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SUMMARY

In its Mobility Fund Notice of Proposed Rulemaking (“NPRM”), the Federal Communications Commission (“FCC” or Commission”) has correctly recognized that a lack of advanced wireless service remains a problem for those who live, work, and travel in areas without such service, and without support, these areas risk falling farther behind as the wireless ecosystem transitions to next-generation high-speed wireless broadband services. Unfortunately, the FCC’s proposed Mobility Fund fails to adequately address this problem.

While the Mobility Fund is a proposed one-time shot of support to get wireless networks to 3G or better, it does not provide for or take into account the ongoing costs of providing essential mobile services in high-cost regions of the country. Networks deployed using Mobility Fund support will require permanent, ongoing support.

Moreover, the proposed size of the Mobility Fund is woefully inadequate to achieve the goals of the Fund. In order to provide support for the provision of broadband services in areas currently lacking advanced wireless services, the Commission must substantially increase the size of the Mobility Fund. Any increase should also be large enough to support the provision of service to areas that also currently lack any wireless service.

The proposed use of reverse auctions will unfairly favor the largest carriers who have economies of scale and scope to provide services below the actual cost in a rural area. The Commission should instead utilize a qualitative market mechanism evaluation process that considers a full range of public interest factors. A qualitative market mechanism evaluation process would determine what constitutes an unserved area by examining not

only where individual Americans reside, but also where mobile traffic will occur, such as highways between towns and cities, as well as roads near seasonal work areas, oil fields, ranches, farms, and recreational areas.

While RTG supports the establishment of minimum eligibility requirements for carriers seeking Mobility Fund support similar to those articulated in the NPRM, the Commission should also employ a “qualitative carrier eligibility” evaluation process that would award “bidding credits” to smaller carriers. Specifically, as part of any project selection or reverse auction process, a rural carrier’s formal bid should be augmented to reflect bidding credits earned for meeting additional stipulations that are deemed to meet certain public interest objectives. For example bidding credits should be awarded to carriers where provision of advanced wireless service will create new jobs and aid small business development. Carriers that primarily serve rural subscribers or have continually served predominately rural areas should also receive a bidding credit.

Additionally, a mandatory data roaming service requirement should be imposed on recipients of Mobility Fund support and the FCC should adopt rules to ensure that no carrier receiving support will be denied data roaming by other wireless carriers. Achieving the National Broadband Plan’s and current Commission’s primary goal of increasing broadband deployment throughout the country will only be accomplished by mandating reciprocal data roaming on networks built using Mobility Fund support and among *all* existing wireless carriers.

better mobile service availability.³ The proposed Mobility Fund would take a portion of high-cost universal service support surrendered by Verizon Wireless and Sprint Nextel, and redirect the funds to provide support for cost-effective network build-out in areas that currently do not have advanced (i.e., 3G or higher) wireless services.⁴

Supporting the build-out of advanced wireless networks in states with 3G coverage lagging the national average is expected to enable those states to catch up with the rest of the nation and improve the business case for eventual 4G rollout in harder-to-serve areas. However, for the Mobility Fund to be truly successful, the Commission should increase the overall size of the fund, determine receipt of support based on a qualitative market mechanism, provide ongoing support to Mobility Fund networks, and mandate data roaming among technically compatible wireless carriers.

II. THE MOBILITY FUND WILL BETTER SERVE THE PUBLIC INTEREST IF THE SIZE IS INCREASED.

A. A Larger Mobility Fund Will Enable The Commission To Distribute Support To All Areas That Lack 3G Services.

To accelerate the nation's ongoing efforts to close the mobility gap, the FCC proposes to use \$100 million to \$300 million from the federal universal service fund ("USF") to create the Mobility Fund.⁵ A Mobility Fund of \$100 to \$300 million will only make miniscule gains in closing the nation's mobility gap. The size of any effective fund would have to be substantially larger in order to truly jump-start deployment and expand

³ Federal Communications Commission, *Connecting America: The National Broadband Plan*, 146 (Mar. 2010) ("NBP").

⁴ Mobility Fund NPRM at ¶8. Unless noted otherwise, all references herein to "unserved" areas refer to areas without advanced wireless services.

⁵ Mobility Fund NPRM at ¶13.

the coverage area of advanced wireless services in a short timeframe. The current proposed size of the fund will help only a few areas in a few states that lack 3G services.

The Commission correctly recognizes that “[m]illions of Americas live in communities where current-generation mobile service is unavailable, and millions more work in or travel through such areas.”⁶ However, there are areas throughout the country where no wireless service exists – areas where people live, work, and travel. A larger Mobility Fund will enable the Commission to not only distribute support to all areas that do not have current-generation wireless service, but also to areas that completely lack any wireless service. The critical need for service in areas where people are not able to contact Public Safety either because there is no service, or the existing level of service is not reliable, is self evident.⁷

The Commission proposes to redirect a portion of USF support voluntarily relinquished by Verizon Wireless and Sprint Nextel to create the Mobility Fund, and use the rest of the surrendered funds for a “down payment” on future broadband reforms.⁸ However, as discussed below, because the Commission lacks authority to fund broadband services with universal service monies, surrendered USF support can only be used to increase the size of the Mobility Fund, not for a down payment on some sort of broadband reform in the distant future.

⁶ *Id.* at ¶1.

⁷ *See, e.g.*, Letter from Senator John D. Rockefeller IV, Chairman, Senate Committee on Commerce, Science, and Transportation, to Julius Genachowski, Chairman, FCC (Aug. 2, 2010) (detailing the communications problems experienced by citizens and Public Safety workers during the Big Branch mine disaster in West Virginia due to “inadequate communications infrastructure”).

⁸ *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 (Sep. 3, 2010) (“Corr Wireless Order”).

B. The FCC Does Not Have The Authority To Use Reclaimed Support For Unspecified Broadband Programs.

To create the Mobility Fund, the Commission proposes to “take a portion of the funds that would have gone to Verizon Wireless and Sprint Nextel to support wireless service in areas that were largely served by one or more other providers, and redirect that money to provide targeted support for cost-effective network build-out in unserved communities.”⁹ The FCC has directed the Universal Service Administrative Company (“USAC”) to hold the remainder of the surrendered Verizon and Sprint funds as a down payment on proposed broadband universal service reforms.¹⁰

The record in the FCC’s *Corr Wireless* proceeding makes it clear that the FCC does not have the authority to use any of the surrendered Verizon and Sprint support for a “down payment” on future broadband reform.¹¹ Furthermore, the Commission itself has already acknowledged that the D.C. Circuit’s *Comcast*¹² decision has weakened its ability to carry out reforms aimed at increasing broadband access and adoption in rural America.¹³ Any use of reclaimed Verizon Wireless and Sprint Nextel funding for general broadband purposes is legally suspect and could hold up the FCC’s proposed Mobility Fund in court.

⁹ Mobility Fund NPRM at ¶8.

¹⁰ See *Corr Wireless* Order at ¶20.

¹¹ See, e.g., Comments of Sprint, WC Docket No. 05-337 (filed Oct. 7, 2010) at p. 4; Comments of Verizon and Verizon Wireless at p. 5; Comments of RICA at p. 5.

¹² *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010)

¹³ Austin Schlick, *Implications of Comcast Decision on National Broadband Plan Implementation*, BlogBand, The Official Blog of the National Broadband Plan (Apr. 7, 2010), <http://blog.broadband.gov/?entryId=356610>; see also Letter dated July 26, 2010 from J. Genachowski to Rep. John Dingell, Chairman, House Committee on Energy and Commerce; *Wall Street Journal*, The Journal Report – Technology, R4 (June 7, 2010), available at: <http://online.wsj.com/article/SB10001424052748704183204575288363378490860.html>.

According to section 254(b)(5) of the Communications Act of 1934, as amended (“the Act”), the Commission’s universal service policies must be based on specific, predictable and sufficient mechanisms.¹⁴ Furthermore, the contribution obligation found in section 254(d) requires every carrier that provides interstate telecommunications services “to contribute...to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”¹⁵ The Commission’s proposed Mobility Fund and future broadband mechanisms are speculative, uncertain, and unpredictable, with the reserve support being earmarked for programs that are yet to be created.¹⁶ Reclaiming support that was intended for a specific, established support mechanism and banking it while waiting for the creation of an undetermined mechanism violates the specific and predictable requirements in both Section 254(b)(5) and Section 254(d). The appropriate action is for the Commission to use the reclaimed high-cost support to increase the size of the Mobility Fund as long as the Mobility Fund is defined as a specific universal service mechanism and support flows, as required by law, to eligible telecommunications carriers.

III. NETWORKS DEPLOYED USING MOBILITY FUND SUPPORT WILL REQUIRE PERMANENT, ONGOING SUPPORT.

The Mobility Fund as proposed would provide one-time support to wireless carriers to deploy 3G or better networks in areas where these services are currently unavailable. The NPRM does not propose any type of permanent, ongoing support for Mobility Fund recipients once funding is used to construct advanced wireless networks. While such a

¹⁴ 47 U.S.C. § 254(b)(5).

¹⁵ 47 U.S.C. § 254(d).

¹⁶ *See* Letter from Caressa D. Bennet, RTG General Counsel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-337, CC Docket No. 96-45 (Nov. 1, 2010).

“one-shot” injection of funding may be helpful, the Mobility Fund, in and of itself, does not take into account the ongoing capital upgrade costs of providing essential mobile services in high-cost regions of the country.

The proposed one-time Mobility Fund *cannot* be used to replace ongoing high-cost support for wireless competitive eligible telecommunications carriers and should not be viewed as any kind of substitute for continued high-cost support. Rural wireless carriers will require ongoing support so that they may continue to provide advanced wireless services to high-cost, hard-to-serve areas. RTG opposes any Mobility Fund that is simply a “bone” thrown to the rural wireless industry to replace ongoing high-cost support and specifically requests the FCC acknowledge in its order that there must be a mechanism for ongoing support of advanced wireless service in rural areas.

In its 2007 Recommended Decision which first proposed a Mobility Fund, the Joint Board on universal service correctly recognized the need to provide continuing operating support to carriers where service is essential but where usage is so slight that there is not a business case to support ongoing operations, even with substantial support for construction.¹⁷ The FCC should not abandon this conclusion when it fashions a new Mobility Fund. Accordingly, the Commission should set aside a portion of the reclaimed Verizon Wireless and Sprint/Nextel high-cost funds to provide permanent, ongoing support.

¹⁷ *In re High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, ¶16 (Nov. 20, 2007).

IV. REVERSE AUCTIONS WILL NOT ACCURATELY DETERMINE THE AMOUNT OF SUPPORT NEEDED TO PROVIDE SERVICE TO AREAS WITHOUT ADVANCED WIRELESS SERVICES AND A QUALITATIVE MARKET MECHANISM EVALUATION PROCESS SHOULD INSTEAD BE USED TO DISTRIBUTE FUNDING TO ALL AREAS OF THE COUNTRY.

A. Reverse Auctions Will Not Accurately Determine The Amount of Support Needed to Provide Service to Areas Without Advanced Wireless Services and Will Instead Produce a Race to the Bottom.

The Commission proposes using a single-round reverse auction in order to determine which entities will receive support from the Mobility Fund. In other words, the entity that submits the lowest bid will receive support. The Commission believes a reverse auction will reveal the actual cost of providing advanced services to any given area.¹⁸ The Commission assumes that “submitted bids should present a good estimate of the actual costs to the bidders of providing advanced mobile services...in the areas on which [carriers] bid to expand service.”¹⁹ However, RTG fears that the use of reverse auctions will produce a “race to the bottom” in which participants submit bids that are too low and provide inferior services. Also, the potential for anticompetitive conduct is high when reverse auctions are used because they unfairly favor the largest carriers who have economies of scale and scope to provide services below the actual cost in a rural area.

The largest wireless carriers will be able to make bids that are substantially lower than the cost of serving an area because they are able to spread their costs across their entire service area which includes low-cost-to-serve and higher-populated areas. Large carriers may be motivated to keep their bids low in order to put rural competitors out of business. Large providers have an obvious economic incentive to accept the economic loss

¹⁸ Mobility Fund NPRM at ¶16.

¹⁹ *Id.* at ¶17.

resulting from below cost bidding in order to put smaller competitors out of business. More importantly, such “low-ball” bids will disadvantage customers seeking mobile service in high-cost areas because low bids will lead to less investment and less infrastructure in high-cost areas, creating a sub-class of rural consumers lacking in up-to-date mobile services. The Commission must ensure that it does not increase the concentration of wireless network ownership through reverse auctions that favor large carriers to the detriment of rural competitors and the consumers they serve.

B. Utilizing A Qualitative Market Mechanism Evaluation Process That Considers a Full Range of Factors Would Allow the Commission to Distribute Mobility Fund Support in a More Targeted and Efficient Manner.

The FCC is seeking comment on whether to make support available to any unserved area nationwide or whether to target support only to a limited set of unserved areas, such as those in counties or states where the percentage of the population with access to 3G services is more than three percentage points below the percentage of nationwide population with such access, which according to data currently available is 98.5 percent. Further, the Commission proposes to determine winning bidders for Mobility Fund support based on the lowest per-unit bids, using the population of unserved areas and *perhaps* other characteristics, such as road miles.²⁰ These additional characteristics cannot be an afterthought. In fact, the Commission correctly notes that in order to consider the full range of potential public benefits that may result from providing new access to mobile services, many additional factors should be considered.²¹

²⁰ *Id.* at ¶18 (emphasis added).

²¹ *Id.* at ¶27.

In order to overcome inherent flaws that favor bidding by large carriers, any reverse auction should employ a “qualitative market mechanism” evaluation process. A qualitative market mechanism evaluation process would distribute funding in a more targeted and efficient manner than a simple, cost-based reverse auction by allowing the Commission to consider additional allocation factors that go beyond mere population when calculating the number of unserved “units” in a given geographic area. If the Commission is to create a Mobility Fund that serves its intended purposes, it should determine what constitutes an unserved area by examining not only where individual Americans reside, but also where mobile traffic will occur, such as highways between towns and cities, as well as roads near seasonal work areas, oil fields, ranches, farms, and recreational areas, regardless of the size of the population residing in these areas.

In other words, the Commission must also recognize that unserved “units” consist of not only residences, but also individuals requiring wireless coverage in:

- Transportation Corridors (*e.g.* highways, railways, navigable waterways);
- Military Installations;
- Homeland Security, Law Enforcement and Public Safety Facilities;
- Tribal Lands;
- Federal and State Parks, Monuments and Recreational Areas;
- Anchor institutions (*e.g.* schools, colleges and universities, hospitals and clinics, prisons);
- Energy and Communications Infrastructure Facilities (*e.g.* hydroelectric dams, wind and solar farms, petroleum refineries, nuclear reactors, satellite dish arrays);
- Agriculture and Food Production Facilities (*e.g.* farms, meatpacking plants, timber cuts and mills);
- Oil, Gas and Mineral Exploration Facilities (*e.g.* surface mines, oil and gas derricks); and
- All other areas where “roaming coverage” is likely to occur but where, by a strict definition of population, there may be few or no actual permanent residents.

Potential unserved “units” can be easily calculated by extrapolating verifiable mobile wireless usage on *existing* transportation corridors or at similar existing facilities or locations. The most obvious non-residential rural areas that lack mobile wireless coverage are transportation corridors, especially non-interstate highways and roads. Small and rural carriers have years of experience providing mobile wireless service to outlying roads and highways that are true “lifelines” to remote communities and that facilitate the commerce that keeps those areas afloat. State and Federal departments of transportation can provide statistics on “road-miles” for wide-ranging types of highways and roads and carriers who already provide service to nearby roads and highways can use existing usage statistics as a foundation for calculating anticipated usage in the unserved corridor.

Combining unserved residence units with other unserved “units” on a one-to-one basis in its qualitative market mechanism evaluation process will enable the Commission to deliver funding to where Americans truly need it the most

V. THE COMMISSION SHOULD ESTABLISH MINIMUM ELIGIBILITY REQUIREMENTS FOR MOBILITY FUND SUPPORT THAT LIMIT SUPPORT TO MEDIUM AND SMALL CARRIERS AND ESTABLISH BIDDING CREDITS THAT FACILITATE THE PROVISION OF ADVANCED WIRELESS SERVICES TO RURAL AREAS AND OTHER AREAS THAT MEET SPECIFIED PUBLIC INTEREST CRITERIA.

RTG supports the establishment of minimum eligibility requirements for carriers seeking Mobility Fund support. Specifically, RTG supports minimum eligibility requirements similar to those articulated in the NPRM. Under these requirements, a carrier seeking Mobility Fund support must (1) be designated as an eligible telecommunications carrier pursuant to Section 214(e) of the Act in the areas it seeks to serve; (2) have access to spectrum that is capable of supporting advanced services in the areas it seeks to serve;

and (3) certify that it is both financially and technically capable of providing advanced services in the areas it seeks to serve.²²

Restricting Mobility Fund eligibility to existing ETCs will ensure support will be distributed only to carriers that have already shown a commitment to serving high-cost areas. ETCs currently holding a spectrum license should be deemed eligible for Mobility Fund support. Carriers that have a long-term spectrum lease of at least five years remaining should also be deemed eligible. In addition to the minimum eligibility requirements, the Commission should adopt the further requirement that Tier I²³ carriers are not eligible for Mobility Fund support. This will help ensure the participation of small, rural wireless carriers. A substantial credit (auction bidding credit) should be awarded to wireless carriers that have already shown a commitment to providing service in rural, hard-to-serve areas. Further, Mobility Fund support should be targeted to less-populated, rural areas, rather than urban “dead spots.” It would be contrary to the public interest and ironic for Verizon and Sprint Nextel that voluntarily gave up support in order to merge with other entities to become even larger to be able to reclaim support they previously gave up through the Mobility Fund.

Additionally, the Commission should employ a “qualitative carrier eligibility” evaluation process that would award “bidding credits” to carriers that meet certain public interest objectives associated with delivering mobile broadband to unserved markets.²⁴

²² Mobility Fund NPRM at ¶45.

²³ Tier I carriers are the four wireless carriers with the largest market share.

²⁴ The FCC has used bidding credits in numerous wireless spectrum auctions. Bidding credits awarded to auction participants who qualify as “Designated Entities” (entities such as small businesses, minority or women-owned businesses, and rural telephone companies who the FCC has determined serve the public interest by providing wireless service, as well as entities who would serve the public interest by bringing service to areas in need of

Specifically, as part of any project selection or reverse auction process, a carrier's formal bid would be augmented to reflect bidding credits earned for meeting additional stipulations that are deemed in the public interest. These bidding credits would be used to lower a carrier's bid even though the carrier's actual funding may be higher. It is well documented that access to broadband will in itself spur economic development.²⁵ Accordingly, in an effort to initiate and maintain economic development in rural areas, the Commission should grant carriers bidding credits that would be used to lower their bid amounts for meeting specific criteria, including:

- Job Creation. Bidding credits should be awarded to a carrier if new jobs are projected to be created as a result of providing the advanced wireless services.²⁶

it such as tribal lands) allow such entities to place higher bids than they would otherwise, based on the discounts awarded by virtue of holding bidding credits. *See* 47 C.F.R. § 1.2110(f). Through the use of bidding credits, the FCC has historically achieved its policy goals of encouraging the provision of service to high cost and other difficult to serve areas. For example, in its Tribal Lands Order, the FCC adopted bidding credits to provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands, concluding that “properly targeted bidding credits will encourage participation in auctions by carriers who are in a position to provide service to tribal lands, and will help to mitigate the economic risk associated with this type of service.” *See Extending Wireless Telecommunications Services to Tribal Lands*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 99-266 at ¶¶ 1, 16 (rel. June 30, 2000).

²⁵ *See* NBP, Chapter 13 Economic Opportunity (2010); *see also* Executive Office of the President, National Economic Council, *Recovery Act Investments in Broadband: Leveraging Federal Dollars to Create Jobs and Connect America* (Dec. 2009) (explaining how broadband investment creates jobs and stimulates the economy on a short and long term basis).

²⁶ For example, both the National Telecommunications and Information Administration's Broadband Technology Opportunities Program and the Rural Utilities Service's Broadband Initiatives Program evaluated and selected project applications that advanced the statutory purpose of creating jobs and stimulating economic recovery found in the Recovery Act. Carriers seeking Mobility Fund support would receive a bidding credit for making a similar showing. *See* U.S. Dept. of Agriculture, Rural Utilities Service, Broadband Initiatives Program, *Second Round Notice of Funds Availability*, Sec. V., C, 1, e. (requiring last mile and middle mile BIP project applications to provide an estimate of the number of jobs created and the number of jobs retained by the project or activity).

- Small Business. Bidding credits should be awarded to carriers that are small businesses. For example, businesses with fewer than 100 employees would receive a larger bidding credit than businesses with 100-500 employees and businesses with over 500 employees would receive no credits.
- Rural Subscriber Coverage. Bidding credits should be awarded to carriers already providing mobile wireless service to progressively more rural communities, with the size of the credit increasing with the proportion of rural coverage area (*e.g.* 100% rural, 75-99% rural, 51-74% rural).²⁷
- Rural Service Dedication Status. Bidding credits should be awarded to carriers for previously offering telecommunications services to rural markets, with the size of the credit increasing with the number of years of service (*e.g.* 1-5 years of service, 6-10 years of service).

For example, a carrier that has served a specific rural region for at least five years could get a five percent “credit” on its bid, and a carrier serving for at least ten years could get a ten percent credit. Thus, if a carrier providing service for ten years or more bids \$100,000 for a specific area, the FCC should consider that a “lower” \$90,000 bid. Similarly, a carrier employing fewer than 100 employees, or whose employees work in the same census block or licensed area where unserved “units” exist could be awarded a five percent bidding credit for each criterion for a total 10 percent discount bid. While the FCC should also institute a reasonable “cap” on such bidding credits, their implementation would recognize the importance of rural economic development.

In sum, the lowering of a carrier’s bid through a uniform set of criteria will ensure that numerous public policy goals are met and that a “race to the bottom” does not take

²⁷ For example, under the Broadband Initiatives Program, the Rural Utilities Service’s last mile and middle mile projects were evaluated using systematic criteria that assigned point values for serving rural residents in unserved areas. For every 10 percent of unserved households compared to the total households to be served that would receive broadband service through the proposed project, RUS awarded 1 point up to a maximum of 10 points. *See* U.S. Dept. of Agriculture, Rural Utilities Service, Broadband Initiatives Program, *Second Round Notice of Funds Availability*, Sec. VI., A, 1-3.

place, minimizing the likelihood that the U.S. experiences harm similar to that resulting from the utilization of reverse auctions in Chile and India.²⁸

VI. A MANDATORY DATA ROAMING SERVICE REQUIREMENT SHOULD BE IMPOSED ON RECIPIENTS OF THE MOBILITY FUND AND MOBILITY FUND RECIPIENTS SHOULD NOT BE DENIED DATA ROAMING BY OTHER WIRELESS CARRIERS.

The Commission proposes that the use of Mobility Fund support be conditioned on the recipient providing data roaming on reasonable and not unreasonably discriminatory terms.²⁹ RTG strongly supports this performance requirement and believes that it must be made a condition to receiving this support. Data roaming is critical to building a competitive, retail mobile marketplace in rural America and throughout the country. A data roaming requirement for Mobility Fund recipients would serve the public interest by enabling citizens in rural areas to obtain the same services that their urban counterparts enjoy (*i.e.*, nationwide mobile data services), and would allow small and regional wireless carriers to compete on a national level. The receipt of federal support should come with an obligation to “share” this publicly supported network.

In order to achieve the National Broadband Plan’s essential goal – increasing broadband deployment throughout the country – RTG suggests that the Commission not only mandate reciprocal data roaming on networks built using Mobility Fund support, but among *all* wireless carriers. The number of American consumers that access the Internet

²⁸ A series of wireless infrastructure reverse auctions in 2007 resulted in India’s oldest and largest communications provider, BSNL, winning over 75% of the auctions. Irene S. Wu, *Maximum Impact for Minimum Subsidy: Reverse Auctions for Universal Access in Chile and India*, FCC Working Paper 2, 17 (Oct. 2010). India’s most recent universal service fund reverse auctions resulted in bids from companies for zero or negative support. *Id.* at 11.

²⁹ Mobility Fund NPRM at ¶36.

using smartphones continues to grow at a fast pace. The question is not *if* all U.S. mobile consumers will permanently migrate to smartphones but *when*.

As a result of large, nationwide carriers refusing to enter into data roaming agreements with smaller carriers,³⁰ many mobile customers are not able to use all the data functions of their devices when roaming, even in situations where it is technically feasible for all of those functions to work.³¹ Without Commission mandated automatic data roaming, the largest national carriers will be able to choose which mobile customers can get online, therefore dictating the development of the marketplace. Such a scenario is detrimental to consumers. The FCC should use its authority to adopt an automatic data roaming requirement through its authority to regulate commercial mobile radio service (“CMRS”) providers.

Any data roaming requirement, be it imposed on Mobility Fund recipients or CMRS carriers in general, should also prohibit priority access that would treat customers of different carriers differently. Specifically, the FCC should not allow the home network operator to give its own customers preferential treatment over a data roaming partner’s customers. This type of discrimination is anticompetitive and should not be allowed. A roaming partner’s customer who has a bad experience while roaming is not going to associate the bad experience with the roamed-on network; rather the customer will

³⁰ See Letter from Caressa D. Bennet, RTG General Counsel, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265, (Nov. 3, 2010); *see also* Joint Letter from Caressa D. Bennet, RTG General Counsel, and Rebecca Murphy Thompson, RCA General Counsel to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265, (Nov. 9, 2010) (providing specific examples of anticompetitive behavior experienced by RTG and RCA members when attempting to obtain data roaming agreements with AT&T and/or Verizon Wireless).

³¹ See NBP at p.48 (acknowledging that a lack of data roaming requirements limit the use of smartphones when roaming).

associate it with its home carrier, thus putting the home carrier at an unfair competitive disadvantage.

VII. CONCLUSION.

The lack of advanced wireless service remains a problem for those who live, work, and travel in areas without such service. Without support, these areas risk falling farther behind as the wireless ecosystem transitions to next-generation high-speed wireless broadband services. RTG urges the Commission to support the build-out of advanced wireless services in all areas without such service by increasing the overall size of the Mobility Fund. Additionally, the Commission should determine receipt of support based on Qualitative Market Mechanism factors that take into account the location of roads and workplaces, and Public Safety considerations. The Commission should also create a mechanism for providing ongoing support to Mobility Fund networks in this proceeding or as part of broader USF reforms. Finally, to achieve the NBP's goal of universal broadband service as soon as possible, the Commission should mandate data roaming not only for mobility fund recipients, but for all wireless carriers.

Respectfully submitted,

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Date: December 16, 2010