only to those mobile providers that adopt the 4G LTE standard. While CCA expects that most carriers will choose to deploy LTE networks, there is no reason for the Commission to dictate this result if alternatives (such as HSPA+) would fulfill the Commission’s performance expectations. Instead, the Commission should afford mobile providers the flexibility to implement their networks in the most efficient and effective manner.

---

<sup>6</sup> *Id.* ¶ 243.

<sup>7</sup> *Id.*

<sup>8</sup> *See id.* ¶ 238 n.436.

**A. The FNPRM Significantly Overstates the Existing Level of Mobile Broadband Penetration**

The FNPRM’s proposal to reduce the funding earmarked for Phase II of the Mobility Fund is premised on a highly flawed analysis that dramatically overstates the level of existing mobile broadband coverage across the United States generally, and in rural areas specifically. While the FNPRM asserts that nearly *99.5 percent* of the U.S. population is covered by some form of mobile broadband technology,<sup>9</sup> even a cursory review reveals that this assertion simply is not supported by any data. Indeed, the Commission itself acknowledges that the coverage information on which the FNPRM relies is of questionable value given the limitations inherent in the underlying methodology.

More specifically, the FNPRM relies on an analysis first presented in the Commission’s *Sixteenth Wireless Competition Report*, which purports to estimate the level of “mobile broadband coverage” in the United States. Critically, however, the *Sixteenth Report* treated mobile services as “broadband” services even in the absence of evidence that those services were capable of satisfying the minimum broadband performance requirements adopted in this proceeding (*i.e.*, 4 Mbps/1 Mbps speeds). In fact, the *Sixteenth Report* explicitly counted networks using “3G” standards and technologies—including but not limited to EVDO, WCDMA, HSPA, and WiMAX networks—that would be *unlikely* to meet those requirements. In short, because “broadband” was defined much more loosely in the *Sixteenth Report*, the coverage estimate presented in that report dramatically overstates the level of service that actually would qualify as “broadband” under the CAF rules.

Moreover, both the *Sixteenth Report* and the FNPRM acknowledge that the data underlying this analysis, and the methodology used to aggregate and evaluate those data, are

---

<sup>9</sup> *Id.* ¶ 238.

questionable given that the Commission’s analysis “likely overstates the coverage experienced by consumers . . . .”<sup>10</sup> Among the specific limitations the Commission identifies are that the underlying methodology: (i) relies on self-reporting and fails to utilize any independent assessment of coverage areas); (ii) does not account for the fact that each wireless service provider uses a different standard for determining “coverage;” and (iii) does not expressly account for factors such as signal strength, bit rate, or in-building coverage.

The *Sixteenth Report* also concedes that its analysis may convey a false sense of consistency in the data across geographic areas and service providers, with the use of a nationwide figure “mask[ing] regional disparities in coverage and creat[ing] an overall picture that does not capture variances across the country.”<sup>11</sup> Specifically, the *Sixteenth Report* makes no attempt to evaluate the extent to which consumers in rural and other high-cost areas of the country (as compared to urban areas) have access to mobile broadband services. Instead, the *Sixteenth Report* provides only a nationwide analysis focused on service to *urban* areas, which cover more than 80 percent of the U.S. population and which large mobile providers continue to target, thereby obscuring the fact that many rural areas lack access to reasonably comparable mobile broadband services. For these reasons, the *Sixteenth Report* explains that the analysis presented therein is appropriately used only to obtain a general baseline and to compare over time its admittedly misleading characterization of nationwide coverage levels —and not for more specific calculations.<sup>12</sup>

In addition, the methodology underlying the *Sixteenth Report* assumes that all households in a given census block are covered if service is available at the centroid of that census block.

---

<sup>10</sup> *Sixteenth Report* ¶ 43.

<sup>11</sup> *Id.* ¶ 42 n.145.

<sup>12</sup> *Id.* ¶ 42.

Yet, based on how mobile services propagate, there is good reason to conclude that this assumption is unreasonable. Notably, preliminary results of an independent study commissioned by CCA indicate that there are significant gaps in population coverage at the county and sub-county levels—particularly in rural areas. For example, in stark contrast with the 99.5 percent urban coverage figure mentioned in the FNPRM, Dr. Raul Katz has determined based on an examination of National Broadband Map data in a sampling of states that rural wireless broadband coverage, and service offerings at download speeds above 3 Mbps in the states sampled often falls below 90 percent. Indeed, wireless coverage in rural counties ranges as low as 76.7 percent of the population in West Virginia and 81.1 percent in North Carolina. Furthermore service coverage at download speeds at or above 3 Mbps ranges as low as 78.6 percent in Kentucky and 86.3 percent in New Hampshire. <sup>13</sup> These findings are consistent with anecdotal examples provided by CCA’s members.

The Commission’s decision to focus on covered *population* also cannot be squared with its recognition, in the *USF/ICC Transformation Order*, that mobile coverage instead should be evaluated on the basis of road miles, as doing so “more directly reflects the Mobility Fund’s goal of extending current generation mobile services . . . .”<sup>14</sup> The FNPRM’s shift in focus is entirely

---

<sup>13</sup> CCA is preparing to submit a detailed coverage analysis, although the requisite study cannot be completed in time to be submitted in this opening comment round. *See* Declaration of Dr. Raul Katz, Telecom Advisory Services, LLC (attached hereto as Exhibit A).

<sup>14</sup> *USF/ICC Transformation Order* ¶ 350. Notably, many industries—including oil extraction, ranching, farming, logging operations, offshore energy exploration, and commercial seafood—operate in sparsely populated areas, yet depend on access to mobile broadband. In addition, recreational areas such as national parks—where people hike, fish, and hunt—deserve coverage, particularly in light of the Commission’s stated public safety goals of enhancing consumers’ access to 911 services. The National Parks Service counted 278,939,216 total recreational visitors to national parks in 2011. *See* Frequently Asked Questions, <http://www.nps.gov/faqs.htm> (last visited Aug. 8, 2014).

unexplained and made more questionable by the fact that the *Sixteenth Report* estimates that *about 10 percent* of U.S. road miles currently are not covered by mobile broadband networks (the true number likely is even higher due to the methodological issues noted above).<sup>15</sup> This about-face, which plainly has the effect of understating the true need for support, cannot be squared with Section 254 of the Act, which requires support to be sufficient and predictable, or the Commission’s own universal service policies implementing the statutory directive.

Even more fundamentally, the FNPRM erroneously examines a question that should not determine the need for high-cost USF funding. The relevant question as Congressionally-directed under the Communications Act is not whether a broad geographic area might have some *de minimis* level of broadband availability (assuming that support for broadband is consistent with the statute), but rather whether consumers throughout a high-cost area have access to high-quality services that are “reasonably comparable to those services available in urban areas.”<sup>16</sup> That is what CCA’s members are working to achieve, and that is what the Commission has identified as its goal for reform. As the Commission proceeds with this rulemaking, it should reorient its efforts toward ensuring reasonably sufficient and predictable support and comparable services, rather than asserting (based on a concededly flawed analysis) that mobile broadband already is sufficiently available.

**B. The FNPRM Also Fails To Account for the Increasingly Essential Nature of Mobile Broadband Services**

Even as the FNPRM *overstates* the level of existing mobile broadband coverage, the FNPRM also ignores the increasingly essential nature of mobile broadband service to consumers.

---

Evaluating covered road miles instead of population helps to ascertain the extent to which these needs are being met.

<sup>15</sup> See *Sixteenth Report* ¶ 48, Table 8.

<sup>16</sup> 47 U.S.C. § 253(b)(3).

Indeed, mobility is even more essential today than it was in 2011, when the Commission adopted the *USF/ICC Transformation Order*. The FNPRM does not adequately account for this trend. Consequently, the FNPRM also fails to recognize the full extent of the public interest benefits that would flow from extending mobile broadband coverage to all Americans and the public interest harms that would result from the failure to do so.

The *USF/ICC Transformation Order* recognized the unique value of mobility to American consumers and announced that the Commission would work to “ensure the universal availability of modern networks capable of delivering mobile broadband and voice service in areas where Americans live, work, or travel.”<sup>17</sup> In establishing a separate Mobility Fund, the Commission also acknowledged that Section 254 of the Act demands “reasonable comparability” between the *mobile* services available in urban and rural areas. For example, the Commission stated that “mobile services provide benefits, consistent with, and in furtherance of the principles of section 254, not offered by fixed services.”<sup>18</sup> The Commission also adopted rules reflecting the need to use CAF support to facilitate the extension of mobile service to rural and other unserved areas even if a fixed service already was available.<sup>19</sup>

The relative funding levels for fixed and mobile services established in the *USF/ICC Transformation Order* were premised on certain assumptions about how consumers would use fixed and mobile broadband services. In particular, the order reflects the assumption that fixed broadband services would remain the dominant means through which consumers access

---

<sup>17</sup> *USF/ICC Transformation Order* ¶ 53.

<sup>18</sup> *Id.*

<sup>19</sup> *USF/ICC Transformation Order* ¶ 339. (explaining that the Commission would not “consider the presence in a census block of voice or broadband services over non-mobile networks in determining which census blocks are unserved” for purposes of the Mobility Fund).

broadband services. But numerous studies confirm that mobile broadband services are becoming increasingly essential to consumers, such that consumers often choose to access the Internet using their mobile devices even where faster fixed alternatives are available. Notably:

- In September, Pew Research published results from its Internet & American Life Project showing that a majority of Americans now use smartphones to access the Internet. More than one-third of Internet users rely on their phones as their principal means of accessing the Internet—and this percentage continues to trend upward.<sup>20</sup>
- In October 2013, Anna-Maria Kovacs published a study finding that mobile services accounted for roughly 60 percent of residential broadband connections as of the end of 2012 and have been responsible for the greatest number of new broadband subscribers since 2005.<sup>21</sup>
- In December 2013, the Centers for Disease Control published results from the National Health Interview Survey showing that, as of the second half of 2012, nearly two in every five U.S. households (38.2 percent) used *only* wireless telephones.<sup>22</sup>
- In June 2014, comScore reported that mobile platforms now account for about 60 percent of the total time that Americans spend using digital media.<sup>23</sup>
- In particular, according to the U.S. Census Bureau smartphone use is significantly reducing the disparities in Internet use traditionally present for race and ethnicity groups.<sup>24</sup>

---

<sup>20</sup> See Maeve Duggan and Aaron Smith, *Cell Internet Use 2013*, PEW RESEARCH INTERNET PROJECT (Sep. 16, 2013), available at <http://www.pewinternet.org/2013/09/16/cell-internet-use-2013/>.

<sup>21</sup> See Anna-Maria Kovacs, *Telecommunications competition: the infrastructure-investment race* (Oct. 8, 2013), available at [http://internetinnovation.org/images/misc\\_content/study-telecommunications-competition-09072013.pdf](http://internetinnovation.org/images/misc_content/study-telecommunications-competition-09072013.pdf).

<sup>22</sup> See Stephen J. Blumberg, et al., *Wireless Substitution: State-level Estimates from the National Health Interview Survey, 2012*, NATIONAL HEALTH STATISTICS REPORTS (No. 70, Dec 18, 2013).

<sup>23</sup> See Andrew Lipsman, *Major Mobile Milestones in May: Apps Now Drive Half of All Time Spent on Digital*, COMSCORE BLOG (June 25, 2014), available at <http://www.comscore.com/Insights/Blog/Major-Mobile-Milestones-in-May-Apps-Now-Drive-Half-of-All-Time-Spent-on-Digital>.

<sup>24</sup> See Thom File, *Computer and Internet Use in the United States: Population Characteristics*, U.S. CENSUS BUREAU (Pub. No. P20-569, May 2013), available at <http://www.census.gov/prod/2013pubs/p20-569.pdf>.

In addition, CCA has commissioned a consumer preference survey that it expects will underscore the value of mobility to end users. Consumers want mobility—and in many cases need it—as mobility may be their only source of Internet access. CCA hopes to provide the results of its consumer survey in its reply comments or soon thereafter.

In addition to these studies, in practical application, mobile broadband is working to improve the lives of Americans. For example, sensors and electronic controls utilizing wireless communications systems have produced a new type of “precision agriculture,” which increases productivity and the effects of which “could have at least as big an impact on agriculture in the next half century as mechanization had in the previous century.”<sup>25</sup> Similarly, tele-health offerings such as videoconferencing and remote monitoring systems have been shown to reduce the length and frequency of hospital visits and potentially reduce mortality rates.<sup>26</sup> As an example, CCA member C Spire has partnered with the University of Mississippi Medical Center, North Sunflower Medical Center, GE Healthcare, and Intel-GE Care Innovations to offer residents living in the heart of the Mississippi Delta with diabetes “more consistent and timely access to clinicians through the use of telehealth technology in their homes.”<sup>27</sup> Further, the

---

<sup>25</sup> Hanns Kuttner, *Broadband for Rural America: Economic Impacts and Economic Opportunities*, HUDSON INSTITUTE 12-14 (Oct. 2012), available at <http://files.eric.ed.gov/fulltext/ED 537579.pdf> (citation omitted); see also *id.* (noting that in addition to these benefits, farmers could take advantage of real-time information on prices in commodities markets and act to hedge against losses with access to better broadband resources).

<sup>26</sup> Daniel Castro, et al., *Unlocking the Potential of Physician-to-Patient Telehealth Services*, INFORMATION TECHNOLOGY & INNOVATION FOUNDATION 4-9 (May 2014), available at <http://www2.itif.org/2014-unlocking-potential-physician-patient-telehealth.pdf>.

<sup>27</sup> Press Release, University of Mississippi Medical Center, New Telehealth Program Assists Diabetes Patients in Delta: Innovative Public-Private Partnership will Expand Access to Quality Care for Patients across Mississippi (Jan. 23, 2014), [http://www.umc.edu/News\\_and\\_Publications/Press\\_Release/2014-01-23-00\\_DIABETES\\_TELEHEALTH\\_NETWORK.aspx](http://www.umc.edu/News_and_Publications/Press_Release/2014-01-23-00_DIABETES_TELEHEALTH_NETWORK.aspx).

Commission’s statutory mandate to adopt rules that advance public safety is jeopardized without adequate funding for mobile broadband. CCA member Commnet, a rural carrier providing coverage to remote areas of Nevada’s rugged, mountainous Seven Troughs Range, was “instrumental” in helping local County police and other public safety officials find a missing family of six.<sup>28</sup> The availability of universal service support can literally mean the difference between whether or not a hiker, skier or nature enthusiast is able to communicate (such as through NG911 capabilities) with emergency responders when trapped or injured in a remote area.<sup>29</sup>

The foregoing examples and the studies highlighted above undermine any assumption that fixed broadband services will remain the dominant means through which consumers access broadband services. Consequently, such studies also raise serious doubts with respect to the existing allocation of funding between fixed and mobile service. Moreover, these studies indicate that the importance of mobile broadband services will become more pronounced over time—such that the public interest harms resulting from the misallocation of funding (overwhelmingly favoring fixed services in a manner that is increasingly at odds with consumer preferences) will continue to grow. For example, mHealth solutions are difficult (if not

---

<sup>28</sup> See Civil Air Patrol: Today’s Features, *CAP Cell Phone Forensics Lead Searchers to 6 Found Alive in Nev.* (Dec. 10, 2013), available at [http://www.capvolunteernow.com/todays-features/?cap\\_cell\\_phone\\_forensics\\_lead\\_searchers\\_to\\_6\\_found\\_alive\\_in\\_nev&show=news&newsID=17800](http://www.capvolunteernow.com/todays-features/?cap_cell_phone_forensics_lead_searchers_to_6_found_alive_in_nev&show=news&newsID=17800).

<sup>29</sup> Compare *id.*, with Shelia Hagar, *Milton-Freewater Woman Survives Harrowing Night After Rolling Truck*, WALLA WALLA UNION-BULLETIN, July 13, 2014, available at <http://union-bulletin.com/news/2014/jul/12/m-f-woman-survives-harrowing-night-after-rolling-t/>; Jeff Martin, *Attack on Georgia’s Silver Comet Trail Raises Security Concerns*, AUGUSTA CHRONICLE, Aug. 3, 2014, available at <http://beta.mirror.augusta.com/news/metro/2014-08-03/attack-georgias-silver-comet-trail-raises-security-concerns?v=1407113286>.

impossible) to provide without mobility, and mHealth is one of the fastest growing industries in America—worthy of rural consumers’ participation.

**C. Given the Actual State of Mobile Broadband Deployment and Increasingly Essential Nature of Mobile Broadband Services, Section 254 of the Act Requires the Commission to Preserve—And Increase—the Level of Support Earmarked for the Mobility Fund**

As noted above, the Commission has acknowledged an obligation to advance the universal availability of *mobile* services that is distinct from any similar obligation with respect to fixed services. Yet millions of Americans still lack access to essential mobile broadband services. This persistent “mobile broadband availability gap” is cause for significant concern; simply stated, the Commission will be unable to achieve its universal service objectives unless this gap is closed—and closed quickly. As an initial matter, CCA continues to believe the most efficient way to distribute high-cost support is through a cost-model rather than a reverse auction. Making matters worse, the FNPRM’s proposal to *reduce* the already limited funding made available to mobile providers is therefore both confounding and disconcerting. Any such reduction would undercut the Commission’s efforts to expand mobile broadband availability in rural and other unserved areas, and would relegate consumers in those areas to second-class citizenship in terms of their access to mobile broadband.

Any such reduction also would be inconsistent with the Commission’s obligations under Section 254(b)(3) of the Act, which requires the Commission to ensure that consumers in rural and other high-cost areas have access to services that are “reasonably comparable to those services provided in urban areas.”<sup>30</sup> Because the Commission has acknowledged the unique benefits of mobile services, and in light of the persistent mobile broadband availability gap and

---

<sup>30</sup> 47 U.S.C. § 254(b)(3). Section 254(b)(5) of the Act further requires the Commission to establish “specific, predictable and sufficient” mechanisms to preserve and advance universal service. 47 U.S.C. § 254(b)(5).

increasingly essential nature of mobile broadband services, Section 254(b)(3) requires that the Commission take affirmative steps to increase or at least preserve the level of universal service support earmarked for mobile providers.<sup>31</sup> Lower levels of funding would fail to achieve the Commission’s goal of bringing mobile broadband service to currently unserved areas. Reduced funding likewise would fail to ensure that rural consumers can obtain the same high-quality broadband services that are available to urban consumers, again in direct contravention of the reasonable comparability principle in Section 254(b)(3).<sup>32</sup>

**D. There Is No Valid Justification for Restricting the Types of Mobile Wireless Technologies that May Be Employed by Mobility Fund Support Recipients**

The FNPRM also proposes to restrict participation in the Mobility Fund to providers that implement 4G LTE networks.<sup>33</sup> The Commission does not offer any justification for this proposal, other than to note that the two largest mobile wireless providers—AT&T and Verizon—have deployed the 4G LTE standard to parts of their networks.<sup>34</sup> While CCA believes that most other wireless providers will follow suit and adopt the 4G LTE standard, there is no

---

<sup>31</sup> The FNPRM suggests that Mobility Fund support should be reduced because mobile broadband coverage is *more* extensive than previously estimated. In other words, the FNPRM advocates a funding level proportionate to the level of coverage. The FNPRM then suggests that ~\$400-\$500 million in annual support would be appropriate to extend mobile broadband to the 0.5 percent of the U.S. population that the *Sixteenth Report* incorrectly estimates to be without service. It follows, by the FNPRM’s own logic, that Mobility Fund support should be increased proportionately to reflect the true state of mobile deployment in the U.S.—*e.g.*, that the Commission should provide closer to \$1.5 billion in annual support if the unserved population were closer to 1.5 percent.

<sup>32</sup> By the same token, failing to provide enough funding to close the mobile broadband availability gap would conflict with the Commission’s responsibility under Section 254(b)(5) to provide “sufficient” support.

<sup>33</sup> FNPRM ¶ 242.

<sup>34</sup> *Id.* ¶ 238.

reason for the Commission to insist on that technology if alternatives (such as HSPA+) would fulfill the Commission's performance expectations.

The Commission cannot accurately predict what technologies will be most efficient or effective in allowing service providers to extend broadband to all areas of the country. Any attempt to confine providers to a certain technology would hobble such efforts, while undermining the Commission's stated commitment to technological neutrality. Indeed, restricting support to 4G LTE networks would disrupt the natural course of technological innovation and amount to precisely the type of "command-and-control" regulation that the Commission appropriately abandoned decades ago. Notably, the Commission has not imposed any prescriptive requirements on wireline support recipients (*e.g.*, the particular mix of fiber and copper facilities they may employ)—for good reason—and there is no reason to treat mobile wireless providers differently.

In short, while CCA understands the Commission's desire to ensure that mobile networks support true "broadband" service to consumers, CCA submits that this objective can be realized through less disruptive means. Instead of issuing heavy-handed dictates with respect to network design, the Commission should simply require support recipients to utilize mobile technologies that ensure that its objective, technologically neutral performance standards can be met.

## **II. THE COMMISSION SHOULD TAKE STEPS TO IMPROVE EFFICIENCY AND MINIMIZE THE DISTORTIVE EFFECTS OF CAF PHASE II FUNDING**

In addition to ensuring sufficient support through the Mobility Fund, the Commission should put Phase II of the CAF program on a more competitively neutral footing. The FNPRM solicits comment with respect to various issues related to the continuing implementation of Phase II of the CAF. Among other things, the Commission seeks public input with respect to: (i) the technologies that support recipients should be able to employ; (ii) the geographic areas that

should be eligible for support; (iii) the evolving performance requirements, if any, that should be imposed on support recipients; and (iv) the criteria that should be used to evaluate the bids submitted in any reverse auction. CCA comments on these issues below.

**A. Phase II Funding Should Be Made Available to Competitive Providers Regardless of the Technology They Use**

The FNPRM asks whether, for purposes of Phase II of the CAF, the Commission “should allow the use of mobile or satellite technology that meets Phase II requirements . . . .”<sup>35</sup> The answer plainly is “yes.” There is no justifiable basis—and no basis at all in the record—for categorically excluding *any* technology that can satisfy the Commission’s broadband performance requirements, which are designed to ensure that consumers have access to services that provide a quality “broadband” experience. Directing support to providers employing various technologies that meet these requirements would allow limited funding to be used more effectively, and ultimately could reduce funding requirements and the contribution costs borne by consumers. Any contrary position would be antithetical to the principles of competitive and technological neutrality that have been the cornerstones of the Commission’s universal service policy for decades. CCA, along with others who represent broadband providers of every size, serving every geographic area in the country and utilizing almost every type of broadband technology, have previously cautioned against prohibiting competitive carriers from vying for high-cost funding based on artificial restrictions.<sup>36</sup>

---

<sup>35</sup> FNPRM ¶ 154.

<sup>36</sup> See, e.g., *Ex Parte* Letter from Ross J. Lieberman, Vice President of Government Affairs, American Cable Association, et al. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 14, 2012).

As the Commission notes, nothing in the *USF/ICC Transformation Order* prohibits the use of mobile technologies by CAF recipients.<sup>37</sup> Thus, any provider whether relying on wireline or wireless technology that meets the relevant performance requirements should be eligible for funding through a reverse auction. Price-cap carriers should not be allowed to game the system where they receive support based on the wireline cost model. In particular, a wireline incumbent would likely realize an unjustified windfall if it ultimately used non-wireline technologies with lower costs than those predicted by the CAF model (which assumes the use of more expensive wireline technologies). Instead, price-cap carriers that use non-wireline technologies at lower cost should have their support levels reduced accordingly from the levels established by the Commission’s wireline cost model. Any other approach would exacerbate the competitive distortions built into the CAF program by denying support to carriers that currently employ wireless technology while allowing ILECs to leverage their right-of-first-refusal only to convert themselves into wireless carriers. If the FCC insists on granting the ILECs a right-of-first-refusal, for the sake of fairness and consistency, perhaps the wireless carriers should receive the same preference with respect to its legacy support. Moreover, providing wireline-model support to carriers using wireless technology would provide ILECs with inflated support at the expense of American consumers.

**B. The Commission Should Be Consistent in Deciding Whether CAF Phase II Funding Should Facilitate Service by Both Fixed and Mobile Providers in a Given Area**

The FNPRM asks whether the definition of “unsubsidized competitor” should be expanded to encompass services relying on mobile wireless and other non-fixed technologies.<sup>38</sup>

---

<sup>37</sup> *Id.* ¶ 153.

<sup>38</sup> *Id.* ¶ 155.

In the *USF/ICC Transformation Order*, the Commission decided to exclude mobile wireless services from the scope of this definition. While the basis for this decision is unclear, the Order generally suggests that the Commission at that time considered fixed and mobile services to be distinct offerings that were not substitutes for Section 254 purposes—even where a particular mobile broadband offering satisfies the Commission’s broadband performance requirements.

If the Commission proceeds with that approach, it should ensure that CAF Phase II support is available to mobile broadband providers that satisfy the Commission’s broadband performance requirements irrespective of whether a given area already is served by a fixed broadband provider—whether subsidized or not.<sup>39</sup> Such an approach would ensure that presently unserved areas have access to both fixed and mobile broadband services, consistent with the Commission’s conclusion that these services are distinct offerings for Section 254 purposes. Any contrary approach would render the Commission’s CAF policies internally inconsistent, and likely arbitrary and capricious.

If the Commission instead decides that CAF Phase II support should *not* be available to mobile broadband providers in areas already served by a fixed broadband provider, it must apply a consistent rationale in addressing support for fixed providers. In particular, such a decision would be supportable only if the Commission determines that mobile and fixed services *are* substitutes. In that case, bedrock principles of logic and administrative law would demand that any mobile broadband provider meeting the Commission’s broadband performance requirements be included in the definition of “unsubsidized competitor” or “qualifying competitor,” thus limiting ILEC support in areas already served by those providers. At bottom, the Commission

---

<sup>39</sup> CCA supports the Commission’s decision to limit the CAF support available to ILECs to those areas without any existing fixed broadband service—“unsupported” or not. Consistent with this view, CCA would oppose any policy that would provide support to ILECs in areas that will receive service through Rural Broadband Experiments.

must treat wireless and wireline providers evenhandedly in determining the extent to which their services are substitutes—if the Commission relies on an ILEC’s existing service offering to deny funding to wireless providers, then so too must existing wireless offerings have a comparable effect on the availability of funding for ILEC services.

**C. The Commission Should Define Any Evolving Performance Criteria in a Manner Achievable by a Wide Variety of Mobile and Fixed Technologies**

CCA does not object to the Commission’s decision to impose performance requirements on providers that receive support from the CAF. However, any such requirements should be competitively and technologically neutral, and should allow the Commission to cast a wide net and consider proposals from any provider that is capable of providing “broadband” service to consumers in rural and other unserved areas. Thus, the Commission should not make distinctions based on whether a potential support recipient is an incumbent or competitor, or the technology employed by such recipient.

Consistent with this view, CCA supports the adoption of performance requirements for Phase II of the CAF that recognize the evolving nature of broadband services. In particular, any gradual increase in the minimum speed requirement should: (i) reflect real-world data regarding the usage patterns and preferences of actual consumers—and not merely the capabilities of a specific class of service provider; and (ii) are implemented over a reasonable time period to ensure that providers can upgrade their networks in a reasonable and efficient manner.

The Commission also should recognize that evolving performance criteria adopted for Phase II of the primary CAF program may be inappropriate in the context of the Mobility Fund. As noted above, the Mobility Fund is premised on the Commission’s determination that mobile broadband services are different in kind from wireline broadband services. It follows that different trade-offs in service attributes may be appropriate in the context of the Mobility Fund

and better advance the Commission’s universal service objectives. For example, a lower speed requirement would make sense in light of the offsetting consumer benefits of mobility. It also would be appropriate to evaluate performance metrics in the mobile context in light of factors such as line of sight, foliage, spectrum propagation, and other realities.

**D. The Commission Should Utilize Auction Mechanics for CAF II that Ensure that “Winners” Are Selected Using Objective Criteria**

The FNPRM proposes to use a competitive bidding process to “first identif[y] those provisionally winning bids that propose service that substantially exceeds the Commission’s service standards . . . .”<sup>40</sup> While it is unclear exactly how this proposal would be implemented, CCA believes that the fairest and most efficient way to administer any reverse auction would be to award funds to the lowest per-unit bids that meet the Commission’s broadband performance standards. This approach would ensure that “winners” are selected on an objective basis and help to safeguard the integrity of the auction process.

Any attempt to identify relevant “service standards” for this purpose would be highly suspect. “Broadband” is a multidimensional concept, and the Commission should avoid crafting rules that define what broadband *is* and thus limit what broadband *can be*. Although the Commission has established broadband performance criteria that incorporate minimum criteria for speed, latency, and usage allowances, these serve a “gatekeeping” function only. In evaluating the overall “quality” of a given broadband offering for comparative purposes, other characteristics may be more salient, and such salience is likely to vary depending on the specific application or user in question. For example, mobility provides significant benefits to consumers and to first responders, as the Commission has recognized, even though those benefits are not reflected in narrow assessments of speed, latency, and usage allowances.

---

<sup>40</sup> FNPRM ¶ 231.

Any attempt to award “extra credit” where a service “substantially exceeds” the Commission’s minimum performance standards for speed, latency, and usage would be subjective and would unreasonably favor some technologies over others. Moreover, any such evaluation would require the Commission to establish subjective weighting criteria or conduct an even more subjective evaluation of the qualitative aspects of a proposal. This would invite the harmful politicization of the bidding process and should be avoided at all costs. It is bad enough that the CAF program embeds significant preferences for ILECs (especially the right-of-first-refusal for price cap carriers and the funding available exclusively to rate-of-return carriers), but would it be far worse for the Commission to skew the auction process further in wireline carriers’ favor in the event they decline to accept model-based funding.

### **III. THE COMMISSION SHOULD ENSURE THAT THE TRANSITION FROM LEGACY SUPPORT TO CAF PHASE II DOES NOT IMPOSE UNDUE HARDSHIP ON RURAL WIRELESS PROVIDERS**

The FNPRM proposes to continue the phase-down of legacy high-cost support initiated in the *USF/ICC Transformation Order*, albeit with certain modifications that purport to reflect recent developments impacting telecommunications markets.<sup>41</sup> The FNPRM proposes to accelerate the elimination of legacy high-cost support for any wireless eligible telecommunications carrier (“ETC”) whose frozen high-cost support amounts to one percent or less of its wireless revenues.<sup>42</sup> The FNPRM presumes that such providers “are not relying on such support to maintain existing service.”<sup>43</sup>

But the FNPRM provides no data whatsoever to validate this presumption, and makes no attempt to explain why a *wireless* ETC (but not any other ETC) should be treated differently

---

<sup>41</sup> See FNPRM ¶ 252.

<sup>42</sup> FNPRM ¶ 253.

<sup>43</sup> *Id.* ¶ 250.

based on the ratio of its support to revenues. At the same time, the FNPRM coincidentally suggests that implementing an accelerated phase-down could endanger the continued availability of mobile broadband services. Notably, the FNPRM proposes *not* to apply the accelerated phase-down to wireless ETCs whose frozen high-cost support amounts to *more* than one percent of wireless revenues because the Commission “lack[s] sufficient data” to formulate a “tailored approach” that would ensure that consumers continue to have such access to such services.<sup>44</sup> But the FNPRM does not present (or even allege the existence of ) such data with respect to wireless ETCs whose support amounts to *less* than one percent of wireless revenues, or otherwise explain why or how the continued ability of *those* wireless ETCs to maintain service in high-cost areas is assured.

Moreover, this approach fails to account for the fact that many wireless carriers (especially smaller carriers serving rural areas) operate on extremely narrow margins. Notably, the accelerated phase-down proposal focuses solely on a wireless ETC’s support as a percentage of total wireless *revenues* and completely ignores *costs* and other operational factors. Where a wireless ETC does not rely on high-cost support for most of its service area—such that its existing support constitutes a relatively small percentage of total wireless revenues—that support nevertheless may be vital to the carrier’s continuing ability to serve the highest-cost segments of its service area.

This approach also fails to appropriately balance the risks and benefits inherent in any acceleration of the phase-down timetable. In the case of most wireless ETCs, an accelerated phase-down would not generate substantial cost savings (as the Commission itself recognizes in

---

<sup>44</sup> FNPRM ¶ 250.

the FNPRM, savings would be “very small”).<sup>45</sup> This accelerated phase-down is particularly suspect when compared to the scheduled phase-down of price-cap carriers’ frozen CAF I support<sup>46</sup>—considering that demand for frozen price cap carrier support exceeded demand for frozen CETC support by over \$300 in 2013.<sup>47</sup> While the Commission’s desire to eliminate any waste is laudable, it would make little sense to rush the Commission’s implementation of the phase-down in pursuit of only modest savings given the significant countervailing risks discussed above. The Commission therefore should abandon its proposal to accelerate the phase-down of legacy high-cost support provided to wireless carriers.

The Commission also should ensure that the phase-down of support does not resume until two critical conditions are met. First, before any further phase-down of support, Phase II of the Mobility Fund should be fully implemented and initial support made available under the program should have been distributed. It would make little sense—and it would risk violating the statutory requirements of sufficient support—to eliminate the legacy support upon which wireless ETCs rely before new “replacement” support has been made available; because doing so would threaten the continued viability of existing wireless networks and risk undermining the successes realized by the Commission universal service policies to date.

Furthermore, no phase-down should be resumed until the Commission has taken action in its ongoing USF contribution reform proceeding.<sup>48</sup> Effective universal service reform demands

---

<sup>45</sup> FNPRM ¶ 253.

<sup>46</sup> *Compare* FNPRM ¶ 250 *with* Order ¶ 52.

<sup>47</sup> Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, 2013 Universal Service Monitoring Report at Table 1.9, *available at* [http://transition.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/Monitor/2013\\_Monitoring\\_Report.pdf](http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/2013_Monitoring_Report.pdf) (“USF Monitoring Report”).

<sup>48</sup> *See generally* WC Docket No. 06-122.

that the Commission address not only the manner in which support is *distributed*, but the manner in which the funds used to provide that support are *collected*. By focusing solely on distribution issues, the Commission risks hamstringing its ability to develop universal service policies that appropriately advance the objectives of Section 254. Indeed, it would put the cart before the horse to focus on revising the key distribution mechanisms prior to completing longstanding efforts to shore up the contribution base and ensure stable and predictable funding for high-cost areas and other universal service needs. The Commission's lack of progress in the contribution reform proceeding appears to be driving the Commission to adopt suboptimal policies on the distribution side, as pressures to mitigate the elevated contribution factor have prompted the imposition of artificial limits on the support available to competitive carriers. Unfortunately, the Commission's proposals are aimed at the wrong target when one considers assessable revenues and high-cost disbursements. According to 2011 calculations and preliminary figures for 2012, total mobile service revenues (and thus the contributions paid based on wireless services) were higher than total local service revenues,<sup>49</sup> yet total high-cost support for ILECs dwarfed that for CETCs in both years (at roughly a 3-to-1 margin).<sup>50</sup> The Commission should act to protect consumers by expanding the USF contribution base, which would: (i) reduce the USF contribution factor and the contribution burden placed on individual consumers, and (ii) yield funds that could be used to provide much-needed support critical to the advancement of the Commission's universal service objectives (*e.g.*, through an expanded Mobility Fund). CCA thus believes that the Commission should make tangible progress in addressing critical contribution-side questions *before* taking any action that could endanger consumers' continued

---

<sup>49</sup> USF Monitoring Report at Table 1.1.

<sup>50</sup> *Id.* Table 2.11.

access to existing mobile wireless networks, and is encouraged by the Commission's recent Order directing the Federal-State Joint Board on Universal Service to provide recommendations for modification to the universal service contribution methodology by April 2015.<sup>51</sup>

### CONCLUSION

For the reasons discussed herein, the Commission should implement Phase II of the CAF and Mobility Fund in a manner consistent with these comments.

Respectfully submitted,

/s/ Rebecca Murphy Thompson

Steven K. Berry

Rebecca Murphy Thompson

C. Sean Spivey

COMPETITIVE CARRIERS ASSOCIATION

805 15th Street, NW, Suite 401

Washington, DC 20005

August 8, 2014

---

<sup>51</sup> Federal State Joint Board on Universal Service *et al.*, WC Docket No. 96-45 *et al.*, *Order*, FCC 14-116 (rel. Aug. 7, 2014).