

**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
)	

REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

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REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (“CCA”) hereby replies to the opening comments submitted in this proceeding in response to the Further Notice of Proposed Rulemaking adopted by the Commission on April 23, 2014 (the “FNPRM”). The record reflects strong support for CCA’s comments stating that: (i) Mobility Fund Phase II should be implemented 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) Connect America Fund (“CAF”) Phase II should be implemented in a manner that increases efficiency and minimizes competitive distortions; and (iii) the transition from legacy high-cost support should not impose undue hardship on wireless providers and their customers.

Accordingly, the Commission should adhere to these principles in devising new roles for the next phase of the CAF and Mobility Fund. By contrast, proposals by incumbent local exchange carriers (“ILECs”) to tilt the playing field even further in their favor would undermine core

universal service principles and the public interest more broadly, and therefore must not be adopted.

INTRODUCTION AND SUMMARY

The record in this proceeding underscores the valuable contributions that mobile wireless services can make in closing the broadband availability gap.¹ As CCA and others have explained, mobile broadband services are increasingly essential to consumers—even though a significant percentage of the U.S. population still lacks access to such services. Therefore, the Commission should refrain from any action that would reduce or reallocate support otherwise available through the Mobility Fund, or reduce or eliminate legacy support before Phase II of the Mobility Fund has been fully implemented.

The record also reflects widespread recognition that competitive neutrality should be restored as a guiding principle to ensure that universal service support extends the benefits of broadband to all consumers in the most efficient manner possible. For this reason, CCA and others have urged the Commission to ensure that Phase II of the CAF is implemented in a manner that promotes consumer preference, cost-effectiveness and minimizes competitive distortions. The Commission should therefore adopt procompetitive policies that do not limit eligibility for support based on the technology used by a given service provider.

Some ILEC interests ask the Commission to forego the benefits of mobile wireless technologies based on the outdated—and unsubstantiated—notion that wireline networks are inherently superior. At the same time, these ILECs seek *additional* preferences with respect to CAF funding and relief from basic obligations necessary to ensure that CAF support actually

¹ See, e.g., C Spire Comments at 7-9; CTIA Comments at 2-3; Deere & Co. Comments at 3-4, 6-7; Rural Wireless Carriers Comments at 5-10.

closes the broadband availability gap as intended. Such policies might serve the interests of those incumbents, but they would harm consumers in rural areas by depriving them of quality broadband service and exacerbate the distortive impact of the significant preferences already conferred on incumbent wireline providers. Accordingly, the Commission should reject such proposals and instead implement Phase II programs in a manner consistent with CCA's opening comments and this reply.

I. THE RECORD REFLECTS THE VALUE OF MOBILE WIRELESS SERVICES AND THE NEED TO PRESERVE AND EXPAND MOBILE WIRELESS NETWORKS

As described in CCA's opening comments, mobile broadband services are becoming increasingly essential to the lives of American consumers. Studies show that mobile broadband services account for the majority of new residential broadband connections, mobile platforms account for the majority of the time Americans spend using digital media, and a substantial percentage of Americans use *only* mobile wireless devices for their broadband needs.² New studies continue to confirm these results.

Importantly, most wireless-only households are not found in major metropolitan areas, but rather in less-densely populated states. According to the Pew Research Center and the CDC, “[I]argely rural states in the West and South are the highest shares of [] ‘wireless-primary’ households, while the lowest wireless-primary shares are clustered in the Northeast.”³ The same

² CCA Comments at 11. *See also, e.g.*, Wall St. J., Map: A Changing Telecom Landscape, (May 6, 2013), available at <http://online.wsj.com/news/interactive/TELECOMFinal050613/?mod=e2tw#?ref=SB10001424052702303789004580074103641398726> (noting, among other things, the numbers of landline and wireless subscriber lines reported by some of the largest carriers).

³ Drew Desilver, *For Most Wireless-Only Households, Look South and West*, PEWRESEARCHCENTER (Dec. 23, 2013), available at <http://www.pewresearch.org/fact-tank/2013/12/23/for-most-wireless-only-households-look-south-and-west/>.

report notes that “[t]he wireless-only lifestyle is especially predominant among the poor and the young.”⁴ Mobile broadband has also been described as “a convenient and attractive alternative for those who do not have access to in-home broadband,” such as African-Americans and Latinos.⁵ More broadly, Bank of America recently published survey results confirming that for many Americans, “mobile phones are the cornerstone for communication—and increasingly—for transactions.”⁶ Indeed, survey respondents ranked mobile phones as more important to their lives than personal computers or televisions, and about half of respondents indicated that they could not last more than one day without access to their smartphones.⁷

Recent accounts also continue to prove what CCA has known for years: that mobile broadband is spurring growth opportunities across a wide-range of sectors of the U.S. economy. As Deere & Company explained in its comments in this proceeding, mobile broadband is the only way of deploying innovative farming techniques in the field.⁸ Smart farming is improving the lives of farmers and ranchers and increasing productivity in food production.⁹ However, there are significant gaps in cell coverage in rural areas where farm machines operate, which

⁴ *Id.*

⁵ MINORITY MEDIA & TELECOM COUNCIL, UNIVERSAL BROADBAND ADOPTION: HOW TO GET THERE, AND WHY AMERICA NEEDS IT 14 (2011).

⁶ *See* Bank of America, *Trends in Consumer Mobility Report* (June 30, 2014), at 1 (attached hereto as Exhibit “A”).

⁷ *Id.* at 5. Moreover, respondents aged 18-24 “view their mobile phone as most important to their daily lives (96%)—even more than the Internet (88%), deodorant (90%) and their toothbrush (93%).” *Id.*

⁸ *See* Deere & Company Comments at 7; *see also id.* at 6 (“For many rural areas, including farm-intensive areas with significant tracts of cropland, *wireless service will be the superior technology choice* to achieve cost-effective coverage.”) (emphasis supplied).

⁹ *See generally id.*

must be met through expanded mobile broadband deployment.¹⁰ Deere & Company’s comments are particularly illuminating in that they explain how farming has transformed as a result of technology, “turn[ing] on the grower’s ability to gather, process and transmit data using advanced information and communications technologies.”¹¹ The promise of a new generation of American agriculture cannot and should not be capped at the knees as a result of inequities in high-cost mobile broadband deployment funding.

Similar examples of mobility’s impact on the American economy abound. Mobile health applications are also being deployed to improve disease-related outcomes, and the U.S. Department of Health and Human Services has acknowledged that harnessing the power of a smartphone “is an important step toward the goal of providing better patient engagement and more mobile healthcare in the U.S.”¹² In schools, 73% of middle school and high school teachers use cellphones for classroom activities.¹³ In fact, more than 750 million educational apps for mobile devices will be installed worldwide this year—with 70% of teenagers age 13-17 using smartphones.¹⁴ For example, a middle school in Hattiesburg, Mississippi recently launched a new program that provides students and teachers with laptop computers in the

¹⁰ *Id.* at 3, 7.

¹¹ *Id.* at 3.

¹² Pedro Hernandez, *Microsoft, TracFone Team on Mobile Health Services*, EWEEK (Aug. 21, 2014), available at <http://www.eweek.com/mobile/microsoft-tracfone-team-on-mobile-health-services.html> (quoting Lee Stevens, Program Manager, U.S. Dept. of Health & Human Servs.).

¹³ See MOBILE FUTURE, EDTECH + MOBILE = LEARNING (Sept. 2, 2014), <http://mobilefuture.org/resources/edtech-mobile-learning/>.

¹⁴ John Doerr, Opinion, *Smart Phones of Smart Kids*, WALL ST. J., Aug. 21, 2014, available at <http://online.wsj.com/articles/john-doerr-smart-phones-for-smart-kids-1408664277>.

classroom and wireless high-speed Internet connections to support digital e-learning.¹⁵ This capability is made possible by CCA member C Spire's installed wireless solution which features 81 devices, 78 access points and three switches, providing super-fast and secure wireless internet coverage in every corner of the middle school campus.¹⁶ And because C Spire offers wireless connectivity throughout Hattiesburg, these middle-school students will have educational access at school, at home, at the library, and anywhere else they go. In the online retail sector, shoppers are trending towards more mobile phone and tablet shopping than traditional computer shopping.¹⁷ Even the way we access news and other media is impacted by mobile, as Americans consume more digital media today through mobile applications than they do via desktop usage or mobile web surfing.¹⁸

In light of this overwhelming consumer demand and the significant coverage gaps that remain (as discussed further below), CCA urged the Commission to increase current funding levels available to mobile broadband providers. The record reflects strong support for this approach, and correspondingly strong opposition to any proposal to reduce or reallocate the

¹⁵ Hattiesburg Middle School Pilots C Spire WiFi and Fiber Internet, <http://cspire.tumblr.com/post/95316134748/hattiesburg-middle-school-pilots-c-spire-wifi-and-fiber> (Aug. 20, 2014).

¹⁶ *Id.*

¹⁷ Posting of Tobias Lutke to Ecommerce Marketing Blog (Mobile Now Accounts for 50.3% of All Ecommerce Traffic), <http://www.shopify.com/blog> (Aug. 26, 2014) (finding that, based on data from over 100,000 ecommerce stores, 50.3% of traffic comes from mobile devices and 49.7% from computers).

¹⁸ Sarah Perez, *Majority of Digital Media Consumption now Takes Place in Mobile Apps*, TECHCRUNCH (Aug. 21, 2014), available at <http://techcrunch.com/2014/08/21/majority-of-digital-media-consumption-now-takes-place-in-mobile-apps/?ncid=twittersocialshare>.

support that otherwise would be made available through the Mobility Fund.¹⁹ Even parties that champion wireline technologies, such as GVNW Consulting, acknowledge that “the broadband future for our country must sustain both wireless mobility AND a strong foundation of a fiber backbone network.”²⁰ Unfortunately, the record clearly establishes that mobile broadband service remains unavailable in much of the country—notwithstanding assertions made in the FNPRM. As CCA demonstrated in its opening comments, and as other commenters agree,²¹ a series of methodological deficiencies individually and collectively call into serious question the data underlying the FNPRM’s coverage assertions. For example, a recent report has demonstrated that right outside of D.C., in nearby Loudon County, Virginia, only one quarter of the western portion of the county is covered by even one wireless carrier.²² Noting that these gaps are “both a public safety and an economic development issue,” a recent study has reported that it would take between 14 and 28 new cell towers to fill these coverage caps, “at a cost of up to \$10 million for the towers alone, not including the fiber and wireless infrastructure, RF equipment and power.”²³

¹⁹ See, e.g., Blooston Rural Carriers Comments at 5-8; C Spire Comments at 6-9; CTIA – The Wireless Association® Comments at 5-6; Rural Wireless Association Comments at 4-5; Rural Wireless Carriers Comments at 5-10.

²⁰ GVNW Consulting Comments at 7.

²¹ Rural Wireless Carriers Comments at 11-15.

²² Michael Neibauer, *Where the Wireless Isn't: Western Loudon's Coverage Gaps Detailed, and What to do About Them*, WASHINGTON BUS. J. (Sept. 3, 2014), available at <http://www.bizjournals.com/washington/blog/2014/09/where-the-wireless-isnt-western-loudouns-coverage.html?ana=wtop>.

²³ *Id.*

Beyond the anecdotal examples introduced into the record to date, independent research commissioned by CCA, while not yet complete,²⁴ confirms that a valid methodological approach leads to very different results. As CCA noted in its initial comments, rural wireless broadband coverage, and service offerings at download speeds above 3 Mbps in many states often falls below 90 percent.²⁵ And as the Commission has previously recognized, there is a critical difference between *coverage* and *the actual provision* of wireless service: “A provider’s having network coverage in an area does not mean that a provider actually offers its service to residents in all of that area.”²⁶ Chairman Wheeler recently reaffirmed that the Commission “must encourage[] the development of new technologies that can bring greater competition and more choices to consumers,” including wireless.²⁷ Reducing the amount of high-cost support available for wireless network builds in rural areas would have the opposite effect.

Furthermore, many mobile broadband networks in high-cost areas were constructed and have been maintained with universal service support. Reducing universal service support for wireless services will force carriers to strand facility investments and thereby leave rural

²⁴ *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Order, DA 14-1276 (rel. Sept. 3, 2014).

²⁵ See CCA Comments at 8. In a similar vein, the Government Accountability Office has found that “while FCC collects and reports a range of data and information on high-cost program funding, GAO identified gaps in FCC’s data analysis and reporting that limit FCC’s ability to evaluate the program, demonstrate its effectiveness, and help ensure that the data collected will inform current and future reforms.” GAO Highlights, *FCC Should Improve the Accountability and Transparency of High-Cost Program Funding*, GAO-14-587 (July 22, 2014).

²⁶ *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, 3744 ¶ 43 (2013).

²⁷ See Tom Wheeler, Chairman, FCC, *The Facts and Future of Broadband Competition* at 5 (Sept. 4, 2014) (“*Future of Broadband Remarks*”).

consumers without a wireless choice. Most wireless carriers do not receive state universal service support or guaranteed ratepayer payments. Absent federal support, consumers will remain unserved. Commissioner Clyburn said it best: “continuing the phase down could put consumers at risk of losing mobile service, which is in tension with the directive in the statute for the Commission to set policies based on the ‘preservation and advancement, of universal service.’”²⁸

The record confirms the serious harms that would result from accelerating the reduction of legacy support received by existing mobile wireless networks.²⁹ Such premature reductions would jeopardize the ability of rural consumers to continue receiving critical mobile services. For instance, CCA is aware of at least one recent example of an area that will go wholly unserved as a direct result of reductions of high-cost funding for mobile services.³⁰

Notably, no commenting party endorses the proposal to accelerate the elimination of legacy high-cost support. In contrast, several commenters strongly oppose that proposal. For

²⁸ *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd. 7051, 7248 (2014) (Statement of Commissioner Mignon L. Clyburn).

²⁹ See AT&T Comments at 35-38; C Spire Comments at 3-5; CTIA Comments at 7; Rural Wireless Association Comments at 2-4; Rural Wireless Carriers Comments at 44.

³⁰ See John King, *CellularOne Leaving Montana, Customers to Lose Service August 31*, KGVO.com (Aug. 12, 2012), available at <http://newstalkkgvo.com/cellularone-leaving-montana-customers-to-lose-service-august-31/> (reporting the Montana Public Service Commission’s assessment that MTPCS’s (d/b/a CellularOne) withdrawal from Montana is a result of the reduction in high-cost support “‘to provide service in areas that were probably uneconomic otherwise’”). The Ruby Valley area, which serviced approximately 1,800 customers according to reports, will not be served by either Verizon or AT&T after the transaction. See Abigail Dennis, *Cellular One Customers Must Find New Cell Phone Service*, The Madisonian (June 26, 2014), available at <http://www.madisoniannews.com/cellular-one-customers-must-find-new-cell-phone-service/>.

example, AT&T echoes many of the concerns raised by CCA in its comments and notes that the Commission fails to explain or justify several key aspects of its proposal, rendering it arbitrary and capricious.³¹ Similarly, C Spire notes that it would be unwise to establish a percentage threshold for accelerating the reduction of legacy funding and thus “disrupt the support that competitive ETCs depend on for building wireless infrastructure and providing ongoing service to rural communities.”³²

Relatedly, several parties caution against any policy that would reduce legacy support before “replacement” support is available under the Mobility Fund and other mechanisms. These parties agree that the timing of any reduction in legacy support should be tied to the *distribution* of Phase II funds, as opposed to the mere *adoption* of rules in response to the FNPRM. As the Rural Wireless Carriers note, “there could be considerable lag-time between the adoption of rules and the actual authorization of ongoing Phase II support.”³³ Wireless networks would be endangered if sufficient funding were not available during this “gap” period; and at a minimum this scheme breeds a substantial amount of uncertainty. For this reason, CCA agrees that “[e]liminating wireless frozen support on a flash-cut basis by the end of 2014 or on the effective date of the rule (whichever is later) is inappropriate for any provider, regardless of how much or how little frozen support it receives.”³⁴ In any event, the Commission should maintain support at

³¹ AT&T Comments at 38.

³² C Spire Comments at 4.

³³ Rural Wireless Carriers Comments at 44.

³⁴ AT&T Comments at 36. *See also* C Spire Comments at 3 (“It is essential that the Commission maintain ongoing support at the current frozen levels so that carriers can maintain service to their customers during the transition to whatever Mobility Fund Phase II support mechanism the Commission adopts.”); Rural Wireless Association Comments at 3-4 (“Phase II can hardly be considered to be ‘operational’ or ‘implemented’ simply

the current funding levels until it has enacted real USF contribution reform. As did CCA, several commenters have pointed out the imbalance between wireless subscribers' contributions to universal service as compared to the level of funding received for wireless buildout—adding insult to injury.³⁵

Accordingly, the Commission should reject any proposal that would reduce or reallocate Mobility Fund Phase II support or accelerate the transition from legacy support mechanisms before sufficient alternative mechanisms are implemented.

II. THE COMMISSION SHOULD HEED THE MANY COMMENTS THAT SUPPORT AN INCLUSIVE AND PRO-COMPETITIVE APPROACH TO PHASE II OF THE CAF AND MOBILITY FUND

Broad participation in the CAF would increase efficiency and minimize the distortive effects of Phase II funding.³⁶ CCA therefore agrees with the many commenting parties that recognize that Phase II programs will be best served by policies that are competitively and technologically neutral. As CTIA observes, “[t]he Commission can help guarantee the success of CAF Phase II by making the competitive bidding process competitively and technologically neutral and encouraging participation by a wide range of providers.”³⁷

In light of the demonstrated need for wireless broadband, CCA urges the Commission to proceed with caution in order to avoid imposing requirements for speeds, latency, and usage allowances that would change the meaning of “broadband” to “wired broadband.” Wireless broadband offers unique advantages by permitting public safety, students and doctors to access

because winning bidders or initial authorizations have been announced and nothing yet disbursed.”).

³⁵ See C Spire Comments at 8-9; Rural Wireless Carriers Comments at 31-32.

³⁶ See CCA Comments at 17-18.

³⁷ CTIA Comments at 2. See also, e.g., DISH Network L.L.C. and Hughes Network Systems, LLC Comments at 3; National Cable & Telecommunications Association Comments at 9.

mobile applications on highway shoulders at accident sites, on the Great Lakes and the Gulf of Mexico, in agricultural and energy fields, on college campuses, forests, and anywhere, anytime. To the extent the Commission recognizes the importance of mobility, it must establish Phase II performance standards that all technologies can achieve. If the Commission strengthens its performance standards, it must avoid service quality that deteriorates as soon as a consumer leaves a static indoors location. Fortunately, a wireless signal covers an infinite number of outdoor locations in any given area that it serves. The fact that mobile service can provide life-saving connections in almost any environment represents a significant advantage over the few static connections offered by wired broadband. Accordingly, CCA urges the Commission to adopt performance standards that will permit wireless carriers to participate.

But some parties give lip service to the principle of competitive neutrality while simultaneously advocating policies that discriminate explicitly on the basis of technology. For example, while UTC purports to support a “technology neutral approach” to the CAF, UTC proceeds to suggest that the Commission award support to wireline technologies on a preferential basis—a policy that is anything *but* competitively neutral.³⁸ Similarly, WISPA urges the Commission to deny support to mobile wireless technologies “even if [they] can meet the CAF public interest requirements”³⁹

These parties rely on vague assertions that mobile technologies are not “functionally equivalent” to fixed technologies and somehow do not serve consumers as well. As an initial

³⁸ Utilities Telecom Council Comments at 15. UTC’s suggestion that it would be “unfortunate” if CAF support flowed to mobile wireless providers and thus limited the availability of wireline service in rural areas is the epitome of technological protectionism and betrays UTC’s elevation of the interests of wireline providers above those of consumers.

³⁹ Wireless Internet Service Providers Association Comments at 7.

matter, such claims are contradicted by actual studies of consumer behavior and preferences—including the studies referenced above and cited in CCA’s opening comments. Simply stated, consumers increasingly rely on mobile technologies and, in many cases, choose mobile broadband solutions over fixed alternatives.⁴⁰ Thus, if anything it would be more accurate to say the fixed technologies are not functionally equivalent to *mobile* technologies, insofar as fixed technologies cannot offer consumers the mobility they crave and need to access the latest technology and services.

In any event, mobile technologies that satisfy the Commission’s objective broadband performance requirements are “functionally equivalent”—if not superior—in every way that matters. As the Rural Associations observe, the *USF/ICC Transformation Order* and related orders “defined the minimum level of service quality standards and pricing requirements expected of CAF Phase II recipients to ensure ‘reasonable comparability’ in a broadband world.”⁴¹ Consequently, any service that satisfies the Commission’s broadband performance requirements also satisfies the “reasonable comparability” standard of Section 254(b)(3)—and, to the extent the Commission wishes to deliver “reasonably comparable” service to rural and high-cost areas in the most efficient manner possible, should be evaluated alongside other options through a mechanism the Commission adopts to allocate support on a competitive basis. As Chairman Wheeler has noted, “the universal service program is one of the most important tools at our disposal to ensure that consumers and businesses in rural America have the same

⁴⁰ See, e.g., Anton Troianovski, *Cord-Cutters Lop Off Internet Service More Than TV*, WALL ST. J. (May 29, 2013), available at <http://online.wsj.com/news/articles/SB20001424127887324682204578513262440196772> (reporting that 1% of U.S. households stopped paying for home Internet subscriptions and relied on wireless access alone in 2014, more than the 0.4% of households that cancelled their pay-TV subscriptions).

⁴¹ Rural Associations Comments at 34.

opportunities as their urban and suburban counterparts to be active participants in the United States of the 21st century.”⁴²

Notably, any effort to exclude mobile wireless providers also would severely undercut the benefits of any competitive funding process since wireless technologies will be the most efficient means of serving consumers in many areas of the country. Moreover, in many parts of rural America, excluding mobile wireless providers would limit eligibility to a single provider—the ILEC. This would be contrary to the Chairman’s recognition that competition and investment “not only [] coexist, but . . . drive each other to produce both profit and progress.”⁴³ For these and other reasons, the Commission should not exclude *any* provider on an *a priori* basis,⁴⁴ without affording that provider an opportunity to demonstrate that it can satisfy applicable criteria.⁴⁵

For similar reasons, the Commission should ensure that funding proposals (whether submitted as competitive bids or through some other mechanism) are evaluated in a matter that

⁴² See Letter from Tom Wheeler, Chairman, FCC to The Hon. Lindsey O. Graham (Aug. 11, 2014).

⁴³ *Future of Broadband* Remarks at 4.

⁴⁴ While CCA would support the use of technologically neutral “gating criteria” similar to those used in Phase I of the Mobility Fund (*e.g.*, colocation and roaming requirements), CCA does not endorse proposals that would arbitrarily limit eligibility based on size, without taking into account considerations such as market power. See, *e.g.*, Rural Wireless Association Comments at 5-6 (proposing to limit eligibility to non-Tier 1 providers).

⁴⁵ There is no basis for Windstream’s suggestion that wireless performance cannot be adequately tested and verified. Windstream Comments at 8. Mobile wireless providers, like landline carriers, submit technical reports that can be reviewed and approved by Commission engineers. Through the Mobility Phase I compliance process, mobile wireless providers are conducting drive tests and generating coverage maps. These typical (although labor-intensive) mechanisms are hardly unverifiable; wireless carriers have used them for years. Carriers rely upon test procedures including propagation modeling and drive testing to design and test their networks to verify performance and certify compliance with certain standards.

avoids *de facto* exclusions of wireless competitors. In particular, the Commission should not grant “extra credit” to wireline technologies, as some parties suggest,⁴⁶ nor should the Commission fund wireline technologies on a priority basis. As Commissioner O’Rielly recently noted, as it reforms its universal service programs the Commission “should assess both individual and additive impact of its actions on the competitive environment.”⁴⁷ These competitive- and technology-partial policies would undermine the efficiency of the CAF and place the interests of ILECs above consumers and competition.

The Commission also should not grant “extra credit” based on whether a given aspect of a carrier’s services “substantially exceeds” the Commission’s broadband performance requirements. As CCA noted in its opening comments, any attempt to identify relevant standards for this purpose would be highly subjective and would doubtlessly favor some technologies over others. Tellingly, the Midwest Energy Cooperative (which supports the “extra credit” approach) concedes that it “is not sure what should qualify as substantially higher service”⁴⁸ Moreover, evaluating and comparing the performance specifications of different services would require the Commission to establish subjective grading criteria or conduct an even more subjective evaluation of the qualitative aspects of a proposal—all of which would invite the

⁴⁶ See, e.g., UTC Comments at 26.

⁴⁷ Commissioner Michael O’Rielly, *Alaska: Lessons Learned*, Official FCC Blog (Sept.5, 2014).

⁴⁸ Midwest Energy Cooperative Comments at 15. Likewise, the Commission should not grant extra “points” based on whether a provider is consistent with “community preferences,” which would be difficult to gauge and might favor ILECs. See UTC Comments at 26.

harmful politicization of the funding process. Notably, the Commission rejected such an approach in the context of its rural broadband experiments.⁴⁹

The record substantiates these concerns and demonstrates how wireline interests could attempt to use any such process to favor wireline technologies. For example, NRECA asks the Commission to award preferences to proposals that would offer higher speeds and to consider “cost effectiveness”—defined as the ratio of speed offered to requested support—in evaluating funding proposals.⁵⁰ But while many mobile wireless networks will be able to satisfy the Commission’s broadband performance requirements—including the contemplated speed requirements, if phased in appropriately—they are not necessarily engineered to maximize speed. Rather, mobile networks typically realize somewhat lower levels of throughput than fixed networks but provide many offsetting benefits—including, most obviously, mobility. As a result, NRECA’s proposal would place mobile providers at an immediate disadvantage. NRECA fails to explain why speed should be elevated above all other criteria in this fashion—particularly in light of recent trends indicating that consumers value mobility more than higher speeds once a minimum threshold has been surpassed.⁵¹ Nor does NRECA explain why a wireline provider should be entitled to shield itself from competition by providing consumers with speeds well in

⁴⁹ See *Connect America Fund, et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98 at ¶ 34 (rel. July 14, 2014) (determining that comparing bids based on various broadband speeds would increase the complexity of the process).

⁵⁰ NRECA Comments at 16-17.

⁵¹ CCA would also draw to the Commission’s attention recent data showing that, within the context of mobile services, consumers value *price* of service over *speed* of service. Specifically, an annual survey by Vasona Networks found that while 32% of respondents list mobile Internet performance as most important in choosing a mobile provider, 56% list the price of a service plan as most important. Press Release, Vasona Networks, Surge in Smartphone Users Demanding Flawless Mobile Broadband Service (Aug. 28, 2014), available at <http://www.vasonanetworks.com/#/news>.

excess of those necessary to satisfy the “reasonable comparability” standard of Section 254(b)(3).

CCA thus agrees with USTelecom that “[a] complex bidding process that weighs multiple criteria will not efficiently result in widespread broadband deployment within the high-cost program budget the Commission has set.”⁵² Instead, the Commission should establish objective criteria for participation and then rely on cost considerations to select funding recipients.

III. THE COMMISSION SHOULD REJECT PROPOSALS THAT WOULD EXACERBATE EXISTING COMPETITIVE IMBALANCES BY GRANTING ADDITIONAL PREFERENCES TO INCUMBENTS

CCA’s opening comments reiterate its deeply held view that the existing CAF program—including the Commission’s decision to confer various preferences on ILECs, such as the “the right-of-first-refusal” enjoyed by price cap ILECs—is fundamentally flawed.⁵³ Even so, those comments express CCA’s desire to remain part of a constructive dialogue about changes that would help to keep the CAF as efficient as possible. Toward this end, CCA stands ready to engage with the Commission and other interested stakeholders.

But the record suggests that ILEC interests have chosen to take the opposite approach by proposing changes in the CAF framework that would grant them *additional* preferences simply because they are ILECs. At the same time, these parties propose that the Commission free ILECs of the performance obligations imposed on ILECs as *quid pro quo* for the preferences they already enjoy within the CAF framework—including, in particular, the obligation to extend broadband service to all households in their service areas. Ironically, wireless USF recipients

⁵² USTelecom Comments at 31.

⁵³ CCA Comments at 2.

also are required to meet performance obligations including to respond to any reasonable request for service. Nevertheless, the ILECs now demand the proverbial mile—at the expense of cost savings that ultimately benefit the American consumer. If implemented, these proposals would eliminate any basis for awarding preferences to ILECs in the first place, and would harm consumers and exacerbate the competitive imbalances created by the existing rules. Accordingly, the Commission should reject them.

A. The Commission Should Reject Proposals That Would Allow Price Cap ILECs To Serve Less Than 100 Percent of Their Service Areas While Still Claiming Preferential Access to CAF Phase II Support

Several ILECs ask the Commission to allow price cap carriers that accept CAF support on a preferential basis to serve less than 100 percent of the unserved area in question. For example, CenturyLink and Windstream both suggest that price cap ILECs should be required to serve only 90 percent of the total number of eligible locations in the relevant service area.⁵⁴ And USTelecom proposes that ILECs be allowed to substitute unserved locations within unfunded census blocks for locations within supported service areas—which would leave those locations unserved.⁵⁵ These proposals are wholly inconsistent with the framework adopted by the Commission in the *USF/ICC Transformation Order* and are independently flawed, and thus should be rejected.

In that Order, the Commission recognized that granting funding preferences to price cap ILECs, including but not limited to the “right-of-first-refusal” they enjoy, would be inconsistent with the traditional understanding of competitive neutrality.⁵⁶ Nevertheless, the Commission concluded that this approach would best “speed the deployment of broadband to *all* Americans

⁵⁴ CenturyLink Comments at 17; Windstream Comments at 5.

⁵⁵ See USTelecom Comments at 15-16.

⁵⁶ See *ICC/USF Transformation Order* ¶ 178.

over the next several years, while minimizing the burden on the Universal Service Fund.”⁵⁷ The Commission also observed that ILECs “generally continue to have carrier of last resort obligations for voice services”—reinforcing the expectation that supported service would be extended to all households that requested it.

Allowing ILECs to serve less than 100 percent of the relevant “unserved” area thus would undercut the Commission’s asserted rationale for funding them on a preferential basis.⁵⁸ Perhaps more importantly, and for obvious reasons, allowing ILECs to serve less than 100 percent of the relevant unserved area would leave a significant number of households without service, and thus fail to close the broadband availability gap. ILEC interests suggest that this result is acceptable because it would cost too much to implement a network that could serve those remaining households. For example, Windstream claims that allowing ILECs to serve less than 100 percent of their service areas would “encourage[] efficient network design and thus maximize[] the ‘bang for the buck’ of CAF Phase II dollars.”⁵⁹ But this assertion ignores the most critical component of “efficiency” in the context of Section 254(b)(3)—actually providing “reasonably comparable” service to all rural high-cost areas, consistent with the purpose of universal service policies and programs.

Furthermore, allowing price cap carriers to serve less than 100 percent of the relevant service area would encourage cream-skimming—a problem the Commission has acknowledged

⁵⁷ *Id.* at ¶ 174 (emphasis supplied).

⁵⁸ *See also* 47 C.F.R. § 54.201(d) (requiring service providers designated as ETCs to provide all supported services—including broadband—“throughout the service area for which the designation is received”). It would be perverse to apply this requirement to competitive ETCs but not ILECs.

⁵⁹ Windstream Comments at 5.

in the universal service context for decades.⁶⁰ As the Rural Independent Carriers Association notes, this approach “would be a license [for price cap ILECs] to cherry pick their service areas to serve only the lower cost, higher density areas, contrary to the very objectives of the program.”⁶¹ Notably, the Commission has adopted specific policies to combat cream-skimming in the context of legacy high-cost programs. And in the *USF/ICC Transformation Order* the Commission explicitly found that “[r]equiring carriers to accept or decline a commitment for all eligible locations in their service territory in a state should reduce the chances that eligible locations that may be less economically attractive to serve, even with CAF support, get bypassed, and increase the chance such areas get served along with eligible locations that are more economically attractive.”⁶² There is no reason to reverse course now by acceding to ILEC proposals to *facilitate* cream-skimming.

For similar reasons, the Commission should not maintain a nominal 100-percent coverage requirement but excuse failures to satisfy that requirement by subjecting ILECs to only a modest reduction in support. While USTelecom suggests that the Commission reduce support by a percentage “equal to the percent of locations served below 100 percent,”⁶³ this would leave price cap ILECs with a significant windfall since a small number of households typically account for a disproportionate share of funds provided under the CAF cost model. As a result, the approach

⁶⁰ See, e.g., *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, at ¶¶ 172-74 (1996).

⁶¹ RICA Comments at 3.

⁶² *USF/ICC Transformation Order* ¶ 173.

⁶³ USTelecom Comments at 14.

advocated by USTelecom would incent price cap ILECs *not* to serve the highest-cost areas of the country, contrary to the Section 254(b)(3) of the Act—which demands the opposite result.⁶⁴

Critically, nothing in the Commission’s rules compels ILECs to provide broadband service to all census blocks within their study areas if doing so would be *inefficient*. Rather, the CAF framework permits an ILEC to decline to exercise the “right-of-first-refusal” where it determines that it cannot serve all households in its study area efficiently based on its own cost-benefit analysis. The Commission fully expected that ILECs would decline support where they could not satisfy applicable public interest requirements efficiently so that support could then be reallocated through a competitive process.⁶⁵ Notably, the Commission has allowed any ILEC that declines to make a “state-wide commitment” to seek support in more limited geographic areas through that competitive process.

In short, ILECs should be compelled to consider the full costs of extending broadband service to *all* households in a given area *before* making such a “state-level commitment” and accepting support on a preferential basis. And where an ILEC determines that it cannot economically serve the *entire* area, it should decline the preferential funding—particularly as competitive wireless providers stand ready to step in and provide service on a more efficient basis.

B. The Commission Should Reject Proposals That Would Extend the Period of Exclusive ILEC Support to Ten Years

ILEC interests also ask the Commission to extend the period of support provided by ILECs that exercise their “right-of-first-refusal” from five years to ten years. These parties

⁶⁴ See American Cable Association Comments at 10 (noting that “price cap LECs would have an incentive to ‘opt out’ of serving the highest cost locations and receive a windfall”).

⁶⁵ *Id.*

further suggest that such an extension should be granted as *quid pro quo* for the Commission’s proposal to increase its broadband speed requirement from 4 Mbps to 10 Mbps. For example, Windstream notes that it would not oppose increasing the speed requirement to 10 Mbps “as long as the Commission concomitantly increases the support term and build-out period for the statewide commitment to 10 years.”⁶⁶ The Commission should refuse to grant any such extension, regardless of whether the broadband speed requirement is increased.

As noted above, in deciding to offer CAF support to ILECs on a preferential basis, the Commission assumed that ILECs would be in the best position to extend broadband availability to *all* Americans on an expedited basis. The Commission based its further determination that price cap ILECs should enjoy exclusive support for a fixed period of five years—representing a further departure from the strict principle of competitive neutrality—on two key considerations, both of which would be undercut by an extension of funding to a 10-year period.

First, the Commission emphasized the “limited” and “one-time” nature of the five-year support period, and promised that after that period the CAF would transition quickly to a more competitive process “in which all eligible providers will have an equal opportunity to compete.”⁶⁷ ILEC proposals to *double* the exclusive period of ILEC support therefore would negate this promise and vitiate one of the principal bases for the Commission’s decision to provide ILECs with preferential treatment. At the same time, any such extension would foreclose the intended transition to a “competitive process” after five years, further undermining the potential for sustainable competition to emerge over time in currently unserved areas. As the Rural Independent Carriers Association puts it, “[f]urther extension of that monopoly . . . would

⁶⁶ Windstream Comments at 3.

⁶⁷ *ICC/USF Transformation Order* ¶ 178.

undermine that rationale and . . . reduce even further the possibility of competitive provision of service in high cost rural areas.”⁶⁸

Second, the Commission found that ILECs would be in the best position to satisfy the Commission’s evolving broadband performance standards, such that it would be safe to provide ILECs with preferential support for a five-year period without worrying about their ability to adapt to those standards. The Commission explained its belief that there likely would be “few other bidders with the financial and technological capabilities to deliver scalable broadband that will meet our requirements over time.”⁶⁹ But ILECs now suggest that they are unable to satisfy the Commission’s *existing* speed requirement within five years, let alone any *evolving* requirement; USTelecom contends that “[f]ive years is an insufficient term of support and buildout period even for the current 4/1 Mbps standard, and there is a significant difference in the design and associated costs of a network designed to meet the proposed higher speed standard.”⁷⁰ Even assuming ILEC assertions are credible in this regard (which remains unclear) such claims would only indicate that those ILECs should decline preferential funding and instead seek support through the competitive allocation mechanism adopted by the Commission—which, as Windstream notes, *would* afford support recipients a 10-year build-out period.⁷¹

Simply stated, there is no basis for extending the period of exclusive ILEC support from five to ten years, and doing so would be inconsistent with the Commission’s asserted bases for providing *any* exclusive support period to ILECs.

⁶⁸ RICA Comments at 3.

⁶⁹ *ICC/USF Transformation Order* ¶ 175.

⁷⁰ USTelecom Comments at 4.

⁷¹ Windstream Comments at 4.

C. The Commission Should Reject Proposals To Allow Price Cap ILECs To Receive Support in Census Blocks They Already Serve

Lastly, ILEC interests advance several proposals that would result in ILECs receiving support in census blocks that they already serve. For example, USTelecom proposes that the Commission provide support in areas where a price cap ILEC already provides broadband at speeds exceeding 10 Mbps, subject only to a process through which the *ILEC* would identify areas in which it does not need support.⁷² Similarly, Windstream “strongly opposes the idea that areas where a *price cap carrier* already offers voice and broadband service meeting the requisite standards should be excluded from receiving support under the competitive bidding mechanism.”⁷³

These proposals are inconsistent with the principal objective of the CAF program—to extend broadband to *unserved* areas. As the Commission has explained, the resources available for CAF Phase II are limited and insufficient to extend broadband to all such areas. It therefore would make little sense to devote resources to areas already served by a wireline carrier.⁷⁴ Moreover, the Commission already has determined that ILECs should not receive support in areas already served by an unsubsidized provider. The rationale underlying this determination—that support is unnecessary in areas where there is a demonstrated business case for provided service absent support—applies with particular force where that “provider” is the ILEC itself.

⁷² USTelecom Comments at 12.

⁷³ Windstream Comments at 8-9 (emphasis in original).

⁷⁴ If the Commission did adopt this approach, it would make little sense to allow price cap ILECs to identify those areas in which they continue to “need” support, as such assessment would hardly be objective.

CONCLUSION

For the reasons discussed herein and in CCA's opening comments, the Commission should implement Phase II of the CAF and Mobility Fund in a manner consistent with those comments.

Respectfully submitted,

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