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

REPLY COMMENTS
of
UNITED STATES CELLULAR CORPORATION

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SUMMARY

Comments submitted in response to the *CAF Phase I FNPRM* present a straightforward history of the events leading to this proceeding. Connect America Fund Phase I collapsed because many incumbent price cap carriers did not have the incentives or capabilities to deploy broadband in unserved areas, and several incumbents wanted a better deal from the Commission.

In the *FNPRM*, the Commission tries to make that deal, giving up on its objective of accelerating the provision of broadband access to consumers in unserved rural areas and fashioning proposals consistent with price cap carriers' requests for more liberalized rules. But the record now provides powerful arguments that the Commission should abort these deal-making efforts and instead seek comment on better options for benefiting consumers in unserved areas.

The Commission's Transformation of Universal Service Is Flawed

Commenters agree with U.S. Cellular that one of the key provisions of the reformed universal service mechanisms adopted by the Commission in the *CAF Order* is a budget that provides a lopsided advantage to incumbent price cap and rate-of-return carriers, that harms consumers by ignoring their preferences for access to mobile voice and broadband networks, and that abandons competitive policies by short-changing support for mobile carriers and other competitive providers.

Parties point to the fact that the failure of CAF Phase I—with more than 60 percent of allocated support turned down by incumbent price cap carriers—underscores the error of the Commission's assumptions regarding the extent to which these carriers have the incentives and capabilities necessary to advance the Commission's goal of bringing advanced broadband service to unserved rural areas.

Even worse, commenters observe that the *FNPRM* reflects the Commission's apparent unwillingness to make mid-course corrections that could salvage its CAF Phase I goal. Instead, the Commission's principal proposal in the *FNPRM* would dispense with this goal, at the behest of incumbent price cap carriers, to enable the incumbents to use Phase I support for purposes other than bringing advanced broadband to consumers in unserved rural areas.

<u>The Commission's Proposal Faces Strong Opposition</u>

One of the key elements of the Commission's Option 1 proposal, which would expand the definition of eligible areas to make all areas without access to 4 Mbps/1 Mbps broadband eligible for Phase I support, has been greeted with skepticism in the record. Commenters agree with U.S. Cellular in arguing that the unwillingness or inability of price cap carriers to utilize the bulk of available CAF Phase I support to deploy broadband networks in unserved areas does not mean that the Commission should abandon its Phase I goal by modifying the rules to accommodate incumbents' preferences for the build-out and upgrading of their networks.

U.S. Cellular endorses arguments in the record opposing any absorption of unclaimed 2012 CAF Phase I support into a second CAF Phase I round in 2013 that would be fully funded at $300 million plus the unclaimed support. Parties argue that this would simply preserve a faulty disbursement mechanism, which would be made even more deficient if the Commission adopts its proposals to liberalize the Phase I rules to accommodate incumbents' concerns. U.S. Cellular also agrees with criticisms of the Commission's proposed rule that would permit incumbents to use Phase I funding to construct second-mile fiber facilities.

U.S. Cellular disagrees with various arguments and suggestions made by proponents of the Commission's Option 1 proposal. Some proponents advocate extending the Commission's proposed liberalization of its rules even further in order to maximize the flexibility available to incumbents in utilizing Phase I support. Other proponents support the Commission's proposal to expand the definition of eligible service areas by advancing arguments that appear to overlook or misconstrue the Commission's Phase I objectives.

The Record Demonstrates That Better Alternatives Are Available

U.S. Cellular posed this question in its Comments: If competing carriers had been eligible to receive CAF Phase I support on the same terms as price cap carriers (including the $775 per household cost criterion), would incumbents still have rejected the bulk of CAF Phase I support? The record roundly criticizes the Commission's failure to address this issue in the *FNPRM* or to examine any alternatives for the disbursement of unclaimed support.

Numerous parties support U.S. Cellular's position that the Commission should focus its CAF Phase I policies on consumers rather than incumbents, by exploring options to make unclaimed Phase I support available to mobile broadband carriers and other competitive broadband providers. Commenters explain that opening up unclaimed support to competitive broadband providers would:

- Preserve the Commission's Phase I objective of bringing broadband to unserved areas, since competitive providers are well-positioned to achieve this task efficiently, effectively, and quickly;
- Renew the Commission's commitment to competitive and technological neutrality, by making the unclaimed support available to *any* provider capable of meeting the Commission's public interest requirements;
- Benefit consumers in unserved rural areas by responding to their demand for mobile broadband services; and

- Begin to correct the skewed allocations in the Commission's overall universal service budget, which disproportionately favor wireline incumbents.

Other Options Proposed by the Commission Garner Little Support

The Commission presented two additional options in the *FNPRM*, but neither of them has generated much support among commenters. The Commission suggested the possibility of transferring unclaimed Phase I support to CAF Phase II, but several commenters agree with U.S. Cellular's concern that this would not benefit consumers because it would delay utilization of the unclaimed support.

The Commission also sought comment on its suggestion that the unclaimed funds could be used to reduce the overall universal service budget. U.S. Cellular has commented that the Commission's focus instead should be on increasing the budget, which can be accommodated through implementation of universal service contribution reform. Other commenters agree with U.S. Cellular's further point that using unclaimed support to reduce the overall budget nonetheless would be preferable to the Commission's proposal to rewrite its CAF Phase I rules to maintain incumbents' exclusive access to Phase I support on more favorable terms.

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United States Cellular Corporation ("U.S. Cellular"), by counsel, hereby submits these Reply Comments, in response to the Notice of Proposed Rulemaking adopted by the Commission in the above-captioned proceeding.[1]

I. INTRODUCTION.

In its Comments, U.S. Cellular asked whether incumbent price cap carriers still would have rejected the bulk of CAF Phase I incremental support if competing carriers were also eligible to receive the support subject to the same terms and conditions, including the requirement to deploy services based on a per household cost of $775.[2]

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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*" or "*FNPRM*"). The due date for reply comments in the proceeding is February 11, 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] U.S. Cellular Comments at ii.

The Commission has refused to address that question in the *CAF Phase I FNPRM*, choosing instead to focus on a proposal to make the unclaimed support available again—and exclusively—to incumbent price cap carriers pursuant to modified rules designed to coax the incumbents into accepting the support on more favorable terms. One of the enticements proposed by the Commission is to permit price cap carriers to use the funding in any service area in which 4 Mbps/1 Mbps broadband is not available, thus abandoning the Commission's goal of using Phase I funding to promote deployment in unserved areas.

The record now stands largely as an indictment of the Commission's proposed approach. Commenters not only criticize aspects of the Commission's overall transformation of its universal service regime, but also explain that the implementation of CAF Phase I foundered because of the Commission's flawed assumptions concerning the capabilities and incentives of incumbent price cap carriers. Commenters also point out that, even worse, the Commission's proposals in the *FNPRM* seem tailored to preserve and extend, rather than to correct, the deficiencies of the new universal service mechanisms.

The record also presents a strong antidote to the shortcomings of the Commission's proposals that have been revealed by commenters: The Commission should make unclaimed CAF Phase I support available to mobile broadband carriers and other competitive broadband providers. Doing so would preserve the Commission's Phase I goal of deploying advanced broadband in unserved areas, thus benefiting rural consumers. The first step in achieving this result is for the Commission to issue a further rulemaking notice to consider options for making the unclaimed support available on a competitively and technologically neutral basis to ensure that support is invested efficiently for the benefit of our rural citizens, and not for any class of carriers.

II. THE FAILURE OF CAF PHASE I HAS EXPOSED FUNDAMENTAL DEFECTS IN THE COMMISSION'S TRANSFORMATION OF UNIVERSAL SERVICE.

The record supports U.S. Cellular's view that the failure of price cap carriers to claim more than 60 percent of the Connect America Fund ("CAF") Phase I support made available by the Commission for 2012[3] reveals serious flaws in the various universal service reforms adopted by the Commission in the *CAF Order*.[4]

Numerous parties responding to the *CAF Phase I FNPRM* agree with U.S. Cellular's assessment that the Commission's reforms favor incumbent wireline carriers.[5] Many parties also agree that CAF Phase I has not worked as the Commission intended, in part because various assumptions the Commission made regarding the capabilities and incentives of price cap carriers have not been borne out by the facts. Parties also express concern that the *FNPRM* reflects an unwillingness by the Commission to confront the flaws in its reform measures, to face the facts presented by the CAF Phase I experience, or to begin to explore policy options for redirecting the Commission's reform efforts.

[3] This percentage has recently increased as a result of a decision by Consolidated Communications, Inc. ("Consolidated"), to return $421,247 in CAF Phase I incremental support that it had been scheduled to receive. Letter from Russell M. Blau, Counsel to Consolidated, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al*., filed Jan. 31, 2013.

[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*"), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

[5] *See* U.S. Cellular Comments at 5. Unless otherwise noted, all references to comments in these Reply Comments are to those filed in response to the *CAF Phase I FNPRM*.

A. The Commission's Universal Service Reforms Have Tipped the Scales in Favor of Incumbent Local Exchange Carriers.

U.S. Cellular states in its Comments that the Commission's "overall budget for high-cost support directs nearly ***ten times*** more support to wireline carriers than to wireless carriers[,]"[6] thus "display[ing] a lopsided preference for incumbent wireline carriers."[7] U.S. Cellular is not alone in this view.

WISPA, for example, observes that "[t]he sweeping changes to the Universal Service Fund rules granted broad financial benefits to a distinct class of telecommunications providers, those price cap carriers that have failed to deploy broadband to vast areas within their wire centers[,]"[8] and ViaSat points out that the Commission in the *CAF Order* abandoned previous policies guiding its universal service mechanisms "in favor of offering incumbent local exchange carriers . . . preferential access to ***billions*** of dollars in support."[9]

There also is support in the record for the view that the Commission should give priority to addressing these budget disparities. U.S. Cellular agrees with CCA, for example, that "the Commission should take all available steps to reduce the amount of funding that is reserved for the exclusive use of ILECs or to which ILECs will have preferential access."[10] Mediacom is more blunt, observing that the Commission should not "succumb to political overtures to treat the CAF as an entitlement program for price cap LECs[,]"[11] and that "[i]t is imperative that the

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[6] *Id*. at 4 (emphasis in original).

[7] *Id*. at 5.

[8] Wireless Internet Service Providers Association ("WISPA") Comments at 2 (footnote omitted).

[9] ViaSat, Inc. ("ViaSat"), Comments at 1 (footnote omitted) (emphasis in original). Mediacom Communications Corporation ("Mediacom") explains that "the current CAF support distribution methodology . . . favors the outdated incumbent LEC-centric service model." Mediacom Comments at 7.

[10] Competitive Carriers Association ("CCA") Comments at 6.

[11] Mediacom Comments at 4.

goal of using CAF subsidies efficiently should not give way to expediencies or political pressures."[12]

As U.S. Cellular has explained in its Comments, the decision in the *CAF Order* to heavily skew the Commission's transformed support mechanisms in favor of incumbent carriers is even more perplexing in light of the fact that "[c]onsumers have embraced mobile broadband services, applications, and devices in unprecedented numbers."[13] U.S. Cellular respectfully urges the Commission to heed the concerns expressed by commenters and to begin efforts to take a more balanced approach in its universal service budget allocations.

B. CAF Phase I Has Not Worked as Intended and Has Disproven the Commission's Rationale for Protecting and Benefiting Incumbents.

U.S. Cellular indicates in its Comments that the Commission's claim that CAF Phase I has been a success rings hollow because "[t]he 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."[14] There is wide support in the record for the view that CAF Phase I has not worked as intended.

CCA, for example, concludes that "Phase I of the CAF was wasteful, inefficient, and <u>un</u>successful . . . ."[15] MATI explains that the Commission's objective for Phase I was to narrow the rural-rural divide, to provide an immediate boost to broadband deployment in unserved areas, and to enable additional deployment beyond what carriers would otherwise undertake, absent

[12] *Id*. at 5.

[13] U.S. Cellular Comments at 20. *See id*. at 19-24.

[14] *Id*. at 3.

[15] CCA Comments at 5 (emphasis in original).

Commission reforms.[16] The facts and results of CAF Phase I funding reveal that this objective has been derailed because price cap carriers "saw fit to refuse CAF Phase I support to the extent that a vast majority of the unserved households will either have to do without broadband, or wait until the CAF Phase II process has been implemented."[17]

The incumbent price cap carriers' decision to turn down a large portion of CAF Phase I funding demonstrates, as WISPA points out, "that they cannot use the excess funds *<u>under the rules they themselves proposed</u>*."[18] Even more telling is the fact that these carriers have been seeking to preserve their exclusive access to the unclaimed support by pursuing the "subsidies through creative, yet flawed, waiver requests."[19]

ViaSat recalls the Commission's conclusion in the *CAF Order* that incumbent local exchange carriers ("LECs") are in "a unique position to deploy broadband networks rapidly and efficiently in [large service] areas[,]"[20] but observes that "[t]he results of the first round of Phase I flatly belie this claim; ILECs have demonstrated that they are poorly positioned to extend actual broadband service to unserved areas in an expeditious and cost effective manner."[21]

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[16] Mescalero Apache Telecom, Inc. ("MATI"), Comments at 3.

[17] *Id*. at 3-4 (footnote omitted). MATI singles out four carriers, noting that AT&T and Verizon have refused all support, CenturyLink accepted only 39 percent of the support to which it was entitled, and Windstream Communications "refused almost all support, but conditioned receipt of all support based on a petition for waiver . . . ." *Id*. at 3.

[18] WISPA Comments at 4 (emphasis in original).

[19] *Id*. at 2 (footnote omitted).

[20] *CAF Order*, 26 FCC Rcd at 17732 (para. 177) (footnote omitted), *cited in* ViaSat Comments at 8.

[21] ViaSat Comments at 8. CCA reaches the same conclusion, noting that, "rather than bending over backwards to subsidize ILEC networks irrespective of efficiency considerations or the implications for competition, the Commission should fundamentally reconsider the apparent assumption that ILECs are uniquely positioned to deliver broadband services to currently unserved communities." CCA Comments at 5-6.

U.S. Cellular agrees with ViaSat's analysis that the price cap carriers' decisions to forego CAF Phase I support "reflect that ILECs are not really incentivized to meet the Commission's universal service objectives."[22] This is because "the CAF program rules shield ILECs from competition for available support. As a result, ILECs lack any reason to adopt cost-efficient technologies and practices, and instead have been able to treat the CAF program rules as an invitation to 'negotiate' with the Commission by declining funding and/or filing waiver requests."[23]

In U.S. Cellular's view, what was sown by the Commission in the *CAF Order* has now been reaped in CAF Phase I. The Commission tried to convince itself in the *CAF Order* that it made sense to give incumbent price cap carriers exclusive access to $300 million in support to jump start broadband deployment in unserved areas, because these carriers were in a "unique position" to advance this policy goal. But the Commission overlooked the fact that price cap carriers had little incentive to play by the Commission's rules, nor did they have sufficient capabilities to bring broadband to unserved rural areas efficiently, effectively, and rapidly. That fact has now come into sharp focus in CAF Phase I.

C. The Commission's Proposals Show That It Is Prepared To Keep in Place a Flawed Universal Service Regime.

The *CAF Phase I FNPRM* gives no sign that the Commission is willing to come to grips with the fact that many aspects of its transformation of universal service support mechanisms favor incumbent carriers at the expense of consumers, competition, and the efficient use of support.[24] Since recognition of a problem is the first and critical step toward solving it, the *FNPRM*

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[22] *Id*. at 6.

[23] *Id*.

[24] *See* U.S. Cellular Comments at 5.

provides little room for optimism that the Commission will seek to move its universal service mechanisms in a different and more productive direction.

Instead, the *CAF Phase I FNPRM* proposes "rules solely to perpetuate the competitively non-neutral, non-market-based price cap LEC-only funding framework of Phase I . . . ."[25] U.S. Cellular agrees with ViaSat that the proposals in the *FNPRM* would maintain "the same flawed structure for high-cost support established in the [*CAF*] *Order*, which abandoned the principle of competitive neutrality that previously had guided universal service policy for decades (and subjected high-cost programs to market discipline) . . . ."[26]

Notwithstanding the approach proposed in the *CAF Phase I FNPRM*, the record in response to the *FNPRM* provides the latest evidence that there is an elephant in the room: The Commission's "LEC-centric" universal service policies appear not to work as intended, to the detriment of consumers in rural areas who seek access to fixed and mobile broadband services. U.S. Cellular agrees with NCTA's assessment that, "[i]n distributing CAF Phase I support in 2012, the Commission limited support to a small group of incumbent LECs and, as a result, failed to achieve its stated intent for CAF, i.e., making broadband available as efficiently and effectively as possible to locations that do not have it."[27]

U.S. Cellular also concurs with the Coalition's argument that the fact "[t]hat $185 million in support went unclaimed in 2012 only underscores the need to modify CAF I Incremental Sup-

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[25] Mediacom Comments at i. Mediacom explains that "getting the price cap LECs to accept the support is not the stated goal of providing Phase I incremental support—the goal is to spur deployment of broadband to unserved locations in lower cost areas." *Id*. at 14 (footnote omitted).

[26] ViaSat Comments at 1.

[27] National Cable & Telecommunications Association ("NCTA") Comments at 1 (footnote omitted).

port so that the program achieves its purposes."[28] The issue, of course, is what form these modifications should take. The answer lies in "focus[ing] on the actual goal of universal service support: providing service to ***consumers***."[29]

U.S. Cellular endorses NCTA's argument that "it is time for the Commission to offer broadband support to any interested provider willing to bring broadband to unserved consumers."[30] In contrast to incumbent price cap carriers, mobile broadband providers are in fact uniquely situated to act efficiently and effectively to bring affordable broadband to unserved rural areas. As U.S. Cellular explains in the following sections, the record in response to the *CAF Phase I FNPRM* provides the Commission with an opportunity to begin opening up unclaimed CAF Phase I support to competitive providers.

III. NUMEROUS PARTIES CRITICIZE THE COMMISSION'S PROPOSAL TO REWRITE CAF PHASE I POLICIES AND RULES TO ACCOMMODATE PRICE CAP CARRIERS.

U.S. Cellular explains in its Comments that "[t]he problem with the Commission's [Option 1] 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."[31] As discussed in the following sections, the

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[28] United States Telecom Association, Independent Telephone & Telecommunications Alliance, and ABC Coalition (collectively, the "Coalition") Comments at 7. ABC Coalition consists of AT&T, CenturyLink, FairPoint Communications, Frontier Communications, Verizon, and Windstream Communications. *Id.* at 3 n.5.

[29] NCTA Comments at 1 (emphasis in original).

[30] *Id.*

[31] U.S. Cellular Comments at 10. Option 1 "propose[s] to combine the remaining funding from the first round of the Connect America Fund into any future rounds of Connect America Phase I funding, and to revise the Phase I rules to expand the definition of eligible areas, adopt a process to update to the National Broadband Map, and alter the metric used to measure buildout." *CAF Phase I FNPRM*, 27 FCC Rcd at 14567 (para. 3).

record reflects widespread opposition to the Commission's proposal to give incumbent price cap carriers a second chance to claim exclusive access to CAF Phase I incremental support.

A. Expanding the Pool of Eligible Areas Would Abandon the Commission's CAF Phase I Goals, Harm Consumers, and Provide a Windfall to Price Cap Carriers.

In its Comments, U.S. Cellular explains that the Commission's explicit mission in CAF Phase I is to accelerate broadband deployment in areas where customers do not have any access to broadband service at any speed.[32] "The Commission's proposal to expand the definition of eligible service areas for CAF Phase I constitutes an abandonment of this mission."[33] The record provides support for this view and sheds further light on the harmful effects of the Commission's proposal to redefine areas eligible for Phase I support.

The Commission defined CAF Phase I eligible areas in the *CAF Order* in a manner consistent with its Phase I goal of rapidly bringing broadband to areas where no broadband is currently available. Specifically, the *CAF Order* provided that Phase I incremental support must be used to deploy broadband "in areas . . . unserved by fixed broadband with a minimum speed of 768 kbps downstream and 200 kbps upstream . . . ."[34] In proposing in the *CAF Phase I FNPRM* to permit unclaimed Phase I incremental support to be used in any areas unserved by 4 Mbps/1 Mbps broadband,[35] the Commission would permit price cap carriers to use incremental support to deploy or expand networks in underserved areas, thus virtually eliminating the prospect that

[32] U.S. Cellular Comments at 10-11.

[33] *Id*. at 11.

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

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

any further support would be used to further the Commission's original objective of bringing broadband to ***unserved*** areas.[36]

NCTA criticizes the Commission's approach as "particularly egregious"[37] and a "non-starter[,]"[38]explaining that "[u]niversal service support is meant to benefit ***consumers***, not incumbent LECs[,]"[39] and arguing that:

> If consumers in a certain area lack basic broadband, then the Commission should design a support distribution mechanism that has a better chance of providing those consumers with service. The Commission should not abandon these consumers because they happen to live in an area served by an incumbent LEC that chooses not to accept funding, and then compound this mistake by redistributing that support to incumbent LECs in other areas.[40]

Minnesota provides a useful illustration of NCTA's point. "More than 226,000 residents in Minnesota ***remain without access to broadband***[,]"[41] a situation that "is simply unacceptable[,]"[42] especially in light of the fact that "[f]armers in rural Minnesota rely on the Internet to check market prices and buy and sell their products. Rural hospitals and clinics need high speed Internet access to coordinate with specialists and major hospitals in urban areas. And businesses cannot remain competitive—or even survive—without access to high speed Internet service."[43] These considerations have led Senator Klobuchar and Senator Franken to "request that the FCC

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[36] *See also* NCTA Comments at 8 (explaining that, "if price cap incumbent LECs receive support now to serve the least costly locations, they are less likely to be willing to serve the remaining consumers in higher cost locations in CAF Phase II").

[37] *Id*. at 6.

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

[39] *Id*. (emphasis in original).

[40] *Id*. at 6-7.

[41] Letter from Hon. Amy Klobuchar & Hon. Al Franken, U.S. Senate, to Hon. Julius Genachowski, Chairman, FCC, Feb. 6, 2013 (emphasis added), accessed at http://www.franken.senate.gov/?p=hot_topic&id=2288.

[42] *Id*.

work expeditiously to commence a second round of CAF I funding in order to deploy broadband to *__unserved areas__* as quickly as possible."[44]

The Commission's proposal to redefine eligible areas, however, would harm consumers in Minnesota and throughout rural America who the Commission initially intended to benefit when it adopted the CAF Phase I mechanism in the *CAF Order*. U.S. Cellular agrees with NRECA's argument that "[t]he focus of the Phase I funds should remain on the deployment of broadband into locations which are currently unserved . . . ."[45] If, on the other hand, the Commission "create[s] a new interim funding mechanism (CAF Phase 1 ½) that will allow price cap incumbent LECs to serve only the most economically attractive locations with speeds below 4/1 Mbps on an exclusive basis[,]"[46] then the result of such a mechanism would be to harm consumers in unserved areas.

In addition to harming consumers and thwarting the Commission's own policy of promoting rapid broadband deployment in unserved areas, expanding the definition of areas eligible for Phase I incremental support would provide a windfall to incumbent price cap carriers. U.S. Cellular agrees with ACA's explanation that, if the Commission were to increase the pool of eligible areas, "then the average cost of serving its lowest cost areas would be lower than the average cost of serving its lowest cost areas that are without 768/200 Kbps."[47] This would mean that the Commission in effect would be allowing price cap carriers "to take the same amount of mon-

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[43] *Id*.

[44] *Id*. (emphasis added).

[45] National Rural Electric Cooperative Association ("NRECA") Comments at 4.

[46] NCTA Comments at 8.

[47] American Cable Association ("ACA") Comments at 14.

ey but spend less of it to meet the minimum performance requirements because it could be spread among a larger population of lower cost locations."[48]

B. The Commission's Proposed Rules Should Not Be Used for a New CAF Phase I Round in 2013.

U.S. Cellular agrees with commenters expressing concerns regarding the advisability of rolling unclaimed 2012 CAF Phase I incremental support into a second Phase I round in 2013, which would be funded at $300 million plus unclaimed 2012 support.[49] The problem with this proposal is that it would only serve to extend and prolong a flawed disbursement mechanism, which would be made even worse if the Commission adopts the proposals made in the *CAF Phase I FNPRM* to liberalize the Phase I rules. As MBI explains, "[b]y rolling funds into a second CAF I round, the pool of possible providers able to use CAF to invest in [broadband] solutions . . . will remain limited to the incumbent providers who have already passed over the funding."[50]

U.S. Cellular agrees with MATI's analysis that the Commission's proposal, "in essence, seeks to further incent the price cap carriers to accept funding in future rounds of CAF Phase I . . . . [T]rying to provide more funding to carriers who plainly do not want or need such funding is the wrong approach to take."[51] The bottom line, in U.S. Cellular's view, is that the Commission should not combine unclaimed 2012 support with a new round of Phase I support if the Commission insists upon keeping this funding locked up for exclusive use by price cap carriers.

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[48] *Id*.

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

[50] Massachusetts Broadband Institute ("MBI") Comments at 2 (unpaginated).

[51] MATI Comments at 4.

C. CAF Phase I Support Should Not Be Available for Construction of Second-Mile Fiber Facilities.

The Commission has sought comment on various proposals that would permit price cap carriers to use CAF Phase I incremental support to construct second-mile fiber facilities.[52] If the Commission continues to disburse CAF Phase I support exclusively to price cap carriers pursuant to revised rules—which U.S. Cellular opposes—then these revised rules should not include any disbursements to fund the construction of second-mile fiber facilities.

As ACA explains, any such disbursements would enable price cap carriers to cream skim support. Any Commission cost-per-mile metric based on average costs would not be able to account for significant variations in costs based on regional and other factors. ACA indicates that these variations would hinder the efficient distribution of support. "As a result, price cap LECs would accept support based on the 'average' and deploy where the costs are much lower than average, for instance, in areas where fiber can be deployed aerially. This would provide price cap LECs with a surplus, which they could use for 'non-support' purposes."[53]

The Coalition supports the Commission's proposal for using CAF Phase I funding to support second-mile facility construction, and proposes a "two-part methodology" that would provide $38,910 in support for fiber feeder deployment on a per-mile basis, and $318 in support for electronics on a per enabled location basis.[54]

[52] Second-mile facilities have been described as broadband transmission facilities between a telephone company end office and a broadband access service connection point, which, in turn, has been described as the network equipment located in a telephone company serving wire center where broadband traffic from one or more telephone company service wire centers is aggregated. *See CAF Order*, 26 FCC Rcd at 18279-80 (App. G–Rural Association Proposed Rule Changes for USF Reform).

[53] ACA Comments at 17.

[54] Coalition Comments at 22.

A problem with the Coalition approach, however, is that it rejects the Commission's proposed "requirement to connect to a minimum number of unserved locations per mile."[55] The Coalition asserts that the proposed requirement is not workable because "the minimum number of customers served by any second-mile fiber deployment can vary considerably, depending upon the company and the geographic area it serves."[56] According to the Coalition, this means that "there is no practical way to develop an 'average minimum number of unserved locations' that every carrier would have to serve with each mile of fiber deployed."[57] The Coalition fears that "imposing such a requirement is likely to undermine the Commission's broadband deployment goals by preventing some price cap carriers from being able to accept some or all of their allocated CAF Phase I support."[58]

In U.S. Cellular's view, the Coalition's objections to an unserved location requirement illustrate why CAF Phase I has been a failure. The Commission's proposed requirement seeks to ensure that there is at least some nexus between the disbursement of support to price cap carriers and the delivery of broadband service to customers who currently have no access to advanced broadband. But price cap carriers argue that they should be authorized to use Phase I support for second-mile fiber construction without being tied down by any requirements that would benefit consumers. Fortunately, as U.S. Cellular will discuss,[59] the record presents a strong case for the pursuit of options that will avoid the dilemma posed by the price cap carriers' reluctance to accept support on any terms but their own.

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[55] *CAF Phase I FNPRM*, 27 FCC Rcd at 14570 (para. 18), *quoted in* Coalition Comments at 23.

[56] Coalition Comments at 23.

[57] *Id*. at 23-24.

[58] *Id*. at 24.

[59] See Section IV., *infra*.

D. Proponents of the Commission's Proposal To Rewrite the CAF Phase I Rules Fail To Present a Credible Case.

The Commission's proposals for revising its CAF Phase I policies and rules find some support in the record, but advocates of the approach suggested by the Commission do not provide any persuasive defense for the proposition that Phase I should no longer be focused on benefiting consumers who currently lack any access to broadband service. Moreover, some parties who support the Commission's proposals seem intent upon attempting to push the Commission even further in the direction of Phase I policies that serve the interests of incumbent price cap carriers rather than those of consumers.

1. Suggestions To Fine Tune the Commission's Proposal Would Benefit Carriers But Harm Consumers.

Some proponents of the Commission's proposal to keep CAF Phase I support exclusively available to price cap carriers on terms favorable to the carriers spend less time defending the proposal and more time suggesting ways to modify it to give even greater flexibility to price cap carriers. Three examples illustrate this point.

First, Alaska Communications Systems ("ACS"), in supporting an expansion of the definition of areas eligible to receive CAF Phase I support, argues that "the Commission [should] adopt 6 Mbps/1.5 Mbps as the speed proxy that best serves the Commission's public interest goals."[60] Under this approach, any area that does not currently have access to 6 Mbps/1.5 Mbps broadband would be eligible for support, in contrast to the Commission's proposal to permit carriers "to accept additional funds to target consumers and businesses that are in areas unserved by broadband that meets our 4 Mbps downstream and 1 Mbps upstream standard."[61]

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[60] ACS Comments at 12.

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

At the same time, however, ACS argues that, "[i]n deploying or upgrading service at these locations, the Commission should require carriers to deploy service only at the 4 Mbps/1 Mbps level required under CAF Phase II, and not the faster, 6 Mbps/1.5 Mbps level used to establish eligibility."[62] ACS argues that this approach is reasonable because the 6 Mbps/1.5 Mbps speed proxy would be easy to administer, and because the Commission "has not yet established the portion of a carrier's CAF Phase II area where 6 Mbps/1.5 Mbps service will be required."[63]

These arguments are not persuasive. The lack of symmetry in ACS's proposal would make CAF Phase I support available to incumbents on unduly favorable terms. Under ACS's approach, it would be possible, for example, for price cap carriers to receive Phase I support to deploy 4 Mbps/1 Mbps broadband in an area that is already receiving broadband at that speed. If the Commission decides to expand the pool of eligible areas—an approach that U.S. Cellular opposes—then the Commission should adhere to its proposal to use the same speed standard to define unserved areas and to establish the price cap carriers' public interest obligation for broadband deployment in those areas.

Second, the Coalition notes that the Commission has provided that an area is ineligible to receive CAF Phase I support if a provider already has plans to deploy broadband, or has agreed to do so to satisfy regulatory obligations,[64] but observes that, in some cases, these plans or regulatory obligations do not involve deployment of 4 Mbps/1 Mbps broadband service or greater.[65] The Coalition argues that, in such cases, "providers should be able to use CAF Phase I support to

[62] ACS Comments at 12.

[63] *Id*.

[64] Coalition Comments at 13.

[65] *Id*. at 13-14.

build out broadband at 4/1 so that consumers can obtain the minimum speeds to best take advantage of the Internet."[66]

The Commission should reject the Coalition's proposal because it conflicts with the Commission's policy goal for CAF Phase I. The Commission has specified its intent to use Phase I support to bring broadband to areas unserved by broadband with a minimum speed of 768 kbps/200 kbps. U.S. Cellular and other commenters argue that the Commission should not abandon this policy, since bringing broadband rapidly to unserved areas is a laudable and important objective. To keep this policy intact, the Commission should provide that an area will be ineligible for Phase I support if any carrier's existing capital investment plans, or any existing regulatory obligations, will result in the deployment of broadband with a minimum speed of 768 kbps/200 kbps or above. Doing so will ensure that Phase I support is preserved for areas with no access to broadband service.

And, *third*, ACS argues that "the Commission should use CAF Phase I incremental support as an opportunity to accelerate the deployment of broadband meeting its CAF Phase II standards and enhance the ability of price cap carriers to meet these lofty Commission aspirations."[67] This proposal appears to invite the Commission to ignore the interests of consumers in unserved areas so that incumbents may have full discretion to use Phase I support in ways tailored to improve their chances of complying with Phase II requirements. The Commission should decline this invitation and instead retain Phase I requirements that are intended to benefit consumers in unserved areas, consistent with the policy adopted by the Commission in the *CAF Order*.

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[66] *Id*.

[67] ACS Comments at 26.

2. Supporters of the Commission's Approach Overlook or Misconstrue the Goals of CAF Phase I.

Some parties support the Commission's proposal to expand the definition of areas eligible for CAF Phase I support, but they tend to overlook or misinterpret the Commission's policies and goals for Phase I. MDTC, for example, supports the Commission's proposal to shift from a 768 kbps/200 kbps standard to a 4 Mbps/1 Mbps standard for the definition of unserved areas,[68] arguing that "[t]he FCC's National Broadband Plan established the country's broadband availability target at these speeds, and the MDTC sees no compelling reason for the FCC to aim short of that target with the CAF."[69]

This argument overlooks the fact that the Commission's Phase I rules require deployment of broadband meeting a 4 Mbps/1 Mbps speed standard, consistent with the Broadband Plan target,[70] while at the same time defining service area eligibility in a manner that will promote deployment in areas currently without any access to broadband.

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[68] Massachusetts Department of Telecommunications and Cable ("MDTC") Comments at 7-8.

[69] *Id*. at 8 (footnote omitted). SEATOA engages in a similar analysis, indicating that it supports expanding the definition of unserved areas to include areas lacking access to 4 Mbps/1 Mbps broadband, based on its observation that some states have a low percentage of households currently receiving 4 Mbps/1 Mbps service. Southeast Association of Telecommunications Officers and Advisors ("SEATOA") Comments at 1-2. SEATOA argues that areas that do not currently have access to 4 Mbps/1 Mbps broadband should be eligible for unclaimed CAF Phase I support because that level of broadband service is "the minimum necessary to engage in modern life." *Id*. at 1 (footnote omitted). The Commission, however, has reasonably decided to use Phase I support to bring 4 Mbps/1 Mbps service to consumers who currently lack access to ***any*** broadband service (which, of course, includes areas lacking access to 4 Mbps/1 Mbps service). Phase II support will then be used to bring 4 Mbps/1 Mbps broadband to any "areas where a federal subsidy is necessary to ensure the build-out and operation of broadband networks[,]" including areas that already have access to broadband at lesser speeds. *CAF Order*, 26 FCC Rcd at 17673 (para. 24). SEATOA provides no reason why the Commission should revisit and overturn its policies regarding the use of CAF Phase I and Phase II support.

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

MBI supports making areas without 4 Mbps/1Mbps broadband eligible for unclaimed Phase I support because "[a]ny area in the United States that is not able to access Internet service of 4Mbps or greater is being served with legacy technology that is unsustainable for the future."[71] CAF Phase II will serve to address unsustainable legacy technology by facilitating network upgrades to achieve the 4 Mbps/1 Mbps speed standard.

Another solution—which currently is largely blocked by the Commission's abandonment of its principle of competitive and technological neutrality—is using universal service support to promote the deployment of 4 Mbps/1 Mbps mobile broadband in areas that only have access to legacy wireline broadband technology. In any event, MBI overlooks the fact that CAF Phase I is aimed at solving a different problem: bringing 4 Mbps/1 Mbps broadband to areas currently lacking *any* broadband service.

ADTRAN favors changing the service area eligibility standard from 768 kbps/200 kbps to 4Mbps/1 Mbps in part because doing so would "maximiz[e] the benefit of limited subsidy funding across as many consumers as possible. By deeming areas with lesser speeds as 'already served,' the Commission would be relegating those customers to 'second class' broadband."[72]

CAF Phase II, as well as Mobility Fund support, will help to avoid the outcome described by ADTRAN. But, more to the point, ADTRAN's argument disregards the fact that the Commission has reasonably adopted a policy that seeks to bring 4 Mbps/1 Mbps broadband to areas with no broadband service at all (Phase I), and to bring 4 Mbps/1 Mbps broadband, to the extent possible, to all high-cost areas (Phase II). Customers who currently have access to broadband at

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[71] MBI Comments at 2 (unpaginated).

[72] ADTRAN, Inc. ("ADTRAN"), Comments at 10-11. *See* ACS Comments at 10; Coalition Comments at 10 (arguing that expanding "the definition of eligible areas for CAF I incremental support would enable price cap carriers to deploy broadband services more quickly to greater numbers of consumers").

speeds below 4 Mbps/1 Mbps are not relegated to a second class status by the Commission's approach because CAF Phase II support will be available to upgrade broadband service for those consumers.

These various arguments advanced by commenters supporting an expansion of the definition of eligible areas bring into focus a key issue to be decided in this proceeding: whether to give up on consumers in unserved areas, or to find ways to continue using CAF Phase I support for the benefit of these consumers. Changing the definition of eligible areas in the manner proposed by the Commission would risk abandoning any effort to bring advanced broadband service to consumers who currently have no access to any form of broadband service. U.S. Cellular believes this would be the wrong choice, and that the Commission should consider other options for bringing relief to these consumers.

E. The Commission's Proposal Overlooks Solutions for Salvaging Its CAF Phase I Goals.

U.S. Cellular recognizes that the Commission indicated in the *CAF Order* that, to the extent price cap carriers reject CAF Phase I incremental support, the funding "may be used in other ways" to advance the Commission's broadband objectives.[73] In U.S. Cellular's view, however, the price cap carriers' decision to walk away from the bulk of Phase I support should not prompt the Commission to fold its tent and abandon its Phase I policy of bringing broadband to unserved areas.

Unfortunately, however, the *CAF Phase I FNPRM* provides little evidence that the Commission has an interest in remaining committed to its own CAF Phase I policies. As U.S. Cellular notes in its Comments, the Commission ignored options advanced by several parties for

[73] *CAF Order*, 26 FCC Rcd at 17717 (para. 138), *cited in* MATI Comments at 4.

using Phase I support to deploy broadband in unserved areas, and instead "chose[ ] 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."[74]

The Commission's apparent willingness to give up on its CAF Phase I goals has not gone unnoticed in the record. NCTA captures the core problem with the *FNPRM*:

> The Commission fails to seek comment on the correct answer, which is to make incremental CAF Phase I support available to ***other providers*** on the same terms offered to price cap LECs. This would help to achieve the goal of CAF Phase I—bringing broadband to consumers who do not have even a 768/200 kbps speed service—while also ensuring that funds are used efficiently and that support is disbursed in a competitively and technologically neutral manner.[75]

In the following section, U.S. Cellular examines arguments made by numerous commenters that the Commission should open up unclaimed CAF Phase I support to mobile broadband carriers and other competitive broadband providers.

IV. THE RECORD PRESENTS STRONG SUPPORT FOR MAKING UNCLAIMED CAF PHASE I FUNDING AVAILABLE TO MOBILE BROADBAND CARRIERS AND OTHER COMPETITIVE BROADBAND PROVIDERS.

U.S. Cellular and other commenters in this proceeding have generally criticized the Commission's universal service transformation because its new policies preserve and extend advantages held by incumbent wireline carriers, to the detriment of rural consumers.[76] U.S. Cellular also has been joined by other parties in specifically documenting the fact that CAF Phase I has failed to realize consumer benefits to the extent intended by the Commission and has ex-

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[74] U.S. Cellular Comments at 17.

[75] NCTA Comments at 4 (emphasis in original).

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

posed flaws in the Commission's assumptions regarding the commitment and capabilities of price cap carriers to deploy advanced broadband networks in unserved areas.[77]

This proceeding presents an opportunity for the Commission to begin reassessing its universal service transformation and to start the process of shifting its policies in a direction that will better serve consumers and competition. There is substantial support in the record for the Commission's taking these steps.

A. Opening Up Unclaimed CAF Phase I Support to Mobile Broadband Carriers and Other Competitive Carriers Would Help To Preserve the Commission's Phase I Policy Goals.

The Coalition argues that, "without increased use of CAF I Incremental Support, it will be difficult, if not impossible, for the Commission to close the rural-urban broadband divide in the near term."[78] U.S. Cellular agrees with this point, except that the Coalition is focusing on the wrong divide.

The Commission made clear in the *CAF Order* that its allocation of $300 million in CAF Phase I incremental support was intended to "begin[ ] the process of closing the <u>*rural-rural divide*</u> by directing additional funds to areas served by price cap carriers . . . ."[79] The Commission's policy regarding the use of this support was driven by its view 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 <u>*have no broadband access*</u> . . . ."[80]

[77] See Section II.B., *supra*.

[78] Coalition Comments at 4.

[79] *CAF Order*, 26 FCC Rcd at 17713 (para. 128 n.201) (emphasis added), *quoted in* U.S. Cellular Comments at 12.

[80] *Id*. at 17669 (para. 7) (emphasis added).

Support disbursed through the CAF Phase II and Mobility Fund mechanisms will help to close the rural-***urban*** broadband divide, but there is support in the record for U.S. Cellular's position that the Commission should preserve its policy of using CAF Phase I incremental support to close the rural-***rural*** divide by benefiting consumers in those parts of rural America that have no broadband access.[81] Other commenters agree with U.S. Cellular that mobile broadband providers are well positioned to use the incremental support efficiently to carry out the Commission's CAF Phase I goals and objectives.[82]

U.S. Cellular agrees with ViaSat's observation that the Commission is wrong in suggesting that CAF Phase I has "attempt[ed] to solve too ***small*** a problem"[83] and that Phase I should be redirected to support households that already have access to broadband service. ViaSat concludes that:

> In reality, the problem is not that Phase I has targeted too few areas for support. Rather, the problem is that the CAF does not incent ILECs to accept and use support effectively. At the same time, the CAF denies such support outright to competitive service providers . . . that are ready, willing, and able to provide 12/3 Mbps and even faster broadband services to unserved and underserved areas on an expedited and cost-effective basis.[84]

NCTA agrees, arguing that the Commission should avoid "diverting support away from consumers that lack even a basic level of broadband service,"[85] and should instead "offer incremental CAF Phase I support to providers other than the incumbent LECs."[86]

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[81] *See* U.S. Cellular Comments at 12-13.

[82] See Section IV.C., *infra*.

[83] ViaSat Comments at 2 (emphasis in original).

[84] *Id*. at 2-3 (footnote omitted).

[85] NCTA Comments at 4. NCTA points to the fact that AT&T and Verizon both declined to accept CAF Phase I support, and that, "[w]ithin the territories served by these companies there are many consumers that do not have even 768/200 kbps broadband service today." *Id*. at 6 (footnote omitted). NCTA concludes that, "[r]ather than giving up on reaching at least some of these unserved consumers, the Commis-

As U.S. Cellular has discussed, these commenters have illustrated a central point in this proceeding: The Commission can either (i) remain committed to its CAF Phase I goal of bringing broadband to unserved areas, and explore pro-competitive options for pursuing this goal; or (ii) it can discard its Phase I goal, in favor of devising rule changes that retain Phase I support within the exclusive domain of price cap carriers. The Commission has proposed the latter course in the *CAF Phase I FNPRM*, but the record is pointing the Commission in the direction of solutions that can preserve the Commission's Phase I policy of funding efforts to bring broadband to consumers who have no broadband access.

B. The Commission Should Revive Its Commitment to Competitive and Technological Neutrality by Making Mobile Broadband Carriers and Other Competitive Providers Eligible for Unclaimed CAF Phase I Support.

An op-ed contributor recently observed in the New York Times that "[h]igh-speed Internet access is now undisputedly the dominant communications technology of our era"[87] and that government policies must "make sure that subsidies are available for competitive companies willing to extend world-class service to more Americans."[88] At the same time, numerous consumer groups are concerned that "[c]ompetition in the broadband market is extremely limited. This lack of competition comes at a time when high speed Internet is becoming increasingly important to participate in civic life and commerce."[89]

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sion should allow non-incumbent LECs an opportunity to serve them with incremental CAF Phase I support." *Id*.

[86] *Id*. at 4.

[87] Susan Crawford, "How To Get America Online," N.Y. TIMES, Jan. 23, 2013, accessed at http://www.nytimes.com/2013/01/24/opinion/how-to-get-high-speed-internet-to-all-americans.html?_r=0.

[88] *Id*.

[89] Letter from Ken McEldowney, Executive Director, Consumer Action, Stephen Brobeck, Executive Director, Consumer Federation of America, Willard P. Ogburn, Executive Director, National Consumer Law Center, Jim Guest, President and CEO, Consumer Union, Ira Rheingold, Executive Director, Nation-

The Commission's Option 1 proposal in the *CAF Phase I FNPRM* would not move its policies in the direction of competitively neutral disbursement mechanisms. As U.S. Cellular explains in its Comments, the *FNPRM* reflects the Commission's apparent willingness to continue to depart from its principles of competitive and technological neutrality.[90] Other commenters have joined U.S. Cellular in opposing the Commission's proposal to shut out competitive service providers from access to unclaimed CAF Phase I support.

U.S. Cellular agrees with TransWorld, for example, that "[i]t would be contrary to the mandates of the Communications Act and prior Commission decisions to continue to exclusively provide price cap telephone companies with universal service funding in their territories, especially given that . . . [m]any price cap carriers have elected not to make broadband service available in Phase I . . . ."[91] TransWorld references the recommendation in the Broadband Plan that "[t]he eligibility criteria for obtaining support from CAF should be company—and technology—agnostic so long as the service provided meets the specifications set by the FCC. . . . Any broadband provider that can meet or exceed the specifications set by the FCC should be eligible to receive support."[92]

Commenters also explain that various benefits can be realized by adhering to the principle of competitive neutrality, and therefore support making unclaimed CAF Phase I support

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al Association of Consumer Advocates, Sally Greenberg, Executive Director, National Consumers League, Robert Weissman, President, Public Citizen & Andre Delattre, Executive Director, U.S. PIRG (collectively, the "Consumer Groups"), to Hon. Barack Obama, President, Feb. 1, 2013, Attachment, "An Agenda To Ensure Consumers Are Heard" ("Consumer Agenda") at 7.

[90] U.S. Cellular Comments at 17.

[91] TransWorld Network, Corp. ("TransWorld"), Comments at 1-2.

[92] *Id*. at 4-5 (quoting Broadband Plan at 145). *See* SEATOA Comments at 6 (arguing that "*any entity* . . . who wants to serve . . . unserved broadband regions should be allowed to apply for CAF funds") (emphasis in original).

available to mobile broadband carriers and other competitive broadband providers. For example, CCA explains that the Commission should not "devote *any* additional funding to a mechanism that is exclusively or preferentially available to ILECs"[93] because "deploying the available funding in a more competitively and technologically neutral manner [will] improve the efficiency of the CAF mechanism and . . . maximize consumer welfare."[94]

ViaSat makes a similar point regarding the relationship between competitive and technological neutrality and the efficient delivery of broadband service, explaining that "rules that minimize competitive and technological bias 'facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier[,]'"[95] but that "the 'wholesale exclusion' of a class of providers effected by existing CAF program rules not only is *in*efficient, but also is 'inconsistent with the language of the statute and the pro-competitive goals of the 1996 Act.'"[96]

The Coalition devotes a footnote to an attempt to justify the Commission's failure to make the CAF Phase I support mechanism competitively neutral, arguing that "CAF I Incremental Support addresses the unique circumstances of incumbent local exchange carriers subject to federal price cap regulation, [and, thus,] CAF I Incremental Support is entirely consistent with principles of competitive neutrality . . . ."[97] The Commission has taken a similar line in the *CAF Order*, indicating (in the context of defending its CAF Phase II rules) that "any departure from

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[93] CCA Comments at 1 (emphasis in original).

[94] *Id*.

[95] ViaSat Comments at 7 (footnote omitted) (quoting *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8802 (para. 48) (1997) ("*Universal Service First Report and Order*") (subsequent history omitted)).

[96] *Id*. at 7-8 (emphasis in original) (footnote omitted) (quoting *Universal Service First Report and Order*, 12 FCC Rcd at 8858 (para. 145)).

strict competitive neutrality"[98] is justified by the fact that incumbent LECs "have had a long history of providing service throughout the relevant areas[,] . . . put[ting] them in a unique position to deploy broadband networks rapidly and efficiently in such areas."[99]

As ViaSat and CCA have explained,[100] this unique position has not been on display in CAF Phase I. Now that it is evident that price cap carriers have largely recoiled from the task of deploying advanced broadband networks in unserved areas, the Commission has every reason to return to its principle of "strict" competitive neutrality by providing mobile broadband carriers and other competitive broadband providers with an opportunity to use unclaimed Phase I support to advance the Commission's Phase I goals.

C. Enabling Mobile Broadband Carriers and Other Competitive Providers To Receive Unclaimed CAF Phase I Support Would Benefit Consumers in Unserved Rural Areas in Several Ways.

Consumers in rural areas want and need access to advanced mobile broadband services. Mobile broadband networks can be deployed efficiently to bring broadband to consumers in unserved areas, if sufficient universal service support is available for this purpose. The availability of unclaimed CAF Phase I incremental support provides the Commission with an opportunity to begin realigning a budget that currently allocates a disproportionately large amount of funding to price cap and rate-of-return incumbents. Rural consumers would benefit from such a realignment that makes mobile broadband service providers eligible to receive unclaimed Phase I support.

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97 Coalition Comments at 2 n.4.

98 *CAF Order*, 26 FCC Rcd at 17731 (para. 177).

99 *Id*.

100 U.S. Cellular discusses these arguments made by ViaSat and CCA in Section II.B., *supra*.

1. Other Technologies Would Be More Efficient Than Price Cap Carriers' Wireline Networks in Bringing Advanced Broadband Service to Unserved Areas.

U.S. Cellular argues in its Comments that making unclaimed CAF Phase I support available to wireless carriers would make it possible to deploy broadband networks in currently unserved areas at per location costs comparable to or lower than those established by the Commission in CAF Phase I for price cap carriers.[101] Other parties agree that other technologies would be more efficient than wireline networks in deploying broadband in unserved areas.

ACA points out that the marketplace is providing evidence that mobile networks are more efficient than wireline networks in bringing broadband to rural areas, explaining that Verizon, which decided to decline any CAF Phase I support, is "moving to rely on wireless deployments in rural areas to provide broadband service."[102] U.S. Cellular also agrees with NCTA that common sense and sound policy dictate that "[t]he Commission should . . . decline to provide incumbent LECs with thousands of dollars per unserved location without giving other providers any opportunity to serve those customers at a lower level of support."[103]

ViaSat explains that ensuring the efficient use of universal service support is largely dependent upon having the right incentives in place. "Without any market-based incentive to build out quickly or efficiently, many ILECs have bided their time by declining Phase I support and attempting to secure even more funding . . . ."[104] ViaSat indicates that, on the other hand, "competitive providers have succeeded in upgrading and expanding the capabilities of their broadband

[101] U.S. Cellular Comments at 24.

[102] ACA Comments at 5 (footnote omitted) (citing a statement of Verizon's CEO, Lowell McAdam, at the Guggenheim Securities Symposium on June 21, 2012)).

[103] NCTA Comments at 8.

[104] ViaSat Comments at 2.

networks and improving service quality[,]"[105] but "those competitors [may not] be able to continue investing in their broadband networks in the face of a regulatory environment that dramatically skews the playing field in favor of the ILECs and their outdated technology."[106]

Rather than preserving the lock that price cap carriers have on CAF Phase I funding, it would be preferable for the Commission to take steps to enable more efficient use of unclaimed Phase I support by competitive carriers, in furtherance of the Commission's Phase I goal of promoting broadband deployment in unserved areas.

2. The Commission's Use of Unclaimed CAF Phase I Support Should Be Responsive to Consumers' Demand for Mobile Broadband Service.

Consumer demand for wireless services generally and for mobile broadband specifically, as U.S. Cellular describes in its Comments, continues to increase dramatically.[107] The Consumer Groups have noted, for example, that "[t]he Internet and other telecommunications services play an increasingly central and critical role in the everyday lives of consumers. Consumers are living more of their lives online <u>*and through mobile tools*</u>."[108] CTIA has explained that "[c]onsumers place enormous and ever-increasing value on the flexibility of using data and voice services whe-

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[105] *Id*.

[106] *Id*.

[107] U.S. Cellular Comments at 19-24.

[108] Consumer Agenda at 7 (emphasis added). It is also useful to note that the demand for broadband services has led to significant investment in both wireline and mobile broadband networks, which has translated into job creation. A recent study, for example, has shown that, in Illinois, broadband investment led to the creation of approximately 13,000 jobs in 2010 and 2011, and that, in 2012, Illinois had nearly 20,000 jobs related to mobile applications. L.E. Hlavach Lee, "Coalition: Broadband Means New Jobs," NWI TIMES, Feb. 1, 2013, accessed at http://www.nwitimes.com/news/local/illinois/coalition-broadband-means-new-jobs/article_a04e974f-a283-5c95-b45e-49fdb663ce61.html.

rever they are, and are embracing mobile broadband faster than any other broadband platform."[109]

CCA also notes the popularity of mobile services among consumers, indicating that consumers have a "manifest preference"[110] for mobile wireless services, which is evidenced by "their continuing abandonment of rural wireline technology[,]"[111] that consumers are cutting the cord from wireline services, and that the growth of mobile services is significantly greater than the growth of fixed services.[112]

These developments have led U.S. Cellular to conclude that the Commission should react to the rapid emergence of the mobile broadband market 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."[113] Given the fact that price cap carriers have not utilized the full amount of CAF Phase I support budgeted by the Commission, U.S. Cellular urges the Commission to heed evidence in the record regarding consumer demand for mobile voice and broadband services, and to make mobile service providers eligible to use unclaimed Phase I support for mobile broadband deployment in unserved areas.

3. Making Unclaimed CAF Phase I Support Available to Mobile Broadband Carriers Would Shift the Commission's Budget Allocations in the Right Direction.

U.S. Cellular observes in its Comments that the Mobility Fund Phase II funding mechanism substantially reduces the level of support available for mobile broadband deployment, com-

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[109] CTIA–The Wireless Association® ("CTIA") Comments, WC Docket No. 10-90, *et al*., filed Apr. 18, 2011, at 4.

[110] CCA Comments at 2.

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

[112] *Id*. at 2 n.4.

pared to the level of capped high-cost support that currently is being phased out.[114] Moreover, the overall $4.5 billion universal service annual budget adopted by the Commission is divided this way: $4 billion for price cap and rate-of-return incumbents, and $500 million for the Mobility Fund.[115]

ViaSat indicates that the Commission's proposals in the *CAF Phase I FNPRM* "are premised on the assumption that preserving ILECs' preferential access to billions of dollars in annual funding, with modest rule changes, would best serve the public interest[,]"[116] and CCA argues that "dedicating the overwhelming bulk of high-cost funding (nearly $4 billion annually) to ILECs under the CAF program inverts the priorities that should guide future funding allocations."[117]

It is difficult to avoid the conclusion that there is a glaring mismatch between the Commission's budget allocations and the broadband service preferences of consumers in rural America. CAF Phase I funds that have been left on the table by price cap carriers now give the Commission an opportunity to begin aligning its support allocations with the significant and increasing demand for mobile broadband service in the rural marketplace.

D. The Commission Should Seek Comment on Alternative Solutions Before Taking Any Further Action in the CAF Phase I FNPRM Proceeding.

U.S. Cellular has requested the Commission to seek "comment on . . . the advisability of making . . . unclaimed [CAF Phase I] support available to wireless competitive ETCs for the

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[113] U.S. Cellular Comments at 24.

[114] *Id*. at 29-30.

[115] *CAF Order*, 26 FCC Rcd at 17711 (para. 126).

[116] ViaSat Comments at 5.

[117] CCA Comments at 2.

deployment of mobile 4G LTE broadband networks in service areas where no broadband service is currently available."[118]

Various companies and trade associations have made the same request, noting that "the proposals in the recent [*CAF Phase I*] *FNPRM* represent a giant step backwards in the Commission's efforts to modernize the universal service high-cost program and should not be adopted as proposed[,]"[119] and suggesting that "the Commission should issue a supplemental notice seeking comment on proposals that would provide all service providers, both incumbent and competing providers, an opportunity to receive support."[120]

As U.S. Cellular has discussed in these Reply Comments, the record in this proceeding has now made it even more evident that there is a need for a further comment round to examine additional options to utilize unclaimed CAF Phase I support that, unlike the proposals in the *CAF Phase I FNPRM*, would be competitively and technologically neutral, would be responsive to the service demands of rural consumers, would enable the efficient use of universal service support, and would be consistent with the Commission's goal of using Phase I support to bring broadband to unserved areas.

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[118] U.S. Cellular Comments at 31. U.S. Cellular has argued that:

> 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 <u>*before*</u> 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.

Id. at 18 (emphasis in original) (footnote omitted).

[119] Letter from Ross J. Lieberman, Vice President of Government Affairs, ACA, Steven F. Morris, Vice President & Assoc. General Counsel, NCTA, Jeffrey H. Blum, Senior Vice President & Deputy General Counsel, DISH Network L.L.C., Michael Rapelyea, Director, Government Affairs, ViaSat, Rebecca Thompson, General Counsel, CCA, Matt Larsen, FCC Committee Chair, WISPA & Dean A. Manson, Executive Vice President, General Counsel & Secretary, EchoStar Corporation, to Marlene H. Dortch, Secretary, FCC, filed Dec. 14, 2012, at 1 (footnote omitted).

U.S. Cellular further suggests that one issue the Commission could address in a further rulemaking proceeding is the use of a reverse auction mechanism or a cost model to disburse unclaimed CAF Phase I incremental support. Parties have argued that the Mobility Fund Phase I reverse auction has worked better than the CAF Phase I disbursement mechanism in allocating support for capital investment in broadband networks,[121] and CCA has noted that "[a] wireless cost model for awarding funds to multiple carriers would lead to both enhanced competition in funded areas and reduced costs, and therefore would likely produce an even more efficient result that the reverse auction."[122] Both Mediacom and NCTA have suggested the use of competitive bidding mechanisms to disburse unclaimed Phase I support.[123]

V. OTHER OPTIONS PROPOSED BY THE COMMISSION HAVE RECEIVED LITTLE SUPPORT IN THE RECORD.

Although the Commission's principal focus in the *CAF Phase I FNPRM* is on its proposal to rewrite its CAF Phase I rules to retain incumbent price cap carriers' exclusive access to Phase I support on more liberal terms, the Commission also poses two other options for repurposing Phase I support that has been turned down by incumbents. Neither option has generated much enthusiasm among commenters.

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[120] *Id*.

[121] *See* CCA Comments at 3-4; Mediacom Comments at 7-8.

[122] CCA Comments at 4 n.11. *See* U.S. Cellular Comments at 19 (noting that unclaimed CAF Phase I "[s]upport could be offered at . . . $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").

[123] Mediacom Comments at 9-10; NCTA Comments at 4-5.

A. Rolling Unclaimed CAF Phase I Support into CAF Phase II Would Slow Progress Toward Advancing the Commission's Universal Service Goals.

U.S. Cellular opposes in its Comments the Commission's Option 2 proposal to shift unclaimed CAF Phase I support into CAF Phase II because doing so would not only signal an abandonment of the Commission's efforts to accelerate broadband deployment in unserved areas, but would also "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."[124]

Several parties agree with U.S. Cellular's concerns regarding the delay in the availability of support that would result from the Commission's proposal. ADTRAN, for example, argues that, "while folding unspent round one CAF Phase I funding into CAF Phase II should eventually lead to additional broadband deployment, it would needlessly result in several years of delay while that program is implemented."[125] MDTC suggests that, "despite progress on Phase II implementation, it is reasonable to conclude that unserved areas in price cap territories where the incumbent has declined Phase I incremental support may not benefit from CAF Phase II funding until at least 2014."[126]

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[124] U.S. Cellular Comments at 13.

[125] ADTRAN Comments at 4-5. ADTRAN also contends that "[b]roadband deployment . . . is far too important to our nation's future for the Commission to simply hit 'pause' after the first round of CAF Phase I and leave a void in support for deployment while awaiting CAF Phase II." *Id*. at 4. ADTRAN favors a second Phase I round for price cap carriers, funded at $300 million plus the unclaimed 2012 support. U.S. Cellular has argued that the Commission should not conduct a second CAF Phase I round in 2013 that is governed by the rule modifications proposed by the Commission in the *CAF Phase I FNPRM*. See Section III.B., *supra*.

[126] MDTC Comments at 3 (footnote omitted). The Coalition explains that considerable ground must be covered before CAF Phase II can be implemented:

> Despite diligent efforts by the Commission, a number of steps remain to complete the implementation of CAF Phase II. The cost model for allocating CAF Phase II support is still under development; once finalized, it must be thoroughly tested and reviewed before

Some parties favor transferring unclaimed CAF Phase I support to CAF Phase II because doing so would at least improve the chances that the support would be used more efficiently and effectively, to the extent it is disbursed through a reverse auction mechanism (in cases in which incumbents choose not to exercise their right of first refusal regarding the receipt of Phase II support).[127]

U.S. Cellular agrees that CAF Phase II does include mechanisms that would loosen incumbent price cap carriers' grip on support, at least in certain circumstances, and that this makes repurposing the support into CAF Phase II more attractive than retaining it in Phase I subject to the rule modifications described by the Commission in its Option 1 proposal. Nonetheless, as U.S. Cellular and other commenters have argued, a far more preferable result would be for the Commission to utilize unclaimed Phase I support for its intended purpose of spurring broadband deployment in unserved areas, but to make the support available for use by mobile broadband carriers and other competitive broadband providers.

B. Using Unclaimed Support To Reduce the Overall Universal Service Budget Would Reduce Incumbents' Exclusive Control over Funding But Would Accomplish Little Else.

U.S. Cellular expresses concern in its Comments regarding the Commission's Option 3 proposal because the Commission should be focused on increasing its inadequate universal service budget, rather than reducing it,[128] but U.S. Cellular also indicates that it does not oppose this

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> carriers can elect to receive support utilizing that model. In addition, an auction process must be developed and implemented.

Coalition Comments at 4 (footnote omitted). *See* NRECA Comments at 3; SEATOA Comments at 4.

[127] *See* ACA Comments at 8, 19-21; Mediacom Comments at 15.

[128] U.S. Cellular Comments at 13-15.

"least objectionable"[129] option presented in the *CAF Phase I FNPRM* because it would at least avoid "protecting price cap carriers' access to funds they have rejected . . . ."[130]

ADTRAN also sees little to recommend the Commission's proposal because it "would not foster the deployment of broadband service, and the one-time reduction in the USF 'taxes' would amount to little more than a 'rounding error' that would be unlikely to stimulate additional calling or even be noticed by consumers."[131] Other parties agree with U.S. Cellular's view that Option 3 (or, in NCTA's case, either Option 2 or Option 3) is better than retaining the funds in CAF Phase I for use by incumbents pursuant to modified rules that cater to their preferences. NCTA argues that:

> If the Commission chooses not to continue providing incremental CAF Phase I support for its originally intended purpose, i.e., to bring broadband to wholly unserved consumers, then this form of support should be eliminated and the Commission should use the $185 million left over from 2012 CAF Phase I to reduce the contribution factor or to be disbursed as part of CAF Phase II. The Commission should not adopt any of the proposals in the *CAF Phase I Further Notice* that would create a new incumbent LEC-only support mechanism for underserved areas or to build second mile facilities.[132]

In U.S. Cellular's view, the best result would be for the Commission to make its Option 3 moot by opening up unclaimed CAF Phase I funding for use by mobile broadband carriers and other competitive providers.

VI. CONCLUSION.

The record presents a strong case that the Commission should discard its proposal to retain unclaimed CAF Phase I support for exclusive use by incumbent price cap carriers in further

[129] *Id*. at 15.

[130] *Id*.

[131] ADTRAN Comments at 5.

[132] NCTA Comments at 6. *See* CCA Comments at 5; Mediacom Comments at 15.

Phase I rounds, subject to liberalized rules that would give the incumbents greater incentives to utilize the support they initially rejected but would abandon the Commission's goal of using Phase I support to bring broadband to unserved areas.

Instead, commenters agree with U.S. Cellular that the Commission should initiate a further rulemaking proceeding to seek comment on proposals for making the unclaimed Phase I support available to mobile broadband carriers and other competitive broadband providers.

Respectfully submitted,

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