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

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

COMMENTS
of
UNITED STATES CELLULAR CORPORATION

Grant B. Spellmeyer
Executive Director – Federal Affairs & Public Policy

UNITED STATES CELLULAR CORPORATION
8410 West Bryn Mawr
Chicago, Illinois 60631
(773) 399-4280

David A. LaFuria
John Cimko

LUKAS, NACE, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678

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SUMMARY

Incumbent price cap carriers have turned down more than 60 percent of the Connect America Fund Phase I support made available by the Commission for 2012, and subsequently have been lobbying the Commission to modify its CAF Phase I rules to make the unclaimed funding available to them on more favorable terms.

In the *CAF Phase I FNPRM* the Commission has taken a blinkered approach in its formulation of options for utilizing the unclaimed funds. Some of the Commission's proposals will likely find support from price cap carriers, but the proposals will not serve the best interests of rural consumers who currently have no access to broadband services. U.S. Cellular encourages the Commission to take a more expansive view of its options for allocating the CAF Phase I funding turned down by price cap carriers.

Making support available to mobile broadband carriers would help to resolve one important question that deserves an answer: Would the price cap carriers have turned down two-thirds of the Phase I funding if a competing carrier were prepared to deliver the services for the offered price of $775 per household? Failing to adopt mechanisms that confront this important question are at the heart of the FCC's failure to distribute all of the Phase I support, and should compel a policy response that minimizes the chance of support inefficiently.

THE COMMISSION'S CAF PHASE I OPTIONS

The Commission presents three options for using the $185 million in CAF Phase I support that has been rejected by price cap carriers. None of the options would advance the Commission's mandate for CAF Phase I, namely, to bring broadband to areas that currently are unserved.

Option 1.—The Commission proposes to transfer unclaimed 2012 funding into future rounds of CAF Phase I, and to expand the definition of unserved areas to include any census block lacking access to broadband with speeds of 4 Mbps downstream and 1 Mbps upstream.

The problem with this proposal is that, in refashioning the rules to make the utilization of unclaimed Phase I support more attractive to price cap carriers, the Commission would sacrifice its goal for Phase I. The $300 million allocated by the Commission for 2012 was intended for use in deploying broadband networks in areas unserved by fixed broadband with a minimum speed of 768 kbps/200 kbps. Consumers in these unserved areas would be disadvantaged by this proposal to expand the definition of eligible areas in the Phase I rules to enable price cap carriers to use the funding in any areas where access to 4 Mbps/1Mbps broadband is not available.

Option 2.—The Commission proposes to transfer the unused CAF Phase I support into CAF Phase II, where the Commission believes it could help achieve longer-term CAF goals. This option, by definition, would delay any utilization of the unclaimed Phase I support, since the Commission's schedule for beginning Phase II support disbursements has been delayed.

Option 3.—The Commission seeks comment on a proposal to use the unclaimed CAF Phase I support to reduce the overall $4.5 billion annual universal service budget. This option ignores the fact that the Commission's budget is not sufficient to ensure deployment of broadband services in rural areas that are comparable to those available in urban areas. Nonetheless, the proposal is less objectionable than the options suggested by the Commission to preserve CAF support for price cap carriers that have turned it down. If the Commission refuses to pursue U.S. Cellular's proposed alternative to make the unclaimed support available for the deployment of advanced mobile broadband networks, then U.S. Cellular would not oppose the Commission's selection of Option 3.

A BETTER ALTERNATIVE

U.S. Cellular suggests an alternative that would save the Commission from abandoning its goals for CAF Phase I: make unclaimed CAF Phase I support available for use in deploying 4G LTE mobile broadband networks in areas unserved by fixed or mobile broadband with a minimum speed of 768 kbps/200 kbps.

Price cap carriers have rejected a major portion of the Phase I support largely based on their determination that the $775 per location allocation of support was not sufficient to warrant their taking on broadband deployment obligations. The deployment of mobile networks, however, could prove to be an efficient option for the use of these unclaimed funds, given that some price cap carriers seek several thousand dollars per location. The Commission should explore this approach before taking any action on the options proposed in the *CAF Phase I FNPRM* or granting any petitions for waiver from price cap carriers seeking Phase I allocations in excess of $775 per location.

The alternative proposed by U.S. Cellular has several advantages. *First*, using unclaimed CAF Phase I support for the deployment of mobile broadband networks in unserved areas would be directly responsive to consumers' demand for broadband services.

Second, mobile broadband service providers may be capable of deploying mobile broadband networks more efficiently and at less cost than price cap carriers can deploy fixed broadband networks.

Third, providing unclaimed CAF Phase I incremental support to wireless carriers would enable the Commission to continue the pursuit of its original policy goals for CAF Phase I, which were intended to promote broadband deployment in areas that currently have no access to any broadband services.

Fourth, President Obama has established the goal of deploying the next generation of high-speed wireless coverage to 98 percent of all Americans by 2015. Repurposing unclaimed CAF Phase I support for use in deploying mobile broadband networks would serve this goal.

Fifth, making CAF Phase I funding available for use by wireless carriers would advance the principle that the Commission's universal service support mechanisms should be competitively and technologically neutral.

And, *sixth*, one way to begin addressing the inadequate level of funding budgeted by the Commission for the deployment and operation of mobile broadband networks in rural areas would be to make unclaimed CAF Phase I support available to mobile broadband providers.

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United States Cellular Corporation ("U.S. Cellular"), by counsel, hereby submits these Comments, in response to the Notice of Proposed Rulemaking adopted by the Commission in the above-captioned proceeding.[1] The *CAF Phase I FNPRM* seeks comment "on potential modifications to the rules governing Connect America Phase I incremental support . . . ."[2]

U.S. Cellular provides cellular services and Personal Communications Service in 44 Metropolitan Statistical Areas, 100 Rural Service Areas, one Major Trading Area, and numerous Basic Trading Areas throughout the Nation. U.S. Cellular has received eligible telecommunications carrier ("ETC") status and is currently receiving high-cost support for its operations in Illinois, Iowa, Kansas, Maine, Missouri, Nebraska, New Hampshire, New York, North Carolina,

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[1] *Connect America Fund*, WC Docket No. 10-90, Further Notice of Proposed Rulemaking, 27 FCC Rcd 14566 (2012) ("*CAF Phase I FNPRM*"). The due date for comments in the proceeding is January 28, 2013. *Comment Cycle Established for Commission's Further Notice of Proposed Rulemaking Regarding Modifications to Connect America Phase I*, WC Docket No. 10-90, Public Notice, DA 13-4 (rel. Jan. 2, 2013).

[2] *CAF Phase I FNPRM*, 27 FCC Rcd at 14566 (para. 2).

Oklahoma, Oregon, Tennessee, Virginia, Washington, West Virginia, and Wisconsin. U.S. Cellular has been an active and ongoing participant in the Commission's Connect America Fund ("CAF"), Universal Service Fund ("USF") contribution reform, Intercarrier Compensation, Mobility Fund, and related rulemaking proceedings since their initiation by the Commission. U.S. Cellular and its affiliates also participated in the Mobility Fund Phase I auction, placing 26 winning bids covering 2,168.42 road miles.[3]

I. INTRODUCTION.

The Commission has explained that "CAF Phase I incremental support is designed to provide an immediate boost to broadband deployment in areas that are unserved by any broadband provider."[4] This boost was to be provided by the "distribut[ion of] up to $300 million [in 2012] in incremental support to price cap carriers and their rate of return affiliates using a simplified forward-looking cost estimate, based on [the Commission's] existing cost model."[5] Chairman Genachowski has observed that CAF Phase I is intended to help address the fact that "millions of Americans still live, work, and travel in rural areas where access to high-speed Internet does not exist."[6]

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

[4] *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17717 (para. 137) (2011) ("*CAF Order*" and "*CAF FNPRM*"), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

[5] *Id*. at 17715 (para. 133).

[6] *FCC Releases New Interactive Map Illustrating States Set to Receive 'Connect America Fund' Support To Bring 400,000 Americans High-Speed Broadband*, FCC News Release (rel. July 26, 2012) at 1.

The Commission to date has disbursed $115 million in CAF Phase I support,[7] which constitutes 38 percent of the $300 million budgeted by the Commission for CAF Phase I support. Nearly 400,000 consumers are projected to gain access to broadband service as a result of these disbursements,[8] which represents roughly 2 percent of the "nearly 19 million residents currently lack[ing] access to broadband."[9]

The Commission has looked upon these CAF Phase I results and declared victory, concluding that its task now is to "build on the success of the first round of [CAF Phase I] funding . . . ."[10] This optimistic assessment of Phase I is difficult to square with the facts. The desired boost in broadband deployment to be delivered by CAF Phase I support has largely been sidetracked by the decision of price cap carriers to turn down more than 60 percent of the Phase I support made available by the Commission.

Moreover, the Commission's options presented in the *CAF Phase I FNPRM* for building on the "success" of the first round of funding reflect a willingness to compromise or walk away from the goals established by the Commission for CAF Phase I. As U.S. Cellular explains in the following sections, the Commission can do better, particularly if it adopts a framework for participation by mobile broadband service providers that will lead to the effective and expedited use of unclaimed CAF Phase I support to benefit rural consumers currently lacking any access to advanced broadband services.

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[7] *FCC Kicks-Off "Connect America Fund" with Major Announcement: Nearly 400,000 Unserved Americans in Rural Communities in 37 States Will Gain Access to High-Speed Internet Within Three Years*, FCC News Release (rel. July 25, 2012) at 1.

[8] *Id*.

[9] *Id*.

[10] *CAF Phase I FNPRM*, 27 FCC Rcd at 14568 (para. 9).

II. ACHIEVING A BETTER BALANCE IN THE COMMISSION'S UNIVERSAL SERVICE POLICIES.

Before turning to U.S. Cellular's critique of the options for the disposition of CAF Phase I funds that have been turned down by incumbent price cap carriers, and to a discussion of alternatives that U.S. Cellular suggests the Commission should pursue, it is useful to place the issues into a larger context.

The genesis of this proceeding flows from the fact that incumbent price cap carriers have left on the table more than 60 percent of CAF Phase I funding allocated to them by the Commission. The Commission's attempt to fashion adjustments to its CAF rules that will make the price cap carriers more amenable to accepting the rejected funding reflects all that has gone wrong with the Commission's universal service policies, in several respects.

First, the Commission has adopted a universal service budget that moves wireless carriers and their customers to the back of the line. The Commission's overall budget for high-cost support directs nearly *ten times* more support to wireline carriers than to wireless carriers. In the *CAF Order* the Commission reduced support to the wireless industry by roughly $1 billion. Mobility Fund Phase II dwindles down support for wireless carriers to *one-third* of what they were receiving under the capped high-cost support mechanism that is now being phased out. In the *CAF Phase I FNPRM*, the Commission is casting about for ways to keep this funding disparity intact, searching for rule revisions that will persuade price cap carriers to revisit their rejection of $185 million in funding.

Second, the Commission cleared the way for these budget disparities by interring its principles of competitive and technological neutrality and sidetracking mandates that its universal service policies should promote competition in telecommunications markets. How can the marketplace and consumer choice play their appropriate role of driving the efficient disbursement of universal service support now that the Commission has imposed the *CAF Order* budget? How can consumers in rural America be served by the Commission's separate budget accounts—one for incumbent wireline carriers that is overflowing, underwriting the operations of inefficient service providers, and one for wireless carriers that is not up to the task of effectively promoting the President's mobile broadband deployment goals? In the *CAF Phase I FNPRM* the Commission proposes to perpetuate these budget disparities by devising means to disburse support to price cap carriers that they have turned down.

And, *third*, in choosing to partition its universal service support in a manner that displays a lopsided preference for incumbent wireline carriers, the Commission is ignoring today's marketplace as well as trends for the future. Consumers—whether they reside in urban or rural areas—want access to mobile broadband service. Mobile broadband applications have burgeoned into a sizable and growing market. Smartphone sales reflect the powerful consumer demand for mobile broadband services.[11]

The Commission is charged with the responsibility of administering its universal service programs in a manner that ensures that consumers in rural America have access to mobile voice and broadband services that are reasonably comparable to those available in urban areas. The budget adopted in the *CAF Order* ignores this responsibility. And the Commission's proposals in the *CAF Phase I FNPRM* would do nothing to start bringing the Commission's budget into alignment with consumer preference and demand.

[11] Telecasts of the presidential inaugural balls earlier this month presented a graphic image of these technological trends. As the President and First Lady walked onto the stage, they were greeted by a sea of smartphones and tablets held aloft and taking photographs and videos of the event that could be instantly posted on the Internet.

Price cap carriers—by rejecting more than 60 percent of available CAF Phase I support—have made it evident that they either cannot or will not deploy broadband networks unless the Commission ignores established cost models to better accommodate their interests. As a result, the Commission's goal of jumpstarting the deployment of broadband in unserved areas has been left to founder and consumers in these unserved areas currently have little prospect for gaining access to broadband services.

But the price cap carriers' stalling out the Commission's broadband deployment goals also presents an opportunity for the Commission to begin turning away from its budget missteps and to begin moving its universal service policies in a different and better direction. The *CAF Phase I FNPRM* proceeding can serve as a vehicle for the Commission to repurpose unclaimed Phase I support for use by mobile broadband service providers that are prepared to rapidly deploy networks in unserved areas. This reallocation of funds would serve the Commission's explicitly stated CAF Phase I goals, it would be consistent with objectives adopted in the Broadband Plan,[12] it would further President Obama's goal for the widespread deployment of mobile broadband networks, and it would begin to correct the unwarranted and detrimental disparities the Commission built into its *CAF Order* budget.

III. THE CAF PHASE I FNPRM.

The Commission in the *CAF Phase I FNPRM* proposes three options for utilizing the approximately $185 million of 2012 CAF Phase I incremental funding that remains unclaimed by price cap carriers.

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[12] Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010) ("Broadband Plan").

Option 1.—The first option would transfer the remaining funding into future rounds of Connect America Fund Phase I,[13] and would also make various modifications in the Phase I rules. A key proposal included in the first option involves revising the definition of unserved areas to include any census block lacking access to broadband with speeds of 4 Mbps downstream and 1 Mbps upstream.[14] In the *CAF Order*, the Commission provided that CAF Phase I support must be used for broadband deployment in areas that are "unserved by fixed broadband with a minimum speed of 768 kbps downstream and 200 kbps upstream . . . ."[15]

The Commission also makes several proposals involving the distribution of support in subsequent rounds of CAF Phase I funding (which would govern distribution of the $185 million proposed to be folded into the next CAF Phase I round). For example, the Commission proposes to require carriers accepting Phase I support to meet their buildout obligations "by building a certain number of miles of fiber for a specified amount of support accepted."[16] Carriers would be required to connect a minimum number of unserved locations per mile.[17]

The Commission also proposes to "tie funding to the estimated costs of deployment in an area."[18] Under this approach, the Commission would continue to use the existing high-cost proxy

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[13] *CAF Phase I FNPRM*, 27 FCC Rcd at 14574-75 (para. 36).

[14] *Id*. at 14569 (para. 11).

[15] *CAF Order*, 26 FCC Rcd at 17720 (para. 146).

[16] *CAF Phase I FNPRM*, 27 FCC Rcd at 14570 (para. 18). Windstream Communications, Inc. ("Windstream"), for example, has indicated that it could deploy fiber to high-cost rural areas with a subsidy of $35,784 per mile. Windstream, Election and Petition for Waiver, WC Docket No. 10-90, *et al*., filed July 24, 2012, at 15 n.38, *cited in CAF Phase I FNPRM*, 27 FCC Rcd at 14571 (para. 19 n.21).

[17] *CAF Phase I FNPRM*, 27 FCC Rcd at 14570 (para. 18).

[18] *Id*. at 14573 (para. 29).

model and the $775 per unserved location metric, but the metric "would be adjusted based on the estimated cost to serve a location in a particular wire center."[19]

Option 2.—As an alternative, the Commission proposes "to apply any funding remaining from Phase I to [the] overall budget for Connect America Phase II."[20] The Commission suggests that such a step "could help to achieve the longer term goals of Connect America Phase II."[21]

Option 3.—The Commission also seeks comment on "whether the remaining [CAF] Phase I incremental support should be used to reduce high-cost demand below the $4.5 billion budget established by the Commission . . . ."[22]

IV. DISCUSSION.

In the following sections, U.S. Cellular demonstrates that the options presented by the Commission for repurposing CAF Phase I incremental support that was rejected by price cap carriers have one common element: None would principally benefit consumers living in service areas where no access to broadband networks is currently available. U.S. Cellular also discusses an alternative to the Commission's proposed options that would facilitate the use of unclaimed Phase I support to serve the Commission's Phase I objective of bringing broadband to unserved areas.

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[19] *Id*. In addition, the Commission seeks comment on a proposal that would allow carriers to accept support based on the current metric of one unserved location per $775 accepted, and asks whether it now should modify the $775 per location metric. *Id*. at 14574 (para. 35).

[20] *Id*. at 14576 (para. 41).

[21] *Id*. at 14577 (para. 42).

[22] *Id*. (para. 44).

A. The Options Proposed by the Commission in the CAF Phase I FNPRM Are Not the Best Way To Optimize Consumer Benefits.

The *CAF Phase I FNPRM* reveals the Commission's apparent intent either to continue to maintain "silos of support by technology"[23] or to pursue additional ways to reduce a universal service budget that already is insufficient to carry out universal service principles mandated in the Communications Act of 1934.[24] In the following sections, U.S. Cellular explains why these options are not the best means of advancing consumer interests.

1. Option 1 Would Rewrite CAF Phase I Rules and Requirements in Ways That Would Not Benefit Consumers Who Currently Have No Access to Any Broadband Service.

When the Commission first formulated and adopted its goals for CAF Phase I, it focused on the fact that 83 percent of the 18.8 million Americans who lack access to any fixed broadband service reside in price cap study areas,[25] and it made a commitment to "provide the opportunity for price cap carriers to begin extending broadband service to hundreds of thousands of unserved locations in their territories."[26]

But now, claiming "the success of the first round of Phase I in targeting support to those areas lacking any form of high-speed Internet access,"[27] the Commission has tentatively decided "to broaden Phase I by permitting carriers to accept additional funds to target consumers and

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[23] Ex Parte Letter from David A. LaFuria, Counsel for U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-90, *et al*., filed Oct. 26, 2012 ("U.S. Cellular October 2012 Ex Parte Letter"), at 3.

[24] *See* 47 U.S.C. § 254(b).

[25] *CAF Order*, 26 FCC Rcd at 17712 (para. 127 & n.199).

[26] *Id*.

[27] *CAF Phase I FNPRM*, 27 FCC Rcd at 14569 (para. 11).

businesses that are in areas unserved by broadband that meets [the Commission's] 4 Mbps downstream and 1 Mbps upstream standard."[28]

Price cap carriers likely will find this proposal attractive,[29] since it would open up the possibility of their being able to utilize the currently unclaimed CAF Phase I support in service areas where (i) infrastructure costs may be lower than in those areas in which there currently is no access to any broadband service; and (ii) they may have already deployed broadband networks that can be upgraded with CAF Phase I support to meet the 4 Mbps/1Mbps standard. U.S. Cellular, however, agrees with NTCH's reaction to the Commission's proposal: "It's as though the Commission is deviating from its original intent to expand broadband coverage to unserved areas simply in order to be able to induce price cap carriers to take more of the money off the Commission's hands."[30]

The problem with the Commission's proposal is that it seeks to make CAF Phase I support more attractive to price cap carriers at the expense of consumers in unserved areas. The Commission in the *CAF Order* staked out the mission for CAF Phase I: provide a boost for the deployment of broadband in areas in which consumers currently have no access to broadband

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[28] *Id*.

[29] *See* United States Telecom Association Comments, WC Docket No. 10-90, filed Jan. 9, 2013, at 2 (apparently assuming that the Commission will adopt the 4 Mbps/1Mbps standard in the *CAF Phase I FNPRM* proceeding and arguing that "[a]ccurate identification of census blocks in which broadband service at speeds of at least 4 Mbps downstream and 1 Mbps upstream (4/1) is provided by neither the incumbent local exchange carrier . . . nor an unsubsidized broadband provider is key to efficiently and effectively using CAF I monies"); Windstream Corporation Comments, WC Docket No. 10-90, filed Jan. 9, 2013, at 2 (footnote omitted) (noting that "[t]he Commission has proposed rightfully that the definition of 'unserved areas' to be eligible for CAF Phase I support should include any census block lacking access to 4/1 broadband").

[30] NTCH, Inc. ("NTCH"), Comments, WC Docket No. 10-90, *et al*., filed Dec. 14, 2012 ("NTCH Comments"), at 2.

service at any speed. The Commission's proposal to expand the definition of eligible service areas for CAF Phase I constitutes an abandonment of this mission.

A further indication of the Commission's apparent willingness to favor price cap carriers over consumers is its proposal to "require carriers to satisfy their buildout obligations for incremental support based on a metric that measures the number of miles of fiber deployed for a defined dollar amount . . . ."[31] The Commission points out that this approach "would allow carriers maximum flexibility in determining how to invest Phase I support to deploy new fiber."[32] This option would also create an additional regulatory burden – the need to ensure that carriers building subsidized middle-mile fiber are not unjustly enriched if such fiber ends up serving as a bottle-neck special access facility.

When this proposal is combined with the Commission's proposal to redefine "unserved" areas as those with no 4 Mbps/1Mbps broadband service, it appears that the Commission's objective may be to redefine the CAF Phase I mission: Instead of bringing broadband service to consumers who currently have no broadband access at all, the goal would be to make unclaimed and future CAF Phase I incremental support available to price cap carriers for their use in enhancing existing infrastructure through the deployment of middle-mile fiber networks in service areas that currently may already have broadband service, but not at 4 Mbps/1Mbps speeds.

The Commission could better serve consumers by focusing on options for the use of unclaimed CAF Phase I support that would deliver broadband to consumers who currently have no access to broadband services.

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[31] *CAF Phase I FNPRM*, 27 FCC Rcd at 14570 (para. 18).

[32] *Id*.

2. Option 2 Would Delay the Delivery of Broadband Service to Rural Consumers.

Moving any unclaimed CAF Phase I support into the overall budget for CAF Phase II—as the Commission proposes in its second option[33]—"could help to achieve the longer term goals of Connect America Phase II"[34] but it would—by definition—end any further pursuit of the goal of "begin[ning] the process of closing the rural-rural divide by directing [an] additional [$300 million in] funds to areas served by price cap carriers"[35] for use in bringing service to rural Americans who currently lack any access to broadband.[36]

The Commission has not yet reached "the end of the beginning" of this process for closing the rural-rural divide,[37] because price cap carriers have failed to claim more than 60 percent of the available support. The Commission made a commitment to dedicate $300 million in Phase I support to help address this rural-rural divide, but its proposal to roll the remaining funding into CAF Phase II would abandon the job before it is even half completed. In U.S. Cellular's view, the Commission set an important task for CAF Phase I when it decided that funding should be used to bring broadband for the first time into unserved areas. It should not abandon this task

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[33] *Id*. at 14576 (para. 41).

[34] *Id*. at 14577 (para. 42).

[35] *CAF Order*, 26 FCC Rcd at 17713 (para. 128 n.201).

[36] In CAF Phase II service area eligibility is not defined by the absence of fixed broadband with a minimum speed of 768 kbps downstream and 200 kbps upstream, but instead is determined through the use of a cost model that is designed to allocate the $1.8 billion annual budget "to maximize the number of expensive-to-serve residences, businesses, and community anchor institutions that will have access to modern networks providing voice and robust, scalable broadband." *Id*. at 17728 (para. 167) (footnote omitted).

[37] The Commission has explained that "a 'rural-rural' divide persists in broadband access—some parts of rural America are connected to state-of-the-art broadband, while other parts of rural America have no broadband access . . . ." *Id*. at 17669 (para. 7).

because price cap carriers have largely decided that it is not worth risking share price or dividends to take up the FCC's challenge.

A further disadvantage of this option is that it would risk tying up the unclaimed CAF Phase I incremental support for an extended period, instead of making the support more immediately available for the deployment of broadband networks in unserved areas. The Commission had hoped that a cost model and competitive bidding mechanism would be adopted for CAF Phase II by December 2012, so that Phase II disbursements could be ramped up in 2013.[38] But the Commission has fallen behind in trying to meet this schedule, and is now contemplating continuing Phase I funding in 2013.[39]

3. Option 3 Would Not Address a Serious Universal Service Funding Problem But Nonetheless Is the Least Problematic of the Options Presented by the Commission.

The Commission devotes a sentence in the *CAF Phase I FNPRM* to its proposal that Phase I support unclaimed by price cap carriers should be used "to reduce high-cost demand below the $4.5 billion budget . . . ."[40] This option would move the Commission's overall universal service budget in the wrong direction, and it would take funding away from the Commission's CAF Phase I goal of promoting broadband deployment in unserved areas, but it still represents the least objectionable of the options posed in the *CAF Phase I FNPRM*. If the Commission refuses to consider U.S. Cellular's proposal that mobile wireless broadband service providers

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[38] *Id*. at 17674 (para. 25).

[39] The Wireline Competition Bureau ("Bureau") has indicated that it "will adopt an order at a subsequent date in 2013 that adopts a final version of the Connect America Cost Model that will be used for purposes of estimating [CAF Phase II] support amounts in price cap areas." *Wireline Competition Bureau Announces Availability of Version Two of the Connect America Fund Phase II Cost Model*, WC Docket No. 10-90, Public Notice, DA 13-70 (rel. Jan. 17, 2013) at 2. The Bureau noted that version two of the model is not the final version of the model, and that the Bureau "will continue to develop the cost model platform and inputs before adopting a forward-looking cost model for Connect America Phase II . . . ." *Id*.

should be given access to unclaimed CAF Phase I support,[41] then the Commission should adopt this "least bad" of the options it has put on the table.

The record in the Commission's universal service reform proceeding "reflects fundamental concerns with the Commission's universal service budget decisions[,]"[42] and "[t]he message from virtually every category of stakeholders is that the Commission's capped $4.5 billion annual budget will disserve rural America because it will likely fall well short of enabling deployment of affordable, high-quality fixed and mobile broadband networks in rural communities."[43]

The conclusion reached by U.S. Cellular at the time the Commission adopted its universal service budget remains on the mark: "The Commission has given priority to keeping down the cost of its universal service reforms, even at the expense of ensuring sufficient mechanisms to bring advanced broadband networks to rural consumers."[44] A better priority would be for the Commission to focus its energies on completing its longstanding efforts to reform its USF contribution mechanisms. Doing so would enable the Commission to establish a budget that would advance statutory universal service mandates that are not currently being met.[45] Moreover, the

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[40] *CAF Phase I FNPRM*, 27 FCC Rcd at 14577 (para. 44).

[41] See Section IV.B., *infra*.

[42] U.S. Cellular Reply Comments, WC Docket No. 10-90, *et al*., filed Feb. 17, 2012, at 8.

[43] *Id*. at 8-9.

[44] U.S. Cellular February 2012 Reply Comments at 13.

[45] *See, e.g.*, U.S. Cellular Comments, WC Docket No. 06-122, *et al*., filed July 9, 2012, at 4 (arguing that the Commission should exercise its permissive statutory authority to expand the contribution base, because doing so will distribute contribution obligations more equitably and will enhance the sustainability of the USF, and that, "[i]n particular, the contribution base should be expanded to cover fixed and mobile broadband Internet access services"); National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, New Jersey Division of Rate Counsel, and Utility Reform Network Comments, WC Docket No. 10-90, *et al*., filed Jan. 18, 2012, at 5 (emphasis added) (arguing that "[t]he FCC has not heeded recommendations to broaden the base for universal service contributions to include broadband services, which means that the funds available to achieve broadband goals of deployment and affordability *<u>are unduly limited</u>*").

Commission need not contemplate the utilization of unclaimed CAF Phase I support to reduce the overall universal service budget because it has a much better option: utilize the unclaimed support to facilitate the deployment of advanced mobile broadband networks in unserved areas.

Nonetheless, of the three options advanced by the Commission, Option 3 is the least objectionable, and, for that reason, U.S. Cellular does not oppose its adoption. The Commission should not reward price cap carriers by securing their ongoing access to CAF support they have turned down because of their objection to the applicable terms, conditions, and requirements established by the Commission. Rather than preserving its balkanized universal service budget by protecting price cap carriers' access to funds they have rejected, a better choice would be to "reduc[e] the amount contributors need to pay into the Universal Service Fund."[46]

B. Providing Wireless Carriers with Access to Unclaimed CAF Phase I Support Is a Better Alternative for Advancing the Commission's Broadband Goals.

Ignoring suggestions by several parties that unclaimed CAF Phase I incremental support should be made available to mobile broadband service providers for their use in deploying networks in unserved areas, the Commission has chosen a narrower approach in the *CAF Phase I FNPRM*, focusing on options that would either accommodate incumbent price cap carriers or further diminish a universal service budget that already is inadequate to meet broadband deployment goals. Below, U.S. Cellular discusses the advantages of the Commission's taking a broader view and facilitating the use of unclaimed Phase I support by wireless carriers.

[46] *CAF Phase I FNPRM*, 27 FCC Rcd at 14577 (para. 44).

1. Parties Have Suggested That the Commission Should Consider Options for Making Remaining CAF Phase I Support Available to Wireless Carriers.

Several parties have suggested that the Commission should consider making the unclaimed funding available to wireless competitive ETCs for their use in deploying mobile broadband networks in unserved areas.

U.S. Cellular, for example, has urged the Commission to "open up any 2013 [CAF Phase I support] distributions to other carriers who are able to provide qualifying service to consumers in high-cost rural areas."[47] NTCH has argued that "the $185 million in price cap money should be available to any carrier who is willing and able to deliver broadband to unserved areas."[48] In addition, CCA has "urge[d] the Commission to seek comment on how wireless carriers could make use of unclaimed funding from Phase I of the Connect America Fund[,]"[49] noting that "[t]here is no legitimate justification for foreclosing debate about wireless carriers' participation . . ., particularly given the stark contrast between price cap carriers' decision to forego

[47] U.S. Cellular October 2012 Ex Parte Letter at 1, *cited in* U.S. Cellular Comments, WC Docket No. 10-90, *et al*., filed Dec. 21, 2012 ("U.S. Cellular December 2012 Comments"), at 6. U.S. Cellular has also supported shifting the $185 million in unclaimed CAF Phase I support to Mobility Fund Phase II. *See id.* In addition, the Competitive Carriers Association ("CCA") has "called on the Commission to reduce the amounts earmarked for ILECs and commensurately increase the support available to wireless ETCs[, has] proposed that the Commission make the $185 million in foregone [CAF] Phase I support available to wireless ETCs[,]" Ex Parte Letter from Steven K. Berry, President and CEO, and Rebecca Murphy Thompson, General Counsel, CCA, to Julius Genachowski, Chairman, FCC, WC Docket No. 10-90, *et al*., filed Oct. 31, 2012 ("CCA October 2012 Ex Parte Letter"), at 3, and has suggested that "the Commission should allocate the $185 million that price cap carriers have refused to Mobility Fund Phase II." Ex Parte Letter from Steven K. Berry, President and CEO, and Rebecca Murphy Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al*., filed Aug. 3, 2012, at 4 n.11.

[48] NTCH Comments at 3.

[49] CCA October 2012 Ex Parte Letter at 1.

Phase I CAF support and wireless carriers' successful participation in Phase I of the Mobility Fund."[50]

The Commission, however, has chosen not to make any proposals or seek any comment in the *CAF Phase I FNPRM* regarding options for making unclaimed CAF Phase I incremental support available to wireless carriers. This refusal reflects the Commission's apparent willingness to continue to depart from its principles of competitive and technological neutrality[51] in favor of preserving and maintaining a universal service budget that disproportionately favors price cap and rate-of-return carriers at the expense of wireless carriers.[52]

As U.S. Cellular demonstrates below, redirecting unclaimed CAF Phase I support would deliver immediate benefits to consumers and help to salvage the Commission's original objectives for CAF Phase I.

2. Opening Up CAF Phase I Support to Wireless Carriers Would Benefit Consumers and Advance Sensible Policy Goals.

The Commission's experience thus far in implementing CAF Phase I has shown that providing support to incumbent price cap carriers at $775 per location was not enough for these carriers in many rural areas. The deployment of 4G Long Term Evolution ("LTE") mobile

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[50] *Id*.

[51] In 1997, the Commission established the principle that "universal service mechanisms and rules" should "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another." *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 (para. 47) (1997).

[52] *See*, *e.g*., RCA January 2012 Comments at 2-3 (emphasis in original) (noting that "the *CAF Order* . . . gives [price cap] carriers a unilateral right of first refusal to take $1.8 billion in Phase II CAF support annually; it contemplates more than $2 billion in annual funding for rate-of-return ILECs without any mechanism to make such funding available to more efficient competitive providers; and it establishes an overall budget for high-cost support that inexplicably would direct nearly *ten times* more support to wireline carriers than to wireless carriers, notwithstanding business and residential consumers' demonstrated preference for increasingly fast mobile wireless services").

broadband networks in these unserved areas could, however, prove to be an efficient option for the use of unclaimed Phase I support.

The potential benefits that could be derived from repurposing CAF Phase I support for use in deploying LTE mobile broadband networks warrant the exploration of this option *before* the Commission makes any decisions regarding the proposals it has advanced in the *CAF Phase I FNPRM* and before it take any action on petitions for waiver from price cap carriers seeking Phase I allocations in excess of $775 per location.[53] As U.S. Cellular has previously explained:

> There is no public policy reason to continue to set aside support for carriers who are demonstrably inefficient, as evidenced by waiver requests filed by several price cap carriers seeking up to $4,000 per location served, or unwilling to participate in the FCC's laudable efforts to jump start broadband investment in rural America.
>
> Moreover, there is no reason to grant any waiver requests to exceed the $775 per location limit without first determining whether other carriers can provide service to the proposed locations at a lower cost, and whether there are other areas where an investment of high-cost support will deliver a bigger benefit by covering more locations. U.S. Cellular is willing to compete for funding that is being set aside for price cap carriers. If other carriers can provide the services at a lower cost to consumers who contribute to the fund, the Commission has an obligation to include them in the process.[54]

The same analysis supports U.S. Cellular's argument that the Commission should table the options it has proposed in the *CAF Phase I FNPRM* until it evaluates the advisability of making unclaimed CAF Phase I support available to mobile broadband providers. In addition to providing for this eligibility, the Commission could establish "a measurable, enforceable obligation to extend service to unserved locations"[55] that would be applicable to wireless carriers receiving

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[53] *See, e.g., Wireline Competition Bureau Seeks Comment on Windstream Communications Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, *et al.*, Public Notice, 27 FCC Rcd 8260 (2012).

[54] U.S. Cellular October 2012 Ex Parte Letter at 1.

[55] *CAF Order*, 26 FCC Rcd at 17718 (para. 139).

unclaimed Phase I support. Wireless carriers receiving any Phase I support could be required "to meet concrete broadband deployment obligations"[56] comparable to those established for price cap carriers receiving Phase I support. Support could be offered at the same $775 per household served, determined through the use of a simplified forward-looking cost estimate, or through any other another disbursement mechanism that the Commission deems appropriate and that would facilitate the expedited distribution of support.

Wireless competitive ETCs accepting CAF Phase I incremental support could be required to certify that their deployment of mobile broadband networks will be undertaken only in areas that are unserved by fixed or mobile broadband with a minimum speed of 768 kbps downstream and 200 kbps upstream.[57] Support recipients could be required to complete deployment to no fewer than two-thirds of the required number of locations within two years, and all required locations within three years,[58] and could be required to offer broadband service of at least 4 Mbps downstream and 1 Mbps upstream.[59]

As U.S. Cellular discusses in the following sections, making unclaimed CAF Phase I incremental support available to wireless carriers, pursuant to the terms and requirements summarized above or similar terms and requirements, as determined by the Commission, would benefit rural consumers and advance the Commission's policies in several ways.

Consumer Demand for Mobile Broadband.—Shifting unclaimed CAF Phase I support to wireless carriers would directly benefit consumers by responding to their service preferences.

[56] *Id*. at 17717 (para. 137) (footnote omitted).

[57] *See id*. at 17720 (para. 146).

[58] *See id*. at 17721 (para. 147).

Consumers have embraced mobile broadband services, applications, and devices in unprecedented numbers. Globally, "forecasts show mobile broadband growing 19.2 percent annually and generating $122.9 billion in incremental revenue between 2013 and 2016."[60] In addition, "worldwide LTE subscribers will surpass 198.1 million in 2013, a 115 percent increase from the 92.3 million last year . . . ."[61] In the United States, wireless data traffic has increased by 486 percent from the second half of 2009 to the first half of 2012.[62] These kinds of gains cannot happen in rural areas if our citizens do not have access to high-quality networks.

With respect to wireless and wireline services generally, the shift in consumers' preferences from wireline services to wireless services continues to be pronounced. For example, statistics released by the Commission this month show that there were 298.3 million mobile wireless subscribers at the end of 2011,[63] an increase of 4.6 percent from the previous year.[64] In contrast, there were 143.5 million wireline retail local telephone service connections at year-end

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[59] *See id*. It would not be inappropriate to give wireless carriers the option of deploying a network that meets either 3G or 4G requirements, since this approach was taken by the Commission with respect to Mobility Fund Phase I. *See id*. at 17791 (para. 360).

[60] Rosalie C. Periabras, "Ovum Sees Mobile Broadband Fueling Telco's Growth," MANILA TIMES.NET, Jan. 4, 2013, accessed at http://www.manilatimes.net/index.php/business/top-business-news/38590-ovum-sees-mobile-broadband-fueling-telco-s-growth.

[61] Andrew Berg, "Report: LTE Subscribers Will Hit 198 Million in 2013," WIRELESS WEEK, Jan. 22, 2013, accessed at http://www.wirelessweek.com/news/2013/01/report-lte-subscribers-will-hit-198-million-2013?et_cid=3055006&et_rid=54161423&linkid=http%3a%2f%2fwww.wirelessweek.com%2fnews%2f2013%2f01%2freport-lte-subscribers-will-hit-198-million-2013 (citing a report issued by IHS iSuppli).

[62] CTIA, "Total Wireless Data Traffic," accessed at http://files.ctia.org/pdf/CTIA_Survey_MY_2012_Graphics-_final.pdf (showing that wireless data traffic was measured at 108 billion MB in the second half of 2009, and reached the level of 633 billion MB in the first half of 2012).

[63] FCC, Wireline Comp. Bur., Ind. Analysis & Tech. Div., LOCAL TELEPHONE COMPETITION: STATUS AS OF DECEMBER 31, 2011, Jan. 2013 ("FCC Competition Report"), at 28 (Table 18).

[64] *See id*. Verizon Wireless, for example, counted 98.2 retail connections at the end of last year, an increase of 6.6 percent over the previous year. Phil Goldstein, "Verizon Adds 2.2M Subs in Q4, But Margins Shrink Amid Smartphone Surge," FIERCEWIRELESS, Jan. 22, 2013 ("FierceWireless January 22 Article"), accessed at http://www.fiercewireless.com/story/verizon-adds-22m-subs-q4-margins-shrink-amid-smartphone-surge/2013-01-22?utm_medium=nl&utm_source=internal.

2011,[65] a decrease of 4.1 percent from the previous year.[66] In addition, a study released last month indicates that more than 34 percent of households in the U.S. are now wireless only, over 51 percent of households in poverty are wireless only, and 40 percent of children with phone service are wireless only.[67] How do low-income households in rural areas compete for jobs and participate in our economy if they do not have access to high-quality mobile broadband coverage?

Smartphones are increasingly considered to be a necessity by consumers across the country. "Over the past three years, American smartphone adoption has increased from 16.9 percent to 54.9 percent . . . ."[68] Statistics show that "the growing prominence of portable devices has played a huge factor in the sizable increase in [devices] accessing the internet," and smartphones currently account for 133 million of these devices.[69] AT&T sold 10 million smartphones in the fourth quarter of 2012,[70] and Verizon reported that smartphones made up 87 percent of its total wireless device sales in the fourth quarter of 2012.[71] By 2014, the number of smartphones used

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[65] FCC Competition Report at 2 (Figure 1). The figures include interconnected VoIP subscriptions.

[66] *See id*.

[67] *See* Stephen J. Blumberg & Julian V. Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2012*, Centers for Disease Control and Prevention, rel. Dec. 20, 2012, at 1, 3, accessed at http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201212.PDF, *cited in* U.S. Cellular December 2012 Comments at 17 n.52.

[68] Internet Innovation Alliance, *IIA 2013 Broadband Guide for the 113th Congress*, at 5, accessed at http://internetinnovation.org/files/2013-Broadband-Guide.pdf.

[69] A.J. Dellinger, "Welcome Our Robot Overlords: U.S. Has More Internet-Enabled Devices Than People," DIGITAL TRENDS, Jan. 3, 2013, accessed at http://www.digitaltrends.com/mobile/welcome-our-robot-overlords-us-has-more-internet-enabled-devices-than-people/.

[70] Phil Goldstein, "AT&T Sold a Record 10M Smartphones in Q4," FIERCEWIRELESS, Jan. 8, 2013, accessed at http://www.fiercewireless.com/story/att-sold-record-10m-smartphones-q4/2013-01-08.

[71] *Id*. Verizon sold 9.8 million smartphones in the fourth quarter. *See* FierceWireless January 22 Article. The increasing popularity of smartphones and tablets is a principal cause of the deterioration of the personal computer ("PC") market. According to a recent report, "[i]nstead of PCs, more people and businesses are buying smartphones and tablets[,]" and PC shipments worldwide dropped 3.5 percent in 2012.

by consumers in the United States is projected to exceed the number of consumers' personal computers by more than 200 million units.[72]

Widespread consumer adoption of mobile broadband has also fueled rapid growth and innovation in mobile applications. For example, the number of applications available at the iPhone App Store has grown 1,900 percent from April 2009 to September 2012,[73] and the number of Android applications reached 700,000 in the fourth quarter of last year.[74] To take another example, a recent study forecasts that "within the next five years about 50 percent of all new car radios sold in the North American market will feature downloadable apps."[75]

Quentin Hardy, "Intel's Profit Falls 27% as PC Sales Drop," N.Y. TIMES, Jan 17, 2013, accessed at http://www.nytimes.com/2013/01/18/technology/intel-earnings-are-sharply-lower.html?nl=technology &emc=edit_tu_20130118. Intel's fourth quarter 2012 net income was $2.5 billion, compared to $3.4 billion a year earlier. Its revenue fell from $13.9 billion to $13.5 billion. *Id*. *See* Michael J. de la Merced & Nick Wingfield, "Microsoft May Back Dell Buyout, N.Y. Times, Jan. 22, 2013, accessed at http//dealboo knytimes.com/2013/01/22/microsoft-may-back-dell-buyout/?ref=business&nl=technology&emc=edit _tu_20130123 (reporting that "PC sales were in a slump for most of last year, as consumers diverted their spending to other types of devices like tablets and smartphones. Dell, the third-biggest maker of PCs in the world, recorded a 21 percent decline in shipments of PCs during the fourth quarter of last year from the same period in 2011").

[72] *See* Strategy Analytics, "Millions of Installed Smartphones and Personal Computers, 2009 to 2014," Jan. 2011, accessed at http://www.brookings.edu/research/papers/2011/12/08-mobile-broadband-west. A recent report projects that, globally, smartphones will comprise more than 50 percent of the handset market by 2014, and 69 percent by 2018 "when 2.4 billion handsets will be shipped." Andrew Berger, "ABI: More Than Half of 2014 Handset Shipments Will Be Smartphones," TELECOMPETITOR, Jan. 22, 2013, accessed at http://www.telecompetitor.com/abi-more-than-half-of-2014-handset-shipments-will-be-smart phones/.

[73] Sam Costello, "How Many Apps Are in the App Store," ABOUT.COM, accessed at http://ipod.about.com /od/iphonesoftwareterms/qt/apps-in-app-store.htm (showing that the number of applications available at the iPhone App Store increased from 35,000 in April 2009 to 700,000 in September 2012).

[74] Shara Tibken, "Google Ties Apple with 700,000 Android Apps," CNET, Oct. 30, 2012, accessed at http://news.cnet.com/8301-1035_3-57542502-94/google-ties-apple-with-700000-android-apps/.

[75] Tammy Parker, "Mobile Apps Coming to a Vehicle Near You," FIERCEWIRELESS, Jan. 3, 2013, accessed at http://www.fiercebroadbandwireless.com/story/mobile-apps-coming-vehicle-near-you/2013-01-03. *See* Brian X. Chen, "Smartphones Become Life's Remote Control," N.Y. TIMES, Jan. 11, 2013, accessed at http://www.nytimes.com/2013/01/12/technology/smartphones-can-now-run-consumers-lives. html?_r=1& (noting that "[f]or several years, technology companies have promised the dream of the connected home, the connected body and the connected car. Those connections have proved illusory. But in the last year app-powered accessories have provided the mechanism to actually make the connections.

Moreover, CTIA has explained that "[c]onsumers place enormous and ever-increasing value on the flexibility of using data and voice services wherever they are, and are embracing mobile broadband faster than any other broadband platform."[76] RCA (now CCA) has also shown that "consumers have demonstrated a strong, sustained, and growing preference for mobile wireless services[,]"[77] and CTIA has indicated that "[m]obile broadband is singularly beneficial for low-income and minority consumers."[78]

The statistics and forecasts regarding mobile broadband recited above demonstrate that the world of communications has changed dramatically since the Commission released its Broadband Plan nearly three years ago. Although the Broadband Plan anticipated these developments to some degree,[79] the pace of this change and the rapid emergence of the mobile broadband market have outstripped most predictions. The Commission needs to adapt to this new world, especially because the growth of mobile broadband has important implications for the Commission's universal service policies. The burgeoning growth of mobile broadband under-

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That is partly because smartphones have become the device people never put down. But it is also because wireless sensors [that are installed in, or interact with, smartphones] have become smaller, cheaper and ubiquitous.").

[76] CTIA–The Wireless Association® ("CTIA") Comments, WC Docket No. 10-90, *et al.*, filed Apr. 18, 2011 ("CTIA April 2011 Comments"), at 4. CTIA cited Commission data showing that, "over the twelve-month period from June 2009 to June 2010, the number of mobile wireless connections with download speeds of at least 768 kbps increased by over 150%, and accounted for almost 85% of all new connections in that speed range." *Id*. (footnote omitted).

[77] RCA–The Competitive Carriers Association ("RCA") January 2012 Comments at 5. RCA cites Commission data showing that mobile Internet access subscriptions exceeded 84 million by December 2010, an increase of 63 percent compared to the previous year. *Id*. at 5 n.4.

[78] CTIA April 2011 Comments at 6. CTIA cites various statistics supporting its observation. *Id*.

[79] The Broadband Plan observed that "[m]obile broadband is growing at unprecedented rates[,]" and noted that, "[f]rom smartphones to app stores to e-book readers to remote patient monitoring to tracking goods in transit and more, mobile services and technologies are driving innovation and playing an increasingly important role in our lives and our economy." Broadband Plan at 9. The Broadband Plan concluded that "[m]obile broadband is the next great challenge and opportunity for the United States. It is a nascent market in which the United States should lead." *Id*.

scores the fact that the Commission has a statutory responsibility to adopt support mechanisms designed to ensure that consumers in rural areas have access to mobile broadband networks and services that are reasonably comparable to those available in urban areas.

One step the Commission should take toward meeting this responsibility is to orient more universal service funding for deployment of 4G LTE mobile broadband networks in rural areas. This can be accomplished generally by increasing the Mobility Fund budget, and by opening up CAF Phase II funding more broadly to mobile broadband service providers.[80] In the context of the *CAF Phase I FNPRM* proceeding, the Commission should take this step by making unclaimed CAF Phase I incremental support available to mobile broadband providers, for use in deploying 4G LTE mobile broadband networks in areas that currently have no broadband service.

Efficient Use of Support.—Opening up unclaimed CAF Phase I incremental support to wireless carriers would create the prospect of accomplishing the deployment of mobile broadband networks in currently unserved areas at per location costs comparable to or lower than those established by the Commission for price cap carriers. U.S. Cellular agrees with NTCH that "[i]t is entirely possible, if not probable, that fixed or mobile wireless companies would [be] per-

[80] The Commission has decided to use a competitive bidding process, in limited circumstances, to disburse CAF Phase II support, *CAF Order*, 26 FCC Rcd at 17725 (para. 156), and has proposed that this competitive bidding mechanism "will be open to *any provider* able to satisfy the public interest obligations associated with [the CAF Phase II] support." *CAF FNPRM*, 26 FCC Rcd at 18086 (para. 1195) (emphasis added). The Commission has also indicated that it "anticipate[s] . . . that mobile providers may also be eligible for support in CAF Phase II . . . , in addition to Mobility Fund Phase II support." *CAF Order*, 26 FCC Rcd at 17825 (para. 495). Significantly, however, the Commission has provided that the reverse auction mechanism will be used to disburse only that portion of CAF Phase II support that is not claimed by incumbent price cap carriers for their exclusive use pursuant to "state-level commitment" right of first refusal mechanism adopted by the Commission. *Id*. at 17725 (para. 156).

fectly capable of delivering the prescribed broadband speeds in unserved areas for $775 a location."[81]

To the extent that wireless carriers are capable of deploying mobile broadband networks more efficiently and at less cost than price cap carriers can deploy fixed broadband networks, wireless carriers should be given the opportunity to do so through the use of unclaimed Phase I support. Such an approach would be consistent with the Commission's acknowledgment "that our statutory obligation runs to consumers, rather than carriers, and that we must target our limited funds for support in a way that expands and sustains the availability of mobile broadband services to maximize consumer benefits."[82]

CAF Phase I Policy Goals.—Giving wireless carriers an opportunity to receive unclaimed CAF Phase I incremental support would enable the Commission to preserve and advance its original policy goals for CAF Phase I, which were intended to promote broadband deployment in areas that are unserved by any broadband provider.

The Commission is proposing to compromise these policy goals, or abandon them altogether, because of its apparent conclusion that price cap carriers cannot be enticed to utilize the remainder of Phase I incremental support if the Commission continues to impose the requirements and metrics adopted in the *CAF Order* to accomplish the Commission's goals. U.S. Cellular agrees with NTCH that, instead of watering down its Phase I goals, "the Commission should . . . broaden the pool of recipients who might be willing and able to deliver broadband to truly unserved areas for the originally contemplated amount—or less."[83]

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[81] NTCH Comments at 2.

[82] *CAF FNPRM*, 26 FCC Rcd at 18087 (para. 1195).

[83] NTCH Comments at 2.

Providing mobile broadband providers with access to remaining CAF Phase I funding would be in keeping with the Commission's long-held view that "Section 254 [of the Communications Act of 1934] does not mandate the receipt of support by any particular carrier. Rather, as the Commission has indicated and the courts have agreed, the 'purpose of universal service is to benefit the customer, not the carrier.'"[84] Options 1 and 2 proposed by the Commission in the *CAF Phase I FNPRM* would have the unintended effect of ignoring this purpose of universal service by benefiting price cap carriers at the expense of customers living in areas with no broadband service.

***President Obama's Mobile Broadband Policies.*—**Repurposing unclaimed CAF Phase I incremental support, for use in the deployment of mobile broadband networks, would promote broadband objectives articulated by both President Obama and the Commission. The Obama Administration has emphasized the importance of a national priority of deploying mobile broadband networks. Thus, the *FY 2013 Budget* submitted by the Obama Administration to Congress a year ago indicates that "[h]igh-speed, wireless broadband is fast becoming a critical component of business operations and economic growth. The United States needs to lead the world in providing broad access to the fastest networks possible."[85] Moreover, in his 2011 State of the Union address, President Obama proposed the deployment of "the next generation of high-speed wireless coverage to 98 percent of all Americans"[86] by 2015.

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[84] *CAF Order*, 26 FCC Rcd at 17745 (para. 221) (quoting *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000) ("*Alenco*")).

[85] Office of Management and Budget, FISCAL YEAR 2013 BUDGET OF THE U.S. GOVERNMENT 57 (rel. Feb. 13, 2012) ("*FY 2013 Budget*"). *See* President Barack Obama, Remarks by the President on the National Wireless Initiative in Marquette, Michigan (Feb. 10, 2011) (establishing a goal of achieving virtually ubiquitous wireless broadband coverage).

[86] President Barack Obama, State of the Union Address, Jan. 25, 2011, accessed at http://www.pbs.org/newshour/bb/politics/jan-june11/sotutranscript_01-25.html.

In addition, Chairman Genachowski has stated that "[b]roadband is the indispensable infrastructure of our 21st century economy[,]"[87] and the Commission has noted that both "[f]ixed and _*mobile*_ broadband have become crucial to our nation's economic growth, global competitiveness, and civic life[,]"[88] that "mobile voice and broadband services provide unique consumer benefits, and that promoting the universal availability of such services is a vital component of the Commission's universal service mission . . . ."[89]

By making remaining CAF Phase I incremental support available for use by mobile broadband service providers, the Commission would not only serve its goal of promoting the universal availability of mobile broadband, but would also advance its objective of utilizing Phase I support to accelerate deployment of advanced broadband networks to areas where consumers currently have no access to any broadband services.

Competitive and Technological Neutrality.—Making wireless competitive ETCs eligible to receive CAF Phase I incremental support that has been rejected by incumbent price cap carriers would promote parity between wireline and wireless service providers with respect to the receipt of universal service support, thus helping to resuscitate universal service policies favoring competitive and technological neutrality adopted by the Commission and confirmed in judicial decisions. In this regard, U.S. Cellular notes NTCH's observation that, "[i]n an ideal world unclouded by political considerations, the Phase I build-out money would have been awarded to

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[87] Chairman Julius Genachowski, Remarks on Plan To Create 100,000 New Broadband-Enabled Jobs, Jeffersonville, Ind., Aug. 4, 2011, at 1.

[88] *CAF Order*, 26 FCC Rcd at 17667 (para. 3) (emphasis added) (footnote omitted).

[89] *Id*. at 17674 (para. 28).

any carrier, wireline or non-wireline, which would be willing and able to do the job for the lowest amount of subsidy from the Fund."[90]

Any restriction of universal service support to a single class of service providers is not competitively or technologically neutral and cannot be squared with the judicial interpretation that USF support mechanisms, *in order to comply with the statute*, must not only be sufficient to preserve and advance universal service, but also must be competitively neutral. The Fifth Circuit has explained this principle:

> The [USF funding] program must treat all market participants equally—for example, *subsidies must be portable*—so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. . . . [T]his principle is made necessary not only by the economic realities of competitive markets *but also by statute*.[91]

The predicament created by price cap carriers' refusal of $185 million in CAF Phase I support serves to emphasize the wisdom and utility of the Commission's—and the statute's—principle of competitive and technological neutrality. Consumers in areas where no broadband service is cur-

[90] NTCH Comments at 2 (emphasis in original).

[91] *Alenco*, 201 F.3d at 616 (emphasis added). As U.S. Cellular has explained:

> With portability, carriers face competition. Under the old [identical support] rule, carriers could only receive support when they got customers, and would lose support when they lost customers. Here [in CAF Phase I], the Commission is about to allow the nation's largest carriers to build subsidized wireless networks in areas where competitors may be already operating 2G and 3G networks. In other areas, competitors may wish to expand their services, but cannot do so because support flowing to their competitor is not portable.

U.S. Cellular October 2012 Ex Parte Letter at 2. U.S. Cellular is aware of the fact that the Commission in the *CAF Order* turned away from its long-standing policies regarding portability and the provision of support to multiple carriers in a service area. *CAF Order*, 26 FCC Rcd at 17780 (paras. 318-319). *See* United Wireless Carrier Universal Service Fund Principal Brief at 35-41, *In re: FCC 11-161*, No. 11-9900 (10th Cir. Oct. 23, 2012) (challenging the Commission's decision to limit Mobility Fund Phase I support to a single carrier in a service area). U.S. Cellular nevertheless urges the Commission to revisit this decision, since adherence to its principle of competitive and technological neutrality will benefit consumers in unserved areas by enabling wireless competitive ETCs to utilize CAF Phase I support to deploy mobile broadband networks.

rently available are disadvantaged by the refusal of price cap carriers to utilize all of the Phase I funds budgeted by the Commission. By expanding eligibility for these funds so that they are available in a technologically and competitively neutral manner, the Commission would restore the possibility that these funds will be used for their originally intended purpose of bringing broadband to unserved areas. Moreover, it would help to answer the critical question that is obscured by the lack of portability: Would price-cap carriers have rejected over 60 percent of funding if another carrier were eligible to deliver the supported services at the same $775 price point? At this stage, the proper policy option is to ensure that support is used efficiently, to deliver service at the earliest possible date, not to silo support to an inefficient carrier that has no competition, denying consumers the ability to choose the services that best suit their needs.

Correcting Budget Disparities.—Providing mobile broadband service providers with access to unclaimed CAF Phase I support would also begin to rectify the Commission's unwarranted refusal to provide a sufficient level of support for the deployment and operation of mobile broadband networks in rural America. As U.S. Cellular has explained, most recently in Comments filed last month, the Mobility Fund is glaringly deficient because "[i]t lacks funding sufficient to provide rural citizens with access to supported services that are reasonably comparable to those available in urban areas."[92]

Budget allotments made by the Commission for Mobility Fund Phase II amount to roughly *one-third* of the universal service funding available for mobile wireless deployment and operations in rural areas under the capped high-cost funding mechanism that is being phased out by

[92] U.S. Cellular Comments, WC Docket No. 10-90, *et al.*, filed Dec. 21, 2012 ("U.S. Cellular December 2012 Comments"), at 2.

the Commission.[93] Moreover, as RCA (now CCA) has explained, "the *CAF Order* includes wrongheaded preferences for wireline incumbent LECs . . . and it relatedly imposes artificial and unjustified limits on the amount of funding available to wireless carriers."[94]

The choices made by the Commission in funding Mobility Fund Phase II lead to "[t]he unavoidable conclusion . . . that the severely constrained Phase II budget will leave numerous areas across rural America unserved, with no access to affordable advanced mobile broadband networks, for the indefinite future."[95] Fortunately, the business choices made by incumbent price cap carriers regarding CAF Phase I support have presented the Commission with an opportunity: It can begin to correct its flawed budget decisions by enabling mobile broadband providers to utilize unclaimed Phase I support to bring mobile broadband to consumers in unserved areas.

V. CONCLUSION.

For all the reasons presented in these Comments, U.S. Cellular respectfully urges the Commission to refrain from taking any final action on the options proposed in the *CAF Phase I FNPRM* for the use of unclaimed CAF Phase I incremental support, and to refrain from granting any waiver petitions filed by incumbent price cap carriers seeking to relax the current rules applicable to their use of CAF Phase I support, until the Commission has examined, and sought

[93] *See id*. at 3.

[94] RCA January 2012 Comments at 2.

[95] U.S. Cellular December 2012 Comments at 3 (footnote omitted).

comment on, the advisability of making such unclaimed support available to wireless competitive ETCs for the deployment of mobile 4G LTE broadband networks in service areas where no broadband service is currently available.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

By:__________________________

David A. LaFuria
John Cimko

LUKAS, NACE, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678

Grant B. Spellmeyer
Executive Director – Federal Affairs &
Public Policy

UNITED STATES CELLULAR CORPORATION
8410 West Bryn Mawr
Chicago, Illinois 60631
(773) 399-4280

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