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November 9, 2016

Ms. Marlene Dortch
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

***Re: WC Docket No. 10-90, Connect America Fund; WT Docket No. 10-208, Universal Service Reform – Mobility Fund***

Dear Ms. Dortch,

On November 8, 2016, Joan Marsh, Stacy Fuller, and the undersigned, all of AT&T, met with Claude Aiken of Commissioner Clyburn's office and Joan Marsh and the undersigned met with Nick Degani of Commissioner Pai's office. In addition, on November 7, Joan Marsh had a phone conversation with Jon Wilkins, Chief of the Wireless Telecommunications Bureau. The purpose of these meetings was to discuss the proposal before the Commission regarding Mobility Fund II (MF II).

AT&T welcomes progress on Mobility Fund II but expressed concern that the current proposal ignores much of what the Commission has learned from successfully implementing other Connect America Fund programs since 2011. The company urged the Commission not to reinvent the wheel with Mobility Fund II but instead to strive for consistency among all CAF programs. Specifically, AT&T suggested that the CAF II term length, deployment milestones, and compliance framework could be easily incorporated directly into MF II. In addition, the company continues to believe that MF II would be more efficient and effective if based on population or geographic area coverage because that is how mobile networks are designed rather than on the artificial road miles metric. AT&T opposed the proposed immediate flash cut of legacy support for nationwide carriers, noting that it violates the statutory requirements for USF support to be "predictable" as well as competitively neutral.

Materials used during the meeting are attached. If you have any questions regarding this matter please contact me at (202) 457-2041.

Sincerely,

/s/ Mary L. Henze

Mary L. Henze

cc: C. Aiken
N. Degani
J. Wilkins

## §54.310 Connect America Fund for Price Cap Territories—Phase II

(a) Geographic areas eligible for support. Connect America Phase II support may be made available for census blocks or other areas identified as eligible by public notice, including locations identified by the forward-looking cost model as extremely high-cost. The number of supported locations will be identified for each area eligible for support will be identified by public notice.

(b) Term of support. Connect America Phase II model-based support shall be provided to price cap carriers that elect to make a state-level commitment for six years. Connect America Phase II support awarded through a competitive bidding process shall be provided for ten years.

(c) Deployment obligation. Recipients of Connect America Phase II model-based support must complete deployment to 40 percent of supported locations by December 31, 2017, to 60 percent of supported locations by December 31, 2018, to 80 percent of supported locations by December 31, 2019, and to 100 percent of supported locations by December 31, 2020. Recipients of Connect America Phase II awarded through a competitive bidding process must complete deployment to 40 percent of supported locations by the end of the third year, to 60 percent of supported locations by the end of the fourth year, to 80 percent of supported locations by the end of the fifth year, and to 100 percent of supported locations by the end of the sixth year. Compliance shall be determined based on the total number of supported locations in a state.

## Paragraph from CAF II Order (FCC 14-190)

36. We modify the build-out requirements established for price cap carriers accepting model-based support to create straight line interim milestones over the revised six-year term, rather than front-loading the deployment obligations in the first three years of the term. When the Commission adopted the interim deployment milestone of deploying to 85 percent of locations by the end of the third year, it noted that "there were few concrete suggestions in the record on what those interim milestones should be." We recognize that the first task for any major network upgrade is to complete an overall plan and then undertake detailed engineering analyses in the field to plan the construction of particular routes. Recipients of support—whether price cap carriers or bidders in a competitive auction—will likely then proceed incrementally, route by route, working to complete construction evenly over the course of the term required for deployment. For that reason, rather than requiring price cap carriers accepting a state-level commitment to offer broadband service meeting the minimum requirements to at least 85 percent of their high-cost locations by the end of the third year, we instead adopt evenly spaced annual interim milestones for price cap carriers to offer at least 10/1 Mbps to an additional 20 percent of the requisite number of high-cost locations each year, as shown in Table 1 below. Completing construction to 40 percent of the requisite number of locations in a state by the end of calendar year 2017, instead of 85 percent by mid-2018 year, is a more realistic expectation, given that carriers will not accept the offer of support until mid-year in 2015 and once authorized to receive support, will then be developing detailed network construction plans.

## § 54.320 Compliance and recordkeeping for the high-cost program.

(a) Eligible telecommunications carriers authorized to receive universal service high-cost support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders.

(b) All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. This documentation must be maintained for at least ten years from the receipt of funding. All such documents shall be made available upon request to the Commission and any of its Bureaus or Offices, the Administrator, and their respective auditors.

(c) Eligible telecommunications carriers authorized to receive high-cost support that fail to comply with public interest obligations or any other terms and conditions may be subject to further action, including the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designation, and suspension or debarment pursuant to § 54.8.

(d) Eligible telecommunications carriers subject to defined build-out milestones must notify the Commission and USAC, and the relevant state, U.S. Territory, or Tribal government, if applicable, within 10 business days after the applicable deadline if they have failed to meet a build-out milestone.

(1) *Interim build-out milestones.* Upon notification that an eligible telecommunications carrier has defaulted on an interim build-out milestone after it has begun receiving high-cost support, the Wireline Competition Bureau will issue a letter evidencing the default. The issuance of this letter shall initiate reporting obligations and withholding of a percentage of the eligible telecommunication carrier's total monthly high-cost support, if applicable, starting the month following the issuance of the letter:

(i) *Tier 1.* If an eligible telecommunications carrier has a compliance gap of at least five percent but less than 15 percent of the number of locations that the eligible telecommunications carrier is required to have built out to by the interim milestone, the Wireline Competition Bureau will issue a letter to that effect. Starting three months after the issuance of this letter, the eligible telecommunications carrier will be required to file a report every three months identifying the geocoded locations to which the eligible telecommunications carrier has newly deployed facilities capable of delivering broadband meeting the requisite requirements with Connect America support in the previous quarter. Eligible telecommunications carriers that do not file these quarterly reports on time will be subject to support reductions as specified in § 54.313(j). The eligible telecommunications carrier must continue to file quarterly reports until the eligible telecommunications carrier reports that it has reduced the compliance gap to less than five percent of the required number of locations for that interim milestone and the Wireline Competition Bureau issues a letter to that effect.

(ii) *Tier 2.* If an eligible telecommunications carrier has a compliance gap of at least 15 percent but less than 25 percent of the number of locations that the eligible telecommunications carrier is required to have built out to by the interim milestone, USAC will withhold 15 percent of the eligible telecommunications carrier's monthly support for that state and the eligible telecommunications carrier will be required to file quarterly reports. Once the eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 15 percent of the required number of locations for that interim milestone for that state, the Wireline Competition Bureau will issue a letter to that effect, USAC will stop withholding support, and the eligible telecommunications carrier will receive all of the support that had been withheld. The eligible telecommunications carrier will then move to Tier 1 status.

(iii) *Tier 3.* If an eligible telecommunications carrier has a compliance gap of at least 25 percent but less than 50 percent of the number of locations that the eligible telecommunications carrier is required to have built out to by the interim milestone, USAC will withhold 25 percent of the eligible telecommunications carrier's monthly support for that state and the eligible telecommunications carrier will be required to file quarterly reports. Once the eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 25 percent of the required number of locations for that interim milestone for that state, the Wireline Competition Bureau will issue a letter to that effect, the eligible telecommunications carrier will move to Tier 2 status.

(iv) *Tier 4.* If an eligible telecommunications carrier has a compliance gap of 50 percent or more of the number of locations that the eligible telecommunications carrier is required to have built out to by the interim milestone:

(A) USAC will withhold 50 percent of the eligible telecommunications carrier's monthly support for that state, and the eligible telecommunications carrier will be required to file quarterly reports. As with the other tiers, as the eligible telecommunications carrier reports that it has lessened the extent of its non-compliance, and the Wireline Competition Bureau issues a letter to that effect, it will move down the tiers until it reaches Tier 1 (or no longer is out of compliance with the relevant interim milestone).

(B) If after having 50 percent of its support withheld for six months the eligible telecommunications carrier has not reported that it is eligible for Tier 3 status (or one of the other lower tiers), USAC will withhold 100 percent of the eligible telecommunications carrier's monthly support and will commence a recovery action for a percentage of support that is equal to the eligible telecommunications carrier's compliance gap plus 10 percent of the ETC's support that has been disbursed to that date.

(v) If at any point during the support term, the eligible telecommunications carrier reports that it is eligible for Tier 1 status, it will have its support fully restored, USAC will repay any funds that were recovered or withheld, and it will move to Tier 1 status.

(2) *Final build-out milestone.* Upon notification that the eligible telecommunications carrier has not met a final build-out milestone, the eligible telecommunications carrier will have twelve months from the date of the final build-out milestone deadline to come into full compliance with this milestone. If the eligible telecommunications carrier does not report that it has come into full compliance with this milestone within twelve months, the Wireline Competition Bureau will issue a letter to this effect. USAC will then recover the percentage of support that is equal to 1.89 times the average amount of support per location received in the state over the six-year term for the relevant number of locations plus 10 percent of the eligible telecommunications carrier's total Phase II support over the six-year term for that state.

(3) *Compliance reviews.* If subsequent to the eligible telecommunications carrier's support term, USAC determines in the course of a compliance review that the eligible telecommunications carrier does not have sufficient evidence to demonstrate that it has built out to all of the locations required by the final build-out milestone, USAC shall recover a percentage of support from the eligible telecommunications carrier as specified in paragraph (d)(2) of this section.

[76 FR 73876, Nov. 29, 2011, as amended at 80 FR 4478, Jan. 27, 2015]

# Making Mobility Fund II Work

## I. The FCC should allow for a reasonable time for *all* carriers to transition support and should not flash cut any support on the effective date of the order.

- "Nationwide carriers" should be subject to same transition as all other CETCs.
  - The areas that nationwide CETCs serve are just as high-cost and uneconomic to serve as the areas that non-nationwide CETCs serve.
  - Doing otherwise would violate the FCC's competitive neutrality USF principle, which prohibits the FCC from adopting rules that advantage or disadvantage one provider over another.
- Section 254(b)(5) requires the FCC to establish "predictable" and "sufficient" USF support mechanisms.
- Carrier reliance on USF is necessary to budget for and meet obligations to "build and maintain" networks and such support is already incorporated into 2017 budgets.

## II. Mobility Fund I has faced significant, *but avoidable,* challenges that should be addressed in MFII.

### A. A POP-based program, rather than road miles, would improve auction participation

- POPs are business as usual for network builds and reliable data is readily available.
- Road coverage used in MFI is harder to analyze and there are data problems.
- If FCC proceeds with road-mile based program eligible roads should at least be limited to Primary, Secondary, and Local (S1100, S1200, and S1400).
- A 90% build requirement is aggressive given state of roads and road data; steps to avoid funding going to cover un-used road segments must be considered.

### B. The FCC should adopt rules for MFII that mirror CAF II -- consistency across programs will encourage participation and will make FCC oversight more effective.

- *Increase the Funding Term and Build-out Milestones:*
  - The funding term and build out schedule should be increased to six years with phased build increments (40% in year 2 and 20% increments each following year) to be consistent with the CAF milestones. See 54.310(c)
  - Proposed "75% by Year Three" MF II time frame does not reflect the time recipients need to plan networks, acquire sites, obtain permits and rights of way, and deploy service in challenging rural areas.

    - A build out schedule that front loads deployment freezes technology options prematurely.

- *Adopt a Clear and Rational Compliance Framework.*
    - Carriers must understand compliance requirements before accepting CAF/MF funding, including the impact of missing deployment milestones and the rules USAC will follow.
    - The CAF II framework properly focuses on encouraging recipients to complete their network builds rather than on imposing penalties for missed deadlines.
    - The MF II framework should mirror CAF II's self-effectuating compliance framework as set forth in 54.320 (d), modified to reflect MFII obligations, e.g., road miles instead of locations.

- *Establish a Transparent Challenge Process:*
    - Concerns about the accuracy of the National Broadband Map for wireless coverage can be resolved via a well-designed challenge process that provides clear guidance to all parties. MF II should follow the CAF example of PN DA 14-864 which defined terms, submission requirements, and standards for FCC decision making.