



November 9, 2016

VIA ECFS
Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex parte presentation – WC Docket Nos. 10-90, 10-208
Mobility Fund Phase II

Dear Ms. Dortch:

This letter is to provide additional information regarding Mobility Fund Phase II, to be adopted at the Commission's Open Meeting on November 17, 2016. As discussed below, Buffalo-Lake Erie Wireless ("Blue Wireless") urges the Commission to adopt a challenge process based on drive test data; to ensure that any letter of credit ("LOC") requirements for Mobility Fund Phase II recipients are not so burdensome that they discourage participation by small regional facilities-based wireless carriers; and to move forward with the competitive bidding process without further delay.

CHALLENGE PROCESS

In order to determine eligible areas in the auction, the Commission should use coverage data from FCC Form 477 as refined by a challenge process based on drive test data. Specifically, any entity wishing to challenge the Form 477 coverage data should be required to submit drive test data to refute the coverage reported on another carriers' Form 477.

A drive-testing requirement for the challenge process is not overly burdensome, even for small entities. Blue Wireless is a small wireless carrier, serving a licensed area of over two million pops with over 100 cell towers. Like any facilities-based wireless carrier, however, Blue Wireless owns the equipment necessary to conduct drive tests, and regularly conducts drive tests of its own network and its competitors' networks. Blue Wireless also is aware of commercial drive-testing services that offer a cost-effective alternative to expand carriers' capacity to conduct drive tests. Any carrier that is serious about participating in Mobility Fund Phase II should not have any trouble conducting drive tests in order to establish the eligibility of areas on which it wishes to bid.

LOC REQUIREMENTS

Small and regional wireless carriers like Blue Wireless have the potential to make the Mobility Fund Phase II auction more competitive, and to help ensure that more rural areas receive coverage as a result of the auction. Such participation, however, only will be possible if the financial rules of the program do not arbitrarily exclude smaller entities. While larger or publicly traded entities may be able to obtain bonds based on other collateral, smaller entities often have to put up cash to secure the full amount of a bond. As a result, the Commission should ensure that the Mobility Fund Phase II rules do not require LOCs in excess of any disbursed but unconstructed funding requests.



The LOC rules in Connect America Fund Phase II create the kind of problematic barriers the Commission should avoid in the Mobility Fund. There, the Commission adopted a requirement that winning bidders maintain an annually increasing LOC or LOCs for the full cumulative amount of support that has been disbursed – even though winning bidders are subject to incremental construction milestone obligations.¹ There is no reason to require a winning bidder to maintain a LOC to secure funding when the carrier has already completed the construction requirement associated with that funding pursuant to a construction milestone requirement. And imposing such a requirement will only serve to prevent smaller rural wireless carriers from participating in Mobility Fund Phase II, to the overall detriment of the program. Instead, LOC requirements should be limited to disbursed funds for which the recipient has not yet certified that the associated construction milestone obligation has been met, plus a reasonable increment in case of any needed true-ups in the final audit.

AUCTION TIMING

The Chairman's Fact Sheet about the draft order indicates that the auction may not be held until 2018. It is unclear why this delay is necessary. As discussed above, a challenge process can be conducted based on drive tests to perfect the existing Form 477 coverage data. This should not take more than a few months to complete. The Commission committed in 2011 to conduct the Mobility Fund Phase II bidding process in 2013. It is now nearly four years after the auction was supposed to be held. Based on the Commission's own data, 3 million people, 575 square miles of area, and 750,000 road miles have no 4G LTE coverage or only subsidized coverage. As the Commission is aware, Blue Wireless's service territory includes many areas that we would like to serve, but simply cannot justify serving based on the economics, given sparse population and/or challenging terrain. Further delay in moving forward with enabling service in these areas cannot be justified.

¹ *Connect America Fund, et al.*, WC Docket Nos. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5991 ¶¶ 122-23 (2016).



In sum, Mobility Fund Phase II has the potential to bring much-needed mobile broadband coverage to many rural areas in the country that lack that service today. The Commission should adopt Phase II rules including reasonable LOC requirements, move forward without delay to conduct a challenge process based on drive tests to determine eligible areas, and conduct the Mobility Fund Phase II auction as soon as possible.

Sincerely,

A handwritten signature in blue ink that reads "Brian Gelfand".

Brian Gelfand
President

cc: Edward Smith
Claude Aiken
Travis Litman
Nicholas Degani
Amy Bender
Jon Wilkins
Jim Schlichting
Chris Helzer
Charles Eberle
Margaret Wiener