



December 8, 2017

**Via ECFS**

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

**RE: NOTICE OF EX PARTE**  
**WT Docket No. 10-208:** *Universal Service Reform – Mobility Fund*  
**WC Docket No. 10-90:** *Connect America Fund*  
**GN Docket No. 17-258:** *Promoting Investment in the 3550-3700 MHz Band*

Dear Ms. Dortch,

On December 6, 2017, RWA representatives (listed in Appendix A) met with: (1) Wireless Telecommunications Bureau (“WTB”) representatives (listed in Appendix B); (2) Jay Schwarz, Wireline Advisor to Chairman Pai, Rachael Bender, Wireless Advisor to Chairman Pai; and (3) staff from the Rural Broadband Auctions Taskforce, WTB, and Wireline Competition Bureau (“WCB”) (together, the “Bureaus”) (listed in Appendix C) in separate meetings.

On December 7, 2017, RWA representatives (listed in Appendix D) met with: (1) Commissioner Clyburn, Claude Aiken, Wireline Legal Advisor to Commissioner Clyburn, and Louis Peraertz, Senior Wireless Legal Advisor to Commissioner Clyburn; (2) Travis Litman, Chief of Staff to Commissioner Rosenworcel; (3) Commissioner Carr and Nirali Patel, Acting Legal Advisor to Commissioner Carr; and (4) Commissioner O’Rielly and Amy Bender, Wireline Legal Advisor to Commissioner O’Rielly, in separate meetings.

**MOBILITY FUND PHASE II**

RWA discussed the Mobility Fund Phase II (“MFII”) challenge process, and its own and others’ pending Petitions for Reconsideration.<sup>1</sup> In regards to the challenge process, RWA expressed

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<sup>1</sup> [Rural Wireless Association, Inc. Petition for Reconsideration and/or Clarification](#), WC Docket No. 10-90, WT Docket No. 10-208, at pp. 2-11) (filed Apr. 12, 2017) (“*RWA Petition*”); [Petition for Reconsideration and/or Clarification](#) of the Blooston Rural Carriers, WC Docket No. 10-90, WT Docket No. 10-208 (Apr. 27, 2017) (“*Blooston Petition*”); [Petition for Reconsideration](#) of Buffalo-Lake Erie Wireless Systems, LLC, WC Docket No. 10-90, WT Docket No. 10-208 (Apr. 27, 2017) (“*Blue Wireless Petition*”); [Petition for Reconsideration and Clarification](#) of United States Cellular Corporation, East Kentucky Network, LLC d/b/a Appalachian Wireless, Cellular

concern about the Bureaus' proposed use of a one square kilometer grid to determine challenge areas. In the majority of rural America, roads are situated directly on the borders of a one *mile* by one *mile* grid. A square kilometer grid cell could be entirely encapsulated within a square mile road grid cell, leaving no access to drive a complete single kilometer-based grid cell. In such a case, RWA recommended that the FCC create an exception applicable to rural areas where road grids are one square mile or larger. If a cell abuts against or is in a group of cells where the challenge has been deemed presumptively successful, then those cells should be automatically considered the subject of a presumptively successful challenge if it is identified by the challenger as not being accessible by road. Further, if four or more of the surrounding grids cells do not meet the Commission's requisite speed threshold, then the inaccessible grid cell should also be considered eligible for MF-II support.<sup>2</sup> The FCC should also consider allowing challengers to take their measurements along the boundaries of the census block or census tract being challenged since these boundaries are usually defined by roads. Alternatively, RWA recommended utilizing a one square mile grid with a ½ mile buffer radius as suggested by ATN in its Comments.<sup>3</sup>

RWA also expressed concern regarding the Bureaus' proposal to require challengers to submit extraneous data parameters. In addition to requiring the parameters adopted by the Commission (geographic area, recorded speed, time and date of measurement, and handset used), the Bureaus would require challengers to provide additional data associated with a speed test (including, but not limited to, signal strength and latency).<sup>4</sup> Verizon would have prospective challengers submit *even more* information in order to mount a successful challenge, urging the Bureaus to require prospective challengers to file "information about the server that they used for speed and latency testing."<sup>5</sup> RWA opposes these proposals because challengers will waste limited time and resources recording and processing data unnecessary to determining the only MFII funding eligibility criterion – download speed. This is especially true because, as RWA representatives explained, it is common practice to test each parameter with a separate device to ensure accuracy. As such, each additional required data set will exponentially increase challenger costs.

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Network Partnership d/b/a Pioneer Cellular, NE Colorado Cellular, Inc. d/b/a Viaero Wireless, Nex-Tech Wireless, LLC, Smith Bagley, Inc.; WC Docket No. 10-90; WT Docket No. 10-208 (Apr. 27, 2017) ("*LLGS Rural Carriers Petition*"); [Petition for Reconsideration of T-Mobile USA, Inc.](#), WC Docket No. 10-90, WT Docket No. 10-208 (Apr. 27, 2017) ("*T-Mobile Petition*").

<sup>2</sup> See *Connect America Fund, Universal Service Reform – Mobility Fund*; [Reply Comments](#) of the Rural Wireless Association, Inc., WC Docket No. 10-90, WT Docket No. 10-208, at pp. 5-8 (Nov. 29, 2017).

<sup>3</sup> See *Connect America Fund, Universal Service Reform – Mobility Fund*; [Comments](#) of ATN International, Inc.; WC Docket No. 10-90, WT Docket No. 10-208; at pp. 3-4 (Nov. 8, 2017).

<sup>4</sup> *Comment Sought on Mobility Fund Phase II Challenge Process Procedures and Technical Implementation*, [Public Notice](#), WT Docket No. 10-208, WC Docket No. 10-90, at ¶ 12 (rel. Oct. 18, 2017) ("*Public Notice*").

<sup>5</sup> *Connect America Fund, Universal Service Reform – Mobility Fund*; [Comments](#) of Verizon; WC Docket No. 10-90, WT Docket No. 10-208; at p. 2 (Nov. 8, 2017) (*Verizon Comments*).

RWA encouraged changes in the Bureaus' proposal to address speed throttling. RWA understands that challengers "must purchase an appropriate service plan from each unsubsidized service provider in the challenged area," and that an "appropriate service plan" is one that "would allow for speed tests of full network performance, *e.g.*, an unlimited high-speed data plan."<sup>6</sup> But RWA also understands that "unlimited" plans are often not actually unlimited in practice.<sup>7</sup> The Bureaus propose to allow a challenged party to submit data identifying a particular device that a challenger used to conduct its speed tests as having been subjected to reduced speeds. This proposal suggests that challenged providers could refute speed test data by asserting that the data speeds were throttled on the device used during the testing period. This practice would undermine the validity of the challenge process. Instead, the Bureaus should require the challenger to notify the challenged carrier that it is testing its network and require the challenged carrier to remove the data cap on the device(s) in question to avoid throttling during the challenge period. Assuming proper notification, speed test results from phones on unlimited data plans should be accepted as they are – regardless of throttling that may have occurred.

Finally, RWA urged Commissioners and staff to ensure that the challenge process timeline does not impede participation. The Bureaus should consider the impact of winter weather on testing and the lack of foliage on service availability data accuracy, and modify the proposed timeline accordingly. Specifically, RWA requested that the 150-day challenge period begin no earlier than May 1, 2018. Further, RWA requested that prospective challengers be given at least 30 days' notice prior to the start of the challenge period. Such notice will allow prospective challengers the time necessary to "staff up" an internal speed test team or secure speed test services from a third party vendor.

In regards to issues pending on reconsideration, RWA first urged the Commission to *retain* the 10/1 Mbps MFII buildout standard and *not* reduce it to 5/1 Mbps as requested by T-Mobile.<sup>8</sup> The Commission has determined that a majority of urban consumers have access to mobile wireless broadband at 10 Mbps/1 Mbps speeds.<sup>9</sup> Further, the record in this proceeding shows that the overall speed that Americans experience from mobile broadband networks is 12.34 Mbps download, more than double the adopted 5 Mbps download threshold and not at all "reasonably

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<sup>6</sup> *Connect America Fund; Universal Service Reform – Mobility Fund*, [Order on Reconsideration and Second Report and Order](#), FCC 17-102, ¶ 50 (Aug. 4, 2017).

<sup>7</sup> *Verizon Comments* at p. 6 (noting that "under some service plans, such as Verizon's 'Beyond Unlimited' plan, data speeds may be slowed temporarily in times of congestion once a monthly usage threshold is met").

<sup>8</sup> *T-Mobile Petition* at pp. 2-6.

<sup>9</sup> *LLGS Rural Carriers Petition* at pp. 5-6 (citing *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Development Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, [2016 Broadband Progress Report](#), 31 FCC Rcd. 699 ¶ 83 (2016)).

comparable” as required by statute.<sup>10</sup> Reducing the buildout standard from 10/1 Mbps to 5/1 Mbps will serve only to further widen the digital divide between rural America and urban America.

RWA further urged the Commission to reconsider its decision to require letters of credit (LOCs) to secure MFII performance. Obtaining LOCs is a burdensome and costly process for small and rural carriers, and will tie up funds for 3-7 years – funds that could be put toward additional wireless broadband deployment. The FCC should instead make clear that program recipients that do not use funds as intended will be barred from future participation, subject to monetary forfeitures, and potentially subject to the loss of one or more Commission licenses either through revocation or non-renewal. If the FCC will not reconsider its decision to impose LOC requirements entirely, it should at least modify such requirements to lessen their burden by allowing small entities to discharge their LOCs after certifying to the satisfaction of construction milestones and verification of such certifications by USAC. RWA noted that some of its members are still carrying LOCs from Mobility Fund Phase I at a cost of \$500 a day in bank fees on top of keeping much needed capital tied up in the LOC. This is money that could be used for building out LTE instead of lining banks’ pockets.

Relatedly, RWA urged the Commission to front-load MFII support (rather than provide monthly installment payments) to better match initial capital outlays. Carriers will have substantial up-front deployment costs at the beginning of the support term. The efficiency of the funding process would be improved if larger support amounts were distributed during the early years of the term. While carriers *can* borrow capital to cover deployment costs, doing so in conjunction with complying with LOC requirements will change the carrier’s leverage ratio and negatively impact interest rates – resulting in less deployment. RWA urged the adoption of a support schedule wherein MFII-supported carriers receive annual distributions in one lump sum at the beginning of each of the first four years. Beginning in year five, MFII-supported carriers could then begin to receive smaller monthly distributions.

Further, the Commission should reconsider its decision to make substantive changes to the tower collocation requirement. The MFI collocation rule applied to “*newly constructed* towers that the recipient owns or manages in the area for which it receives support.”<sup>11</sup> The adopted MFII collocation rule would require an MFII recipient to allow for collocation on all of its towers in the area for which it receives support – including towers built and maintained without *any* support.<sup>12</sup> Whether or not to allow collocation on towers built and/or operated absent any universal service support should be a business decision made by individual carriers. It should not be a requirement foisted upon MFII participants, and particularly not without adequate notice of

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<sup>10</sup> [Written Statement](#) of LeRoy T. Carlson, Jr., before the Subcommittee on Communications and Technology, U.S. House of Representatives Energy and Commerce Committee, “Broadband: Deploying America’s Twenty-First Century Infrastructure,” at p. 17 (Mar. 21, 2017)).

<sup>11</sup> 47 C.F.R. 54.1006(d) (emphasis added).

<sup>12</sup> *Connect America Fund, et al.*, [Report and Order and Further Notice of Proposed Rulemaking](#), WC Docket No. 10-90, WT Docket No. 10-208, FCC 17-11, Appendix A, p. 99 (rel. Mar. 7, 2017).

the Commission's intention to do so. The FCC should adopt the same collocation requirement adopted for MFI. If MFII funds are used for construction and/or maintenance of a tower, then and only then, should recipients be subject to the collocation requirement.

## **CONNECT AMERICA FUND PHASE II**

RWA also discussed issues pending in the Connect America Fund Phase II (CAFII) proceeding. RWA reiterated its support for the FCC's proposal to use census block groups, rather than census tracts, as the minimum geographic bidding area.

RWA also expressed its view that, given the complexity of the CAFII auction, the FCC should adopt anti-collusion rules that facilitate participation by small and rural service providers with assistance of counsel/consultants. RWA remains concerned that the inability to rely on a limited pool of experienced third parties could prevent many small and rural carriers from participating in the CAFII auction, and urged Commissioners and staff to consider "safe harbor" proposals put forth by various parties in the proceeding.<sup>13</sup>

In its meeting with the Bureaus, RWA discussed the confusion surrounding the Bureaus' proposal to use package bidding in the CAF Phase II auction and recommended further clarification of the process – noting that RWA and others have expressed opposition primarily from a lack of clarity on how the process would work in such a complicated auction undertaking.

RWA also urged the FCC to address the "locations gap" that exists between the model-indicated locations and the actual number of locations within CAFII-eligible census blocks. As previously discussed, the Commission should: (1) allow carriers to deploy to 95% of the required number of locations without reducing support; (2) allow carriers having service available to all actual locations in a census block to receive credit for having service available to all model-indicated locations within that census block; and (3) allow carriers to reduce their deployment obligations with a commiserate support reduction.<sup>14</sup> The Commission should also expand the definition of "location" to better meet facts on the ground. The current definition of "location" is not a good fit for the emerging realities of future wireless broadband deployment. The "Internet of Things" will provide substantial benefits to rural areas. Precision agriculture, livestock operations, and oil and gas development installations will all require connectivity.<sup>15</sup> To better account for that future, the FCC should allow permanent and semi-permanent facilities not considered a "residence" or a "small business" to be counted as locations for the purposes of meeting deployment obligations.

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<sup>13</sup> See e.g., [Comments](#) of the Wireless Internet Service Providers Association, AU Docket No. 17-182, WC Docket No. 10-90, at pp. 5 (Sept. 18, 2017).

<sup>14</sup> See [Reply Comments](#) of the Rural Wireless Association, AU Docket No. 17-182, WC Docket No. 10-90, at pp. 5 (Oct. 18, 2017).

<sup>15</sup> [Comments](#) of the Rural Carrier Coalition, WT Docket No. 14-170, GN Docket No. 12-268, RM-11395, WT Docket No. 05-211 (May 14, 2015) (noting the importance of wireless broadband to agriculture and energy production).

Finally, RWA asked Commissioners and staff not to impose additional CAFII auction eligibility requirements on spectrum-based applicants. The current proposal would require an applicant intending to use spectrum to submit additional information in its short-form application to show that the applicant is “reasonably capable” of meeting its public interest obligations.<sup>16</sup> This is counter to the FCC’s desire to have technology neutral rules that promote participation by a broad range of bidders.

## **CITIZENS BROADBAND RADIO SERVICE**

RWA also discussed the Citizens Broadband Radio Service proceeding, and discussed its initial thoughts regarding geographic license area sizes, license term lengths, and possible buildout requirements. RWA also discussed license partitioning/disaggregation and joint bidding arrangements, and why these often-touted “solutions” for small carriers do not adequately address a lack of access to spectrum due to too-large geographic license areas.

Pursuant to Section 1.1206 of the FCC’s Rules,<sup>17</sup> this *ex parte* is being filed electronically with the Office of the Secretary.

Respectfully submitted,

/s/ Caressa D. Bennet

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<sup>16</sup> [Public Notice](#), *Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction (Auction 903)*, AU Docket No. 17-182, WC Docket No. 10-90, at ¶ 37 (rel. Aug. 4, 2017).

<sup>17</sup> 47 C.F.R. § 1.1206.

## **Appendix A**

Carri Bennet- RWA  
Erin Fitzgerald- RWA  
Beau Handcock- STRATA Networks  
Bert Potts- STRATA Networks  
Mike Kilgore- Sagebrush Cellular  
Brian Woody- Union Wireless  
Chris Reno- Union Wireless  
Bryan Darr- Mosaik (Task Force/Pai Staff Meetings only)  
Lynn Merrill- Monte R. Lee (Task Force/Pai Staff Meetings only)

## **Appendix B**

Donald Stockdale- WTB  
Nese Guendelsberger- WTB  
Paul Powell- WTB  
Becky Schwartz- WTB  
Jessica Greffenius- WTB  
Dana Shaffer- WTB  
Matthew Pearl- WTB

## **Appendix C**

Audra Hale-Maddox- WTB  
Mark Montano- WTB  
Martha Sancill- WTB  
Heidi Lankau- WCB  
Angela King- WTB  
Jonathan McCormack- WTB  
Paroma Sanyal- WTB  
Margaret Wiener- WTB  
Thom Parisi- Rural Broadband Auctions Task Force  
Michael Janson- Rural Broadband Auctions Task Force  
Katie Hinton- WTB  
Thuy Tran- WTB  
Chelsea Fallon- Rural Broadband Auctions Task Force  
Alex Minard- WCB

## **Appendix D**

Carri Bennet- RWA  
Erin Fitzgerald- RWA  
Beau Handcock- STRATA Networks  
Bert Potts- STRATA Networks  
Mike Kilgore- Sagebrush Cellular  
Chris Ruhl- Cross Wireless  
Jake Baldwin- Cross Wireless  
Jana Wallace- PTCI  
Lynn Merrill- Monte R. Lee & Co.  
Todd Houseman- United Wireless  
Brian Woody- Union Wireless