Before the
FEDERAL COMMUNICATIONS INDIANA COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Universal Service Fund	)	WT Docket 10-208
	)	
Mobility Fund	)	
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INITIAL COMMENTS OF
THE INDIANA UTILITY REGULATORY INDIANA COMMISSION

Introduction

The Indiana Utility Regulatory Commission (Indiana Commission) respectfully requests an exception and waiver of time and/or filing requirements in order to provide these late-filed comments on the Federal Communication Commission's (FCC) proposal to establish a Mobility Fund, as part of the FCC's efforts to expand the availability of broadband and reform the Universal Service Fund (USF).

Initially, the Indiana Commission applauds the FCC's acknowledgement, through the issuance of the Mobility Fund Notice of Proposed Rule Making (Mobility Fund NPRM),[1] that aspects of current USF support for wireless service can and should be improved upon. Indeed, as a threshold consideration, reform is long overdue. The Indiana Commission also recognizes both the need for 1) greater access to wireless services, including broadband services properly implemented, in areas where such services are not provided today and 2) the possibility of

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

addressing this problem using USF support. Within these comments, the Indiana Commission offers its input and perspective on the various aspects of the proposed Mobility Fund, and how the FCC's wireless service policy in the areas of USF, wireless broadband and spectrum allocation can be enhanced.

Current USF Supported Services Must Be Preserved While Transforming Support to Wireless

The Indiana Commission supports the USF and the important role the USF can play in facilitating expanded wireless service, including broadband, in areas of the United States that do not have such service today. However, the expanded availability of wireless services in currently unserved areas using the USF funding must be done in a way that minimizes the unintended and unnecessary negative consequences and maximizes the public benefit. As the FCC proceeds with the establishment of a Mobility Fund, or any other initiative intended to promote greater access to broadband (wireless or wireline), the existing USF structure and recipient services should not suffer. The FCC's efforts to promote greater access to wireless broadband through the use of the USF should complement and not supplant existing wireline voice and broadband services that were facilitated by support from the USF. The expanded use of USF support to additional services, like broadband wireless service, must not endanger longstanding commitments of the USF to support existing telecommunication services.

The FCC has been critical of rural local exchange carriers (RLECs) for de facto use of USF support to fund capital expenditures that have resulted in build-out of broadband, when broadband has not heretofore been a supported service. However, those RLECs have taken broadband service, including with increasing frequency fiber to the premises, to customers when no other providers were doing so. These RLECs count on the revenue stream provided in part by high-cost funds to amortize the debt incurred to implement what virtually everyone agrees is an appropriate public policy: near-ubiquitous broadband.

The existing compact with providers of currently supported telecommunication services warrants a careful look and significant reform, such as the introduction of benchmarking, but it needs to be preserved. Adequate protection can be provided to these existing USF commitments,

if the Mobility Fund is structured properly and other wireless policy changes are made. Specific the other wireless policy changes that should be considered are 1) how new wireless spectrum is allocated and 2) significant but long-overdue reform of USF support as currently provided to wireless providers is promptly implemented.

The Mobility Fund Needs to Be Structured Properly

The Indiana Commission acknowledges the independent value of broadband wireless service as a telecommunication service worthy of promotion through the use of the limited resources in the USF. Wireless service's inherent mobility allows for improvements in public safety and economic and social activity that are beneficial to the public. Applications such as mobile web-browsing and GPS mapping, enabled by high-speed wireless Internet access, are not accessible where there is a lack of mobile wireless broadband service. People located, either as permanent residents or as transients, in areas without broadband wireless service are deprived of these benefits when terrestrial broadband is inaccessible. The Indiana Commission supports broader access to wireless broadband service and the use of the USF in the form of a Mobility Fund as an appropriate method to accomplish this goal.

The Indiana Commission contends that there is an existing road map showing how to proceed with wireless broadband in the form of a dedicated Mobility Fund. The Recommended Decision issued in 2007 by the Joint Board on Universal Service (2007 Recommended Decision) proposed significant reform in the structuring of the USF and expanded broadband coverage. Instead of the mechanism currently in place, the 2007 Recommended Decision advocated for the establishment of three (3) separate funds to individually address the issues of broadband, wireless and provider of last resort.[2] Indeed, the 2007 Recommended Decision may have been the first mainstream recommendation for the creation of a Mobility Fund.

The Indiana Commission believes the FCC would do well to heed the 2007 Recommended Decision with regard to not only the establishment of a separate Mobility Fund to

[2] In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Recommended Decision*, rel. November 20, 2007. (2007 Recommended Decision)

support wireless build-out, but other reforms to improve its overall effectiveness and sustainability. Additionally, we believe the FCC should utilize the Joint Board referral process before proceeding further with the Mobility Fund.

Redefinition of USF Supported Services

Specifically, the FCC needs to establish, through the proper process, a redefinition of services supported by the USF to include broadband and what exactly constitutes broadband. This same issue was raised in the Recommended Decision by Federal-State Joint Board on Universal Service on Lifeline and Link Up (2010 Recommended Decision) last month:

> Under Section 254(c) of the federal Telecommunication Act of 1996, 47 U.S.C. § 254(c), recommendations on the redefinition of the universal service concept and the inclusion of a broadband component are both legally and substantively within the purview of the Joint Board.[3]

The Indiana Commission urges the FCC to take advantage of the Federal-State Joint Board referral process to establish a definition of broadband as a service included in universal service.

2007 Recommended Decision

For the purpose of these comments, the Indiana Commission will limit its discussion to three specific recommendations made in the 2007 Recommended Decision as applied to the Mobility Fund proposed by the FCC in this NPRM.

First, the Indiana Commission agrees that USF support, whether used for wireline or wireless support, should be used to expand geographic coverage of service and not to foster competition.[4] Accordingly, the Indiana Commission strongly supports limiting the availability of the proposed Mobility Fund support to a single wireless provider for any given geographic area in which support is provided. USF, and in particular the high-cost funds, are intended to provide support in those areas where costs exceed earned revenues, a pure market-based solution is not

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[3] In the Matter of Federal Joint-Board on Universal Service Lifeline and Link Up, CC Docket No. 96-45 WC Docket No. 03-109, *Recommended Decision*, rel. November 4, 2010, Statement by Chairman James H. Cawley Concurring in Part, Dissenting in Part at 2.

[4] 2007 Recommended Decision at ¶ 18.

an option, and supplemental support is therefore required. Any new USF initiatives, including the proposed Mobility Fund, should not be used to promote competition, wireless or wireline, in areas where a provider currently offers service, regardless of whether that provider receives USF support today. To do otherwise, risks the further dissipation of scarce USF resources by promotion of competition in the offering of wireless services, instead of maximizing the expansion of wireless and wireless broadband availability.

Second, the Indiana Commission supports the use of Mobility Funds for the construction of new facilities in unserved areas.[5] While existing high-cost USF resources are used not only for capital expenditures but operating costs, efforts to expand wireless broadband service availability could greatly benefit solely from the boost of capital expenditures funded from the proposed Mobility Fund. Supporting capital expenditures in areas which are uneconomic to build out without such support should, if properly documented, attract sufficient recurring revenues to cover ongoing operational and maintenance costs. Limiting the Mobility Fund support to capital expenditures would limit additional demands for operational support on the high-cost USF, thereby reducing risk of increased growth of USF expenditures and/or taking support from other supported services. To the extent that USF support continues to be accorded to wireless providers for costs other than capital expenditures, support should be based on the cost of the wireless providers rather than on the cost of the local exchange carrier who also received support. Support of multiple providers in a service area represents a travesty and a mockery of the principles underlying USF high-cost support, and should be eliminated. Traditional support should be provided on the basis of service, not on the basis of handsets.

Third, the Indiana Commission maintains that States have an important role to play in the process of promoting expanded broadband wireless service and wireless broadband availability.[6] Each State by definition has greater familiarity with the areas within its borders. This knowledge can prove invaluable in evaluating areas in need of support and projects and providers capable of successfully expanding broadband wireless service to those areas. The FCC should consider a

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[5] 2007 Recommended Decision at ¶ 16.

[6] 2007 Recommended Decision at ¶ 18.

mechanism to allow for State input into the areas selected, as well as the projects and providers who will offer that service.

Nonetheless, the Indiana Commission agrees that a reverse auction provides an appropriate mechanism to select the appropriate provider and to provide support in proportion to the cost of actually providing service in the geographic area to be served, provided that full recognition is given to the fact that the rules established in such an auction can de facto determine the successful bidders. In this specific situation, an appropriately structured reverse auction should better reflect the extent of subsidy needed to cover total costs anticipated by the provider submitting the bid and potentially receiving the subsidy.

The 2007 Recommended Decision counseled scrapping the identical support rule because of the inaccuracies inherent in granting USF support without consideration of the costs associated with the method and technology used by the provider actually receiving the support.[7] Granting Mobility Fund support, via a reverse auction, to the provider that submits the lowest bid will mean that the support given will better match the costs of the provider receiving the support. Also, a reverse auction will maximize the Mobility Fund's impact because of more efficient allocation of support to the provider utilizing lower cost technology and design.

Funding Level of the Mobility Fund

The Indiana Commission commends the FCC on the source of funding suggested for the Mobility Fund. The FCC correctly intends the Mobility Fund to be vested with USF support funds surrendered by Verizon Wireless and Sprint Nextel as part of separate merger approval transactions in 2008. In those transactions, Verizon Wireless and Sprint Nextel each committed to surrender their high-cost support over five (5) years. In proposing to repurpose USF support that would otherwise go to wireless providers in areas where, in many cases, more than one provider is offering service, the FCC acknowledges the importance of focusing USF support on areas currently unserved and which would be served by a single provider. Unfortunately, the FCC's proposed funding of an upper limit of $300 million does not provide sufficient funds necessary for a successful Mobility Fund trial. The FCC should seriously consider the need for

[7] 2007 Recommended Decision at ¶ 5.

additional funding. According to a 2008 CostQuest Study,[8] ubiquitous build-out of Third Generation (3G) wireless broadband would require a capital investment of approximately $22 billion. The Indiana Commission believes that $500 million per year over an initial term of five (5) years is the minimum amount of funding needed to establish an effective trial for the proposed Mobility Fund. However, funding alone will not guarantee success of the Mobility Fund. The FCC must establish a rigorous review process to track the impact of the Mobility Fund following its implementation. After that time and evaluation, determinations can be better made about the prudence of the funding level and effectiveness of the mechanisms implemented in this approach to promoting wireless voice and broadband service.

Broader USF Reforms Necessary for Wireless Services

As suggested above, prior to the implementation of the proposed Mobility Fund, the FCC should institute broader reforms in USF support provided to wireless providers. Currently, USF support can be provided to a number of wireless providers offering service in the same overlapping geographic area. As stated above in reference to the structure of the Mobility Fund, the Indiana Commission contends that USF should be reformed generally to address shortcoming in how existing USF support is provided to wireless providers today. Specifically, USF support should be limited to a single wireless provider in a given geographic area. Dysfunctional duplicate support for multiple providers in the same area promotes competition at the cost of expanding availability of service to completely unserved areas.

The Indiana Commission notes that limiting support to a single carrier in a given area would provide cost savings that could be used to provide increased and broader access through more efficient use of the proposed Mobility Fund by no longer providing support to multiple carriers serving the same area. These savings could provide the additional $200 million per year recommended by the Indiana Commission.

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[8] U.S. Ubiquitous Mobility Study: *Identification of and Estimate Initial Investments to Deploy Third Generation Mobile Broadband Networks in Unserved and Underserved areas.* Prepared by CostQuest Associates, Inc. for CTIA-The Wireless Assoc. (April 17, 2008).

Improved Access to Spectrum by Smaller Providers

The Indiana Commission asserts that the prevailing process of bidding for wireless spectrum severely limits smaller carriers' (wireless and wireline) access to spectrum, and skews the process in favor of larger providers. Some smaller wireless or wireline carriers that receive USF support today may be able to improve efficiencies in the offering of service if they can access wireless spectrum and combine wireline and wireless delivery of broadband in current or adjacent markets. Greater efficiencies achieved by these carriers could translate into lower demands for scarce USF resources. The Indiana Commission believes that the FCC should strongly consider modifications to the bidding process for yet unreleased wireless spectrum to permit greater access to wireless spectrum by smaller carriers serving rural areas, particularly those currently receiving USF support.

Conclusion

The Indiana Commission supports the expansion of wireless broadband through the use of the proposed Mobility Fund. However, the success of the Mobility Fund, both in terms of expanding wireless service including wireless-based broadband service, and limiting harm to existing USF commitments, in whole depends on properly structuring this program. Reform of long-overdue dysfunctionalities can help to restructure USF funding without abrogating longstanding commitments and running the risk of court challenges to reform on the basis of violation of the Telecommunications Act of 1996.[9]

Before proceeding to implement the Mobility Fund, the FCC should establish the definition of broadband through a referral to the Federal-State Joint Board on Universal Services. Additionally, the FCC can greatly improve the success of the Mobility Fund in expanding broadband wireless service by limiting Mobility Fund support to a single carrier in a given area and by limiting funding to build-out of capital infrastructure. The FCC should take advantage of

[9] "Access in Rural and High Cost Areas- Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." 47 U.S.C. § 254(b)(3)

States' proximity to, and local knowledge of, areas that lack wireless and broadband wireless service today. In conjunction with valuable information about a provider's cost structure provided via a reverse auction process, States' participation in the awarding of support could contribute to more effective targeting of Mobility Fund support to the areas in greatest need of broadband wireless services.

Respectfully submitted this 17th day of December, 2010.

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