Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Universal Service Reform	)	WT Docket No. 10-208
	)	
Mobility Fund	)	

To: The Commission

COMMENTS OF NTCH, INC.

NTCH, Inc. ("NTCH") offers these comments in measured support of the Commission's proposal for distributing the windfall dollars it has appropriated from the USF funds renounced by Verizon and Sprint. As set forth below, NTCH considers the Commission's initiative here a major step forward in rationalizing the USF distribution process.

I. Introduction

NTCH prefaces its support for the Commission's initiative here with misgivings. The process by which the Commission has effectively expropriated monies that were plainly due and owing to CETC's under the Commission's Interim Cap Order[1] is highly suspect. A number of powerful and well-founded petitions for reconsideration of the Commission's action are currently pending, and there is every reason to think that if the Commission does not change its mind (as the opening of this proceeding suggests that it will not), many of those petitioners are likely to take the matter to court. It will therefore be a couple of years at best before the money is available for distribution, if indeed it ever is. So NTCH offers its following comments in support

[1] *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service,* WC Docket No. 05-337, CC Docket No. 96-45 (rel. May 1, 2008) ("*Interim Cap Order*")

of the mechanism that the Commission is proposing but with serious doubts that the funds at issue will actually be distributed via this mechanism.

In addition, NTCH has for some years been a strong proponent of single-source, low bid provision of universal service. For too many years we have seen USF funds go to support bloated and inefficient legacy systems to the detriment of competition and improved service in the very localities in America that the USF is intended to benefit. The current system rewards inefficiency and duplication and therefore that is precisely what it gets, much to the dismay of American consumers who must pay for these inefficiencies month after month, year after year, by a 10 or 12% surcharge tucked at the end of their phone bill. The object of universal service support should simply be to ensure that all Americans have access to at least one local telecommunications service provider at rates comparable to those in urban areas. Our society has chosen to subsidize that goal – at very considerable cost – through the USF program, but there is no need whatsoever for either multiple subsidies for the same area or subsidies beyond the level at which some carrier would be willing to offer these services. Until the system is rationalized in this regard, it will remain dangerously broken.

The FCC's current proposal moves toward that goal by at least rationalizing the wireless component of USF. We assume that these same principles – which apply with equal or greater force to wireline carriers – cannot be implemented more generally for all USF purposes because the Commission lacks the political will to take on the powerful ILEC lobby, which, of course, sucks down by far the greatest portion of the USF funds. Nevertheless, if a rationalizing principle can be adopted and demonstrated as effective in the wireless regime, it may eventually prove difficult NOT to adopt similar reforms across the board.

II. The Proposed Mechanism is Workable

The procedure proposed by the Commission here is well thought out and solves some of the thornier issues which had arisen in connection with earlier reverse auction proposals. Among the features that NTCH applauds in whole or in part are these.

1. A single provider per area. The public should not have to subsidize more than one provider to ensure the availability of basic mobile services

2. Reverse auction mechanism. A reverse auction is the best and fairest way to identify the lowest cost provider. This will eliminate the gold-plating and padding that characterize the wireline recipients of USF funds

3. Identification of unserved areas. The Commission will identify the areas which are to be bid for based on its own research. One of the grave problems with the Broadband Stimulus Program was that it required applicants to somehow determine which areas were underserved or unserved. Because subscribership data is not publicly available, this proved an impossible task for many prospective applicants, even when they were reasonably confident that a particular area was unserved. This was also the greatest source of contention in the process. By having the Commission designate underserved areas itself at the outset, this uncertainty is eliminated and all prospective providers can begin on the same page knowing the exact geographic areas that they must serve.

4. Definition of service area blocks. Use of census blocks provides accurate service data, but is too granular. The Commission proposes to provide support to unserved areas on the census tract level rather than the census block level. Census blocks are too small in size to be useful areas for either support or determining service status. It will also unduly complicate the entire process by greatly expanding the numbers of discrete unserved areas which may qualify

for support and administration. The Commission should use census tracts to determine whether areas are unserved. Then if at least 40% of the census tracts in a county are unserved, the entire county should be deemed unserved. This will reduce the number of unserved areas considerably and make the resulting process much easier to administer. At the same time, counties link up better with natural wireless license areas, particularly BTAs, which have been regularly used by the Commission in the past.

5. Unserved units. The Commission proposes to establish unserved units mainly by population, but is open to considering business data and highway data. Given that the need for mobile services is driven not just by residential population but also by business activity and highways, both of those factors need to be entered into the equation in order to fairly and accurately assess the need for service. Businesses in the census tracts could be counted as a multiplier of residential people, since businesses draw activity to themselves. So, for example, a business with $500,000 in annual revenue (per Dun and Bradstreet) would count as 5 residents, a million dollar company would count as 10, and so on. Similarly, highway miles (four lane highways or higher) would be counted as a fraction of their traffic volume (highway miles multiplied by average daily traffic). For example, US route that is 20 miles long in a given census tract and has average traffic of 5000 vehicles per day over some or all of its path would count as 100000 traffic miles and would be divided by 1000 to equate to 100 residents).

6. Bidding by overlap. One of the problems identified in earlier reverse auction proposals was the apples and oranges problem – how to compare bids which might not cover the same geographic areas. By permitting overlapping bids and simply awarding the bidder with the lowest bid in any given area, the Commission neatly eliminates that problem. Two important tweaks are required here: (i) The Commission should permit bidders to specify that their bid is

predicated on service to some minimum area. This will prevent the situation where a bidder has predicated its business plan on service to a certain amount of population or territory, but then the bidder is underbid on some significant portion of the area it bid on. Its business proposal might very well not be viable without the entire contemplated area being included. To forestall that, the bidder should either be allowed to opt out if it gets less than its minimum area or should simply be eliminated from contention if it is not the low bidder for the entirety of its minimum bidding area. (ii) The proposed service areas to be bid on should not be so vast that they effectively preclude most carriers from being able to compete. Only a handful of carriers have service areas vast enough to cover multiple states, for example. While some economies of scale could potentially be achieved over large service areas, these economies should not be achieved at the cost of excluding all smaller carriers from the process. A judicious balance of these competing interests would be to permit bidding areas to be no larger than a single state, except where a metropolitan area overlaps state boundaries.

7. Shared tower use. The NPRM would require that towers constructed with support money must be available to competitors, and data roaming must be permitted at reasonable and non-discriminatory rates. These sensible measures ensure that other carriers are not frozen out of the supported markets. If facilities are being constructed with public money, the beneficiary of the funds should not be allowed to create a monopoly for itself on the public's nickel.

The above features of the proposal, with the small adjustments noted, will go a long way toward creating a fair distribution system.

III. The ETC Designation Process Must Be Streamlined

One of the Commission's proposals is that any bidder for these USF monies must either be an ETC now or be an applicant for same. Since the statute requires that USF recipients be ETCs, there is no way around this requirement. However, the Commission should be aware that ETC designation can be a long and laborious process. The Commission itself sometimes takes three or more years to process a simple ETC application. Various states also require that a certain number of hoops be jumped through (often including study area re-definition) in order to qualify for ETC status. No one is served by such delays since these carriers are presumptively willing to provide service to needy customers, yet the bureaucratic process is preventing them providing service. This is especially important in areas where USF support is the difference between being able to provide service or not provide it. The delays are not merely hypothetical annoyances to the carriers but actually result in worsened service and less choice and competition for consumers. Something must be done to prevent that process from repeating in the context of the Mobility Fund.

NTCH suggests that the Commission should include in the application form used in the bidding process a series of certifications that the bidder, if successful, will provide all the service elements required of an ETC and that it meets any other ETC eligibility requirements established by the Commission. Upon "award" of the low bidder designation at the end of the auction, the winning bidder would be qualified as an ETC without further ado. This will ensure that a winning bidder in the reverse auction will actually be able to proceed to immediately deliver the services it has committed to without having to wait several years for further FCC or state action.

Under current procedures, the Commission may only designate ETCs itself in circumstances where a common carrier is providing telephone exchange service and exchange access and is not subject to the jurisdiction of a State commission, per Section 214(e) of the Act.

To avoid myriad delays at state commissions in getting ETC status for carriers who are the low bidders (and therefore the bidders presumptively most likely to serve the public interest), the Commission should simply pre-empt state jurisdiction of wireless carriers for ETC designation purposes. In our view, the benefits of fragmented state review of ETC qualifications, if any, far outweigh the delays and attendant disservice to the public which would likely be caused by requiring further post-auction ETC proceedings at either the state or federal level. The state commissions could, of course, continue to regulate ETCs in their states in their accustomed manners, but the initial ETC determination would no longer be in their hands.

By taking this step, the Commission would ensure that the broadest range of carriers -- including new entrants – participates in the reverse auction without having to go through a time consuming and often unnecessary ETC designation process. It would streamline a process which is already unnecessarily cumbersome and slow even at the federal level, and it would eliminate any possibility that state commissions would hold up ETC designations for new competitors to their home-based LECs and wireless carriers. In addition, since the Commission proposes to impose strict build-out requirements on winning bidders, the immediate ETC designation process would ensure that the shot clock on build outs could start shortly after the auction rather than having to await a matter of years while the winning bidder got its ETC designation.

IV. Availability of Spectrum

The FCC proposes to require auction participants to show that they have access to spectrum to be able to provide the required services. The Commission should permit this requirement to be met by the availability of owned or lease spectrum, spectrum which has been applied for but not yet acquired, or, in some cases, by a showing that sufficient unlicensed spectrum is available to meet broadband needs. This will ensure at the outset that bidders do have access to sufficient spectrum in the areas they bid on to meet their commitments without unduly restricting participation by imminent or incipient carriers who are in the process of acquiring spectrum. The low bidder designation would be conditioned on the applicant actually getting the spectrum it has applied for, if that is the basis on which it is bidding.

V. Interplay with Stimulus Money

In some ways the Mobility Fund covers similar ground to that covered by the Broadband Stimulus Program administered by NTIA and RUS in 2009-2010. Those programs delivered about $7 billion to entities pledging to promptly build out broadband facilities in underserved and unserved parts of the country. This program should therefore have filled many holes in the nation's broadband coverage map by the end of 2012, when much of the stimulus-funded construction should be complete or nearly complete.

It would be foolish to ignore this massive public works project as though it did not exist. The Commission should not award Mobility Funding to recipients of Broadband Stimulus money or RUS loans in the same area since that would essentially duplicate funding and undercut both programs at the same time. All stimulus funds should have been spent on deployment by the time the Mobility Funding is ready for distribution, but if it is not, the Commission should permit a different awardee of Mobility Funds to offer to provide service where the stimulus awardee has fallen down on the job. The people should not have to suffer for the derelictions of the stimulus fund recipient.

VI. Conclusion

The Commission's NPRM holds considerable promise for reforming at least a small corner of the USF universe. The Commission should move forward quickly to implement these proposals as soon as the judicial dust settles on the availability of the Mobility Fund for re-distribution.

Respectfully submitted,

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By_______/s/_________________
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