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

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

COMMENTS OF
RURAL CELLULAR ASSOCIATION

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SUMMARY

Rural Cellular Association supports the Federal Communications Commission's fundamental objectives, outlined in the National Broadband Plan, to accelerate investment in broadband infrastructure and make broadband services more accessible throughout the United States, and in particular for people living in rural and insular high-cost areas. Further, RCA applauds the FCC for recognizing the value of advanced mobile wireless services, and the importance of making these services available to all Americans. Unfortunately, the proposed Mobility Fund will not be an effective means to promoting improved mobile wireless coverage, particularly if the Commission implements its proposals to use reverse auctions to determine Mobility Fund winners and limits the Mobility Fund to no more than $300 million.

Reverse auctions are inherently anti-competitive and will not benefit consumers. While a reverse auction might bring competition within an electronic auction room, it would not have a competitively neutral effect in the marketplace. Worse yet, a single winner reverse auction essentially creates a government sanctioned and government funded monopoly in the relevant service area. Monopoly service will inevitably result in higher prices and/or reduced services – or it will require intensive government regulation to monitor service levels and pricing. The reduction or elimination of competition within the market will require the government to substitute extensive (and expensive) regulation for marketplace competition.

Where the prize for a single winner reverse auction is the award of a *de facto* monopoly, the incentives for anti-competitive, or at a minimum, over-zealous bidding are enormous. For example, a participant may well have a financial incentive to win a reverse auction at a price that will not generate a positive return, if the effect is to: (1) provide that carrier with an offsetting benefit of reducing its contributions into the universal service fund; (2) eliminate support for

existing competitors or prospective new entrants so as to dominate the market; or (3) push competitors out of the market. Single winner reverse auctions also could encourage highly aggressive, economically unsustainable bids – in essence, a race to the bottom. RCA's concern is heightened because of the FCC's proposal to provide one time support, rather than on-going support for operating expenditures.

Reverse auctions will not result in significant cost savings. First, it is unlikely that there would be enough competition for high-cost, low-density portions of any given service area – the very areas targeted by the Mobility Fund – to create much, if any, reduction in the level of high-cost support for that particular service area. Second, the Mobility Fund only provides one-time support for infrastructure build-out. Reverse auction winners may well need additional funding to support their on-going operating expenses. Third, the cost of increased regulation – made necessary by the selection of a government funded monopoly provider – must be subtracted from any potential reduction in high-cost support payments. Fourth, the reduction in consumer welfare as a result of higher service costs and reduced service quality must also be subtracted from potential cost savings.

The proposed funding level of $100 - $300 million is wholly insufficient to have a meaningful impact on the current mobility gap. Only a very limited number of new cell sites, covering a limited geographic area with a small population, could be constructed with the proposed funds. Further, the FCC's proposal to fund projects on a one-time basis, presumably funding only capital expenditures, is wholly inadequate to support the long-term provision of quality service.

The proposed source of funding for the Mobility Fund is highly vulnerable to legal challenge. The Commission proposes to set up the Mobility Fund by using a portion of the

annual USF support "voluntarily" relinquished by Verizon Wireless and Sprint Nextel as a condition to approvals for recent merger transactions. RCA member companies and other parties seeking reconsideration of the *Corr Wireless Order* have presented several reasons to conclude that this reservation of funding, and the procedures followed by the Commission in deciding to reserve the funds, are neither legally permissible nor sufficient. Most importantly with respect to the current proceeding, the Commission lacks any statutory authority to establish a pool of funds to be used for unspecified purposes at an undetermined point in the future.

If the Commission nonetheless moves forward with a single winner reverse auction, it is vital that the auction winners be required to provide automatic voice and data roaming at reasonable rates and terms, as proposed in the NPRM. Regardless of whether the FCC adopts the Mobility Fund, the FCC must promptly move forward to ensure automatic data roaming for mobile service providers.

If adopted, the Mobility Fund must not, in any manner, be deemed a substitute for current high-cost support for competitive ETCs. The level of proposed funding is wholly insufficient to make even a dent in the current mobility gap. Further, any successful program will require on-going support for operating expenditures. RCA has repeatedly urged that there be no phase-down of high-cost support until, and unless, the FCC implements an adequate replacement support mechanism(s). The Mobility Fund is not an adequate replacement.

The Commission's goals can best be achieved by adoption of a well-designed forward-looking cost model (or models) that targets support to high-cost areas and identifies an amount of support that is portable to all competitors in the market. Cost models are the best mechanism for achieving the statutory goal of reasonably comparable services at reasonably comparable rates in rural areas.

Specifically, RCA proposes that the Commission establish a (dollar limit) cap, *per customer*, on high-cost support. Any competing carrier that captures a customer within the relevant geographic market would be entitled to high-cost support in an amount not to exceed the cap. In order to avoid cream-skimming, carriers would be required to offer the supported services throughout the designated service area. In the event the customer switches to another carrier, that ETC-designated carrier would now be entitled to high-cost support for that customer, in an amount not to exceed the cap. In this way, the high-cost support would be both "success-based" (available only to the carrier that wins the customer) and "portable" (it would move with the customer).

A well-designed forward-looking cost model offers numerous benefits to consumers. First, "success-based" support with "portability" ensures that there will be vigorous competition among carriers to obtain and retain each and every customer. Second, by capping high-cost support, carriers will be incented to deploy the most cost-effective technology in the most efficient manner. Third, capped support that moves with the customer will eliminate the risk of significant growth in the USF fund. Carriers that are losing customers will not be able to continue collecting a fixed level of support. If the customer leaves, the support for that carrier will be reduced commensurately.

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Rural Cellular Association ("RCA"), by its counsel, hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.[1] RCA represents the interests of nearly 100 regional and rural wireless carriers with licenses covering more than 80% of the United States. Most of RCA's members receive high cost support provided by the Universal Service Fund ("USF"), and these members effectively and efficiently utilize such support to construct and upgrade high-quality networks.

I. INTRODUCTION

RCA supports the Federal Communications Commission's ("FCC" or "Commission") fundamental objectives, outlined in the National Broadband Plan, to accelerate investment in broadband infrastructure and make broadband services more accessible throughout the United States, and in particular for people living in rural and insular high-cost areas. Further, RCA applauds the FCC for recognizing the value of advanced mobile wireless services, and the

[1] *Universal Service Reform, Mobility Fund,* WT Docket No. 10-208, Notice of Proposed Rulemaking, FCC 10-182, rel. Oct. 14, 2010 ("*NPRM*").

importance of making these services available to all Americans, including by proposing to condition receipt of mobility funding on providing data roaming at reasonable terms and rates. Unfortunately, the proposed Mobility Fund will not be an effective means of promoting improved mobile wireless coverage, particularly if the Commission implements its proposals to use reverse auctions to determine Mobility Fund winners and limits the Mobility Fund to no more than $300 million.

The Commission's goals can best be achieved by adoption of a forward-looking cost model combined with success-based portable funding. If crafted correctly, universal service support mechanisms offer an extraordinary opportunity to stimulate investment in expanded coverage and next generation mobile wireless technologies to the benefit of consumers in rural and high-cost areas.

II. THE PROPOSED MOBILITY FUND WOULD NOT BE AN EFFECTIVE MEANS OF PROMOTING IMPROVED MOBILE WIRELESS COVERAGE AND SERVICES.

A. Single Winner Reverse Auctions Are Inherently Anti-Competitive And Will Not Benefit Consumers.

Reverse auctions are inherently anti-competitive.[2] While a reverse auction might bring competition within an electronic auction room, it would not have a competitively neutral effect in the marketplace. Worse yet, a single winner reverse auction essentially creates a government sanctioned and government funded monopoly in the relevant service area. Monopoly service will inevitably result in higher prices and/or reduced services – or it will require intensive government regulation to monitor service levels and pricing.

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[2] Peter K . Pitsch, *Reforming Universal Service: Competitive Bidding or Consumer Choice* (Cato Inst. Briefing Paper No. 29, May 7, 1997), *available at* http://www.cato.org/pubs/briefs/bp-029.html.

According to William Rogerson, Professor of Economics at Northwestern University and FCC Chief Economist from 1998 – 1999:

> The reverse auction approach potentially creates very powerful competition *for* the market …. However, the cost of creating this very powerful competition *for* the market is that after a winner is declared, there will be a significant reduction in competition *within* the market for customers.[3]

As Rogerson further explains:

> [W]ireless carriers operate in markets where the prices they charge and the quality and type of service they provide are largely unregulated. It is local competition among competing carriers that creates powerful incentives for firms to charge lower prices, to improve their quality of service and level of coverage, and to introduce new advanced services as rapidly as possible. In the absence of these powerful incentives, government would need to turn to direct regulation of quality, prices, coverage, and the timing of when advanced services are introduced.[4]

Americans living in rural communities will not benefit from a government process that creates a monopoly service provider.

Single winner reverse auctions are very different than spectrum auctions. Spectrum auctions are a highly effective market mechanism to get spectrum, an essential input for the provision of wireless services, into the hands of the entities that value the spectrum most highly, and will put that spectrum to the best use.[5] In sharp contrast to single winner reverse auctions,

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[3] *Problems with Using Reverse Auctions to Determine Universal Service Subsidies for Wireless Carriers*, William P. Rogerson, January 14, 2010, submitted by U.S. Cellular as enclosure to *ex parte* letter from David A. LaFuria, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket No. 05-337, filed Jan. 28, 2010 ("*Rogerson Study*")(emphasis in original) at pages 6 - 7.

[4] *Id*. at page 7. Rogerson further explains that "[a] reduction in the number of competitors, or in the ability of existing carriers to compete, due to the use of reverse auctions would have exactly the same effect on wireless customers as a reduction in competition due to a merger." *Id.* at page 11.

[5] Spectrum auctions, when truly competitive, can also provide a significant revenue source for the government.

the typical spectrum auction results in *multiple* carriers getting access to comparable spectrum.[6] The winners of spectrum auctions do not get any government funding, let alone exclusive government funding for a geographic service area. As a result, spectrum auctions create competition for the market, and competition within the market. By contrast, reverse auctions reduce or eliminate competition within the market.

The reduction or elimination of competition within the market will require the government to substitute extensive (and expensive) regulation for marketplace competition. Such regulation is inefficient, ineffective and, in one key aspect, unlawful. Price regulation of Commercial Mobile Radio Service ("CMRS") providers is prohibited by Section 332 of the Act.[7] The 1996 Act dictates that universal service mechanisms must help to deregulate the marketplace and promote competition for all Americans, not just those living in urban areas. These potential additional layers of regulation are the *opposite* of what the 1996 Act demands. Funding mechanisms should be designed to promote competitive entry because the best means of replicating the advanced broadband services available in urban areas is to harness the efficiencies and technological innovation produced by competitive markets.

Where the prize for a single winner reverse auction is the award of a *de facto* monopoly, the incentives for anti-competitive, or at a minimum, over-zealous bidding are enormous. For example, a participant may well have a financial incentive to win a reverse auction at a price that will not generate a positive return, if the effect is to: (1) provide that carrier with an offsetting benefit of reducing its contributions into the universal service fund; (2) eliminate support for existing competitors or prospective new entrants so as to dominate the market; or (3) push

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[6] One exception to this typical result is the 700 MHz spectrum, where, because of a lack of interoperability across the 700 MHz band classes, all paired-blocks of the spectrum are not equal.

[7] 47 U.S.C. § 332(c).

competitors out of the market. An auction participant with these objectives would likely provide only the minimum, and quite likely a stagnant, level of service in high-cost areas.

RCA is also deeply concerned that single winner reverse auctions could encourage highly aggressive, economically unsustainable bids – in essence, a race to the bottom. In fact, such bidders would likely be successful, absent cost based models that set a reserve price based on realistic cost estimates. RCA's concern is heightened because of the FCC's proposal to provide one-time support, rather than on-going support for operating expenditures. As a result, a low-ball bidder could win the auction, and then be unable to complete construction of its proposed facilities. Alternatively, the low-ball bidder might complete construction, but be unable to sustain the operating expenditures required to provide high-quality service to customers. At the same time, the subsidized cost of construction for the winning bidder likely would have driven other competitors out of the market, or discouraged such competitors from entering the market. The end result, in all events, will be that customers will be stuck with poor service and/or high prices, without the ability to change providers.

Recent U.S. government experience with reverse auctions (and similar competitive bidding programs) for procurement has been decidedly negative, particularly as applied to small businesses. For example, in 2007, Department of Health and Human Services (DHHS) began implementing the Medicare clinical laboratory services competitive bidding demonstration project for diagnostic lab services.[8] In 2008, several lab companies sued DHHS on the grounds,

[8] In 2003, Congress passed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) requiring that the Secretary, through the Centers for Medicare and Medicaid Services, conduct a demonstration project on the application of competitive acquisition for payment of clinical diagnostic laboratory tests that would otherwise be covered by the Medicare Part B fee schedule. PL 108-173, 42 U.S.C.A. Sec. 1395W-3 (2003).

among others, that the competitive bids forced non-participants to go out of business.[9] The litigation lead to an injunction, and ultimately Congress repealed the program. Likewise, Congress suspended in 2008 until 2011 Medicare's competitive bidding program for durable medical equipment. Like reverse auctions to allocate USF, the government claimed this competitive bidding program could save taxpayers a billion dollars. Congress suspended the program after the GAO concluded that the program decreased beneficiary access, caused unnecessary delays in service and cost Medicare more in back-end charges.[10]

Other agencies have also expressed serious doubts about reverse auctions, particularly the adverse impact on small businesses. The U.S. Army Corps of Engineers concluded that reverse auctions yield no measurable savings and encourage "bid-gaming".[11] The author of the report stated that bid-gaming and related collusion are very possible in online reverse auctions. In comments filed with the FCC in 2008, the Small Business Administration recommended further investigation into the impact of reverse auctions on small entities and consideration of less burdensome alternatives.[12] Finally, in 2003, the GAO asserted that the U.S. Postal Service program for commodities resulted in a decrease in small business contracts.[13]

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[9] *Sharp Healthcare v. Leavitt*, 555 F.Supp.2d 1121 (S.D. Cal. April 8, 2008).

[10] *See* GAO, *Medicare: CMS Working to Address Problems from Round 1 of the Durable Medical Equipment Competitive Bidding Program*, GAO-10-27 (Washington, D.C., Nov. 6, 2009).

[11] Final Report Regarding the U.S. Army Corps of Engineers Pilot Program on Reverse Auctioning, LTC A.J. Castaldo, Program Manager and Deputy PARC (July 2004).

[12] Comments of the Office of Advocacy, U.S. Small Business Administration, *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, filed in WC Docket No. 05-337 and CC Docket No. 96-45 (May 19, 2008).

[13] *See* http://www.gao.gov/new.items/d03230.pdf. In October 1999, the Postal Service issued a solicitation for a national-level office supply contract. The solicitation provided that the award would be made to the vendor that offered the best overall value to the government, considering non-price and price factors. The Postal Service estimated that this contract would enable it to save up to $28 million annually.

Reverse auctions will not result in significant cost savings for several reasons, and therefore, will not reduce the size of the fund. First, it is unlikely that there would be enough competition for high-cost, low density portions of any given service area – the very areas targeted by the Mobility Fund – to create much, if any, reduction in the level of high-cost support for that particular service area. Many RCA members provide service to high-cost, low density areas. At first glance, rural and regional carriers may appear to have as many as five competitors in their service territories. Upon closer inspection, it becomes clear that only the RCA members are providing service in the hard to reach, high-cost, low density portions of these service territories. In contrast, the larger carriers are serving only the high density areas such as the population centers or along the highway. Second, the Mobility Fund only provides one-time support for infrastructure build-out. As noted above, it may well be the case that reverse auction winners will seek additional funding to support their on-going operating expenses. Third, the cost of increased regulation, made necessary by the selection of a government funded monopoly provider, must fully be taken into account, and subtracted, from any potential reduction in high-cost support payments. Fourth, the reduction in consumer welfare as a result of higher service costs and reduced service quality must also be subtracted from potential cost savings.

B. The Proposed Structure Of The Reverse Auction Will Not Result In Expanded Service To The Areas Most In Need of Funding For Such Service.

The Commission proposes to determine winning bidders based on the lowest per-unit bid, and to compare all per-unit bids against all other bids nationwide.[14] This proposal is flawed for several reasons.

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[14] *NPRM*, ¶ 18.

First, reverse auctions are contrary to Sections 214 and 332 of the Act. By their very nature, auctions that produce a single winner restrict marketplace competition. Establishing a single winner contradicts Section 214 of the Act, which states that the FCC *shall* designate multiple carriers in areas served by non-rural carriers.[15] Moreover, it is inconsistent with the FCC's own interpretation of this Congressional mandate.[16]

Second, the determination of winning bidders based on nationwide lowest per-unit bids defeats what should be the FCC's overarching goal – to provide USF funding to the geographic areas where the need is greatest. In other words, funding should be targeted to geographic areas where financial support is absolutely necessary for carriers to provide new or expanded advanced mobile services. Unfortunately, the FCC's proposal unduly, and unjustly, favors carriers proposing to expand service to geographic areas with the highest density, since these areas can be served at the lowest per-unit cost. Indeed, FCC Chairman Genachowski has recognized that the Mobility Fund was created to target areas adjacent to existing 3G networks.[17] Providers seeking to serve more remote areas, which lack existing infrastructure, face high backhaul charges, and lack the opportunity to acquire a higher number of potential customers, would be

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[15] 47 U.S.C. § 214(e)(2); *see also* 47 U.S.C. §§ 254(b)(3), 254(b)(5). Section 214 also states that the FCC *may* designate multiple carriers in areas served by rural carriers

[16] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8790 (1997) ("*First Report and Order*") (subsequent history omitted) ("*We adopt this principle and the principles enumerated by Congress in section 254(b) to preserve and advance universal service while promoting the pro-competitive goals of the 1996 Act*.") (emphasis added). *See also, Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Tenth Report and Order, 14 FCC Rcd 20156, 20160 (1999); *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Fifth Report and Order, 13 FCC Rcd 21323, 21326 (1998).

[17] Remarks of FCC Chairman Julius Genachowski at news conference following FCC Open Meeting on April 14, 2010, as reported in *Communications Daily*, October 15, 2010 at p. 5 ("The fund is designed 'as a one-time capital infusion to make a dent in the mobility gap. The idea is that there are areas adjacent to existing networks where the issue really is the one-time capital infusion required to put up a tower' and install equipment.")

highly unlikely to win in a nationwide contest. Instead, funding will most likely be awarded to providers serving geographic areas where expanded or improved facilities might have been built out in the near future as a result of market forces, without the need for support (at least not for infrastructure costs).

Third, the proposal leaves open the possibility that one bidder could win the entire amount allotted to the fund. Given the anti-competitive bidding incentives described above, that winning bidder could well be a nationwide carrier seeking to reduce competition in adjacent markets, or an ultra aggressive bidder that ultimately will be unable to complete its system or provide adequate service.

Fourth, the high transactional costs to participate in a reverse auction will deter smaller bidders, for whom such costs will be disproportionately greater. This deterrence will be exacerbated by the proposal to compare bids on a nationwide basis and by the distinct possibility that a single entity could win the entire allotted amount. The costs will be particularly high if the FCC imposes onerous application, performance guarantee, and reporting requirements on auction participants.

C. The Proposed Funding Level Is Wholly Inadequate To Have A Meaningful Impact And The Restriction Of Support To One-Time Capital Expenditures Will Result In Under-Funded Projects.

The proposed funding level of $100 - $300 million is wholly insufficient to have a meaningful impact on the current mobility gap. Further, the FCC's proposal to fund projects on a one-time basis, presumably funding only capital expenditures, is wholly inadequate to support the long-term provision of quality service. RCA estimates that it costs its members on average $250,000 - $400,000 to construct a new cell site. Thus, each $100 million in funding would only be sufficient to build approximately 250 - 400 new cell sites. For example, RCA estimates that it

would cost approximately $400,000 per cell site to serve fewer than 2000 people in the remote portions of rural Illinois. With $100 million, the Mobility Fund would only add 500,000 potential broadband subscribers in low density portions of rural Illinois, which equates to less than 4% of the entire state of Illinois. This small impact cannot be what the FCC envisioned when attempting to bridge the mobility gap, laying the ground work for 4G mobile services by stimulating 3G service in currently unserved areas.

The FCC's proposal to limit support to a one-time payment (presumably for capital expenditures) is unwise and inconsistent with findings in the *CAF NOI* and *NPRM*, where the FCC recognized that one-time grants are insufficient in certain high-cost areas.[18] In providing support for high-cost areas, it is essential for the FCC to fund not only capital expenditures, but also on-going operating expenditures. The high cost of providing service in rural areas is not eliminated after the facilities are constructed. Without population growth in the relevant area, the operating expenses in the first year are likely to be at least equal to the operating expenses in future years.

RCA emphasizes that, even if adopted, the Mobility Fund must not, in any manner, be deemed a substitute for current high-cost support for competitive ETCs. As noted above, the level of proposed funding is wholly insufficient to make a dent in the current mobility gap. Further, any successful program will require on-going support for operating expenditures. RCA has repeatedly urged that there be no phase-down of high-cost support until, and unless, the FCC

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[18] *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 10-58, 2010 WL 1638319, rel. Apr. 21, 2010 ("*CAF NOI and NPRM*") ¶¶ 45 – 46. *See also* FCC, *Connecting America: The National Broadband Plan* (rel. Mar. 16, 2010) ("*National Broadband Plan*" or "*NBP*") at p. 138.

implements an adequate replacement support mechanism. The Mobility Fund is not an adequate replacement.

Finally, the FCC must maintain its focus on implementing comprehensive USF reform. Such reform must be competitively and technologically neutral. If the FCC is going to implement a reverse auction for certain funding to wireless carriers, it should also implement a reverse auction for certain funding to wireline carriers.

D. The Proposed Source Of Funding For The Mobility Fund Is Legally Suspect.

The proposed source of funding for the Mobility Fund is highly vulnerable to legal challenge. The Commission proposes to set up the Mobility Fund "by using a portion of the several hundred million dollars in annual USF support voluntarily relinquished by Verizon Wireless and Sprint Nextel, which . . . the Commission recently reserved [in the *Corr Wireless Order*] as a down payment on broadband USF reform . . . ."[19]

RCA member companies and other parties seeking reconsideration of the *Corr Wireless Order* have presented several reasons to conclude that this reservation of funding, and the procedures followed by the Commission in deciding to reserve the funds, are neither legally permissible nor sufficient.[20]

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[19] *NPRM*, ¶ 5. *See High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, FCC 10-155 (rel. Sept. 3, 2010), *recon. pending* ("*Corr Wireless Order*").

[20] *See* Allied Wireless Communications Corp., Cellular South Licenses, Inc., Commnet Wireless, LLC, Corr Wireless Communications, L.L.C., East Kentucky Network, LLC d/b/a Appalachian Wireless, Leaco Rural Telephone Cooperative, Inc., MTPCS, LLC d/b/a Cellular One, N.E. Colorado Cellular, Inc., PR Wireless, Inc., Union Telephone Company d/b/a Union Wireless, and U.S. Cellular, Joint Petition for Reconsideration, *Corr Wireless Order* Proceeding, filed Oct. 4, 2010 ("Joint Petition"); Southern Communications Services, Inc. d/b/a SouthernLINC Wireless and the Universal Service for America Coalition, Petition for Partial Reconsideration, *Corr Wireless Order* Proceeding, filed Sept. 29, 2010 ("SouthernLINC Petition").

First, and most importantly with respect to the current proceeding, the Commission lacks any statutory authority "to establish a pool of funds to be used for unspecified purposes at an undetermined point in the future."[21] Second, the Commission's decision not to redistribute to other competitive ETCs the high-cost support surrendered by Sprint and Verizon was arbitrary and capricious because the Commission's decision hinged on the mistaken conclusion that Sprint and Verizon continued to be "eligible" carriers for USF purposes even after they agreed to surrender their support.[22] Third, the Commission's decision to hold the surrendered funds in reserve for future use was procedurally defective because the Commission failed to give any prior notice to the public that it planned to reserve the funds instead of redistributing them pursuant to the terms of the *Interim Cap Order*.[23]

The legal challenges to the *Corr Wireless Order* demonstrate that the Mobility Fund would rest on a shaky foundation if the Commission were to go forward with its plan to use the high-cost support surrendered by Sprint and Verizon as the source of monies for the Fund. Even if the Commission can avoid in this proceeding the Administrative Procedure Act issues raised by the *Corr Wireless Order*, there is no way that the Commission can avoid, or cure, the absence of statutory authority to redistribute USF funds in the manner proposed. The highly uncertain legal status of the Commission's actions regarding funding sources for the Mobility Fund provides yet another reason why the Commission should give serious consideration to abandoning its proposal to establish the Mobility Fund.

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[21] SouthernLINC Petition at 3; *see id*. at 7-11.

[22] Joint Petition at 15-20.

[23] *Id*. at 20-21. *See* SouthernLINC Petition at 11-16.

E. The Commission Must Ensure Automatic Data Roaming for Mobile Service Providers.

If the Commission nonetheless moves forward with a single winner reverse auction, it is vital that the auction winners be required to provide automatic voice and data roaming at reasonable rates and terms, as proposed in the NPRM.[24] Regardless of whether the FCC adopts the Mobility Fund, the FCC must promptly move forward to ensure automatic data roaming for mobile service providers. As RCA has previously demonstrated, data roaming is the fundamental building block for bringing ubiquitous broadband to rural America.[25] Rural and regional carriers have limited options to obtain nationwide data roaming, but their customers still expect nationwide coverage and comparable services to their urban counterparts. Larger carriers are blocking rural and regional carriers from obtaining data roaming with reasonable terms and conditions because there is no regulatory mandate.[26] This problem is exacerbated by consolidation in the wireless market which has eliminated many potential roaming partners. An automatic data roaming obligation is essential to preserving and promoting competition, innovation and investment in wireless data services and wireless networks. A data roaming

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[24] *NPRM*, ¶ 36. *See Reexamination of Roaming Obligations of Commercial Radio Service Providers*, WT Docket No. 05-265, Comments of RCA filed June 14, 2010 and Reply Comments of RCA filed July 12, 2010.

[25] *See Ex Parte* Letter from Rebecca Murphy Thompson, RCA General Counsel, to Marlene H. Dortch, Secretary, FCC, filed in RM-11592, WT Docket No. 05-265, WT Docket No. 06-150, WT Docket No. 10-208, WC Docket No. 10-90, PS Docket No. 06-229 and GN Docket No. 09-51 (Nov. 10, 2010); *see also Ex Parte* Letter from Rebecca Murphy Thompson, RCA General Counsel, to Marlene H. Dortch, Secretary, FCC, filed in CG Docket No. 09-158, RM-11592, RM-11497, WT Docket No. 05-150, WT Docket No. 05-265, PS Docket No. 06-229, and GN Docket No. 09-51; *see also* RCA Comments, filed in WT Dock-et No. 05-265 (June 14, 2010); *see also* RCA Reply Comments, filed in WT Docket No. 05-265 (July 12, 2010).

[26] *See Ex Parte* Letter from Rebecca Murphy Thompson, RCA General Counsel, and Caressa D. Bennet, RTG General Counsel, to Marlene H. Dortch, Secretary, FCC, filed in WT Docket No. 05-265 (Nov. 12, 2010).

requirement will at least mitigate the anti-competitive impact of having a monopoly mobile services provider in the award area.

III. USF FUNDING BASED ON COST MODELS IS A MUCH BETTER WAY TO TARGET COST-EFFECTIVE FUNDING TO HIGH-COST RURAL AREAS.

RCA submits that a well-designed forward-looking cost model (or models)[27] that targets support to high-cost areas and identifies an amount of support that is portable to all competitors in the market, will best preserve and advance universal service, as required by the Act. A properly structured cost model "will facilitate a market-based approach whereby each end-user comes to be served by the most efficient technology and carrier."[28] By using a model to determine the appropriate level of support for an area, the Commission will further the principle that:

> [T]he purpose of universal service is to benefit the customer, not the carrier. 'Sufficient' funding of the customer's right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy.[29]

Cost models are the best mechanism for achieving the statutory goal of reasonably comparable services at reasonably comparable rates in rural areas. The NBP evidences a great deal of work in developing a cost model, and RCA encourages the Commission to continue working to develop such model(s).

More specifically, RCA proposes that the Commission establish a (dollar limit) cap, *per customer*, on high-cost support. Any competing carrier that captures a customer within the relevant geographic market would be entitled to high-cost support in an amount not to exceed the

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[27] RCA supports the use of different cost models for wireless and wireline carriers.

[28] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8802 (1997) ("*First Report and Order*") (subsequent history omitted).

[29] *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000).

cap. In order to avoid cream-skimming, carriers would be required to offer the supported services throughout the designated service area. In the event the customer switches to another carrier, that ETC-designated carrier would now be entitled to high-cost support for that customer, in an amount not to exceed the cap. In this way, the high-cost support would be both "success-based" (available only to the carrier that wins the customer) and "portable" (it would move with the customer).[30] If experience demonstrates that support is insufficient, or excessive, the amount per customer can later be adjusted to reach desired outcomes.[31] A well-designed forward-looking cost model offers numerous benefits to consumers. First, "success-based" support with "portability" ensures that there will be vigorous competition among carriers to obtain each and every customer. Not only will existing carriers compete for customers, but new entrants will have an opportunity to collect the same level of high-cost support if they are able to capture customers. Under a cost model, in contrast to a reverse auction mechanism establishing a monopoly provider, no carrier will have a captive market. Instead, carriers will have to compete on price and service, and meet customer demands for new and improved service. Thus, intensive government regulation will not be required; the competitive market will incent carriers to provide the best service at the lowest prices.

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[30] In other words, the carrier who captures the customer would be entitled to collect the high-cost support associated with that customer. Alternatively, consideration could be given to providing a direct subsidy to customers.

[31] Such a cap on high-cost support per customer would be entirely different than the FCC's "interim" cap on aggregate support for competitive eligible telecommunications carriers ("CETCs"). RCA vigorously opposes the "interim" cap, because, among other reasons, it arbitrarily limits the amount of high-cost support that any given CETC can collect, regardless of the number of customers captured by that carrier. The "interim" cap also varies widely from state-to-state based on the March 2008 disbursement levels – levels determined, in large part, by the number of CETCs in any particular state as of March 2008. By contrast, the per-customer cap proposed here would reward service providers for each customer that they capture. In addition, the per-customer cap would be technologically neutral – applying to both wireless and wireline carriers. By contrast, the interim CETC cap applies only to wireless carriers.

Second, by capping high-cost support, carriers will be incented to deploy the most cost-effective technology in the most efficient manner. Third, capped support that moves with the customer will eliminate the risk of significant growth in USF. Carriers that are losing customers will not be able to continue collecting a fixed level of support. If the customer leaves, the support for that carrier will be reduced commensurately.

The Commission recognized the potential value of cost models in the National Broadband Plan, and in the *CAF NOI* and *NPRM* the Commission asks whether cost models will be needed to set reserve prices for reverse auctions.[32] If the FCC is going to need to develop cost models to set reserve prices, the FCC instead ought to use these cost models to cap per-user high-cost support and abandon reverse auctions.

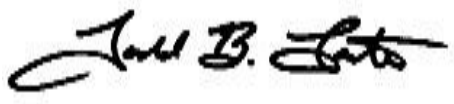
[32] The Commission is currently considering the use of a cost model to help determine USF support levels "in areas where there is no private sector business case to provide broadband and voice services." *CAF NOI* and *NPRM*, ¶ 2. This consideration includes an assessment of whether "a model should be used to set reserve prices" if the Commission selects a market-based mechanism (such as reverse auctions) to award USF support. *Id*. ¶¶ 20-21. In the *NPRM*, the Commission proposes that, prior to the auction, reserve amounts be established. *NPRM*, ¶ 66.

IV. CONCLUSION.

The proposed Mobility Fund will not be an effective means of promoting improved mobile wireless coverage in high-cost and rural areas, particularly if the Commission implements its proposals to use reverse auctions to determine Mobility Fund winners and limits the Mobility Fund to no more than $300 million. RCA urges the Commission not to adopt the Mobility Fund proposal, but instead to adopt a cost based model for high-cost support with success-based portable funding. A well-crafted forward-looking cost-based model for universal service support will best advance the Commission's goal to stimulate investment in expanded coverage and next generation mobile wireless technologies to the benefit of consumers in rural and high-cost areas.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION



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