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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

COMMENTS
of the
RURAL WIRELESS CARRIERS

United States Cellular Corporation
NE Colorado Cellular, Inc., d/b/a Viaero Wireless
Smith Bagley, Inc.
Union Telephone Company, d/b/a Union Wireless
Cellular Network Partnership, An Oklahoma Limited Partnership
Nex-Tech Wireless, LLC
Texas 10, LLC, d/b/a Cellular One
Central Louisiana Cellular, LLC, d/b/a Cellular One
Carolina West Wireless, Inc.
Cellcom Companies
PR Wireless, Inc., d/b/a Open Mobile

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August 8, 2014

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Summary

Americans living in rural areas deserve to have access to advanced telecommunications and information services that are reasonably comparable in quality and price to those available in urban areas. That commitment is made in Section 254(b)(3) of the Communications Act of 1934, and to deliver any less relegates our rural citizens to second class status. The Commission appears to have lost sight of that statutorily mandated goal.

Wireless voice communications are approaching saturation in urban areas. A majority of low-income citizens use a mobile phone as their ***only*** connection to the Internet. Machine-to-machine communication is revolutionizing business, including agricultural applications, in rural America. A tsunami of health care applications is on the horizon. Soon, the cost of mobile and wearable monitoring devices will drop such that health care providers will provide them free to patients, because they serve to lower health care costs dramatically and reduce medical visits. Mobile applications are also driving education, as textbooks follow the wireline phone into history.

As with electricity, water, and other basic services, the Commission must develop policies that provide ***all*** Americans with access to the tools they need to participate in society. Enabling these tools requires investment. Without a tower linked to the greater network, a community lacks the basic services that urbanites take for granted. Rural citizens understand that it has taken government support to extend basic services beyond where a business case makes sense on its own.

Mobility Fund Phase II Budget.—Between 2008 and 2011, support to mobile wireless carriers was reduced from approximately $1.2 billion under the legacy program to $500 million in the new Mobility Fund. Whatever one thinks about whether funds were invested efficiently under the legacy fund (and there is abundant evidence that legacy support resulted in substantial capital investment and increased competition), the Commission's decision to reduce funding was not well

supported by the record. It "budgeted" $500 million for mobile wireless networks without being able to definitively measure the areas where support is needed, or definitively say what the appropriate amount should be to fulfill President Obama's pledge that all of rural America should have access to mobile broadband within five years.

Now, three years later, and having yet to implement Mobility Fund Phase II, even though (i) demand for mobile broadband services is soaring, (ii) the public safety benefits of mobile broadband are more apparent than ever, and (iii) the Commission is considering dialing up the Connect America Fund throughput speeds to 10 Mbps/1 Mbps and more—the Commission proposes to ***reduce*** funding to mobile broadband.

Worse yet, the Commission rests its proposal to cut the Mobility Fund Phase II budget on assertions by AT&T and Verizon (the "Big Two" national carriers) that they are busily upgrading existing networks in rural areas to 4G LTE. Respectfully, at this date, the Commission has no record upon which it can make any conclusion whatsoever. Ironically, simultaneously, the Commission all but telegraphs in a notice of inquiry adopted this week that its next Broadband Progress Report is going to conclude that broadband is not being delivered to rural Americans in a timely fashion.

If the Commission is serious about extending mobile broadband networks to rural areas that need improved service, it must drop the pretense that the job is done, that the largest carriers will do everything without support, and that the *status quo* is acceptable. It must develop an accurate record about the quality of mobile broadband ***coverage*** in rural areas, to assess whether substantial investment should be targeted within existing carrier networks and at the edges, to fill in dead zones that leave consumers without service in critical areas where they live, work, and travel.

At the very time when the American public is clamoring for increased access, for faster throughput, for bigger bundles, and for choices in service providers, the Commission's proposed direction in the *Further Notice* goes in the wrong direction.

The Commission fails to advance any credible case for a downward adjustment to the Mobility Fund Phase II budget, attempting to justify its proposal by citing "marketplace developments" regarding the level of commercial deployment of mobile broadband networks in the last three years and the extent of 4G LTE deployments made by AT&T and Verizon.

The Commission's conclusion that 99.5 percent of the U.S. population (and road miles associated with that population) is covered "by some form of mobile broadband technology" concedes that this coverage percentage includes both 3G and 4G LTE technologies. The fact that 3G deployment has increased in rural areas since 2011 has no bearing on the need for 4G deployment. One reason for this is that the 3G technologies that have been deployed do not consistently deliver 3 Mbps downstream and 768 Kbps upstream speeds.

The Commission's optimistic assessment of the mobile broadband marketplace also fails to account for the fact that, even when 4G LTE networks are deployed, any individual consumer only has access to a single GSM-based or CDMA-based network. The Mobility Fund will not be successful if the Commission cuts its budget and Phase II support only delivers a patchwork of incompatible technologies throughout rural America.

In addition, the Commission gives no indication that the 4G LTE deployment claims made by AT&T and Verizon have been independently validated. In fact, the Commission acknowledges that these claims may be overstated. Moreover, the claims made by the Big Two have little to do with actual coverage in ***rural*** areas. The Commission also fails to take into account a more relevant marketplace development, namely, that there is a continuing disparity in the availability of competitive mobile broadband services between urban and rural areas.

The Commission also expresses concern that frozen legacy support currently being received by wireless competitive eligible telecommunications carriers is not “well-targeted” and supports multiple networks, but, even to the extent there is any basis for these concerns regarding where legacy support is being provided, these concerns do not provide any grounds for reducing the ongoing Mobility Fund Phase II budget.

Finally, the Commission appears to imply that $400 million—the amount of legacy support currently received by smaller and regional competitive ETCs—should be the baseline from which to calculate any reductions in the Mobility Fund Phase II budget. This baseline is not appropriate, since it is less than the full level of legacy support that was being received by competitive ETCs at the time this support was frozen. More reasonable baselines would be $1.2 million (the 2010 level), $579 million (the level of support that was being received by regional and small competitive ETCs in 2010 before the phase-down began), or $500 million (the current Phase II budget).

Reallocation of Mobility Fund Phase II Support.—As part of its proposed budget-cutting, the Commission proposes to reallocate Mobility Fund Phase II support to CAF Phase II or to the Remote Areas Fund. If the Commission does impose Mobility Fund Phase II budget reductions—which it should not—neither of these reallocations should be undertaken.

The only explanation the Commission provides for its proposal to shift Mobility Fund Phase II support to CAF Phase II is its expectation that wireless providers will participate in the CAF Phase II competitive bidding process. This justification is not sufficient, especially since there is no basis for the Commission’s implication that access to CAF Phase II support—if it is provided by the Commission—will offset wireless competitive ETCs' loss of a portion of Mobility Fund Phase II support as a result of the Commission's budget cutting.

It is likely that a considerable portion of CAF Phase II support will be claimed by incumbent price cap carriers through the Commission's right of first refusal and state-level commitment mechanism, enabling wireline incumbents to build subsidized 4G LTE networks via their wireless affiliates in areas already being served by wireless competitive ETCs. Even if that turns out not to be the case, mobile wireless carriers would be required to compete against other service providers—including incumbent price cap carriers—for CAF Phase II support. Moreover, as a policy matter, reallocating Mobility Fund Phase II support to CAF Phase II would not serve the Commission's reform objectives.

Shifting a portion of the Mobility Fund Phase II budget to the RAF is also inadvisable. The Commission does not expect to implement the RAF until 2016, after completion of the CAF Phase II reverse auction. There is no reasonable basis for moving funds to the RAF and then impounding those funds for 18 months or more. In addition, there are no policy grounds or practical reasons for moving Mobility Fund Phase II support to the RAF while the Commission at the same time has decided in the *Report and Order* to scale back the role originally envisioned for the RAF and to permit CAF Phase II support to be used for both high-cost and extremely high-cost areas.

Mobility Fund Phase II One-Time Support.—The Rural Wireless Carriers oppose the Commission's proposal to reduce permanently ongoing Phase II support, and to offset only partially this permanent reduction through the one-time provision of support for LTE deployment. Phase II support is needed for both competitive ETCs' operating expenses and capital investment for 4G services. The Commission has expressed concern that its funding policies could result in the loss of mobile services to existing customers in rural areas. This risk would be heightened by its proposal to cut back permanently the level of funding available for ongoing Phase II support.

The Rural Wireless Carriers do not favor the Commission's suggestion that Mobility Fund Phase I support that has not been claimed in Auction 901 should be shifted to Mobility Fund Phase II. A better approach would be to make unclaimed Auction 901 support available immediately to next-in-line bidders in the auction, since this is a more efficient and expeditious means of making this unclaimed funding available for mobile broadband deployment.

In addition, if the Commission seeks to replicate Mobility Fund Phase I by making additional one-time support available for LTE deployment, then it should consider the $1.8 billion annual CAF Phase II budget as a source of such one-time support. A reallocation of a portion of CAF Phase II funding to Mobility Fund Phase II would be a first step toward acknowledging both the disparities in the Commission's current budget for the funding of wireline and wireless technologies, and the substantial and growing consumer preference for mobile broadband services.

Targeting Mobility Fund Phase II Support.—The Rural Wireless Carriers generally support the Commission's proposal for targeting Phase II support, but also suggest that it should be careful to preserve existing mobile broadband service supported by its universal service mechanisms, and should avoid an exclusive focus on extending service to unserved areas. Areas that have some mobile broadband coverage should not be eliminated from receiving support because, without further investment, citizens in these areas will be relegated to an inferior experience due to the fact that devices work on a CDMA- or GSM-based network, but not both.

In addition, the Rural Carriers encourage the Commission to continue its efforts to develop sufficient mechanisms to determine accurately the extent to which areas are in fact currently served by 4G LTE broadband, and also suggest that interested parties be given an opportunity to comment on the new Form 477 reporting requirements and suggest modifications to further improve the accuracy of collected data.

Eligibility of Mobile Broadband Providers for CAF Phase II Support.—Wireless competitive ETCs should be permitted to compete for CAF Phase II support, since this would make the reverse auction process more competitive and would benefit rural consumers by increasing their opportunity to access mobile broadband services. The proposed 10 Mbps speed requirement should be applied to mobile broadband carriers only if the availability of new spectrum and technology on the market enables them to acquire sufficient bandwidth to meet the speed requirement.

Price Cap Carriers' Right of First Refusal.—The Commission should not permit price cap incumbents to utilize CAF Phase II model-based support to deploy 4G LTE networks, since permitting these incumbents to use support based on wireline network costs for the construction of mobile wireless broadband networks would be an inefficient use of Phase II support and represents nothing more than a continuation of the "identical support" rule the Commission rejected for wireless carriers in the *CAF Order*.

Transition from Legacy Support to Mobility Fund Phase II Support.—The Rural Wireless Carriers urge the Commission to take action that ensures that wireless carriers receiving frozen legacy support will be able to maintain service to their existing customers during the transition to the Mobility Fund Phase II support mechanism.

Other Issues.—The Rural Wireless Carriers continue to oppose the use of reverse auctions as an appropriate means of distributing fund support. If that mechanism is used, however, then the Rural Carriers support a 10-year term for support, but also urge the Commission not to award Mobility Fund Phase II support based on a methodology that compares bids across all geographic areas. Such a mechanism virtually guarantees that carriers seeking to serve areas with higher mobile broadband costs will have difficulty in successfully bidding for support in the auction.

Finally, the Commission should adopt its proposals for making penalties for failures to meet annual data and certification filing deadlines proportionate to the offense, although the Rural Wireless Carriers suggest several modifications to the Commission's proposals.

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United States Cellular Corporation ("U.S. Cellular"), NE Colorado Cellular, Inc., d/b/a Viaero Wireless, Smith Bagley, Inc., Union Telephone Company, d/b/a Union Wireless, Cellular Network Partnership, An Oklahoma Limited Partnership, Nex-Tech Wireless, LLC, Texas 10, LLC, d/b/a Cellular One, Central Louisiana Cellular, LLC, d/b/a Cellular One, Carolina West Wireless, Inc., the Cellcom Companies,[1] and PR Wireless, Inc., d/b/a Open Mobile (collectively, "Rural Wireless Carriers" or "Rural Carriers"), by counsel, hereby submit these Comments, pursuant to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.[2] The Rural Wireless Carriers welcome this opportunity to comment on the various proposals in the *Further Notice* to continue implementation of the universal service reforms adopted by the Commission in the *CAF Order* three years ago.

I. INTRODUCTION.

The premise of the Commission's proposals in the *Further Notice* relating to Mobility Fund Phase II appears to be that "significant commercial deployment of mobile broadband services"[3] since adoption of the *CAF Order* has opened the door for cutting the Phase II budget. Although the Commission does not find it necessary to provide any estimate of the level of budget reductions

[1] Northeast Communications of Wisconsin, Inc., and its wireless carrier affiliates Brown County MSA Cellular Limited Partnership, Nsighttel Wireless, LLC, Wausau Cellular Telephone Company, LP, Wisconsin RSA No. 4, LP, and Wisconsin RSA No. 10, LP, are collectively referred to as the "Cellcom Companies".

[2] *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Universal Service Reform–Mobility Fund*, WT Docket No. 10-208, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 (rel. June 10, 2014), 79 Fed. Reg. 39164 (July 9, 2014) ("*Report and Order*" and "*Further Notice*"). The due date for comments in response to the *Further Notice* is August 8, 2014. The *Report and Order* and *Further Notice* continue implementation of universal service reforms adopted by the Commission in 2011. *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 (2011) ("*CAF Order*" and "*CAF Further Notice*"), *aff'd sub nom*. *In re FCC 11-161*,703 F.3d 1015 (10th Cir. May 23, 2014).

[3] *Further Notice* at para. 238.

it is contemplating, it does make it clear that a principal focus for Phase II is to "adjust downward"[4] the Phase II budget and to reallocate Phase II support to other funding mechanisms.

The Commission's budget proposals are misguided. The marketplace developments it cites are a conglomeration of non-binding assertions by national carriers that have a vested interest in reducing their contributions to the Commission's universal service programs, combined with advertising maps that the Commission admits overstate coverage. In order to determine a sufficient level of funding for the Commission's support budget, reliable data is needed.

The Commission can begin by making further improvements to the requirements for collecting and submitting Form 477 data, which will be submitted for the first time on October 1 of this year. The Commission should compare this data to advertising data, and decide whether it is useful for determining coverage on rural roads. It can order a study to determine how many non-Tribal Census Blocks that were listed as "unserved" in Auction 901 have been served by unsubsidized carriers. If the advances in mobile broadband are as dramatic as the Commission appears to assume, then surely there must be a large number of these previously unserved Census Blocks receiving new coverage, and new 4G Long Term Evolution ("LTE") broadband services.

The Commission's implication that cutting the Mobility Fund Phase II budget would not be problematic because wireless competitive eligible telecommunications carriers ("ETCs") could rely on Connect America Fund ("CAF") Phase II or Remote Areas Fund ("RAF") support to deploy LTE networks in rural areas is dubious. CAF Phase II funding is locked up for at least five years by the right of first refusal mechanism, which the Rural Wireless Carriers have opposed

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[4] *Id*. at para. 243.

since it was first drafted by wireline carriers in 2010. Moreover, using the limited amount of available RAF support for terrestrial mobile broadband will not move the needle in rural areas.

Instead of moving funding out of Mobility Fund Phase II, the Commission should develop a record that helps it to target Phase II support efficiently at the current budget level, to maximize 4G LTE network coverage in rural areas, and to ensure that competitive ETCs have sufficient support to maintain and operate these mobile broadband networks once they are deployed.

That is the goal established by the Commission in the *CAF Order* for Mobility Fund Phase II, and that is the goal the Commission should continue to pursue. These Comments demonstrate that there is neither empirical support nor any sound policy basis to reduce Mobility Fund Phase II support. The Rural Wireless Carriers also address several other issues in the following sections, including the targeting of Mobility Fund Phase II support, and the eligibility of wireless competitive ETCs to participate in the CAF Phase II reverse auction process.

II. DISCUSSION.

A. The Commission's Proposal To Downsize the Mobility Fund Phase II Budget Would Undercut Efforts To Deploy Advanced Mobile Broadband Networks in Rural America.

The annual budget adopted in the *CAF Order* for Mobility Fund Phase II is $500 million, with $100 million of that amount set aside for Tribal lands.[5] The Commission now proposes "to adjust downward" the Phase II budget,[6] although it refrains from providing any specific proposals regarding the extent or amount of any such adjustment.

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[5] *CAF Order*, 26 FCC Rcd at 17711 (para. 126). The Commission asks in the *Further Notice* whether it should "preserve the existing amount of funding dedicated to Tribal lands …." *Further Notice* at para. 245.

[6] *Further Notice* at para. 243.

This budget-cutting proposal flies in the face of the *CAF Order*, in which the Commission noted that it had adopted reforms to "expand the high-cost program in important ways to promote broadband and mobility[, and] that it is appropriate, in the first instance, to *evaluate the effect of these reforms before adjusting our budget*."[7] One of the *CAF Order* reforms—Mobility Fund Phase II—cannot be evaluated because it has not yet been implemented. Nonetheless, the Commission now brings forth a proposal to reduce the Phase II budget.

1. Providing the Benefits of Advanced Mobile Broadband to Rural Consumers and to Public Safety First Responders and Other Organizations Is an Important Policy Goal for Mobility Fund Phase II.

Lack of access to modern health care and educational opportunities relegates a citizen to second class status. The Commission's proposal to reduce the Mobility Fund Phase II budget places this access in jeopardy, and also stands in stark contrast to its conclusion elsewhere in the *Further Notice* that much remains to be done to bring 4G LTE service to rural areas. Specifically, the Commission indicates that, "[g]iven the experiences with Mobility Fund Phase I … where demand for universal service support far exceeded the supply of available funding, we recognize that there is a need and desire on the behalf of providers to extend mobile service …."[8]

U.S. Cellular has previously reached the same conclusion, explaining that, "[i]n Mobility Fund [Phase] II, when the standard will be areas that lack 4G service, many additional areas will be eligible and the resulting demand [for support] will be even higher [than in Auctions 901 and

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[7] *CAF Order*, 26 FCC Rcd at 17711 (para. 125) (emphasis added).

[8] *Further Notice* at para. 241.

902].”[9] U.S. Cellular has also observed that, in light of the fact that Mobility Fund Phase I support will provide coverage for only approximately 13 percent of eligible road miles and only approximately 6 percent of biddable geographic areas, “the Commission still has a long way to go toward its goal of maximizing the availability of mobile broadband in rural areas. Even the most optimistic observer cannot conclude that Mobility Fund Phase II, with its limited annual budget, will be sufficient to meet this task.”[10]

The Mobility Fund Phase I experience provides strong evidence that the Commission’s proposal for cutting the Mobility Fund Phase II budget is, at best, premature. In Phase I, the strong demand for one-time support indicated that the Commission’s efforts to spur rapid deployment of mobile broadband networks could have been dramatically more successful if the Commission had targeted more than $100 million for Phase I.

This outcome in Phase I suggests that it would be prudent for the Commission to allow its measure of the demand for support in the Phase II funding process to drive the Commission’s decisions regarding the Phase II budget. For example, if total demand for support exceeds the current $500 million budget, then the Commission will have empirical data that the current budget itself is insufficient and the “need and desire on the behalf of providers to extend mobile service”[11] cancels any basis for budget reductions. The Rural Wireless Carriers note that the demand for

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[9] Ex Parte Letter from David LaFuria, Counsel for U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, CC Docket No. 96-45 (filed Apr. 14, 2014) (“U.S. Cellular Ex Parte Letter”), at 1, *cited in Further Notice* at para. 241 n.442.

[10] U.S. Cellular Comments, WC Docket No. 10-90, WT Docket No. 10-208 (filed Dec. 21, 2012) (“U.S. Cellular Mobility Fund Phase II Comments”) at 4.

[11] *Further Notice* at para. 241.

broadband experiments was over 1,000 applicants proposing billions of investment dollars in rural America, for a budget that was set at $100 million.[12]

Proposing to cut the Mobility Fund Phase II budget at this stage is a high-risk and high-stakes endeavor because, as the Commission has determined, mobile broadband is important to rural consumers and the U.S. economy. The Commission explained in the *CAF Order* that:

> Mobile voice and mobile broadband services are increasingly important to consumers and to our nation's economy. Given the important benefits of and the strong consumer demand for mobile services, ubiquitous mobile coverage must be a national priority. Yet despite growth in annual funding for competitive ETCs … there remain many areas of the country where people live, work, and travel that lack any mobile voice coverage, and still larger geographic areas that lack current generation mobile broadband coverage.[13]

One of the most important benefits provided by mobile voice and broadband services involves public safety communications.[14] "Mobile broadband … is vital to public safety in rural areas"[15] because mobile data connectivity is often critically important for first responders responsible for providing emergency services in sparsely populated rural and remote areas.[16]

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[12] *See* FCC News Release, *FCC Launches Rural Broadband Expansion Experiments*, WC Docket No. 10-90, WC Docket No. 14-58 (rel. July 11, 2014), at 1; Joan Engebretson, "Almost 1,000 Entities Want To Participate in FCC Rural Broadband Trials," TELECOMPETITOR (Mar. 12, 2014), *accessed at* http://www.telecompetitor.com/almost-1000-entities-want-participate-fcc-rural-broadband-trials/.

[13] *CAF Order*, 26 FCC Rcd at 17771-72 (para. 295). Moreover, as U.S. Cellular has observed, there are many additional areas that currently lack 4G LTE service. U.S. Cellular Ex Parte Letter at 1.

[14] *See*, *e.g*., Association of Public-Safety Communications Officials, "Brief History of Broadband for Public Safety" (undated), *accessed at* https://www.apcointl.org/, at 2 (unpaginated) (explaining that "[t]he role of broadband … within public safety has been to provide value-added features beyond critical voice by providing data connectivity to and from field personnel").

[15] Julius Genachowski, Chairman, FCC, BRINGING BROADBAND TO RURAL AMERICA: UPDATE TO REPORT ON RURAL BROADBAND STRATEGY, GN Docket No. 11-16, 2011 WL 2491524 (June 17, 2011), at para. 24.

[16] Various types of emergency incidents (*e.g.*, medical emergencies, transit derailments, wildfires) may often generate significant bandwidth needs for first responders. Rick Burke, "Rural Coverage Challenges and Opportunities" (undated), *accessed at* https://www.apcointl.org/, at 3 (unpaginated).

To take one example, broadband has the capability to aid first responders in rural areas by enabling the use of smartphones (including their texting functionalities[17]), computers, and medical devices to place emergency calls. "In fact, any device that could connect to the Internet has the potential to call 911."[18] These broadband functionalities can deliver invaluable tools and capabilities to public safety personnel operating in rural areas. A further consideration is the fact that cellular towers deployed and maintained by wireless competitive ETCs using Mobility Fund support are available for use as collocation facilities by the nationwide public safety network.[19]

In addition to the significant role mobile wireless broadband plays in public safety, mobile broadband networks deployed by wireless competitive ETCs bring to many rural Americans a wide array of devices and applications capable of providing unique and effective services and solutions for consumers, health care providers, educational institutions, and other organizations.[20] These mobile broadband capabilities are virtually limitless. As CTIA has observed, "[w]ith widespread availability of mobile broadband, … more Americans may benefit from wireless products

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[17] The Commission today "adopted rules requiring text messaging providers to enable Americans to text 911 in an emergency." FCC News Release, *FCC Adopts Rules To Promote Widespread Text-to-911 Availability* (rel. Aug. 8, 2014), at 1 The Commission had previously adopted a Policy Statement earlier this year stating the goal that wireless carriers should enable consumers to send text messages to 911. *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, PS Docket No. 11-153, *Framework for Next Generation 911 Deployment*, PS Docket No. 10-255, Policy Statement and Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 1547 (2014).

[18] Eddie Reyes, "Embracing Broadband Technologies to Serve and Protect the Public" (May 6, 2014), *accessed at* http://broadbandsummit.apcointl.org/wp-content/uploads/08_EmbracingBroadband_Reyes_BBS14.pdf, at 5 (unpaginated).

[19] U.S. Cellular Ex Parte Letter at 2.

[20] *See*, *e.g.*, Ex Parte Letter from Steven K. Berry, President and CEO, Competitive Carriers Association ("CCA"), to Thomas Wheeler, Chairman, FCC, WC Docket No. 10-90, WT Docket No. 10-208 (filed Apr. 15, 2014) ("CCA Ex Parte Letter"), at 4.

and services no matter their locations, from taking online education classes to applying for jobs and accessing the best medical care."[21]

In the health care industry, "[s]martphones offer advanced features such as mobile e-mail, web browsing, and wireless communications. The sophistication of these devices has spawned a variety of new medical applications that help doctors and patients stay in touch and monitor health care needs."[22] For example, "there is a mobile application that allows physicians to get test results on their mobile device. They can look at blood pressure records over time, see an electro-cardiogram, or monitor a fetal heart rate."[23]

Mobile broadband services also play an increasingly important role in education, especially in rural areas. For example:

> Handheld devices enhance student learning [and] have been found to bridge the gap between haves and have-nots, and expose pupils to a rich array of instructional resources. Students find this approach very engaging and report great satisfaction with mobile learning approaches. This is particularly the case with underserved populations located either in geographically remote areas or poor districts.[24]

These mobile broadband capabilities underscore the importance of ensuring that advanced mobile broadband networks are deployed and maintained in rural America. The Commission has observed, however, that "significant mobility gaps remain a problem" for residents, public safety first responders, businesses, public institutions, and travelers in rural areas.[25] Cutting the Mobility

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[21] CTIA–The Wireless Association,® Policies & Initiatives, Broadband, *accessed at* http://www.ctia.org/policy-initiatives/policy-topics/broadband.

[22] Darrell M. West, "Ten Facts about Mobile Broadband" (Dec. 8, 2011), *accessed at* http://www.brookings.edu/research/papers/2011/12/08-mobile-broadband-west.

[23] *Id*.

[24] *Id*.

[25] *CAF Order*, 26 FCC Rcd at 17774 (para. 301).

Fund Phase II budget would make it more difficult for wireless competitive ETCs to continue and to sustain their efforts to eliminate these gaps.

The Commission, as the Rural Wireless Carriers have noted, acknowledges in the *Further Notice* that Mobility Fund Phase II can play a key role in eliminating these significant mobility gaps, and has recognized that there is a need to extend mobile service.[26] This need to extend mobile broadband—and to ensure that mobile broadband networks are maintained—in rural areas will be compromised by reductions in the Mobility Fund Phase II budget. As discussed in the next section, this concern is heightened by the fact that the Commission does not offer any convincing basis for its open-ended proposal to downsize the budget.

2. The Commission Does Not Provide a Reasonable Justification for Its Proposal To Reduce the Mobility Fund Phase II Budget.

The Commission devotes a single paragraph in the *Further Notice* to its proposal to reduce the Mobility Fund Phase II budget.[27] The reasons it advances for its budget-cutting exercise are not persuasive.

a. Marketplace Developments Do Not Support Downsizing the Mobility Fund Phase II Budget.

The Commission opines that, "[g]iven marketplace developments, the areas requiring support to preserve and advance mobile services appear to be less extensive than the Commission

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[26] *Further Notice* at para. 241. *See* U.S. Cellular Ex Parte Letter at 1, *cited in Further Notice* at para. 241 n.442.

[27] *Further Notice* at para. 243.

anticipated in 2011."[28] These developments—which involve the "significant commercial deployment of mobile broadband services" during the past three years[29]—are the basis for the Commission's proposal to reduce the Mobility Fund Phase II budget.

An examination of the marketplace developments the Commission cites in the *Further Notice* exposes problems with any reliance on these developments as a basis for Mobility Fund Phase II budget cuts. The Commission concedes, for example, that the "significant commercial deployment" involves both 3G and 4G LTE mobile broadband networks.[30] Thus, the Commission appears to be proposing that the Phase II budget—which is intended to enable deployment of service in areas lacking *<u>4G LTE</u>* broadband[31]—should be reduced based on the current availability of *<u>3G</u>* service.

The Commission generally should take relevant marketplace developments into account in weighing its budgetary decisions for universal service support, but, in this case, developments that involve 3G deployment during that past three years should be given no weight in determining whether to alter the size of the Mobility Fund Phase II budget. While some rural carriers have upgraded to 3G technology over the past several years, the technology does not deliver the 4G LTE speeds that are the subject of Phase II. Areas served only by 3G do not yet have the robust mobile broadband access that consumers in the coming years will need and expect.

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[28] *Id*.

[29] *Id*. at para. 238.

[30] *Id*. at para. 238 n.435.

[31] The Commission proposes that areas eligible for Phase II support will be those areas "where neither Verizon nor AT&T provide[s] 4G LTE …." *Id*. at para. 241.

The Commission also observes that nearly 99.5 percent of the U.S. population "is covered by some form of mobile broadband technology[,]"[32] and that both Verizon and AT&T (the "Big Two" national carriers) claim extensive 4G LTE network coverage.[33] That unsubstantiated coverage percentage is not relevant because it includes 2.5G, 3G, and 4G LTE deployments. In addition, the Commission concedes that the coverage percentage is inflated because it "reports advertised coverage as reported … by many mobile wireless service providers, each of which uses a different definition or determination of coverage."[34]

Even if the coverage percentage cited by the Commission were accurate and included only 4G deployment—which the Commission explains is not the case—its relevance is further vitiated by the fact that it represents *nationwide* coverage, which sheds little light on coverage in rural areas. Approximately 80.7 percent of the U.S. population resides in urban areas,[35] while non-metropolitan areas comprise approximately 72 percent of the total U.S. land mass.[36] Given the fact that the U.S. population is highly concentrated in urban areas, it is reasonable to conclude that mobile broadband coverage is also higher in urban markets.

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32 *Id*. at para. 238 (footnote omitted).

33 *Id*. In the Rural Wireless Carriers' view, it is unlikely that any of this claimed coverage includes the substantial percentage of census tracts that were eligible for Mobility Fund Phase I support but were not included in winning bids for support to deploy mobile broadband networks. The Rural Carriers have suggested that the Commission should conduct a study to determine how many areas listed as "unserved" in Auction 901 have been served by unsubsidized carriers. See Section I., *supra*.

34 *Id*. at para. 238 n.436 (quoting *Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, 28 FCC Rcd 3700, 3749 (para. 48) (2013) ("*Sixteenth Report*")).

35 U.S. Census Bureau, "Growth in Urban Population Outpaces Rest of Nation, Census Bureau Reports" (Mar. 26, 2012), *accessed at* http://www.census.gov/newsroom/releases/archives/2010_census/cb12-50.html.

36 U.S. Department of Agriculture, Economic Research Service, Rural Economy and Population, *accessed at* http://www.ers.usda.gov/topics/rural-economy-population/population-migration.aspx#.U8lhsZRdV4k.

In addition, the Commission does not point to any evidence substantiating claims by the Big Two national carriers regarding their 4G coverage in rural areas. The Commission, for example, cites claims by Verizon that its 4G LTE network is available to 95 percent of the U.S. population.[37] The Commission has yet to develop a record explaining what "available" means. It could mean that 95 percent of Americans have access to high-quality service everywhere they live, work, and travel. But there are no marketplace claims by the Big Two carriers that this is the case. It could also mean that 95 percent of Americans see the LTE light on their phones when they travel somewhere within their local community. The latter is a much different level of service, one that would indicate a need for substantial further investment to make LTE available throughout the community of interest.

Accordingly, this coverage percentage has little to do with real coverage in ***rural*** areas. Moreover, the Commission should develop a record relying upon Mobility Fund Phase I type demonstrations and equipment descriptions to validate the 4G coverage claims made by AT&T and Verizon, as well as whether these carriers are actually delivering 4G speeds to rural consumers. Without complete records substantiating actual real-world coverage, 4G LTE coverage is overstated and accompanying coverage maps are misleading.[38]

Finally, the Commission should take into account another relevant marketplace development. Specifically, there is a continuing disparity in the availability of mobile broadband services

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[37] *Further Notice* at para. 238.

[38] *See* CCA Ex Parte Letter at 3 (explaining that "AT&T and Verizon operate in some rural areas—likely by utilizing USF support—but their rural coverage typically runs only along the highways and main transportation corridors and is often not supported by backhaul sufficient to enable today's mobile broadband speed and capabilities. The record contains no information to indicate the level of service quality being provided by the largest wireline carriers in rural America. Moreover, there are many rural communities that AT&T and Verizon do not serve.").

in urban and rural areas. For example, the Commission found, in its most recent report on the state of competition in the mobile services marketplace, that:

> there is a disparity in the percentage of rural and U.S. population covered by more than two mobile voice provider networks. This disparity is even more pronounced when considering mobile broadband networks: 97.7 percent of the total U.S. population in non-rural area[s] is covered by three or more mobile broadband providers, compared to only 65.4 percent of the rural population.[39]

Additional "deployment trends in urban and rural areas over the last three years[,]"[40] referenced by the Commission just three days ago, further highlight the disparities in urban and rural broadband deployment:

> [The] lack of access to broadband [in rural areas] continues today, as June 2013 SBI [State Broadband Initiative] Data suggest that 22 percent of Americans living [in] rural areas lack access to 4 Mbps/1 Mbps broadband …. The discrepancy persists for higher speeds as well. For example, June 2013 SBI Data suggest that 98 percent of Americans living in urban areas have access to 10 Mbps/1 Mbps service while only 67 percent of Americans residing in rural areas have access to this same service. Additionally, June 2013 SBI Data suggest that 64 percent of Americans living in urban areas have access to 25 Mbps/10 Mbps service while only 25 percent of Americans residing in rural areas have access to this same service.[41]

After recounting urban and rural service disparities in the *Sixteenth Report*, the Commission cited, as a potentially ameliorating consideration, the fact that, "[i]n Phase II of the Mobility Fund, the Commission will provide up to $500 million per year in ongoing support to expand deployment and sustain mobile voice and broadband services in areas in which such service would

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[39] *Sixteenth Report*, 28 FCC Rcd at 3726 (para. 2).

[40] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, Tenth Broadband Progress Notice of Inquiry, FCC 14-113 (rel. Aug. 5, 2014), at para. 41.

[41] *Id*. at para. 40.

be unavailable absent USF support."[42] This commitment referenced in the *Sixteenth Report* has now been placed in jeopardy by the Commission's proposal to downsize the Phase II budget.

b. The Commission's Concerns That Legacy Competitive ETC Support Is "Not Well-Targeted" Are Not a Basis for Cutting the Mobility Fund Phase II Budget.

In discussing whether to downsize the Mobility Fund Phase II budget, the Commission asserts that funding currently disbursed to smaller and regional wireless providers—which it estimates to be approximately $400 million—"is not well-targeted" because "it is supporting multiple networks with overlapping coverage in some areas, and in some areas supporting a network that overlaps with the coverage provided by one of the four national wireless providers that is not relying on federal universal service support to offer mobile services in that area."[43] The Commission proposes the elimination and retargeting of the "unnecessary support" in these areas.[44]

The Rural Wireless Carriers emphasize that, regardless of whether there is any basis for the Commission's assumptions regarding faulty targeting of legacy support in certain areas, there are several reasons why these assumptions do not support a *reduction* of the Mobility Fund Phase II budget.

First, the Commission has already addressed concerns regarding overlapping coverage by multiple networks by eliminating the identical support rule[45] and proposing that Mobility Fund Phase II support will be available only to one service provider in any geographic area.[46] To the

[42] *Sixteenth Report*, 28 FCC Rcd at 3727-28 (para. 2).

[43] *Further Notice* at para. 243.

[44] *Id*.

[45] *CAF Order*, 26 FCC Rcd at 17830 (para. 511).

[46] *Id*. at 18073 (para. 1136) (indicating that it Mobility Fund Phase II "will generally be supporting a single provider for a given geographic area").

extent that legacy support is funding overlapping coverage, that support is already being eliminated by the Commission pursuant to its phase-down rules.[47] Thus, this use of legacy support for multiple networks has no bearing on determining the appropriate level of ongoing Phase II support.

In addition, the Commission specifically took this funding overlap issue into account in 2011 when it established the $500 million annual budget for Mobility Fund Phase II. The Commission noted that regional and small carriers received $579 million in high-cost support in 2010, and that, "[o]f this $579 million, we know in many instances that this support is being provided to multiple wireless carriers in the same geographic area."[48] Given that the Commission has already accounted for this perceived funding overlap in establishing the current Phase II budget, it is unclear how this overlap issue can again provide a basis for the Commission to "eliminate unnecessary support" by cutting the budget.

Second, the Commission is addressing its concerns regarding the use of support for networks that overlap with unsubsidized coverage provided by one of the four national wireless providers by proposing that Phase II support will be available only in areas unserved by 4G LTE service.[49] Thus, to the extent this overlap problem exists, it is being eliminated by the phase-down of legacy support, and the Commission's proposal in the *Further Notice* is intended to ensure that the problem will not be replicated by the Phase II disbursement mechanism.

Third, the Commission itself signals that its funding overlap concerns are not a basis for reducing the Mobility Fund Phase II budget. Specifically, the Commission explains that, "[t]o the

[47] *Id*. at 17830-31 (para. 513); 47 C.F.R. § 54.307(e).

[48] *CAF Order*, 26 FCC Rcd at 17824 (para. 495) (footnote omitted).

[49] *Further Notice* at para. 241 (proposing to "to focus competitive bidding for Mobility Fund Phase II support on extending mobile 4G LTE to the remaining U.S. population that will not have it available from either Verizon or AT&T").

extent we eliminate unnecessary support … , we could _target that support to those areas that will not be served with 4G LTE_ through commercial deployments."[50] The Commission thus makes the case for keeping the level of Phase II support intact—instead of cutting it—but ensuring that the support is targeted for use in areas currently without 4G LTE service.

And, _fourth_, the Commission has yet to acknowledge that mobile service is not like landline when it comes to consumer access. A consumer with access to high-quality mobile broadband service has access to the Internet throughout the area where she lives, works, and travels. However, that citizen does not necessarily have access to the Internet in 100 percent of her community _even if the Commission's policies result in 100 percent coverage by at least one carrier_. Even in a 4G LTE world, any single consumer only has access to a GSM- or CDMA-based network because the consumer's handset is not capable of accessing service provided on an incompatible network platform. Beyond making a 911 call, consumers are locked out of any area with incompatible network coverage.

It is therefore misleading to conclude that 95 percent of Americans have access to mobile wireless coverage, or that the Mobility Fund will succeed when the government-directed investment plan only delivers a patchwork of incompatible technologies throughout rural America. To be clear, each consumer has access to only 50 percent of the total network deployed nationwide (assuming GSM and CDMA are split evenly), unless the consumer purchases two subscriptions—one GSM and one CDMA. This problem is not significantly mitigated by deployment of 4G mobile broadband networks operating on the uniform LTE standard, because, for example, the Big Two

[50] *Id*. at para. 243 (emphasis added).

national carriers operate incompatible 4G LTE systems.[51] In any event, the Commission's proposal to downsize the Mobility Fund Phase II budget will undercut wireless carriers' efforts to deploy 4G LTE networks.

In sum, adopting policies that attempt to eliminate 100 percent of overlapping coverage areas is counterproductive for rural citizens. A better direction would be to adopt a goal consistent with the Communications Act of 1934 ("Act")—that rural citizens should have access to services that are reasonably comparable to those in urban areas.[52] Since the Commission has not yet figured out an effective way to meet this statutory objective, the Rural Wireless Carriers recommend using the Federal-State Joint Board on Universal Service ("Joint Board") process to develop a record and recommend steps to surmount this challenge.[53]

c. Any Resizing of the Mobility Fund Phase II Budget Should Be Based on an Accurate Baseline.

The Commission appears to assume that the starting point for determining whether the Mobility Fund Phase II budget should be resized is $400 million, which is the amount the Commission estimates is currently being received by smaller and regional carriers.[54] The *Further Notice* seems to imply that the Commission is proposing to reduce the current $500 million Phase II

[51] *See, e.g.*, Roger Cheng, "Sorry, LTE Compatibility in the U.S. Still Years Away," CNET (Feb. 27, 2013), *accessed at* http://www.cnet.com/news/sorry-lte-compatibility-in-the-u-s-still-years-away/.

[52] 47 U.S.C. § 253(b).

[53] *See, e.g.*, *Federal State Joint Board on Universal Service, Universal Service Contribution Methodology, A National Broadband Plan for Our Future*, WC Docket No. 96-45, WC Docket No. 06-122, GN Docket No. 09-51, Order, FCC 14-116 (rel. Aug. 7, 2014) (asking the Joint Board to provide recommendations on how the Commission should modify the universal service contribution methodology).

[54] The Commission estimates that wireless competitive ETCs currently are collectively receiving approximately $590 million in annualized support, with approximately $185 million of that amount being disbursed "to two of the largest national providers that have announced the commercial roll-out of LTE. Thus, we estimate that about $400 million is going to smaller and regional wireless providers." *Further Notice* at para. 243.

budget to $400 million—the current level of support being received by wireless competitive ETCs (with $100 million of that reserved for Tribal lands, pursuant to the Commission's current rules)—and then to reduce the Phase II budget even further to "eliminate unnecessary support …."[55]

As the Rural Wireless Carriers have explained above, there is no credible basis for reducing the current Mobility Fund Phase II budget. If, however, the Commission continues to consider whether to adopt these budget reductions, the Rural Carriers suggest that the Commission should not use $400 million as the baseline from which reductions would be made. Instead, the proper starting point from which to consider any resizing of the Phase II budget should be either $1.2 billion (the level of legacy support received by wireless competitive ETCs in 2008), or at least $579 million,[56] the level of support that was being received by regional and small competitive ETCs in 2010 before commencement of the phase-down of their support pursuant to Section 54.307(e) of the Commission's Rules.[57]

Alternatively, and at a minimum, the current Phase II budget of $500 million could serve as the baseline from which to calculate any resizing of the budget. In the Rural Wireless Carriers' view, however, the $1.2 billion or $579 million levels of support previously being received by wireless competitive ETCs are more realistic starting points because the Commission has never provided a defensible explanation of how its $500 million budget would be sufficient to preserve and advance universal service in the Nation's rural, high-cost areas.

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[55] *Id*.

[56] *See CAF Order*, 26 FCC Rcd at 17824 (para. 495).

[57] 47 C.F.R. § 54.307(e).

B. The Commission's Proposals for Reallocating Support from a Reduced Mobility Fund Phase II Budget Are Unnecessary and Should Not Be Adopted.

As demonstrated above, there is no rational basis for the Commission to downsize the Mobility Fund Phase II budget. Any such reductions would undercut efforts by wireless carriers to bring advanced mobile broadband networks to consumers, public safety first responders, health care providers, educational institutions, and others in rural areas. If the Commission nonetheless undertakes such reductions, then it should not pursue the reallocations of the Phase II budget that are proposed in the *Further Notice*.

1. Shifting Mobility Fund Phase II Support to Connect America Fund Phase II Would Not Serve the Commission's Universal Service Goals.

In proposing to shift support from Mobility Fund Phase II to CAF Phase II, the Commission seems to imply that, from the perspective of wireless competitive ETCs and their customers, it should make little difference whether the repository for mobile broadband funding is Mobility Fund Phase II or CAF Phase II.

Specifically, the Commission seeks to justify its proposal to move Mobility Fund Phase II funding to CAF Phase II by observing that it "expect[s] wireless providers that meet the requisite service standards will participate in … the … Connect America Fund[,]"[58] that wireless technology "may well be the appropriate solution to serve many areas lacking broadband today,"[59] and that the CAF Phase II competitive bidding process "will be implemented in a technologically neutral manner to allow the participation of as many entities as possible."[60]

[58] *Further Notice* at para. 246.

[59] *Id*.

[60] *Id*.

The Commission's justification is not realistic or credible for two reasons. *First*, it is not reasonable to assume that the level of funding that wireless competitive carriers would be able to secure through the CAF Phase II competitive bidding process would be comparable to the funding available to them from the current recurring budget for Mobility Fund Phase II. Although the Commission has been exceptionally generous in funding CAF Phase II at the level of $1.8 billion annually, it has also given incumbent price cap carriers the option of locking up the entirety of this funding for the initial five-year period of CAF Phase II disbursements, through their exercise of the incumbent carriers' state-level commitment mechanism. Support to competitive ETCs will be zero for five years in every area where the state-level commitment is exercised.[61]

Thus, while competitive ETCs welcome the opportunity to compete for CAF Phase II support,[62] they could find the CAF Phase II cupboard bare (or substantially depleted) during the first five years of Phase II disbursements. And during that time, incumbents will be able to build subsidized 4G LTE networks in areas already being served by competitive ETCs, a policy completely at odds with the stated goal of not investing support dollars in areas that would overlap existing networks. Moreover, even if significant levels of CAF Phase II funding are not captured by price cap incumbents through their right of first refusal, wireless competitive ETCs would still be required to compete against other service providers—including price cap incumbents[63]—for Phase II support.

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[61] *See CAF Order*, 26 FCC Rcd at 17673-74 (para. 24). The import of the mechanism is to give incumbent price cap carriers a five-year right of first refusal for CAF Phase II funding.

[62] The Commission is seeking comment in the *Further Notice* "on whether, for purposes of [CAF] Phase II implementation, we should allow the use of mobile … technology that meets the Phase II requirements …." *Further Notice* at para. 154 (footnote omitted). The Rural Wireless Carriers comment in favor of making CAF Phase II funding available to wireless competitive ETCs. See Section II.E., *infra*.

[63] *See Report and Order* at para. 37.

Any suggestion by the Commission in the *Further Notice* that shifting funding from Mobility Fund Phase II to CAF Phase II would have little bearing on wireless carriers' access to the funding ignores the fact that there is a difference between dedicating funding for the explicit purpose of supporting deployment of 4G LTE broadband networks by mobile wireless competitive ETCs, and, on the other hand, only giving these competitive ETCs an opportunity to compete for a pool of funds that is also available to price cap incumbents and other service providers. As a practical matter, it is not likely that support that is cut from the Mobility Fund Phase II budget and moved to CAF Phase II would ultimately be used for mobile broadband deployment in rural areas on a dollar-for-dollar basis, or even that any significant portion of the shifted funding would be disbursed for mobile broadband deployment.

And, ***second***, as a policy matter, reallocating Mobility Fund Phase II support to CAF Phase II would not serve the Commission's reform objectives. The focus of the Commission inquiry should be whether the Commission's universal service objectives would be better served by leaving the Mobility Fund Phase II budget intact, or by shifting Phase II support to CAF Phase II (or to another funding mechanism, such as the RAF).[64] In furtherance of its efforts to preserve and advance service in rural areas, the Commission in the *CAF Order* adopted a performance goal "to ensure the universal availability of modern networks capable of delivering *mobile* broadband and voice service in areas where Americans live, work, or travel[,]"[65] finding that "ensuring universal advanced mobile coverage is an important goal on its own …."[66]

[64] The Rural Wireless Carriers discuss the Commission's proposal to reallocate Mobility Fund Phase II funding to the RAF in Section II.B.2., *infra*.

[65] *CAF Order*, 26 FCC Rcd at 17682 (para. 53) (emphasis added).

[66] *Id*.

"To accomplish this goal, [the Commission] establish[ed] the Mobility Fund."[67] As the Rural Wireless Carriers have explained, shifting funding from Mobility Fund Phase II to CAF Phase II would compromise the opportunity of wireless carriers to obtain the funding for their use in deploying mobile broadband networks. Such a reallocation of funds would not "be consistent with [the Commission's] overall reform objectives"[68] to the extent those objectives include promoting "ubiquitous availability of mobile services …."[69]

The Commission's indication that it expects wireless providers to participate in CAF Phase II suggests that the Commission considers this CAF Phase II funding to be necessary to meet the performance goal the Commission has adopted for mobile broadband. In that case, it makes more sense to leave the funding in the Mobility Fund Phase II budget, rather than shifting it to CAF Phase II, since the Mobility Fund has been dedicated specifically to the task of meeting the Commission's mobile broadband performance goal.

2. The Deployment of Mobile Broadband Networks Would Be Impeded by Reallocating Mobility Fund Phase II Support to the Remote Areas Fund.

The Commission also proposes to reallocate to the RAF support generated by a downward adjustment of the Mobility Fund Phase II budget.[70] The Rural Wireless Carriers oppose such a reallocation because, for many of the reasons discussed in the previous section, moving Phase II funding to the RAF would not serve the Commission's reform objectives. Two additional factors also weigh against such a funding shift.

[67] *Id*. at 17773 (para. 299).

[68] *Further Notice* at para. 246.

[69] *CAF Order*, 26 FCC Rcd at 17773 (para. 298).

[70] *Further Notice* at para. 246.

First, the Commission, for the reasons discussed in the following paragraphs, has decided "to defer full implementation of the Remote Areas Fund until 2016, after completion of the Phase II competitive bidding process."[71] Moving Mobility Fund Phase II funding to the RAF would therefore be equivalent to locking the funding in a drawer for at least 18 months, and possibly much longer.

Past experience indicates that moving forward with RAF funding does not appear to be a priority for the Commission. In the *CAF Order*, the Commission stated that it "expect[ed] to finalize the Remote Areas Fund in 2012 with implementation in 2013."[72] The Commission now proposes to push back the 2013 implementation date by three years to 2016—and that date could slide further if there are delays in the completion of the CAF Phase II disbursement process, in adopting the rules governing the RAF, or in establishing the auction procedures to implement competitive bidding for RAF funds (if a competitive bidding mechanism is adopted by the Commission[73]). In the Rural Wireless Carriers' view, it would be more productive, and more in keeping with the Commission's performance goal for the timely deployment of mobile broadband, to keep the funding within the Mobility Fund support mechanism.

And, *second*, the Commission in the *Report and Order* has recalibrated its funding for extremely high-cost areas in a way that suggests there is no need to shift additional support into the RAF from the Mobility Fund Phase II budget. Specifically, the Commission has decided to include both high-cost and extremely high-cost areas in the CAF Phase II competitive bidding

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[71] *Report and Order* at para. 16.

[72] *CAF Order*, 26 FCC Rcd at 17675 (para. 30).

[73] *See CAF Further Notice*, 26 FCC Rcd at 18103-07 (paras. 1276-1289).

process in order to enable bidders to build integrated networks that span both types of areas in adjacent census blocks.[74]

The Commission took this step based on its conclusion that "it would be the most efficient use of [CAF] Phase II funding to provide support to areas above the specified funding threshold [*i.e.*, both high-cost and extremely high-cost areas] and then target the discrete budget for the Remote Areas Fund to those areas that remain unserved after the competitive bidding process."[75] Under this new approach, which has CAF Phase II doing part of the job that the RAF was originally intended to do, there does not seem to be any need to funnel Mobility Fund Phase II support into the RAF, which will now have a scaled-back role.

Given how little time and attention has been devoted to the RAF, the Rural Wireless Carriers suggest that questions surrounding how to effectively and efficiently deploy RAF funding are ripe for analysis by the Joint Board.

C. Using a Portion of a Reduced Mobility Fund Phase II Budget for One-Time Support of Mobile LTE Deployment Would Not Effectively Advance the Commission's Mobile Broadband Goals.

The Commission asks for comment on the proposition that, instead of maintaining the $500 million budget for Mobility Fund Phase II, the Commission could use an unspecified portion of that budget to provide one-time support to those providers willing to extend mobile 4G LTE broadband networks to eligible unserved areas.[76]

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[74] *Report and Order* at para. 30. The Commission took this step based on Connect America Cost Model data showing that extremely high-cost areas are actually interspersed among high-cost areas. *Id*.

[75] *Id*. at para. 31.

[76] *Further Notice* at para. 247.

The Commission also seeks "to further develop the record on how much of [the] $400 million in competitive ETC support provided today to smaller and regional wireless providers is covering ongoing operating expenses, and how much of it is being used to extend service to unserved areas."[77] In addition, the Commission seeks information regarding the extent to which current funding is needed to preserve existing service, and the extent to which this existing service "overlaps with the coverage areas of one of the four national providers."[78] The Commission presumably would attempt to rely on this data to determine the level of Mobility Fund Phase II downsizing and the amount of one-time support for 4G LTE deployment.

1. Cutting the Ongoing Mobility Fund Phase II Budget Would Risk Shortfalls in Support Necessary for Wireless Carriers To Maintain and Operate Mobile Broadband Networks in Rural Areas.

The approach discussed by the Commission in the *Further Notice*—to make a permanent reduction in ongoing Mobility Fund Phase II support, and to only partially offset this reduction through the one-time provision of support for LTE deployment—lacks any credible factual basis or public policy rationale.

The Commission's desire to build a further record regarding the current use of legacy support by wireless competitive ETCs for both ongoing operating expenses and deployment of facilities in unserved areas suggests that the Commission may intend to explore whether there is a rationale for downsizing Mobility Fund Phase II on the grounds that an annual budget of $500 million is not required for operating expenses, and that 4G LTE deployment can be supported

[77] *Id*. at para. 244.

[78] *Id*.

through a one-time infusion of Phase II support (the amount of which is not specified in the *Further Notice*).

Such a policymaking approach would be problematic and unsupportable. Mobility Fund Phase II funding, at least in the near-term, will be needed for *both* operating expenses and capital investment for 4G LTE deployment. As the Rural Wireless Carriers have discussed, the large number of rural areas currently lacking 4G service will generate a high demand by service providers for Phase II support for use in deploying 4G LTE networks. Cutting the Phase II budget would threaten not only the ongoing maintenance and operation of currently deployed mobile broadband service,[79] but also the deployment of new 4G LTE facilities in unserved rural areas.

The Commission has acknowledged the fact that its funding policies for wireless competitive ETCs could result in the cessation of carrier services in rural areas, indicating that it is "concerned that some areas of the country may lose service if competitive ETC funding is further phased down before the rules for Mobility Fund Phase II are adopted."[80] This is a serious concern, and the Rural Wireless Carriers support the Commission's proposals for amending its phase-down rules to avoid such a result.[81] An additional and greater concern, however, is that Phase II—especially if it is downsized and its funding is reallocated, as the Commission proposes—will not be sufficient to prevent the same result. In other words, if the Commission downsizes the Phase II

[79] *See*, *e.g.*, Ex Parte Letter from David LaFuria, Counsel for MTPCS, LLC, d/b/a Cellular One, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, CC Docket No. 96-45 (filed Apr. 17, 2014), at 1 (explaining "the continuing need for support in rural areas to … maintain facilities constructed with support in remote areas that would not otherwise be maintained but for carriers being able to receive some support. In many areas, the cost of maintaining towers built with support exceeds the revenues being generated, necessitating some form of Mobility Fund Phase II support to keep them operating.").

[80] *Further Notice* at para. 252.

[81] See Section II.G., *infra*.

budget, then many wireless competitive ETCs will receive insufficient Phase II support—or no support at all—and will no longer be able to provide service to existing customers.

In light of these concerns expressed by the Commission, the Rural Wireless Carriers are encouraged that the Commission is seeking comment on "targeted measures that would … *preserve* existing mobile voice and broadband service where it would not otherwise exist without government support."[82] In the Rural Carriers' view, a necessary measure to preserve existing mobile broadband service, as well as to maintain 4G LTE service that will be deployed, is to keep intact the $500 million ongoing Phase II budget adopted by the Commission in 2011.

When the Commission made that budgetary decision, it did so "in recognition of the fact that there are areas in which offering of mobile services will require ongoing support."[83] That continues to be the case today, and, three years later, the Commission has pledged that it is "committed to preserving universal service, consistent with the statute."[84] A downsizing of the ongoing Mobility Fund Phase II budget can only reduce new investments and risk having cell sites decommissioned. If the Commission is not satisfied that ongoing annual reports[85] do not provide sufficient accountability or transparency into the investments being made by carriers, then improving reporting requirements is much more likely to produce the desired result.

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[82] *Further Notice* at para. 14 (emphasis added).

[83] *CAF Order*, 26 FCC Rcd at 17824 (para. 493).

[84] *Further Notice* at para. 193 (footnote omitted).

[85] *See* 47 C.F.R. §§ 54.313, 54.1009.

2. It Would Be Inefficient for the Commission To Shift Undisbursed Auction 901 Funds to the Mobility Fund Phase II Budget, But the Commission Should Consider Other Sources of One-Time Support for 4G LTE Deployment.

The Commission seeks comment regarding whether Mobility Fund Phase I funds that have remained undisbursed after completion of Auction 901 should be combined with a portion of the Mobility Fund Phase II budget for use in providing one-time support to those providers willing to extend mobile 4G LTE broadband networks to eligible unserved areas.[86]

The Rural Wireless Carriers do not favor the Commission's suggestion that Mobility Fund Phase I support that has not been claimed in Auction 901 should be shifted to Mobility Fund Phase II. The Rural Carriers also object to combining this shift of Phase I support with a reduction in the Phase II budget.

Moreover, a better approach for the disposition of undisbursed Mobility Fund Phase I support would be to make that support available immediately to next-in-line bidders in Auction 901, since this is a more efficient and expeditious means of making this unclaimed funding available for mobile broadband deployment. The Commission does not need to construct any new mechanisms or adopt any new rules for utilization of this undisbursed Mobility Fund Phase I support. As U.S. Cellular has previously advocated, the Commission should simply award undisbursed Phase I support from Auction 901 to "next-in-line" bidders in Auction 901.[87]

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[86] *Further Notice* at para. 247.

[87] *See id*. at para. 247 n.450 (citing U.S. Cellular, Petition for Declaratory Ruling, Docket No. AU 12-25, Docket No. WC 10-90, Docket No. WT 10-208 (filed Mar. 21, 2014) ("U.S. Cellular Petition")).

Approximately $73 million of the $300 million made available in Mobility Fund Phase I has remained unclaimed as a result of defaults by winning bidders in Auction 901. The Commission has been committed to "distribut[ing] this support as quickly as feasible …."[88] Awarding unclaimed Auction 901 support to next-in-line bidders—which can be done expeditiously by the Wireless Telecommunications Bureau and the Wireline Competition Bureau through the exercise of their existing delegated authority[89]—would serve the Commission's objective of disbursing Auction 901 funds as quickly as possible. As U.S. Cellular has explained:

> The next-in-line bidders have already completed the requisite Commission processes, they have participated in the auction, and they have affirmatively stated a readiness to deploy facilities pursuant to their plans filed with the Commission. … Awarding support to next-in-line bidders distributes funds to those who have already submitted bids and are committed to performing.[90]

On the other hand, the approach described by the Commission in the *Further Notice*, which would involve the adoption of rules for the utilization of undisbursed funds remaining from Mobility Fund Phase I, would significantly delay the actual use of the $73 million in available Phase I funding for 4G LTE deployment. In addition, "moving the [undisbursed Phase I] funds to another place within the universal service mechanism sets a poor precedent that undermines confidence in the auction process."[91]

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[88] *CAF Order*, 26 FCC Rcd at 17773 (para. 299).

[89] *See* U.S. Cellular Petition at 5-6; Ex Parte Letter from David A. LaFuria & Robert S. Koppel, Counsel for U.S. Cellular, to Ruth Milkman, Chief, Wireless Telecom. Bur. & Julie Veach, Chief, Wireline Competition Bur., Docket No. AU 12-25, Docket No. WC 10-90, Docket No. WT 10-208 (filed Sept. 23, 2013), at 4-5.

[90] U.S. Cellular Petition at 6-7.

[91] *Id*. at 7.

Finally, if the Commission seeks to augment Mobility Fund Phase I by making additional one-time support available for 4G deployment, the Rural Wireless Carriers suggest that the Commission should consider the $1.8 billion annual CAF Phase II budget as a source of such one-time support. Reallocating a portion of CAF Phase II into Mobility Fund Phase II "to provide one-time support to those providers willing to extend mobile LTE to eligible unserved areas"[92] would help to rebalance the overall universal service budget in a more equitable and effective manner that also would better reflect continuing consumer preferences for mobile voice and broadband services.

In the Rural Wireless Carriers' view, it is ill-advised for the Commission to now propose downsizing a $500 million Mobility Fund Phase II budget, while at the same time proposing no specific reductions in the disproportionately large $3.8 billion annual budget for price cap and rate-of-return incumbents. The current budget provides 800 percent more universal service support to these incumbents than to wireless carriers, and $1.8 billion (41 percent of the overall budget) is targeted for price cap incumbents in CAF Phase II and initially reserved for their exclusive use through the right-of-first-refusal mechanism. In contrast, the amount of funding allocated to the Mobility Fund (including the Tribal land set-aside) comprises 11 percent of the overall universal service budget adopted by the Commission, while at the same time "wireless providers are paying 44 percent of [the] funds" that support the Commission's universal service programs.[93]

The charts on the following page contrast the current budget with the level of high-cost support available in 2011, and compare budget allotments with contribution obligations:[94]

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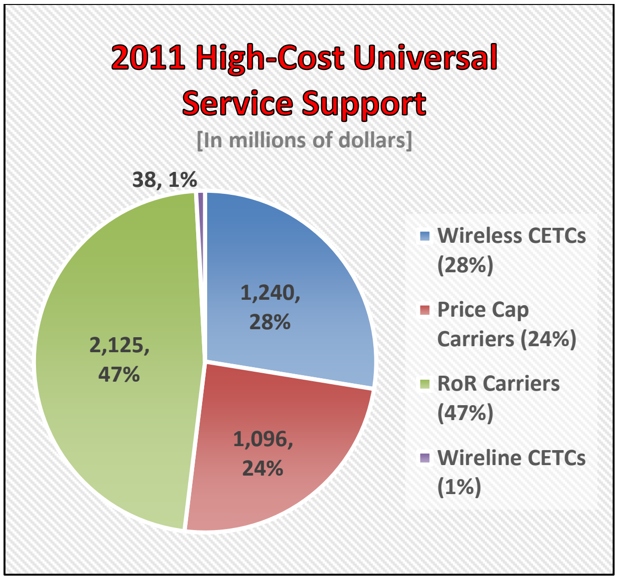
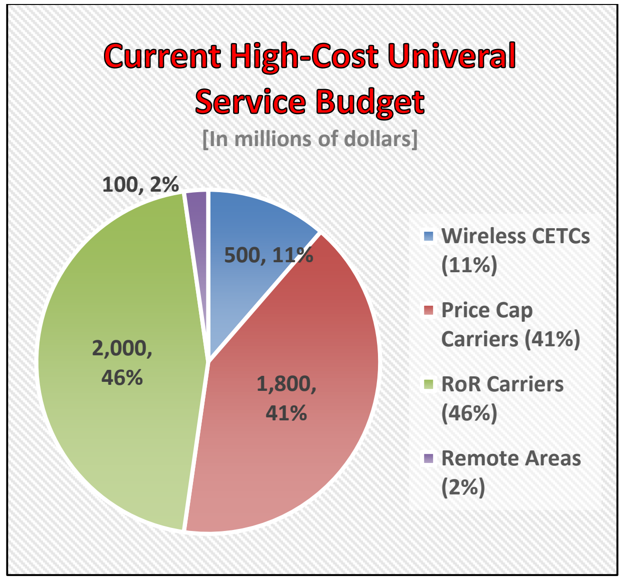
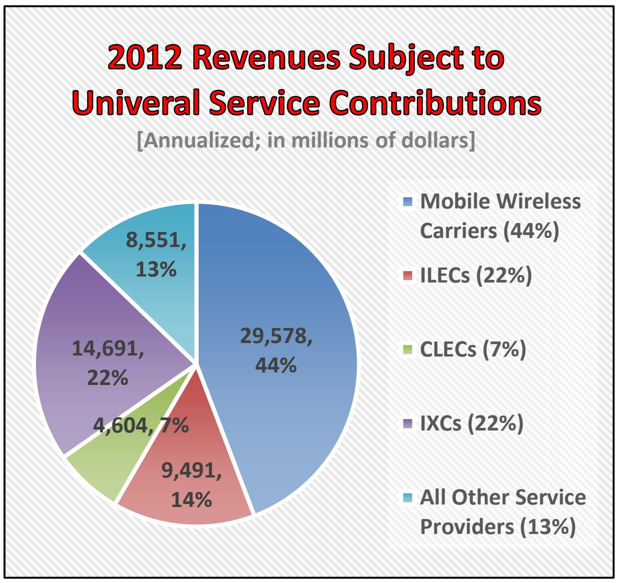
[92] *Further Notice* at para. 247.

[93] U.S. Gov't Accountability Office, *FCC Should Improve the Accountability and Transparency of High-Cost Program Funding*, GAO-14-857 (July 2014) at 16.

[94] Data regarding 2011 funding is drawn from CCA, *A Framework for Sustainable Competition in the Digital Age: Fostering Connectivity, Innovation and Consumer Choice* (2013), at 17, *accessed at* http://com-







U.S. Cellular has previously indicated that "[t]he Commission has chosen these [current] disbursement allocations even though President Obama has established a goal of achieving virtually ubiquitous wireless broadband coverage, … and consumer preferences for mobile voice and broadband services continue to increase."[95] The Commission has an oppor-

petitivecarriers.org/wp-content/uploads/2014/01/CCA_SustainableCompetition_FINAL.pdf. Data regarding 2012 revenues subject to federal universal service contribution obligations is annualized based on quarterly revenues reported in May 1, 2012, FCC Form 499-Q filings. *See* "Rollup of May 1, 2012 FCC Form 499-Q Filings, Detailed Revenues by Principal Business Activity of Provider," *accessed at* http://www.fcc.gov/encyclopedia/telecommunications-industry-revenue-data-form-499.

[95] U.S. Cellular Comments, WC Docket No. 10-90, *et al*. (filed Jan. 18, 2012) ("U.S. Cellular 2012 Comments") at 52 (footnotes omitted).

tunity to get back on the right track toward accomplishment of President Obama's goal by recalibrating its overall universal service budget allocations and shifting support from CAF Phase II to Mobility Fund Phase II as a means of providing one-time funding for 4G LTE deployment.

Taking such a step toward a more level playing field for CAF and Mobility Fund support would also bring the Commission's universal service program more closely in line with consumer trends that favor wireless over wireline voice and broadband services. CTIA recently documented a sampling of these dramatic trends:

> Recognizing the value and resilience of LTE technology, an increasing number of consumers have chosen to go "wireless-only," severing their retail relationship with the wireline industry. Similarly, a growing number of consumers use their wireless device as their on-ramp to the Internet, and it was recently estimated that 50 million people in the U.S. now watch video on their mobile phones. Irrespective of service (voice, data, and video), consumers now spend more minutes per day focused on their smartphones (151 minutes) than on televisions (147 minutes), and the disparity is even greater when tablet use (43 minutes) is aggregated with smartphone use.[96]

Moreover, a recent survey indicates that "[t]wo in every five American homes (41.0%) had only wireless telephones … during the second half of 2013—an increase of 1.6 percentage points since the first half of 2013 and 2.8 percentage points since the second half of 2012."[97] In addition, "[g]rowth [has been] particularly high in mobile Internet subscriptions. The number of mobile subscriptions with speeds over 200 kbps in at least one direction grew to 181 million [as of June 30, 2013]—up 18% from June 2012."[98]

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[96] CTIA, Response to House Energy and Commerce White Paper on Modernizing U.S. Spectrum Policy (filed Apr. 25, 2014), at 4 (footnotes omitted).

[97] Steven J. Blumberg & Julian V. Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July–December 2013,* CDC Division of Health Interview Statistics, National Center for Health Statistics (rel. July 2014), *accessed at* http://www.cdc.gov/nchs/nhis.htm, at 1.

[98] FCC, Wireline Competition Bur., Industry Analysis & Tech. Div., *Internet Access Services: Status as of June 30, 2013* (rel. June 2014), at 4.

Given these extraordinary trends in consumer preference for mobile wireless voice and broadband services, the Commission, instead of proposing reductions in Mobility Fund Phase II support, should explore ways to bolster the level of that support to better ensure that consumers in rural areas are able to join other Americans in accessing the benefits of mobile broadband services.

D. The Commission's Proposals for Targeting Mobility Fund Phase II Support Must Focus on Preserving Existing 4G LTE Service and Ensuring Sufficient Levels of Service for Rural Americans.

The Commission seeks "comment on how to ensure that Mobility Fund Phase II is focused on preserving service that otherwise would not exist and expanding access to 4G LTE in those areas that the market will not serve."[99] Specifically, the Commission proposes "to focus competitive bidding" for Phase II support on extending mobile 4G LTE to the remaining U.S. population that will not have it available from either Verizon or AT&T, to distribute those funds within a defined budget so as to maximize the population that can be served with 4G LTE, and to "identify areas eligible for support, i.e., areas where neither Verizon nor AT&T provide 4G LTE …."[100]

The Rural Wireless Carriers suggest that two particular aspects of the Commission's efforts to target the use of Mobility Fund Phase II support merit close attention. *First*, the Commission should be careful to preserve existing mobile broadband service supported by universal service mechanisms, and should not focus exclusively on extending service to currently unserved areas.

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[99] *Further Notice* at para. 239.

[100] *Id*. at para. 241.

As a practical matter, as the Rural Carriers have discussed,[101] if ongoing Phase II support for wireless competitive ETCs' operating expenses is curtailed, it will curb the carriers' ability to make capital expenditures to deploy 4G LTE facilities.

And, *second*, there is a critical need to develop sufficient mechanisms to determine accurately the extent to which areas are in fact currently served by 4G LTE. Wireless competitive ETCs continue to face significant problems in achieving ubiquitous 4G coverage in rural areas. Mobility Fund Phase II support—maintained at current funding levels or at increased funding levels—can help address these problems, but not if the Commission simply declares rural areas to be covered by LTE service when they in fact are not.

The Rural Wireless Carriers commend the Commission for taking positive steps to address this problem by avoiding any reliance on deficient mobile broadband coverage data licensed from Mosaik Solutions, LLC,[102] and instead developing mechanisms for collecting adequate and reliable mobile broadband data through an improved FCC Form 477 process.

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[101] See Section II.C.1., *supra* (discussing the need for ongoing Mobility Fund Phase II support for operating expenses).

[102] *See Further Notice* at para. 238 n.436. U.S. Cellular has previously criticized the Mosaik database, pointing out that the database "includes some carrier-advertised data speeds as being available in particular geographic areas. Reliance on advertising claims—as opposed to drive test results, for example—could inherently create an upward bias in the extent of coverage. Such an upward bias, by reducing the number of census blocks eligible for [Mobility Fund] Phase II support, could create the erroneous impression that, even with limited Phase II funding, the Commission's support disbursements would be operating effectively to speed deployment to the greatest number of unserved areas." U.S. Cellular Mobility Fund Phase II Comments at 17-18 (footnotes and internal quotation marks omitted).

New reporting requirements, adopted by the Commission in June 2013,[103] are intended to make important improvements in the National Telecommunications and Information Administration's State Broadband Initiative mechanisms for collecting data on broadband deployment.[104] Data collections pursuant to the new requirements are expected to commence in September,[105] and the Rural Wireless Carriers encourage the Commission to monitor the implementation of these requirements to ensure that accurate depictions of 4G LTE coverage are collected and made available to interested parties.

Developing sound Mobility Fund Phase II policy is largely dependent upon having reliable data. The Rural Wireless Carriers therefore also encourage the Commission to provide interested parties with an opportunity to submit comments that address the extent to which the new Form 477 reporting requirements are producing more accurate information, and that make suggestions for modifying the reporting requirements to further improve the level of accuracy of the collected data.

Finally, the Commission asks, in the case of areas where a portion of a network overlaps with an area that has 4G LTE coverage from AT&T or Verizon, how it should "treat the eligibility of those areas so as to promote the preservation of service in the portion that does not overlap …."[106] In the Rural Wireless Carriers' view, the Commission should treat the entire area—including the portion that overlaps with AT&T or Verizon LTE coverage—as eligible for Mobility Fund Phase II support.

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[103] *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Report and Order, 28 FCC Rcd 9887 (2013) ("*Form 477 Data Order*"). The new data collection requirements took effect in June. FCC, *Modernizing the FCC Form 477 Data Program*, 79 Fed. Reg. 36231 (June 26, 2014).

[104] *Form 477 Data Order*, 28 FCC Rcd at 9897-98 (para. 24).

[105] *Id*. at 9899 (para. 25); *Further Notice* at para. 241.

[106] *Further Notice* at para. 242.

Requiring the support recipient to demonstrate that Phase II funds are not being used to provide service in the unsupported portion of the area that overlaps with Big Two coverage imposes a very difficult, and sometimes impossible, standard on fund participants, and is a fool's errand for the Commission. Carriers should not be expected to drive test wide areas to "prove" that multiple competitors do not provide 4G LTE service. For small carriers lacking resources, or larger carriers operating in much larger geographic areas in multiple states, the task is near-impossible.

The kind of data the Commission seeks should be provided by each carrier in a consistent format and with a certification as to accuracy. Moreover, areas that have some coverage should not be eliminated from receiving investment support, because, as stated above,[107] without further investment citizens in these areas will be relegated to an inferior experience due to the fact that devices work on a CDMA- or GSM-based network, but not both.

Treating the entire area as eligible would not compromise the preservation of service in the portion that does not overlap, because the Mobility Fund Phase II support would be used to maintain and operate a network that will continue to be used to provide service in that portion (as well as the portion that overlaps with Big Two coverage). This would also be consistent with the Commission's prior determination that a CAF Phase II carrier using support to build 4G LTE service may do so even in areas already covered by a competitive wireless ETC.[108]

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[107] See Section II.A.2.b., *supra*.

[108] The Commission has excluded from eligibility for CAF Phase II support only areas served by an *unsubsidized* competitor. *See CAF Order*, 26 FCC Rcd at 17729 (para. 170) (indicating that, ''[i]n determining the areas eligible for support, we will … exclude areas where an unsubsidized competitor offers broadband service that meets the [adopted] broadband performance requirements'').

E. Mobile Broadband Providers Should Be Eligible To Receive Connect America Fund Phase II Support.

The Commission seeks "comment on whether, for purposes of [CAF] Phase II implementation, we should allow the use of mobile … technology that meets the Phase II requirements ….[109] The Commission notes that "[w]hat is important from the consumer's perspective is the quality of the user experience and the price of the service offering, not the specific technology used to deliver service."[110]

Wireless competitive ETCs should be permitted to compete for CAF Phase II support. Three years ago, the Commission "anticipate[d] … that mobile providers may also be eligible for support in CAF Phase II in areas where price cap carriers opt not to accept the state-level commitment, in addition to Mobility Fund Phase II support."[111] The Commission now should confirm that expectation by making mobile broadband providers eligible for CAF Phase II funding.

Taking such a step would make the CAF Phase II auction process more competitive by expanding the number of potential participants in the auction.[112] The Commission has determined that "maximizing the number of qualified participants in the competitive bidding process is likely to improve the overall quality of the process."[113] Enabling wireless competitive ETCs to participate in the CAF Phase II auction would also benefit consumers in rural areas by increasing the prospect

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[109] *Further Notice* at para. 154 (footnote omitted).

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

[111] *CAF Order*, 26 FCC Rcd at 17825 (para. 495). *See Further Notice* at para. 246 (indicating that the Commission "expect[s] wireless providers that meet the requisite service standards will participate in … the … Connect America Fund. Wireless technology may well be the appropriate solution to serve many areas lacking broadband today …").

[112] *See* U.S. Cellular 2012 Comments at 43 (favoring rules for CAF Phase II competitive bidding that would "result in more competitive bidding [by] allow[ing] more technologies to compete for funding").

[113] *Report and Order* at para. 43 (footnote omitted).

that they will have access to advanced mobile broadband services (assuming that wireless competitive ETCs also continue to have access to Mobility Fund Phase II support funded at least at current levels). In addition, opening up CAF Phase II funding to mobile broadband providers would be a modest step toward alleviating the funding disparities between wireline and mobile wireless technologies reflected in the universal service budget adopted by the Commission in the *CAF Order*.[114]

The Commission also seeks "comment on how to account for the interplay between higher speed requirements, the use of mobile technology, and the availability of spectrum."[115] An important issue for mobile broadband providers is the manner in which the Commission's proposed increase of the minimum broadband speed to 10 Mbps downstream, for supported services provided by CAF Phase II funding recipients,[116] would apply to mobile broadband services. The Commission notes that "[t]he new speed standards would apply generally to all recipients of high-cost support that are subject to broadband public interest obligations[, including] ETCs that receive Phase II support through the competitive bidding process …."[117]

The Commission explains, however, that it "do[es] not intend to suggest that ETCs must deliver such [10 Mbps] speeds immediately upon adoption of a new rule."[118] Instead, the Commission is "proposing a standard that ETCs … would be expected to achieve over a period of years, as they utilize high-cost support to extend and upgrade networks in high-cost areas."[119] This approach reflects the Commission's "intent … to establish a new minimum standard that we build

[114] See Section II.C.2., *supra* (discussing allocation inequities in the current universal service budget).

[115] *Further Notice* at para. 154 n.339.

[116] *Id*. at para. 138.

[117] *Id*.

[118] *Id*. at para. 142.

[119] *Id*.

toward over time, recognizing that consumers increasingly will utilize applications and services that require greater bandwidth than our current standard."[120]

Striving to reach a 10 Mbps speed metric over time is not an unreasonable goal, although the Rural Wireless Carriers suggest that making it a requirement, in the case of mobile broadband providers, should be tempered by an important consideration: Given the fact that deploying mobile broadband networks providing minimum speeds of 10 Mbps downstream would be an extremely costly undertaking for wireless carriers, the 10 Mbps requirement should be applied to mobile broadband providers only to the extent that the availability of new spectrum and technology on the market enables these carriers to acquire sufficient bandwidth to deploy mobile broadband meeting the speed requirement.[121]

Applying the speed requirement in this manner would not detract from the quality of the user experience (which the Commission observes is not measured exclusively with reference to quantifiable metrics such as speed[122]), since consumers would be receiving a wide array of features, functions, and capabilities that are unique to mobile broadband and to the extent that such speeds are widely available in urban areas.[123]

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[120] *Id*. at para. 143.

[121] *See* U.S. Cellular Ex Parte Letter at 2, *cited in Further Notice* at para. 154 n.339.

[122] *Further Notice* at para. 154 n.338.

[123] See Section II.A.1., *supra* (discussing the unique benefits of mobile broadband for consumers, public safety responders, health care providers, educational institutions, and other organizations).

F. The Commission Should Not Permit Price Cap Carriers To Utilize Connect America Fund Phase II Model-Based Support To Deploy 4G LTE Broadband Networks.

The Commission should revisit the issue of whether incumbent price cap carriers exercising the right-of-first-refusal option to receive model-based CAF Phase II support should be permitted to use this support to construct 4G LTE broadband networks. In the Rural Wireless Carriers' view, the Commission's overall reform objectives would not be served by permitting price cap carriers to utilize model-based support to deploy wireless networks.

It makes little sense to use a ***wireline*** cost model[124] as the basis for awarding CAF Phase II support to price cap incumbents choosing to exercise their right of first refusal, and then to permit these incumbents to utilize the support to deploy ***wireless*** mobile broadband networks.[125] In fact, the Commission sought to avoid a similar funding mismatch in the *CAF Order*, deciding to eliminate the "identical support rule"[126] based on its determination that "[t]he support levels generated by the identical support rule bear no relation to the efficient cost of providing mobile voice service in a particular geography."[127]

Permitting price cap incumbents to receive support based on wireline network costs, and then to use that support to build mobile wireless networks, would create the same problem the Commission was seeking to eliminate in the *CAF Order* be repealing the identical support rule. To the extent that the wireline cost model yields a level of CAF Phase II support that is higher than

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[124] The Commission determined in the *CAF Order* that "the CAF Phase II model should estimate the cost of a wireline network." *CAF Order*, 26 FCC Rcd at 17736 (para. 189).

[125] *See* U.S. Cellular Ex Parte Letter at 2.

[126] The identical support rule (former Section 54.307 of the Commission's Rules) provided competitive ETCs with the same per-line amount of high-cost universal service support as the incumbent carrier serving the same area. *CAF Order*, 26 FCC Rcd at 17825 (para. 498).

[127] *Id*. at 17828 (para. 504).

the cost associated with a price cap carrier's deployment of a wireless mobile broadband network, the Commission's own analysis suggests that the Phase II mechanism would be providing the incumbent carrier with a windfall. The Commission should avoid this inefficient use of Phase II support by requiring that model-based funding must be used by price cap incumbents to deploy wireline networks.

The Rural Wireless Carriers note that the Commission addressed a related but distinguishable issue in the *Report and Order*, concluding that it was "not persuaded that permitting price cap carriers to participate in the Phase II competitive process as wireless providers would be 'inconsistent' with the Commission's objectives of promoting competition and the efficient use of Connect America support."[128]

The issue here, however, is not whether price cap carriers should be permitted to use support they receive as CAF Phase II auction winners[129] to deploy mobile broadband networks. Instead, the issue is whether price cap incumbents accessing Phase II model-based support, reserved for their exclusive use by the right-of-first refusal mechanism, should be permitted to use that support for 4G LTE deployment.

The Commission claims that, in the context of the reverse auction process, "competition … will drive down support amounts to efficient levels for providers that will offer the services

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[128] *Report and Order* at para. 37 n.65. The Commission was responding to an argument made by CCA that "allowing the price-cap carrier to participate in the auction as a ***wireless*** provider would further exacerbate the opportunities for gaming and cherry-picking." CCA Ex Parte Letter at 4 (emphasis in original).

[129] The Rural Wireless Carriers note that they disagree with the Commission's decision on the threshold issue of whether price cap carriers rejecting model-based CAF Phase II support should be eligible to participate in the reverse auction process. *See Report and Order* at para. 37; U.S. Cellular 2012 Comments at 44 (arguing that there is no public policy basis for "giving incumbents the opportunity to weigh their self-interest and then select the funding mechanism—either right of first refusal or the reverse auction mechanism—that would better solidify their competitive advantage").

meeting the Commission's requirements for speed, usage, latency, and pricing."[130] For price cap carriers opting for model-based support, however, nothing will stand in the way of their reaping a windfall in excessive CAF Phase II support by deploying 4G LTE networks and forcing the Rural Wireless Carriers and other wireless competitive ETCs who will be locked out of receiving CAF Phase II support, to compete with a larger subsidized company.[131]

Finally, the Commission believes that a right-of-first-refusal mechanism is an effective way to ensure continuity for consumers, to enable them to receive high-quality services, and to avoid their exposure to rate shock or reductions in service levels.[132] Consequently, the Commission should establish a right-of-first-refusal mechanism for wireless carriers in the Mobility Fund. The Rural Wireless Carriers and other wireless competitive ETCs, which have invested in their networks to improve service in areas that would not otherwise have access to the benefits available from improved mobile broadband services, can make the same case as price cap carriers that they should have the right to retain existing levels of legacy funding if they demonstrate that they are using such funding in compliance with the Commission's public interest obligations and accountability standards.

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[130] *Report and Order* at para. 37 n.65.

[131] Any price cap carrier using support to invest in a 4G LTE network should be required to meet the same performance standards required of Mobility Fund participants, including drive testing to prove service availability.

[132] *See CAF Order*, 26 FCC Rcd at 17729-31 (paras. 171-175) (discussing the "state-level commitment" mechanism that provides incumbent price cap carriers with an opportunity to receive the total model-derived annual support associated with all eligible census blocks in their service territories, for a period of five years).

G. The Commission Should Administer the Phase-Down of Legacy Competitive ETC Funding in a Manner That Ensures Continuity of Service.

In the case of each wireless competitive ETC for which legacy support is more than 1 percent of its wireless revenues,[133] the Commission proposes to maintain existing support levels (*i.e.*, 60 percent of baseline support) until (1) the first month after the month in which the competitive ETC's Mobility Fund Phase II ongoing support is authorized (in the case of a winning Phase II bidder); or (2) the first month after the month in which a public notice announces winning bidders for Phase II ongoing support (in the case of a competitive ETC that is not a winning bidder).[134]

The Rural Wireless Carriers believe any action here must ensure that wireless carriers receiving frozen legacy support will be able to maintain service to their existing customers during the transition to the Mobility Fund Phase II support mechanism.

The Commission also asks for comment on an alternative approach pursuant to which it would resume the phase-down in support upon adoption of rules establishing the framework for Phase II.[135] The Rural Wireless Carriers oppose this approach, because there could be considerable lag-time between the adoption of rules and the actual authorization of ongoing Phase II support.

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[133] In the case of any wireless competitive ETC for which legacy high-cost support represents *1 percent or less* of its wireless revenues, the Commission proposes to accelerate the phase-down of such support, eliminating the support on December 31, 2014, or the effective date of the new rule, whichever is later. *Further Notice* at para. 253. If the phase-down is accelerated for large carriers, the Commission should be sure that it does not inadvertently expedite the elimination of legacy support received by smaller competitive ETCs. The accelerated loss of such support, despite its small amount, could impair a smaller carrier's ability to maintain service. To avoid such a result, the acceleration rule, for example, could be structured so that it applies only to competitive ETCs (1) for which high-cost support represents 1 percent or less of their wireless revenues; and (2) that have more than 1,500 employees.

[134] *Id*. at para. 252.

[135] *Id*.

H. Issues Related to the Proposed Rules for Mobility Fund Phase II.

The Commission notes in the *Further Notice* that it has proposed rules for Mobility Fund Phase II in the *CAF Order* and that it now seeks comment on revised proposed rules for Phase II in light of the new proposals made in the *Further Notice* and "the Commission's experience with administering Phase I of the Mobility Fund."[136] The Rural Wireless Carriers address several issues relating to the Commission's proposed rules in the following sections.

1. If a Competitive Bidding Process Is Used for Mobility Fund Phase II, It Should Not Compare Bids Across All Geographic Areas.

The Rural Wireless Carriers oppose the use of competitive bidding as an appropriate means of distributing universal service support,[137] as well as to the manner in which the Commission proposes to "use competitive bidding … to determine the recipients of support available through Phase II of the Mobility Fund and the amount(s) of support that they may receive for specific

[136] *Id*. at para. 248.

[137] U.S. Cellular, for example, has previously advocated that the Commission should adopt a cost model as the mechanism for disbursing Mobility Fund Phase II support, demonstrating that a reverse auction mechanism would not be as effective as a cost model in meeting the Commission's objectives for mobile broadband deployment. In its comments in response to the *CAF Further Notice*, for example, U.S. Cellular argued that:

> The fundamental premise of reverse auctions is inherently bad for rural consumers: Reverse auctions are designed to drive down costs. While this may serve the Commission's principle of fiscal responsibility, such an approach cannot escape the fact … that you get what you pay for. The reverse auction mechanism, in forcing rural consumers to deal with the lowest bidder, would create a significant risk that these consumers would be short-changed with regard to rates, service quality, and the extent of deployment.
>
> U.S. Cellular understands that the statutory principle of rate and service comparability is intended to protect rural consumers from these adverse outcomes. But this statutory protection would be undermined if the Commission manufactures—through a reverse auction mechanism—circumstances in which low-bidding auction winners have strong incentives to cut corners regarding service quality and network deployment, and to recoup diminished levels of support through increased rates in rural areas.

U.S. Cellular 2012 Comments at 17-18 (footnote omitted).

geographic areas ….”[138] Specifically, the Commission, as it did for Mobility Fund Phase I, would require reverse auction participants to compete against other bidders across the Nation, and auction winners would be selected based on the lowest-cost bids to extend coverage to unserved areas.[139]

The Commission's proposed bidding methodology[140] for Mobility Fund Phase II virtually guarantees that "consumers in areas with higher costs are systematically shunted to the end of the line for Phase II support"[141] and are likely to be left standing in line after the auction-awarded support is exhausted. This mechanism picks winners and losers in rural America, and the losers remain losers indefinitely.

This result—produced by the fact that bidders planning to serve lower-cost areas are able to underbid carriers seeking to serve higher-cost areas—cannot be reconciled with the Commission's responsibility to adhere to the statutory principle that "[c]onsumers in ***<u>all regions</u>*** of the Nation, including … those in … high-cost areas"[142] should have access to reasonably comparable

[138] *Further Notice*, App. B, proposed Section 54.1011 of the Commission's Rules.

[139] U.S. Cellular previously addressed this issue in its December 2012 comments responding to the Commission's *Further Inquiry into Issues Related to Mobility Fund Phase II*, WC Docket No. 10-90, WT Docket No. 10-208, FCC Public Notice, 27 FCC Rcd 14798 (WCB, WTB 2012). *See* U.S. Cellular Mobility Fund Phase II Comments at 12-16.

[140] The Commission has explained this bidding methodology as follows:

> All bids, across all areas, would be compared against all other bids, and would be ordered from lowest-price-per-unit bid to highest. … Support would be allocated first to the bidder making the lowest (adjusted) per-unit bid, and then to bidders with the next lowest per-unit bids in turn, until the running sum of support funds for the winning bidders exhausted the money available in the CAF.

Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; WC Docket No. 10-90, WC Docket No. 07-135, WC Docket No. 05-337, WC Docket No. 03-109, CC Docket No. 01-92, CC Docket No. 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4649-50 (para. 286) (2011) (footnote omitted).

[141] U.S. Cellular Mobility Fund Phase II Comments at 14.

[142] 47 U.S.C. § 254(b)(3) (emphasis added).

services at reasonably comparable prices. If Mobility Fund Phase II is conducted as the Commission proposes, it will, by definition, conflict with that statutory goal. The Rural Wireless Carriers therefore urge the Commission to develop a Phase II methodology that does not replicate the nationwide auction process used in Phase I, which may have prejudiced more remote areas that deserved funding, and which did not disburse support consistent with Section 254 of the Act.[143]

2. The Commission Should Adopt Its Proposal To Authorize Mobility Fund Phase II Support for a Ten-Year Term.

The Rural Wireless Carriers support a rule authorizing Mobility Fund Phase II participants to receive support for a 10-year term.[144] U.S. Cellular has previously argued that "fixed terms shorter than 10 years would make it extremely difficult for smaller wireless carriers and regional carriers serving rural areas to attract sufficient capital to assist in meeting network deployment obligations mandated by the Commission."[145]

The Rural Wireless Carriers also note that Section 54.1018(b), as originally proposed in the *CAF Further Notice*, provided that carriers would be authorized to receive Mobility Fund Phase II support on a quarterly basis for a 10-year term.[146] The revised version of proposed Section

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[143] 47 U.S.C. § 254.

[144] *Further Notice*, App. B, proposed Section 54.1018(b) of the Commission's Rules.

[145] *See*, *e.g*., U.S. Cellular 2012 Comments at 35. *See also* Ex Parte Letter from David LaFuria & Marc Paul, Counsel for Union Telephone Company, d/b/a Union Wireless, MTPCS, LLC, d/b/a Cellular One, and Carolina West, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WC Docket No. 05-337, WT Docket No. 10-208 (filed June 25, 2013), at 2 (explaining that "a ten-year term [for Mobility Fund Phase II funding] is important to provide carriers with the necessary predictability and consistency of support needed to deploy and operate robust 4G networks. In addition, banks prefer a ten-year term of support … [and a] ten year term is more closely aligned with the useful life of equipment.").

[146] *CAF Further Notice*, 26 FCC Rcd at 18237 (proposed Section 54.1018(b)).

54.1018(b) in the *Further Notice*, however, does not specify a quarterly or other periodic disbursement schedule. The Commission should clarify its intent regarding the schedule for Phase II disbursements.

3. The Commission Should Disburse Mobility Fund Phase II Support To Maximize the Road Miles Covered.

The Commission proposes in the *Further Notice* to utilize population rather than road miles as the basis for determining whether construction deadlines have been met by winning bidders authorized to receive Mobility Fund Phase II support.[147] The Commission had previously proposed to distribute Mobility Fund Phase II funds so as to maximize the road miles covered.[148]

The Commission should not adopt its proposed shift to a focus on the coverage of population, and instead should rely on road miles. U.S. Cellular, for example, has previously argued that requiring additional coverage of road miles directly reflects the objective of the Mobility Fund to extend <u>*mobile*</u> services. Moreover, basing support on road mile bids takes into account other important factors, including business locations, recreation areas, and work sites, that are accessed by roads.[149]

In addition, from the perspective of one bidder in the Mobility Fund Phase I reverse auction, U.S. Cellular observes that it formulated and presented 68 bids in that auction, and "found that constructing these bids based on road miles worked efficiently and did not introduce unwarranted burdens or complexities."[150] Although difficulties with road miles cropped up post-auction, the Commission clarified its drive testing requirements to address these problems. In short, carriers

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[147] *Further Notice*, App. B, proposed Sections 54.1012(b) and 54.1016(a); *see id*. at para. 248 n.451.

[148] *Id*. at para. 241 n.443 (citing *CAF Further Notice*, 26 FCC Rcd at 18073 (para. 1134)).

[149] U.S. Cellular 2012 Comments at 33 (citations omitted).

[150] U.S. Cellular Mobility Fund Phase II Comments at 24.

are now familiar with the Commission's road miles regime, and urge that future drive testing burdens must be reasonable and attainable by small carriers with limited budgets. On the other hand, using other measuring elements, such as population, could lead to unnecessary complexity and imprecision that would interfere with the efficient operation of the support disbursement process and administration of coverage requirements.[151]

4. The Proposed Rules for Reductions in Support for Late Filings Should Be Adopted with Several Modifications.

The Commission proposes to make penalties for failures to meet annual data and certification filing deadlines proportionate to the offense. Thus, the Commission proposes that a late filing of one to seven days would result in seven days of lost support, and that a filing later than seven days would result in a loss of support for each day that the filing is late.[152]

In addition, the Commission proposes a one-time grace period for one filing made within three days after the applicable deadline, with a limit of one grace period per holding company. In the case of a second offense, the Commission would impose the standard penalty, plus an additional amount reflecting the penalty that would have been levied for the first offense, but for the grace period.[153] Finally, the Commission proposes to cease the practice of routinely granting waivers of late-filing penalties.[154]

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[151] *See id*.

[152] *Further Notice* at para. 319.

[153] *Id*. at para. 321.

[154] *Id*. at para. 324.

The Rural Wireless Carriers generally support the Commission's proposals to recalibrate its rules "to ensure that the consequences of non-compliance [with reporting deadlines] are appropriate rather than unduly harsh[,]"[155] but also suggest that the Commission should consider several adjustments to its proposals.

The Rural Wireless Carriers support the one-time grace period for ETCs that miss the filing deadline by not more than three days, but question the need or reasonableness of the Commission's proposal to nullify the grace period retroactively in the case of second-time offenders. This retroactive penalty would introduce unnecessary complexity[156] and appears to be more punitive than constructive.

Finally, The Commission also should consider broadening the application of the one-time grace period. Specifically, the Commission proposes "to apply the grace period at the holding company level, so that a grace period would not be available to another operating company of that holding company that holds the ETC designation to serve a different study area."[157] Since each ETC operating company must separately comply with the filing deadlines, it would be more reasonable to apply the one-time grace period separately to each operating company.

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[155] *Id*. at para. 318.

[156] The Commission's example of how this proposal would work illustrates its complexity:

> For example, if an ETC missed the deadline by two days the first year, it would not lose support due to the grace period. But, if another ETC within the same holding company (or the same ETC) misses the deadline again a subsequent year by eight days, it would be subject to a loss of support for eight days, plus the seven day minimum reduction of support that would have applied to its affiliate ETC the prior year if there had been no grace period, for a reduction in support that totals 15 days.

Id. at para. 321.

[157] *Id*. The grace period would be provided only "once for a given holding company, regardless of the number of affiliated operating companies that may individually be designated as an ETC." *Id*.

III. CONCLUSION.

The Rural Wireless Carriers commend the Commission for its efforts to "take further steps to bring broadband service to every corner of the country[,]"[158] and to target Mobility Fund Phase II funding on "preserving and extending service" in high-cost rural areas.[159]

For the reasons discussed in these Comments, the Rural Wireless Carriers respectfully oppose the Commission's proposals to downsize the Mobility Fund Phase II budget, and to reallocate portions of the Phase II budget to CAF Phase II or the Remote Areas Fund.

The Rural Wireless Carriers urge the Commission to adopt its proposals for targeting Mobility Fund Phase II support, and also to ensure that sufficient funds are available to preserve the

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[158] *Id*. at para. 3.

[159] *Id*. at para. 239.

operation of mobile broadband networks after they have been deployed. Finally, the Rural Carriers also support the adoption of rules making wireless mobile broadband carriers eligible to compete for CAF Phase II support.

Respectfully submitted,

RURAL WIRELESS CARRIERS

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NE Colorado Cellular, Inc., d/b/a Viaero Wireless
Smith Bagley, Inc.
Union Telephone Company, d/b/a Union Wireless
Cellular Network Partnership, An Oklahoma Limited Partnership
Nex-Tech Wireless, LLC
Texas 10, LLC, d/b/a Cellular One
Central Louisiana Cellular, LLC, d/b/a Cellular One
Carolina West Wireless, Inc.
Cellcom Companies
PR Wireless, Inc., d/b/a Open Mobile

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August 8, 2014