

**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 FREE PRESS

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COMMENTS OF FREE PRESS

Free Press¹ submits these brief comments in the above captioned proceeding to express serious concerns about the proposal to divert up to \$300 million in scarce universal service funding to create a one-time mobility fund. While we strongly believe that mobile broadband is a vital communications medium that should be universally available at reasonable rates, we cannot ignore the fiscal and legal issues that must be addressed in order to achieve the goals of the Communications Act. While well intentioned, the proposal in the instant *Notice* is flawed for the following reasons:

- Section 254 of the Communications Act requires that services be adopted by a “substantial majority” of consumers. However, less than 20 percent of the population subscribes to mobile wireless data services.² Adopting a mobility fund at this time is inconsistent with the Act, for this reason and also given that the Federal State Joint Board has not yet recommended that the FCC add mobile data services to the list of supported services. While the order contemplates this problem, the solution of “3G gold-plating” voice networks to get around the lack of a Joint Board recommendation for a mobile data fund

¹ Free Press is a national nonpartisan organization working to increase informed public participation in crucial media policy debates, and to generate policies that will produce a more competitive and public interest-oriented media system. Free Press has filed extensive comments in universal service, intercarrier compensation wireless competition proceedings, and given expert testimony on Universal Service reform before Congress.

² See Erik Sass, "Nielsen 'Audit': Smartphones in 15% of U.S. Households, *MediaDailyNews*, Dec. 22, 2009. See also John Horrigan, “Broadband Adoption and Use in America,” OBI Working Paper Series No. 1, Federal Communications Commission, p. 4, 14. See also Federal Communications Commission, “Internet Access Services: Status as of December 31, 2009,” Industry Analysis and Technology Division, Wireline Competition Bureau, December 2010, showing that there were 52 million mobile wireless Internet subscriptions in service at the end of 2009.

runs counter to the spirit of the law and perpetuates many of the problems of the existing High-Cost Fund.³

- The proposed reverse auction structure for the mobility fund is flawed. It would lead to subsidies in the areas where carriers are the most likely to deploy services in the months ahead as the mobile data market continues to mature. In other words, the Commission would be directing scarce funds to the areas that are the least likely to need subsidies.
- The proposal would fund deployment of mobile wireless data services in areas that already have mobile voice services, while other areas without mobile voice or wired data services continue to remain unserved. This too runs counter to the spirit of the law.
- As the National Broadband Plan recognizes, the overall size of the Universal Service Fund must be contained, as the contribution burden falls most heavily on consumers. Therefore, the Commission should use USF resources for the highest value services. The proposed \$300 million would be better used to create a pilot broadband Lifeline program, and/or for the deployment of wired broadband networks in currently unserved areas. Given that over-two thirds of U.S. households currently subscribe to wired broadband but less than a fifth subscribe to mobile data services, it is both inequitable and counter to the Act for the Commission to use scarce USF funds for 3G services in areas that may already have wired broadband, while millions of low-income and rural American's lack basic fixed broadband.
- The *Notice* fails to address the issue of wireless Network Neutrality. The United States Congress overwhelmingly decided that broadband deployment subsidies must be tied to strong non-discriminatory protections.⁴ Regardless of

³ *Mobility Fund NPRM* at f.n. 47.

⁴ See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115, 516 (2009). For requirements, see Broadband Initiative Program, Broadband Technologies Opportunity Program, Notice of Funds Availability and Solicitation of Applications, "Non-discrimination and Interconnection Obligations", 74 Fed. Reg. 33104 at 33110 (July 9, 2009).

how the Commission chooses to deal with this issue industry-wide, the Commission cannot give away scarce ratepayer dollars with no associated public interest obligations. Congress recognized this, and the Commission must as well.

We strongly urge the Commission to not proceed with the mobility fund as proposed. In addition to the structural flaws of the reverse auction and the lack of public interest obligations, the Commission's authority to establish such a fund is in serious doubt. There are many broadband gaps identified in the National Broadband Plan that are more deserving of attention, and we encourage the Commission to do so. Bringing broadband into the homes of the rural and low-income Americans that lack service is a far wiser endeavor than this proposal, which as structured is essentially a needless \$300 million check to the largest wireless carriers.

Respectfully submitted,

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