

**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 VERIZON AND VERIZON WIRELESS

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I. INTRODUCTION AND SUMMARY.

The Commission should adopt its proposal for targeted, one-time Universal Service Fund (USF or “fund”) support to build wireless infrastructure in those few, isolated areas that still do not have access to 3G (or better) wireless service.² In particular, the proposed “Mobility Fund” advances the goals of the universal service program in at least two respects: First, upgrading wireless facilities in areas without 3G (or better) service today will lay the groundwork for filling the few remaining gaps in broadband coverage. Wireless technology, as the National Broadband Plan acknowledges, in many cases will be the most efficient option to extend broadband to hard-to-reach areas.³ Second, by awarding Mobility Fund grants through a competitive bidding system the Commission will gain valuable experience with market-based mechanisms to distribute universal service support in the future, including ongoing Connect America Fund

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² *Universal Service Reform, Mobility Fund*, Notice of Proposed Rulemaking, 25 FCC Rcd 14716 (2010) (“*NPRM*”).

³ *Connecting America: The National Broadband Plan*, <http://download.broadband.gov/plan/national-broadband-plan.pdf> (2010) (“National Broadband Plan” or “NBP”).

support. The National Broadband Plan commits the Commission to using such market-based mechanisms whenever possible to determine the most efficient amount of USF support, which is the right approach. Universal service funding is finite; in repurposing the fund for broadband the Commission must deploy USF subsidies in the most strategic way possible to produce tangible results. Competitive bidding is also fully consistent with the Commission's Section 254 statutory authority.

At the same time—or sooner—the Commission acts to address 3G deployment gaps in the wireless market, the Commission must implement the National Broadband Plan recommendation to phase-out all competitive eligible telecommunications carrier (ETC) support. In its recent *Corr Order* the Commission took the necessary steps to implement Verizon Wireless and Sprint merger conditions to relinquish their CETC support, freeing up significant funding for new broadband priorities such as the proposed Mobility Fund.⁴ The National Broadband Plan, however, envisions substantially more USF funding for broadband than the amount left on the table by just these two carriers. Given the Commission's appropriate concern that a larger fund is not sustainable by consumers who pay to support it, the only way to ensure that there is adequate universal service funding for broadband in the pipeline is to get serious about reducing legacy voice support—starting with the remaining CETC support. It is critical for the Commission to know how much funding it actually has *available* to spend on broadband *before* it can spend the money. Competitive equity in the robustly competitive wireless industry also requires the Commission to move as quickly as possible to phase out legacy CETC support

⁴ *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, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 12854 (2010), reconsideration pending (“Corr Order”).*

to all carriers.

The specific competitive bidding mechanism proposed by the Commission in the *NPRM* for the Mobility Fund is generally sound. Responses to some of the Commission's technical auction design questions and comments on many of the tentative conclusions are discussed below. Overall, in working through the mechanics of a competitive bidding system the Commission should be careful not to over-condition awards or to make the competitive bidding mechanism accessible to only the most sophisticated providers, both of which would discourage program participation, increase the amount of bids, and reduce the number of successful auctions. The Commission should also set realistic expectations for coverage gains from Mobility Fund grants. Today, relatively few people lack access to 3G (or better) wireless service, and this population lives in areas that are often very expensive to serve. As a result, it is not practical to expect that coverage can be expanded to 100 percent of the unserved population, and in some areas only incremental gains may be realistic. Finally, the Commission should be prepared to be flexible in implementing the Mobility Fund pending review of data identifying unserved areas. It may make sense, for example, to modify competitive bidding areas, funding priority, or design of the competitive bidding mechanism based on the facts on the ground that will determine how to make the most of scarce universal service dollars.

II. TARGETED WIRELESS INFRASTRUCTURE GRANTS AWARDED BY COMPETITIVE BIDDING MAKE SENSE AND ARE CONSISTENT WITH THE COMMISSION'S STATUTORY AUTHORITY.

Wireless networks now blanket the United States, and the vast majority of people who want a wireless device have access to quality service at affordable prices. There is no dispute, and the Commission acknowledges, that 3G (or better) "wireless services that include both voice telecommunications service as well as e-mail and Internet access are now widely available."

NPRM ¶ 2. In fact, 98.5 percent of all Americans have access to at least one 3G (or better) wireless service, compared to at least 95 percent of Americans who have access to terrestrial broadband service. NBP at 146. But with the nationwide deployment of LTE or 4G services now in full swing, in a few isolated areas where the 3G (or better) market has not yet reached wireless service can—and should—improve. It is especially important to ensure that sufficient wireless infrastructure is deployed in these areas as the Commission looks to implement its broadband agenda laid out in the National Broadband Plan. The Commission anticipates that wireless will likely be the most efficient technology to reach those few Americans that still do not have access to broadband. *Id.*

Using targeted, one-time funding to upgrade wireless infrastructure in certain areas as a springboard to launch the larger broadband agenda, therefore, makes sense. Many of the few isolated areas that lack 3G (or better) wireless service or terrestrial broadband could become “served” through strategic deployment of resources. Support for one-time construction of facilities or upgrades to existing infrastructure is projected to fill nearly *half* of the existing broadband gap and extend broadband coverage to more than 3.2 million households. NBP at 138.

The proposed initial size of the Mobility Fund, \$100-\$300 million, is also sensible. *NPRM* ¶ 13. While \$300 million is a relatively small amount compared to the estimated \$24 billion overall broadband gap, the Commission must be methodical in using scarce USF resources for broadband. NBP at 133. Importantly, the Commission cannot spend resources that it does not have, and \$300 million represents a significant portion of the amount of USF support freed up as a result of the *Corr Order* implementing merger conditions to phase out universal service support to Verizon Wireless and Sprint. *NPRM* ¶ 13. Consumers pay for the fund

through charges on their bills, and the Commission recognizes that repurposing the USF for broadband must be done in a way that does not significantly expand the fund and undermine consumers' ability to pay for it. NBP at 149-50 (“The FCC should manage the total size of the USF to remain close to its current size (in 2010 dollars) in order to minimize the burden of increasing universal service contributions on consumers. Unrestrained growth of the USF, regardless of reason, could jeopardize public support for the goals of universal service. . . The FCC needs to proceed with measured steps. . .”).

It may turn out that additional funding for Mobility Fund or similar grants is the most effective way to expand the reach of broadband networks into the few remaining unserved areas. If that does turn out to be the case, then the Commission could commit additional resources—instead of transitioning all of the remaining USF high cost support freed up by the *Corr Order* and other USF reductions—to the Connect America Fund for ongoing broadband subsidies. As discussed further below, however, the only way to ensure that there will be enough support to realize meaningful broadband coverage gains—whether the need is one-time infrastructure funding or otherwise—is to actually begin reducing USF voice subsidies for all carriers, starting with a phase-out of all remaining CETC support.

The Commission's proposal to distribute Mobility Fund support by competitive bidding is the right approach and will enable the most efficient use of this support. *NPRM* ¶ 16. For many years, Verizon and its predecessor companies have urged the Commission to replace current USF support models with a more rational market-based mechanism to award subsidies. The way support to wireless carriers is currently structured, for example, is badly flawed. Today, while wireless funding is capped overall at the state level (approximately \$1.4 billion in CETC funding nationwide), the per-handset subsidy amount paid to wireless carriers is

calculated based on the per-line amount that is paid to the wireline incumbent serving a high cost area under the identical support rule. 47 C.F.R. § 54.307. Payments to wireless carriers are the same even if there are multiple providers that offer mobile service in the area—including carriers that compete without any universal service support at all. The USF program was not intended to subsidize multiple competing voice service providers (based on the incumbent's costs) in areas that are prohibitively expensive for even one provider to serve. And this construct is neither an efficient nor effective way to meet the market's current and future mobile broadband needs.

A competitive bidding mechanism fixes these problems. Competitive bidding breaks the artificial link between wireline and wireless funding in a sensible way. Many important goods and services, such as critical product development work for military equipment and repair work for bridges and roads, are purchased by government entities based on competitive bid contracts. The National Broadband Plan itself embraces the use of market-based mechanisms to distribute USF support whenever possible. NBP at 145.

The experience the Commission and the industry will gain from an operational USF competitive bidding system with the Mobility Fund is also invaluable. Over time, the Commission proposes to repurpose all high cost universal service funding (currently about \$4.5 billion annually) for broadband, phasing out support for voice-only networks in favor of the all-broadband Connect America Fund. NBP at 145. Like the Mobility Fund, the National Broadband Plan proposes to and should distribute Connect America Fund support using market-based mechanisms. *Id.*

Finally, the Commission has statutory authority to award Mobility Fund grants using a competitive bidding mechanism. *NPRM* ¶ 12. More specific legal questions, such as ETC requirements for winning bidders, are addressed in appropriate context below. In general, the

Commission has significant flexibility to shape sensible universal service programs under Section 254 of the Act. Nothing about Section 254 requires, for example, the Commission to award only traditional on-going universal service subsidies and not one-time grants. The Commission is empowered to ensure that consumers “in all regions of the Nation” have “[a]ccess to advanced telecommunications and information services.” 47 U.S.C. § 254(b)(2)-(3). In distributing high cost support, the Commission is further guided by Section 254(c), which broadly provides that the definition of universal service should evolve over time. 47 U.S.C. § 254(c)(1). And the Commission is expressly directed by the statute to make necessary changes to the program over time so that access to advanced services in high cost areas keeps pace with technological gains. 47 U.S.C. § 254(c)(2).

In the past, some parties (typically incumbent rural wireline carriers) have suggested that a competitive bidding mechanism would violate Section 254 because it does not ensure that any particular service provider will be funded. These concerns overlook the fact that universal service “is to benefit the customer, not the carrier.” *Alenco Comm’ns v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000); *see also Rural Cellular Association, et al. v. FCC*, 588 F.3d 1095, 1102 (D.C. Cir. 2009). Viewing statutory requirements from the consumer’s perspective, as Congress intended, allays concerns about the legality of competitive bidding. More specifically, the Act requires “sufficient” and “predictable” support, not subsidies that are constant and indefinite. 47 U.S.C. § 254(b)(5). And one of the primary benefits of competitive bidding is that the sufficiency of funding is knowable from the bidding process itself. It is the bidding providers themselves—not regulators—that have the best knowledge of their own costs and revenues. *See also Alenco*, 201 F.3d at 622 (“What petitioners seek is not merely predictable funding mechanisms, but predictable market outcomes. Indeed, what they wish is protection from

competition, the very antithesis of the Act.”).

III. THE COMMISSION MUST BEGIN THE PHASE-OUT OF ALL CETC SUPPORT AS SOON AS POSSIBLE.

The amount of support necessary to fill the few remaining broadband gaps is reasonably debatable. The National Broadband Plan, however, envisions that significantly more USF support (and eventually all high cost program funding) than what is currently on the table from reductions in Verizon Wireless and Sprint’s funding will be repurposed for broadband. Because it is not possible to significantly grow the fund and further burden all consumers who pay for it, the only way to ensure that adequate universal service support will be available for broadband priorities when needed is to get serious—immediately—about reducing legacy support for voice services. The problem is made more acute by the Commission’s recent announcement that the USF contribution factor will hit another all-time high next quarter, increasing to 15.5 percent.⁵ Consumers are already stretched to the limit of what they can afford to pay for the USF program, meaning the Commission has no choice (as acknowledged in the National Broadband Plan) but to free up support for broadband from within the fund.⁶

In the *Corr Order*, the Commission elected to phase out support to Verizon Wireless and Sprint because of two-year-old merger conditions ahead of the rest of the industry.⁷ The

⁵ *Proposed First Quarter 2011 Universal Service Contribution Factor*, Public Notice, CC Docket No. 96-45 (Dec. 13, 2010).

⁶ *See also Rural Cellular*, 588 F.3d at 1102 (holding that the Commission must exercise fiscal responsibility with universal service funding by “balance[ing] the risks of excessive subsidization with the principles set forth in § 254(b)” and “consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the burden on customers who continue to maintain telephone service.”).

⁷ *See Letter from John Scott, Verizon Wireless, to Marlene Dortch, FCC, Applications of Atlantis Holdings LLC and Cellco Partnership d/b/a Verizon Wireless for Transfer of Control*, WT Docket No. 08-95, at 1-2 (Nov. 3, 2008) (“In the event that the Commission adopts a

National Broadband Plan’s recommendation is to eliminate *all* CETC funding over five years, completing the phase-down by 2016. NBP at 144, 147-48. The phased-out Verizon Wireless and Sprint support will be sufficient to “cover” the current round of one-time Mobility Fund awards. This amount will not be sufficient, however, if significant additional grant funding is required because such infrastructure grants turn out to be the best way to satisfy broadband needs in unserved areas. Moreover, support reductions to just these two carriers will not come close to off-setting the projected \$24 billion total broadband funding gap. NBP at 136. The National Broadband Plan’s recommendation to phase out the remaining CETC funding over a period of years makes it all the more important to start this process as soon as possible—i.e., this funding will not be fully available until the *end* of the phase-out, and no additional funding will be available until the phase-out actually begins. If the Commission does not establish the mechanism to phase down CETC funding now, broadband funding priorities will inevitably be delayed for lack of funds.

Moreover, the Commission cannot effectively design the Connect America Fund (envisioned as an on-going USF support mechanism), or be confident that additional Mobility Fund support will be available if that is where the needs are, until the Commission knows how

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different transition mechanism or a successor mechanism to the currently capped equal support rule in a rulemaking of general applicability . . . then that rule of general applicability would apply instead.”). The Commission adopted this commitment in its order approving the Verizon/Alltel merger. *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, ¶ 197 (2008). *See also* Letter from Lawrence Krevor, Sprint, to Marlene Dortch, FCC, *Sprint Nextel Corporation and Clearwire Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 08-94 (Nov. 3, 2008); and *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer of Control of Licenses, Leases, and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 17570, ¶ 108 (2008).

much support for legacy voice networks can be repurposed for broadband and over what period of time. In other words, the Commission must make decisions about how much money it actually has *available* to spend on broadband *before* it can spend the money. And, in the near term, the only way to know that is to begin phasing out all legacy CETC support as called for in the National Broadband Plan.

Competitive parity also requires that the Commission move as quickly as possible to phase out legacy CETC support to all carriers. The terms of the *Corr Order* require the Verizon Wireless and Sprint merger conditions to be implemented retroactively. *Corr Order* ¶ 15. This means that because of two unrelated transactions, Verizon Wireless and Sprint are now effectively in year three of their CETC funding phase-out while the rest of the industry (their competitors) continues to collect a full share of USF support for serving customers in their designated service areas. The competitive inequity of the situation is made worse because AT&T Mobility, Verizon Wireless and Sprint's largest national competitor, is now seeking new ETC designations in additional states. This unfair competitive disparity skews the market and limits the amount of USF support available for broadband priorities.

Years of competitive penalties from a delay in comprehensive reform of all CETC distributions was not what was contemplated at the time these merger commitments were made. For their part, Verizon Wireless and Sprint agreed to funding reductions based on the reasonable assumption that comprehensive reform would, within a short time, restore parity to the robustly competitive wireless industry.⁸ Continuing to penalize Verizon Wireless and Sprint and to

⁸ Verizon Wireless and Sprint submitted their merger commitments on November 3, 2008, when Commission action on the comprehensive fund reforms recommended by the Joint Board was due at any moment. Two days later, however, a divided Commission issued an order declining to act on the Joint Board's recommendations for the time being, which was followed by now nearly two years of further delay. *High-Cost Universal Service Support, et al.*, Order on

advantage their competitors violates Section 254(b)(4) of the Act, which among other things provides that all providers shall contribute to the preservation and advancement of universal service on an “equitable and nondiscriminatory” basis. 47 U.S.C. § 254(b)(4). The Commission’s refusal to act on comprehensive CETC reform also violates its own USF policy principle of “competitive neutrality.” *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶¶ 46-52 (1997) (“Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules *neither unfairly advantage nor disadvantage one provider over another. . .*”) (emphasis added); *see also* 47 U.S.C. § 254(b)(7). In contrast, an industry-wide phase-out of all CETC support would be competitively neutral and would ensure that all CETCs are treated equitably.

Moreover, continuing to perpetuate competitive disparity in the wireless marketplace for so long is a marked departure from Commission practice in similar circumstances. In earlier transactions involving AT&T and Alltel, the carriers agreed to caps on their CETC support.⁹ A few months later, however, the Commission made good on its planned industry-wide cap on CETC funding, and, as required, allowed the 2008 CETC cap to supersede the AT&T- and Alltel-specific caps.

The Commission must act as soon as possible and include notice of implementation of the National Broadband Plan recommendation to phase out all remaining CETC support in its

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Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, ¶ 37 (2008).

⁹ *See High Cost Universal Service Support, et al.*, Order, 23 FCC Rcd 8834, ¶ 5 n.21 (2008) (providing that the then-new interim cap on competitive ETC support replaces similar merger condition caps on high cost support to AT&T and Alltel).

next universal service item. A better approach would be to issue a stand-alone item with a fast-track comment cycle immediately to make sure that the funding base for broadband support does not get delayed by anticipated debate over who should receive the broadband subsidies and how they should be distributed. Further delay is not an option: The Commission cannot move forward with its broadband priorities until it frees up the necessary funding. If it is not feasible to address CETC funding reductions as a stand-alone item, then at the very least the industry phase-out of CETC support should be included in the anticipated NPRM to establish the Connect America Fund (or a different universal service item if issued sooner). The Commission should adopt final rules for the CETC funding reductions at the next available opportunity—which may be the Commission order establishing the Mobility Fund. The mechanics of phasing out CETC support were already established by the Commission in the *Corr Order*. And the associated policy issues have already been fully vetted by all interested parties in the eight months since the National Broadband Plan was issued.¹⁰

From a competitive equity perspective, even if the Commission waits to begin phasing out remaining CETC support until its order implementing the Mobility Fund, Verizon Wireless and Sprint will still be—at a minimum—three years (probably four) ahead of their competitors in

¹⁰ See, e.g., Comments of the USA Coalition, *Connect America Fund; A National Broadband Plan for Our Future; High-Cost Universal Service Support*, WC Docket Nos. 10-90 & 05-337; GN Docket No. 09-51 (July 12, 2010); Letter from Grant Spellmeyer, US Cellular, to Marlene Dortch, FCC, *A National Broadband Plan for Our Future* GN Docket No. 09-51; *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229; *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *700 MHz Mobile Equipment Capability*, RM-11592; *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265 (Dec. 9, 2010); Letter from Rebecca Murphy Thompson, Rural Cellular Association, to Marlene Dortch, FCC, *Connect America Fund; A National Broadband Plan for Our Future; High-Cost Universal Service Support*, WC Docket Nos. 10-90 & 05-337; GN Docket No. 09-51 (Dec. 8, 2010).

eliminating CETC support. If the Commission cannot move CETC funding reductions on fast-track comment cycle, then at a minimum in the interim the Commission should act on another National Broadband Plan recommendation to eliminate subsidies for multiple wireless lines in the same household or business.¹¹ NBP at 148 (“In order to accelerate the phase-down of legacy support, the FCC could immediately adopt a rule that any wireless family or shared plan should be treated as a single line for purposes of universal service funding. As competitive ETC support levels are reduced, this funding should be redirected toward broadband. This could yield up to \$5.8 billion (present value in 2010 dollars) in savings over a decade.”); *see also Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407, ¶¶ 164-65 (2010) (“. . . 67 percent of all mobile wireless subscribers were part of a family plan in 2009, up from just 35 percent in 2004.”).

IV. ANSWERS TO SPECIFIC COMPETITIVE BIDDING DESIGN QUESTIONS IN THE NPRM.

The competitive bidding system proposed in the *NPRM* is generally sound. *NPRM* ¶¶ 16-101. The proposal lays out, in significant detail, how the Commission will manage and operate a workable mechanism. A few cautions that overlay the mechanism itself: First, the Commission should be careful not to overload Mobility Fund awards with conditions or build too many complexities into the competitive bidding system. To achieve meaningful gains in wireless and broadband deployment the Commission will need to oversee *successful* auctions, and more than anything a successful competitive bidding system requires a sufficient number of bidding

¹¹ The additional savings could be used initially to fund Mobility Fund grants, and once the Commission’s other proposed USF broadband program(s) are established the additional savings could be used for those programs.

providers. In order to bid, providers must be convinced that they will be able to reasonably navigate the competitive bidding process and that if they do win the bid funding will not be so conditional as to constrain their business models or consume significant administrative resources. Second, the Commission must have reasonable expectations about the impact of Mobility Fund awards in terms of additional network coverage. Areas without 3G (or better) service today are few, far between, and very expensive to serve. Many of these sparsely populated remote areas have significant geographic deployment challenges such as the presence of mountains or oceans. In most of these areas it would not be realistic to expect that, for example, funding to construct one additional cell tower will result in 100 percent coverage.

Verizon has significant experience with the Commission's analogous electromagnetic spectrum auctions, and a long history of providing wireless services throughout the country, including in rural and sparsely populated areas. And, as discussed above, Verizon is a long-time proponent of using competitive bidding to distribute universal service support in the most efficient way.¹² Below are specific responses to individual questions or comments on technical matters raised in the *NPRM*.

The Commission, however, should be prepared to be flexible in implementing the Mobility Fund pending review of data (American Roamer data or otherwise) identifying unserved areas. It may well make sense, for example, to modify competitive bidding areas, funding priority, or design of the competitive bidding mechanism based on the facts on the ground that will determine how to make the most of scarce universal service dollars. Verizon's

¹² See, e.g., Letter from Kathleen Grillo, Verizon, to Marlene Dortch, FCC, *Federal-State Joint Board on Universal Service; High Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45 (Feb. 9, 2007) (attaching and describing detailed proposal for wireless USF competitive bidding mechanism).

assessment below of specific issues raised in the *NPRM* does not reflect review of actual data identifying unserved areas, which was not included with the *NPRM*. Access to the mapping data is necessary to provide the most informed recommendations. And just as the Commission should be prepared to make changes reflecting such analysis, specific Verizon recommendations may change based on new data.

- ***Number of providers (NPRM ¶15)***. We agree with the Commission’s proposal to support only one provider per area (i.e., one winner per auction). All universal service funding is finite, and the purpose of the universal service program is not to subsidize competition in areas that are prohibitively expensive for even one provider to serve.
- ***Identifying unserved areas eligible for support (NPRM ¶¶ 20-21)***.¹³ The Commission proposes to analyze and determine 3G (or better) service availability on a census block basis, with bidding rolled up to the census tract level. This approach seems workable, but depending on what the data indicate (see below) the Commission may want to consider identifying unserved areas at the census tract level in the first instance. Census blocks are the smallest unit matching available data, which is helpful to target funding to areas where support is truly needed. Individual census blocks themselves, however, are likely too small for bidding. There are 0-600 people per census block, some of which have no population. Nationwide, there are more than eight million census blocks. Generally, there are 2,500-8,000 people per census tract (about 4,000 people per tract), which have boundaries that follow discernable features. There are approximately 65,000 census tracts in the United

¹³ See U.S. Census Bureau Participant Statistical Areas Program, Statistical Areas Boundary Criteria, <http://www.census.gov/geo/www/psapage.html>.

States.

- ***Methodology for determining whether a census block is unserved (NPRM ¶ 22).***

The Commission suggests two alternatives. One method is to simply determine if there is 3G (or better) service at the centroid or geometric center of the census block.

The other is to weight service based on factors such as where the population is located in the census block or look at both population and traffic density. Normative weighting of such population related factors would yield a more accurate measure of service availability and success of the program. This approach, however, would overly complicate bidding and compliance and likely prove unworkable on a comparative basis nationwide. A consistent, single-factor measurement in all census blocks/tracts such as the centroid service approach is probably more manageable.

- ***Data to determine whether 3G (or better) service is available (NPRM ¶ 23).*** The Commission asks for comments on the data source to determine whether service is available in particular census blocks, by whatever measure, and suggests using American Roamer data. Using American Roamer data for this purpose is sensible, and if the Commission desires to overlay existing data with coverage mapping we are not aware of any other source that presents a viable alternative. And building a new data source from scratch would be time-consuming and cost prohibitive given the size of the program. If this approach proves too cumbersome, the Commission could also consider relying on wireless Form 477 data, which is reported by census tract, and identifies those census tracts where wireless broadband is—or is not—available.
- ***Bidding to provide service to all unserved census blocks in each census tract (NPRM ¶ 25).*** Although the Commission would determine whether an area has 3G

(or better) service at the census block level, the winning bidder would be required to serve all unserved census blocks within a census tract. As discussed above, census blocks are likely too small to bid individually. If bidders are not actually bidding on individual census blocks, however, it is not clear how this block-level service requirement would actually work. A census tract-level service requirement with a specific coverage target (determined through the bidding process) should be sufficient.

- ***Establishing unserved units (NPRM ¶ 27).*** The Commission proposes to establish unserved “units” in each census block as each person living in the census block and asks for comment on whether it should also use road miles, traffic density, and/or community anchor institutions in determining the number of unserved units in each block. As discussed above, we agree that traffic density and the presence of anchor institutions, like population, are relevant and could be taken into account when determining whether service is available and how many units there are to serve. Such weighting, however, would again overly complicate the system and would be problematic on a comparative basis nationwide. We recommend measuring coverage based on a single unit—population—but that other such factors perhaps be considered as discussed below.
- ***Prioritizing unserved areas and distributing support (NPRM ¶¶ 28-32).*** The Commission seeks comment on whether to make Mobility Fund support available to all unserved areas nationwide (based on a national ranking list) or to target support to only some subset of unserved areas. It is difficult to make this judgment in the abstract without some analysis of where these unserved census blocks/tracts are

actually located and the associated number of people who lack service. In general, we recommend keeping this process as simple as possible. One such approach would be to stick to the national ranking proposal based on expected coverage gain in terms of number of people that would gain access to 3G (or better) service. Instead of then wrestling with difficult judgments as to performance and coverage requirements in unserved areas (see below), the Commission could also require bidders themselves to determine and disclose in their bids what population percentage they will be able to cover if they win the bid in a particular area. The Commission can then translate that information into number of people to be covered and adjust the funding priority rankings accordingly. Weighted alternatives based on “substantial lags” in 3G (or better) coverage on a county or state basis, etc., have appeal, but streamlining the process based on coverage gains as measured by population would help ensure the most “bang for the buck.”

- **Coverage requirements (NPRM ¶ 34).** The Commission asks for comments on the percentage of the population in an unserved area required to be covered by the winning bidder. The Commission does not make a recommendation but asks about 95-100 percent coverage requirements. This is a critical question that will factor prominently when providers evaluate whether and how much to bid. An expectation of 95-100 percent coverage is not realistic in many unserved areas. American Roamer data indicate that 98.5 percent of all Americans already have access to 3G (or better) wireless service. Reaching the very small remaining subset of the population is very expensive and presents challenges unique to each unserved area. A better approach, as discussed above, would be to require bidders to disclose what population

percentage they will be able to cover in an unserved area and to factor that into the ranking of areas eligible for funding. This approach would help ensure that the Commission conducts successful auctions and would keep post-auction enforcement to a minimum. If the Commission determines that it must set a nationwide population coverage requirement for winning bidders in unserved areas, 50-80 percent coverage may be more realistic—but, again, in some areas such gains may simply not be possible.

- ***Marketing requirements (NPRM ¶ 35).*** It is not necessary for the Commission to set specific marketing or advertising requirements. If winning bidders must be ETCs (see below), the statute already requires advertising. 47 U.S.C. § 214(e)(1)(B) (requiring all ETCs to “advertise the availability of such services and the charges therefore using media of general distribution.”). There is no reason to establish more particular requirements for Mobility Fund awards. And as a practical matter, winning bidders will have every incentive to market their services regardless of any Commission requirements. Standing alone, a one-time grant from the Mobility Fund will not be sufficient to support a business case without actual customers in a service area.
- ***Collocation and data roaming (NPRM ¶ 36).*** Reasonable allowances for tower collocation would likely be acceptable to most bidders. Regardless, terms and conditions of collocation should be left to marketplace negotiations just as these matters are determined in other areas. The Commission should also not impose data roaming requirements on winning bidders. The record developed in the Commission’s more specific data roaming proceeding makes clear that the market is

working, and carriers that want data roaming agreements are able to negotiate acceptable terms.¹⁴ And the convergence of 4G technology around the LTE standard means that carriers will have more roaming partners in the future than ever before. Conditioning receipt of Mobility Fund support on enhanced data roaming mandates is unnecessary and will make the program less attractive to would-be bidders.

- **Service quality (NPRM ¶ 37).** The service requirement should be for 3G (or better) coverage. The Commission’s description of commonly available 3G technologies, including HSPA and EV-DO, is accurate. We note here that allowing for deployment of 3G “or better” service is important. Because these areas by definition lack 3G service today, providers in some cases will make the rational decision to skip 3G and go straight to LTE or 4G.
- **Rates (NPRM ¶ 38).** The Commission should not use Mobility Fund support as a back-door to affirmative rate regulation of wireless carriers. It is likely that winning bidders will already have sufficient incentives to offer affordable rates in unserved areas similar to their rates in other areas, which in many cases are set on a national or regional basis. Competitive pricing will be key to the carriers’ success even without Commission mandates. Additionally, in the past, the Commission has not conditioned receipt of universal service support by wireless carriers on rate regulation, and there is no reason to now depart from that longstanding practice. In the Commission’s first wireless ETC designation orders under Section 214(e)(6) of the Act, for example, the only discussion of end-user rates came in the context of commitments to local usage

¹⁴ See, e.g., Reply Comments of Verizon Wireless, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, at 2 (July 12, 2010).

requirements should the Commission adopt any and voluntary adherence to the CTIA code for wireless services.¹⁵

- ***Deployment schedule (NPRM ¶ 39)***. The Commission proposes that recipients achieve 50 percent of the coverage requirement within one year after qualifying for support. While this may be desirable in terms of expediting the program, such a requirement will not be realistic in many unserved areas. In addition to securing funding, significant additional work is required to deploy facilities in unserved areas. Such work includes time-consuming engineering, site acquisition, equipment purchasing, and actual construction. It is not practical to require prospective bidders to complete enough of this work in advance of awarding funds in order to meet a 50 percent coverage requirement within one year. Tower site approvals alone typically take anywhere from six months to two years. When the Commission established build-out rules for the 700 megahertz spectrum, licensees were given four years to get sufficient facilities in place to cover 40 percent of the licensed area. At a minimum, providers should be given two years to meet deployment expectations, and even that time-frame would be aggressive.
- ***Proof of deployment (NPRM ¶¶ 40-44)***. Proof of deployment that exceeds that required of current ETCs seems unnecessary and again may burden and frustrate the purpose of the program. Historically, ETCs have self-certified compliance with use

¹⁵ See *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, 19 FCC Rcd 1563, ¶¶ 14, 30 (2004); and *Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, 19 FCC Rcd 6422, ¶¶ 15, 24 (2004).

of ETC funds. Moreover, because detailed build plans are not being proposed here, heightened attention to progress reporting would not make sense.

- ***Eligibility requirements (NPRM ¶¶ 47-48)***. Sections 214(e) and 254(e) of the Act may operate to limit the pool of eligible Mobility Fund recipients to ETCs, depending on how the Mobility Fund is ultimately structured and whether the Commission makes any attendant changes to other aspects of the USF program. It likely makes sense, however, to reduce the additional Commission rule requirements applicable to Mobility Fund ETCs. ETCs are required under Section 214 to offer all supported services, which should be doable for winning bidders. 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.101(a). Other aspects of ETC status—such as detailed reporting and compliance requirements under state rules and the federal default rules—may be too constraining and deter would-be bidders from participating in the program. 47 C.F.R. 54.202. Nonetheless, to avoid delay in making significant rule revisions, the Commission could begin the new program with the requirements in place and revisit the matter if it turns out that current ETC strictures dissuade too many otherwise qualified bidders from participating in the program. To increase the pool of bidders at the front end of the process, the Commission should allow providers to participate even if they are not currently designated as an ETC but commit to obtaining ETC status prior to disbursement of funding. This would allow new providers to participate in the program, which could be significant in some unserved areas that, by definition, existing providers have not yet found economical to serve. Alternatively, a better approach altogether may be to forbear from the Section 214(e) and 254(e) ETC requirements for the limited purpose of participating in the Mobility Fund. 47

U.S.C. § 160(a). The Commission has a history of limited forbearance in the ETC context, allowing wireless resellers to participate in the Lifeline program despite the Section 214 requirement that ETCs use some of their own facilities. 47 U.S.C. § 214(e)(1)(A) (providing that an ETC shall offer supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”).

- ***ETC service area (NPRM ¶ 49)***. The ETC “service area” is a significant issue that should be addressed immediately. In legacy non-rural areas, the Commission and the states have considerable flexibility to tailor service areas to a wireless ETC’s coverage area. 47 U.S.C. § 214(e)(5). In legacy rural areas, however, the statute is more restrictive, defining the service area as the wireline incumbent’s entire study area unless the Commission *and* the relevant state commission affirmatively establish a different service area. *Id.* Most areas that lack 3G (or better) service today will likely be in rural incumbent areas. To ensure there is no uncertainty regarding regulatory approvals (which could cause providers to increase their bids or discourage participation altogether) the Commission should take service area redefinitions off the table before bidding, once the unserved census tracts are identified. As a process matter, the Commission could give notice to all affected state commissions that auctioned unserved census tracts (or a combination of unserved tracts) will be the defined service area of a Mobility Fund recipient for Section 214(e)(5) purposes. The Commission could provide the states with a standard “opt-out” period to object to the redefinition, after which time, without objection, the redefinition would be deemed approved by the state. If the service area redefinition must be done after winning

bidders are identified, the Commission should at a minimum establish a streamlined process. The redefinition could be done as a matter of form in an order (perhaps from the bureau on delegated authority) following an award—again providing for a standard “opt-out” period in which the relevant state commission could object. Either process may require some modification to the Commission’s existing service area redefinition rules. 47 C.F.R. § 54.207.

- ***Spectrum licenses (NPRM ¶ 51).*** A binding agreement by the winning bidder to acquire necessary spectrum authorizations for 3G (or better) service in unserved census blocks should be sufficient for Mobility Fund purposes. A bidder should also be able to represent that the carrier has applied for, and expects to receive, required licensure. Such “chicken or the egg” questions always present difficulties in these situations. If it turns out that the Commission is forced to revoke a significant number of awards because winning bidders are not able to finalize required licenses and spectrum after an auction, the Commission could revisit these issues.
- ***Leased spectrum (NPRM ¶ 52).*** Confirmed access to leased spectrum should be sufficient to bid and otherwise participate in the program. Long-term spectrum leasing is very common in the wireless industry. There is no reason to exclude qualified bidders that intend to rely on leased spectrum. Excluding leased spectrum would also conflict with longstanding Commission policies that encourage the best use of spectrum in particular areas, on a leased basis or otherwise. The Commission should, however, refrain from attempting to dictate particular terms of spectrum leases that are today negotiated in the marketplace on a business-to-business basis. It should be sufficient for a Mobility Fund bidder to demonstrate that the carrier has

sufficient spectrum access (owned or leased spectrum) for the duration of any Mobility Fund service obligation. It should also be sufficient to participate in the program for a bidder to establish that spectrum is under agreement to lease even though FCC Form 608 (Application or Notification for Spectrum Leasing Arrangement or Private Commons Arrangement) may yet to be filed.

- ***Auction administration and application process (NPRM ¶¶ 58-62).*** The Commission proposes that the auction design and two-level application process (an initial short form followed by a long form for winning bidders) should closely pattern existing rules that govern the design and conduct of spectrum license auctions. This is appropriate. The Commission staff and many would-be Mobility Fund bidders are familiar with spectrum auctions, which, on balance, work well. There is no need to reinvent these processes for one-time grant awards involving significantly less money on a comparative basis.
- ***Bidding process (NPRM ¶¶ 63-64).*** The Commission proposes a single round auction whereby bidders would bid a per-unit (e.g., per covered person) amount for each unserved census block in a particular census tract. Per-unit bidding is a reasonable approach. A single round auction, however, could be problematic. In our experience with spectrum auctions, first round bids are typically very conservative, and in this situation bidders are likely to be even more conservative because this is a new program with—in some cases—inexperienced bidders. Allowing for two or three rounds of bidding could reduce costs to the program in the long-run. Multiple rounds do not necessarily add more complexity so long as bidders are not allowed to repackage their bids after the first round, which should be prohibited in any event.

- **Selecting winning bids (NPRM ¶ 65).** The Commission proposes to select winning bids on a national basis by ranking bids from lowest to highest based on the per-unit (e.g., per person) bids, eliminating bids for census tracts already covered, and awarding support so long as funding remains available under the program cap. In general, this makes sense, but as discussed above, this process should also allow bidders to set coverage gain benchmarks by population in particular census blocks/tracts, which should be reflected in the ranking as well. It may also be desirable to build in some flexibility to the ranking process and selection of winning bidders in certain situations. A provider may, for instance, bid to offer significantly greater coverage in an area at a per-unit amount that is only marginally greater than the lowest bid. For example, in hypothetical Area X with a population of 1,000, Bidder 1 may bid \$100 per unit and commit to 50 percent coverage (\$50,000 to cover 500 people). Bidder 2 may bid a slightly higher amount, \$101 per unit, but commit to 90 percent coverage (\$90,900 to cover 900 people). Depending on what happens in other areas and the amount of funding available, Bidder 2's proposal may be more attractive. In addition, if an area has a significant, demonstrable transient population, in addition to residents, the Commission could factor the in-transit population on a lesser basis than area residents.
- **Auction reserves (NPRM ¶ 66).** The Commission does not propose a particular reserve methodology. The mechanism needs a reserve or maximum bid calculation. It is possible to use the overall \$300 million program cap as the only reserve for the auction, which could be run nationwide all at one time. This is a risky strategy for an untested mechanism, however. A better approach may be to conduct the bidding in

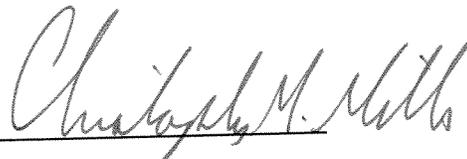
- stages by geographic region or some other division. This would allow for some priority sequencing of, for example, whole states or counties that lag behind the nation overall in terms of 3G (or better) deployment. To set the reserve for each auction stage, the Commission could divide the \$300 million cap by the total unserved population nationwide and then multiple that amount by the smaller, total unserved population in each geographic region up for auction in a particular phase.
- ***Post-auction process and service obligation (NPRM ¶¶ 79-90).*** The Commission discusses a number of administrative, disclosure, and other monitoring requirements. While most of these requirements may not be too burdensome individually, depending on how the requirements are implemented they could be onerous enough to discourage program participation. A key problem may be the length of compliance and reporting requirements. Unlike traditional USF support, these awards will be one-time grants—and in some cases a relatively small amount of money. Even traditional universal service ETC status (including on-going high cost support in most cases) does not impose a term of service obligation and is backstopped only by ETC relinquishment procedures and desire for future USF draws to ensure compliance with specific reporting and monitoring requirements. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.202(a)(1)(i)(B). A multi-year service term with compliance and reporting requirements is unnecessary and unprecedented for a one-time grant and will likely inhibit access to the program. At most, the Commission should require reports from winning bidders until the project dollars are invested. If this program is then incorporated into a broader USF reform proposal the Commission could revisit the issue.

- ***Disbursing support (NPRM ¶92).*** The Commission proposes that funds be disbursed in three installments, with one-third of the award disbursed initially. Dispersing at least one half of the total amount approved initially would be more appropriate. It can be anticipated that many bidders will be small carriers, and because facilities deployment will be, by definition, in areas that are uneconomic to serve, upfront investment costs to deploy infrastructure will be significant.

V. CONCLUSION.

For these reasons, the Commission should move forward with the proposed one-time grants to support deployment of wireless infrastructure in those few, isolated areas that lack access to 3G (or better) service today. The Commission should award support through competitive bidding. At the same time, or sooner, the Commission should begin phasing out all legacy CETC support.

Respectfully submitted,

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