Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF METROPCS COMMUNICATIONS, INC.

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MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys, hereby submits its comments on the *Notice of Proposed Rulemaking* ("*NPRM*") in the above-captioned proceeding.[2] The following is respectfully shown:

I. INTRODUCTION AND SUMMARY

MetroPCS supports the Commission's goal of encouraging the deployment of broadband services in unserved areas. Indeed, MetroPCS' own business plan aims to make both voice and mobile wireless broadband services available to often-ignored segments of the American population. However, MetroPCS does not believe that the proposed creation of a new mobility fund is the best use of the foregone Universal Service Fund ("USF") subsidies in today's roller coaster economy. Rather, these funds should be used to reduce the USF contributions of all wireless carriers, which will free them to expand mobile wireless broadband services across the

[1] For purposes of these Comments, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

[2] *Universal Service Reform, Mobility Fund*, in WT Docket No. 10-208 (October 14, 2010) ("*NPRM*").

nation without ongoing government involvement and/or allow them to reduce the amount of USF contributions they seek from their customers. This MetroPCS position is based in part on its view that the Commission, under the plain language of Section 254 of the Communications Act, does not have clear authority to use USF resources to promote the deployment of broadband services.

If the Commission nonetheless moves forward with the creation of the Mobility Fund, it may improve its jurisdictional basis by tying any grant under the Mobility Fund to a requirement that the recipient provide data roaming on just, reasonable and non-discriminatory terms. By requiring that Mobility Fund recipients offer data roaming services on such terms -- which the Commission has the authority to do[3]-- the Commission will bolster its authority to use the foregone USF funds to fund the Mobility Fund.

Furthermore, if the Commission does proceed with the creation of the Mobility Fund, MetroPCS urges it to do so in a forward-thinking manner that assures accountability and distributes funds to those most capable and most likely to successfully construct networks that will provide beneficial services where they are most needed over the long-run. To this end, the Mobility Fund should only support the deployment of 4G technologies, or else the networks constructed with government support will be obsolete by the time they become operational. Furthermore, 4G networks, unlike 3G networks, will ameliorate the technical compatibility

[3] MetroPCS has made numerous filings in the data roaming docket (WT Docket No. 05-265) demonstrating the jurisdictional authority of the Commission to regulated data roaming. *See* Comments of MetroPCS Communications, Inc., WT Docket No. 05-265, 13-14 (filed Oct. 29, 2007) ("MetroPCS Data Roaming Comments"); Comments of MetroPCS Communications, Inc., WT Docket No. 05-265, 4-10 (filed Nov. 28, 2007) ("MetroPCS Data Roaming Reply Comments"); Comments of MetroPCS Communications, Inc., WT Docket No. 05-265, 17-35 (filed Jun. 14, 2010) ("MetroPCS Data Roaming Comments 2"); Reply Comments of MetroPCS Communications, Inc., WT Docket No. 05-265, 13-17 (filed July 6, 2010) ("MetroPCS Data Roaming Reply Comments 2").

limitations that pertain to CDMA and GSM systems. Further, 4G networks hold the promise of providing data speeds and capacity which will allow wireless mobile broadband to more fully compete with wireline broadband services. Finally, Mobility funds should be committed only to unserved areas – not to underserved areas where the effect would be a government subsidy that could undermine competition.

MetroPCS also encourages the Commission to draft its Mobility Fund rules to ensure that any reverse auction is carefully crafted so that funds are distributed only to those with the financial wherewithal to see their plans through to a successful end. For example, the Commission should require that Fund recipients contribute 75 percent to the projected expenses of the project, allowing the use of Mobility Funds only when that amount has been spent by the entity itself. This will prevent speculative applicants from gaming the system by taking grant money but not completing the project because they cannot raise the additional funds necessary to do so. Additionally, the Commission should use a multi-round reverse auction, as opposed to the proposed single-round format, which allows price discovery and more informed bidding.

Further, the Commission must continue to monitor Mobility Fund recipients and set terms and conditions that assure the promised services are provided, including construction and interim performance requirements. Most importantly, the Commission should require carriers who receive Mobility Funds to enter into data roaming agreements upon request on just and reasonable, nondiscriminatory terms in order to ensure that the Commission's investment benefits all Americans through increased mobility capabilities and the enablement of heightened competition in all markets.

Finally, the Commission needs to ensure that the Mobility Fund does not end up funding a monopoly service provider. To that end, MetroPCS proposes that Mobility Fund recipients be required to allow resale in the areas covered by the Mobility Fund payments at reasonable rates that will allow meaningful competition to develop.

II. THE COMMISSION SHOULD USE THE AVAILABLE FUNDS TO REDUCE WIRELESS USF OBLIGATIONS

As an initial matter, while the proposed Mobility Fund is well-intentioned, MetroPCS does not believe that the Commission should use surrendered USF resources for the purposes of creating this new fund. Rather, given the economic uncertainties facing the entire country, the better use of these funds would be as a reduction in the amount of USF contributions taken from wireless carriers each year. This approach would make additional funds available for carriers that already have proven themselves willing and able to deploying networks across the country. Studies show that wireless broadband is proliferating, not just in major markets but also in small, rural and mid-tier markets. Reducing USF obligations would fuel this growth of networks in previously unserved and underserved regions. Returning this money to carriers also would allow them to return a portion back to their customers – who are the very ones who paid the USF in the first place. The latest NTIA study indicates that cost is a major barrier to broadband adoption, particularly among minorities and disadvantaged members of society. Additionally, injecting this money into the economy will have the immediate effect of customers spending more on telecommunications equipment which will spur the economy.

This MetroPCS position is driven in part by its conclusion that the Commission does not have the clear authority to repurpose the USF money and to use it to finance broadband services, which qualify as information services. The statutory authority for USF support clearly omits information services from the list of eligible services. Section 254(e) of the Communications Act states that "only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support."[4] The statute clearly only contemplates the receipt of USF support by telecommunications services. It makes no mention of information services. The Commission, in the *NPRM*,[5] points to Section 254(c), which refers to an "evolving level of *telecommunications services* that the Commission shall establish periodically under this section"[6] and authorizes the Commission to "modify[y]…the definition of the services that are supported by Federal universal service support mechanisms."[7] The use of the term "telecommunications services" in this section undermines any view the broadband data services can be covered since broadband Internet service clearly is an information service.[8] Thus, the Commission does not have the legal authority to repurpose Universal Service Funds to use them to support broadband Internet deployment.

Should the Commission move forward nonetheless with the creation of the Mobility Fund, its legal position as to its authority will improve if it requires that networks supported by the Mobility Fund provide data roaming services to other mobile wireless broadband providers. As MetroPCS has demonstrated in the data roaming proceeding,[9] data roaming is a telecommunications service and thus spending the money to broaden data roaming would be spending the money on telecommunications services. AT&T has stated – and MetroPCS agrees – that "[d]ata roaming is merely a wholesale, provider-to-provider service that facilitates the

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[4] 47 U.S.C. § 254(e).

[5] *NPRM* at ¶ 12.

[6] 47 U.S.C. § 254(c) (emphasis added).

[7] *Id.*

[8] Use of the term "services" in Section 254(c)(2) only refers back to the "telecommunications services" term.

[9] *See* MetroPCS Data Roaming Reply Comments 2 at 20-26.

offering of another non-interconnected service, wireless broadband Internet access."[10] As MetroPCS showed in its technical analysis,[11] the wholesale, carrier-to-carrier "transmission provided by the Roaming Partner is functionally equivalent to the telecommunications services provided for voice roaming."[12] Thus, if the Commission extends its proposed requirements to include a mandate that Mobility Fund-supported networks offer data roaming agreements on just, reasonable and nondiscriminatory terms, the Commission will have improved its legal basis to exercise authority over broadband service deployment with USF resources.

III. ANY MOBILITY FUND RULES SHOULD SUPPORT WIRELESS INNOVATION, PROMOTE COMPETITION, AND ENSURE THE FINANCIAL WHEREWITHAL OF FUND RECIPIENTS

If the Commission chooses to proceed with the establishment of the Mobility Fund, MetroPCS urges the Commission to ensure that funds are directed toward the construction of forward-looking technologies, that it does not allow funds to be used to create unfair competitive advantages, and that funds are given only to providers capable of constructing sustainable networks.

A. The Commission Should Support 4G Networks

The Commission should not invest in technologies that will become technically obsolete as soon as they are installed. The Commission proposes that "[p]arties supported by the Mobility Fund must provide 3G or better mobile coverage in specific areas previously deemed unserved by 3G."[13] If it does so, the Commission will only perpetuate current technical compatibility problems which plague 3G services due to the consolidation of the wireless industry and the two

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[10] Comments of AT&T, Inc., in WT Docket No. 05-265, 16 (filed Jun. 14, 2010).

[11] MetroPCS Data Roaming Comments 2 at 8-17.

[12] *Id*. at 7.

[13] *NPRM* at ¶ 40.

non-compatible air interfaces for wireless broadband. This would leave many American consumers without any benefit from the government's investment. On the other hand, 4G long-term evolution ("4G LTE") does not suffer from the same incompatibility problems, thus eliminating many of the issues associated with the differing 3G air interfaces. 4G LTE also would be a more cost-effective investment for the Commission, since the capacity and speeds of 4G LTE networks would allow recipient providers to compete effectively with wireline facilities providers, by providing high speed broadband services. In contrast, 3G in many instances offers service no better than DSL, which, although better than dial-up, is not the future of wireless broadband.

Finally, 3G is being replaced by 4G and any investment in 3G would be quickly obsolete by the time auctions were completed, the money awarded, and the systems built. Almost all of the significant service providers have deployed, are in the process of deploying, or have plans to deploy, 4G networks in the future. For example, MetroPCS began offering 4G LTE services in Las Vegas, Nevada, Dallas, Texas, and a number of other markets this fall.[14] Sprint and Clearwire now offer 4G services over their WiMAX network.[15] Verizon has launched portions of its 4G LTE network,[16] and AT&T hopes to begin offering 4G plans in the very near future.[17]

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[14] *See* 4G Coverage, MetroPCS.com, *available at* http://www.metropcs.com/4g/coverage/ (last visited Dec. 13, 2010).

[15] *See* Tara Seals, Sprint, Clearwire Expand WiMAX Footprint, Phone+, Aug. 2, 2010, *available at* http://www.phoneplusmag.com/news/2010/08/sprint-clearwire-expand-wimax-footprint.aspx ("Clearwire Corp. and Sprint-Nextel Corp. continue to expand the reach of real mobile broadband with the launch of 4G WiMAX service in five additional markets…").

[16] *See* Esther Shein, *Verizon Launches 4G LTE Network*, INFORMATIONWEEK, Dec. 6, 2010, *available at* http://www.informationweek.com/news/infrastructure/management/showArticle.jhtml?articleID=228600062&cid=RSSfeed_IWK_All.

With 4G on the upswing and 3G becoming a thing of the past, the Commission would be wise to use any available mobility funds to ensure the provision of the state of the art services to Americans and to provide a good long term investment. Any 3G facilities that the Commission supports would rapidly become obsolete.

B. Support Should Be Limited to Unserved Areas

In reference to the Commission's target geographic areas, MetroPCS strongly agrees that any funds spent should be channeled into areas which are *un*served, not merely *under*served. The reason is twofold. First, this will target the areas of greatest need. Second, focusing on unserved areas will avoid having the Government skew the competitive market. Mobility Funds should not be used to enable one competitor to gain a competitive advantage by using government money to pay for facilities that the carrier uses to compete with an existing unsubsidized service provider in an underserved market.

If the Commission is determined to create a mobility fund, it should address the core problem highlighted in the National Broadband Plan (the "Plan"): "At present, there are 14 million people living in seven million housing units that do not have access to terrestrial broadband infrastructure capable of meeting the National Broadband Availability Target."[18] The Plan continues to note that, "[b]ecause service providers in these areas cannot earn enough revenue to cover the costs of deploying and operating broadband networks, including expected returns on capital, there is no business case to offer broadband services in these areas."[19] In

[17] *See* 4G LTE Mobile Broadband, AT&T.com, *available at* http://www.wireless.att.com/learn/why/technology/4g-lte.jsp (last visited Dec. 13, 2010) ("AT&T began trials of LTE in 2010 and we plan to launch LTE commercially in 2011.")

[18] FCC, CONNECTING AMERICA: A NATIONAL BROADBAND PLAN FOR OUR FUTURE, 136 (2010) ("*National Broadband Plan*").

[19] *Id.*

light of this unserved area problem, the Commission should avoid investing Mobility Fund dollars in areas with an established carrier presence, where at least some carriers can “earn enough revenue to cover the costs of deploying and operating broadband networks.” If the targeted areas are merely underserved, Americans with no access to broadband today will remain unserved after this money is spent. The focus of this Mobility Fund should be to close the broadband availability gap, by targeting only those areas where private investment is not currently feasible.

C. The Commission Should Adopt Safeguards to Ensure that the Funds are Distributed Only to Qualified Entities

The Commission must ensure that bidders are qualified to construct and operate a state of the art network. In particular, the Commission must take steps to ensure that applicants who receive funds have the financial capacity to construct and maintain the system it proposes. The Commission is well familiar with problems of the past in which auction winners – particularly in the initial C Block PCS auction – proved incapable of successfully completing their build-outs due to financial shortcomings. The result was that valuable spectrum laid fallow for years and the public was not served.

To avoid an embarrassing reoccurrence, the Commission should require a demonstration that each Mobility Fund recipient has the financial wherewithal to make a substantial matching investment. MetroPCS suggests that the Mobility Fund money not represent more than 25 percent of the funds necessary to affect the bidder’s business plan. And, the remaining 75 percent should not come from grants or other non-investor sources. (For example, BTOP funds should not count towards the 75 percent.) This limitation will help to make certain that a bidder's business plan has been able to attract investment capital from the commercial market. The likelihood of success will increase if bidders are fully committed to their plans and others are willing to share in all the risks that the Commission takes by granting them the funds. Further, to make sure the Commission's investment is not wasted, Mobility Funds should be devoted to the <u>final</u> 25 percent of expenses on the project, rather than the first 25 percent. This will prevent applicants from taking the funds but not completing the project. In addition, this will cause the applicants to have the continuing incentive to complete the project quickly to ensure they receive the 25 percent support.

MetroPCS agrees with the Commission that Mobility Funds should be granted on a "non-recurring" basis.[20] A grant of recurring funds would reduce the incentive for bidder's to create a self-sustaining business plan. Mobility Fund beneficiaries must share in the risk and must show a willingness to commit themselves and their own resources in the long term to the service of the now-unserved. The Commission should lend a hand in the deployment of broadband services in areas in which service providers have a hard time making the business case for initial construction; it should not get into the business of directly propping up those networks in the long run. By making the funds non-recurring, the applicant will have to secure third party funding to continue to operate the business. These third parties are in a better position than the Commission to determine whether the applicant's business plan will be able to succeed. In effect, this will allow the market, rather than the Commission, to determine which applicants succeed or fail. In contrast, if the Commission provides recurring funds, prudence would require it to determine whether the applicant will be viable in the long-term to provide the services promised.

As for bidder eligibility, MetroPCS disagrees with the Commission's assessment that bidders must qualify as ETCs. The Commission proposes "to require that applicants for

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[20] *NPRM* at ¶ 11.

Mobility Fund support be designated as wireless ETCs covering the relevant geographic area prior to participating in a Mobility Fund auction."[21] MetroPCS does not see a compelling need for limiting eligibility in this fashion. ETC criteria have been developed over time to fulfill a different, broader set of criteria than those to which the Mobility Fund is targeted. Since bidders are not receiving ETC funds, but rather Mobility Funds, the Commission should establish its own criteria, and need not defer to the states. Further, ETC is geared towards the provision of telecommunications services – namely voice services. Here, bidders will be focused on broadband data services and not on providing voice services. Accordingly, requiring every bidder to be an ETC would unnecessarily limit the pool of applicants to those who plan to provide voice services in addition to broadband services.

One important threshold criteria, however, that the Commission should establish is that entities must hold spectrum, or have in place a long-term spectrum lease, before qualifying as a bidder. Without this requirement, the Commission could be incented to abandon the successful auction tradition and grant spectrum to successful Mobility Fund bidders, even if the Commission would not otherwise do so, creating a potentially inefficient distribution of spectrum.

MetroPCS also believes that the Commission should amend its approach to the reverse auction. The Commission notes that, "although there are a number of formats that could be used for reverse auctions, including both multiple-round and single-round formats, we propose to use a single-round reverse auction to award Mobility Fund support."[22] However, single-round auctions do not permit recipients to engage in price discovery, and thereby deprive bidders of the chance to submit fully inferred bids. Multi-round auctions allow participants to discover what

[21] *NPRM* at ¶ 47.

[22] *NPRM* at ¶ 58.

other bidders are willing to pay and to bid with more confidence. The quality of bids in a multi-round auction is better, and it will lead to better inferred bids with the ultimate result that more areas will be successfully built. The Commission has had significant success with its multi-round simultaneous auctions, which MetroPCS attributes in large measure to the fact that pricing information is available to help educate and inform bidders. Just as it is important for spectrum auctions, so too is it important for any Mobility Fund reverse auctions. Thus, MetroPCS urges the Commission to use a multi-round reverse auction instead of a single-round format.

D. Fund Recipients Should Meet Performance Requirements, Provide Data Roaming Services and Allow Resale

The Commission should ensure that recipients actually construct and operate the systems they propose and meet meaningful coverage targets. The Commission needs to ensure that the recipient actually builds what it promises. To this end, MetroPCS supports requiring recipients to put up a construction bond sufficient to cover the unfunded portion of its business plan. While applicants should be allowed to opt to provide a letter of credit, the minimum requirement should be for a construction bond. A bond is less costly than a letter of credit because the bond company may not require a dollar-for-dollar deposit equal to the amount of the payment. Further, a bond or letter of credit allows third parties to evaluate and back the bidder's business plan. The Commission would benefit from such third party involvement.

Further, a bond will allow a third party to assess the capability of the recipient to actually construct the system. The Commission seeks comments "on whether all winning bidders should be required to obtain an irrevocable standby letter of credit ('LOC') no later than the date on which their long-form application is submitted to the Commission."[23] An LOC will generally require a deposit of the amount of the obligation. That will detract from the money available to

[23] *NPRM* at ¶ 85.

construct and operate the system. Additionally, a back-up LOC only requires money and will not involve a third party in evaluating the ability of the recipient to construct the system. Of course, if a recipient would rather put up an LOC, they should be permitted, but not required, to do so.

Additionally, the Commission needs to establish meaningful interim performance benchmarks. The Commission notes that it may "require that recipients achieve fifty percent of the coverage requirement within one year after qualifying for support." It further asks for comments "on appropriate coverage percentages and time periods for such a milestone." MetroPCS agrees that the Commission should establish meaningful performance requirements. However, too aggressive performance requirements may be counterproductive and deter participation. If the Commission uses relatively small geographic areas (e.g., zipcodes, which is the basis on which some of the broadband mapping is being done), 50 percent coverage requirements in 12 months may be acceptable. If, however, the Commission uses larger areas (e.g., entire counties, particularly in rural and less populated areas where counties tend to be large, or other wireless licensing areas such as MTAs, EAs, BTAs or CMAs), 50 percent may be too high a hurdle.[24] In any event, MetroPCS does urge the Commission to create appropriate interim performance obligations that ensure that the recipient is, in fact, using the funds as promised. MetroPCS, as earlier noted, also supports not making all of the money available at award. Rather, the Commission should backload the Mobility Fund payment so that the recipient is required to spend its 75 percent portion before the Commission's 25 percent is made available. This will create increased incentive for the recipient service providers to hit their performance and construction milestones and actually provide service as they propose in their bids.

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[24] It also matters where such construction may occur as some states are notoriously difficult to secure the necessary approvals.

Further, MetroPCS believes that recipients should be required to agree to provide data roaming over their Mobility Fund-enabled networks on just, reasonable and nondiscriminatory terms. This will ensure that these funds will accomplish a dual purpose – encouraging build-out in unserved areas and fostering greater roaming. This will provide greater mobility to American consumers and increased competition in the nationwide mobile wireless broadband market, while still making available mobile wireless broadband access for those currently without it.

As the wireless marketplace continues deploying new 4G broadband technologies, such as LTE, wireless data roaming will play an ever-increasing role in the lives of consumers. In order to incent other small, rural and mid-tier carriers to invest their own funds in next-generation networks, the Commission must assure such carriers that their customers will be able to access these important wireless data services outside areas served by their home carrier. Absent a ubiquitous data roaming environment, small, rural and mid-tier carriers will be disincented to spend the hundreds of millions of dollars necessary to deploy next generation technologies or services, including currently unserved and underserved regions that will not be served by the Mobility Funds. The result will be a less competitive data market in which consumers have fewer competitive choices, especially in rural and non-urban areas. Reduced competition will not serve the public interest now that wireless data is becoming an increasingly important part of the typical wireless customer's usage pattern. The Commission's own data shows that wireless access to the Internet continues to increase at a rapid rate.[25] Customers will not be satisfied with data that only works locally. In order to compete effectively, wireless carriers simply must be able to promise their customers nationwide wireless data plans.

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[25] *Implementation of Section 6002 (b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Federal Communications Commission, Fourteenth Report, WT Docket No. 09-66, ¶¶ 181-184 (rel. May 20, 2010) ("*Fourteenth Report*").

However, this is impossible to do at present because the largest nationwide providers consistently refuse to enter into automatic wireless data roaming agreements with other carriers at reasonable rates. While the data roaming footprint provided by Mobility Fund-supported networks may not be extremely large, it will set an optimistic tone for wireless data providers who are currently uncertain of the wisdom of investing in further deployment in the face of the regulatory uncertainty surrounding the data roaming issue.

Finally, MetroPCS believes that successful bidders should be required to permit resale of their services on fair and reasonable prices.[26] In many areas these facilities may be the only wireless broadband facilities (and, perhaps, the only broadband facilities). As a result, the Commission should act to promote competition. To prevent the Commission from establishing a monopoly provider in an otherwise unserved area, the best approach is through requiring resale. Requiring data roaming, while helpful, will not allow robust competition in these areas because roaming agreements generally do not result in, and often do not permit, the roaming carrier to establish a local marketing presence to sell services in the serving carrier's market. Accordingly, the best way to promote competition is for the Commission to require resale of services at prices that will attract entry by resale.

IV. CONCLUSION

The foregone subsidies would be best spent by reducing the USF obligations of wireless carriers and allowing them to increase their investment in wireless broadband deployment. If the Commission decides to go forward with the creation of the Mobility Fund, it should do so in a manner that is technologically forward-thinking, that ensures that recipients are capable and fully

[26] MetroPCS is generally against resale obligations for carriers, especially when there are multiple facilities-based competitors. Here, however, because of the nature of the requirements (e.g., unserved), there is no other provider, and thus it is unlikely, absent resale, for there to be any competition to the Mobility Fund winner.

committed to the build-out of their networks in underserved areas, and that guarantees all Americans to benefit from the program, by way of just and reasonable, nondiscriminatory data roaming agreements and resale requirements.

Respectfully submitted,

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