

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

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

**REPLY COMMENTS
RURAL INDEPENDENT COMPETITIVE ALLIANCE**

The Rural Independent Competitive Alliance (“RICA”) files its Reply Comments in response to the Comments of other parties filed December 16, 2010 with respect to the Commission’s Notice of Proposed Rulemaking (“NPRM”) rereleased October 14, 2010.¹ RICA is a national association representing the interests of rural competitive local exchange carriers that provide wireline and mobile services.

I INTRODUCTION AND SUMMARY

RICA agrees with the majority of the commenting parties that mobile communications should be supported by the Universal Service Fund (“USF”). Mobile communications are particularly important in the rural areas served by RICA members because of the often vast distances between population centers and the outdoor nature of much of the agricultural and extractive economic activities in those areas. Mobile communications are a vital complement to wireline services, even if not capable of fully replacing such services with respect to transmission capability.

¹ 75 Fed. Reg. 67060, Nov. 12, 2010.

RICA agrees that while the USF should support broadband mobility, the priority for mobile support should be those areas that currently lack mobile voice-grade service, and maintenance of mobile service in those high cost to serve rural areas where providers designated as ETCs have made investment in infrastructure in reliance on USF. The mechanism proposed by the NPRM, however, would provide support for upgrading existing mobile services to 3/4G while leaving the most remote areas without any mobile service. The proposal to provide only one-time capital funding support will exacerbate the tendency of the proposal to direct support away from the areas most in need because service in those areas is not financially feasible without operational support as well as initial capital funding.

Like most parties, RICA recognizes that the USF is not an unlimited resource, that progress must necessarily be incremental, and that the existing fund's contribution factor is straining the limits of political acceptance. The Commission however has greatly exacerbated this problem in several ways. First, it has maintained the "identical support rule" long past the time when it became apparent that its theoretical basis was badly flawed and it was causing immense harm. Second, although the Commission announced almost three years ago in the *CETC Cap Order*² that CETC cost studies would be accepted in lieu of identical support, it has failed to give USAC sufficient direction to implement that decision. Finally, after forcing Verizon and Sprint to agree to forgo USF in order to get their respective mergers approved, the Commission has both refused to redistribute those funds to other CETCs that could bring service to unserved areas, and refused to use the reduction in support payments to lower the contribution factor. Instead it has illegally "reserved" those funds for a mechanism that is not in existence, thus perpetuating the political peril of the entire USF.

² *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Order*, 23 FCC Rcd 8834 (2008) ("*Interim Cap Order*").

II THE COMMISSION'S AUTHORITY TO ADOPT THE NPRM'S PROPOSALS IS QUESTIONABLE IN SEVERAL AREAS

Several parties note that the NPRM is remarkable for its general lack of analysis of the Commission's legal authority to adopt the proposed mobility fund rules as well as its failure to provide any meaningful discussion of the Joint Board's 2007 recommendation directly bearing on the subject.³ NASUCA notes, for example, that Section 254 establishes criteria the Commission must consider before determining a service to be supported, but that the Commission has yet to make the specific factual findings with respect to those criteria.⁴

RICA agrees with these comments and would add that if the Commission proceeds to make mobility a supported service, it must recognize that most ILECs and wireline CETCs are not able to offer mobility, but should not lose their existing support through application of the Section 214(e)(1)(A) requirement to offer "the services that are supported by Federal universal service support mechanisms..."⁵ One approach would be to conduct a forbearance proceeding along the lines that have been used to relieve some Lifeline-only wireless providers of the requirement that ETCs use their own facilities, at least in part.⁶ There may be other means. To preclude confusion with respect to fixed wireless services, the Commission should also define "mobility" as requiring communications to and from "mobile stations" as defined in the Act.⁷

³ US Cellular at 10, Indiana URC at 3.

⁴ NASUCA at 2, Indiana URC at 4.

⁵ 47 U.S.C. 214(e)(1)(A).

⁶ *Petition of Tracfone Wireless, Inc. for Forbearance from 47 U.S.C. 214(e)(1)(A) and 47 C.F.R. 54.701*, Order, 20 FCC Rcd 1557 (2005)

⁷ 47 U.S.C. 153(28).

Many parties correctly question the legality of the NPRM's proposal to use funds collected to provide support to Verizon and Sprint after those carriers agreed to forgo support.⁸ RICA agrees with these comments, and for the reasons stated in Section I, above, believes it is also bad public policy for multiple reasons.

Some parties suggest that somehow the mobility fund will be so unique that the Commission need not concern itself with the clear Universal Service support structure adopted by Congress in Section 214(e) and is free to create its own by eliminating the role of state commissions in designating Eligible Telecommunications Carriers.⁹ These parties fail to provide reasoned support for their proposals and are simply wrong. Assuming, as discussed above, that some eligibility questions can be resolved through forbearance proceedings, the authority delegated to states by Congress in Section 214(e) is not subject to preemption by the Commission under its authority to determine that a "regulation or provision of this Act" need not be applied to a telecommunications carrier or telecommunications service.¹⁰

Many parties agree with the NPRM's proposal to limit mobility support to a single provider in a given area. RICA recognizes that from a policy perspective it is today difficult to justify providing support to multiple carriers (especially 4 or 5) in areas where service would be infeasible without support or where rates would not be comparable.¹¹ Before adopting a single provider rule, however, the Commission must develop a legal analysis of the provision in Section 214(e)(2) which, on its face, appears to reflect a Congressional determination that in areas served

⁸ ATA at 3 ("...any increase in the assessment factor is inflammatory and injudicious."); Metro PCS at 4; NASUCA at 4; NTCH at 1 (because of likely litigation it will be years, if ever, before money is available for distribution); RTG at 4, US Cellular at 17,18.

⁹ AT&T at 6; Metro PCS at 11; NTCH at 7.

¹⁰ 47 U.S.C. 160(a).

¹¹ As discussed in Section I, above, much of the current problem is attributable to the Commission's failure to eliminate the identical support rule and to require ETCs to provide cost justification for their support.

by non-rural ILECs there will be multiple ETCs, and the Congressional assumption that there would be multiple applicants for ETC designation implies that Congress expected them all to be eligible for support.¹²

III THE USE OF “REVERSE AUCTIONS” TO DETERMINE MOBILITY SUPPORT WOULD NOT SERVE THE PUBLIC INTEREST, PARTICULARLY AS STRUCTURED IN THE NPRM

Several parties present cogent arguments why the Commission should not adopt its proposal to determine mobility support on the basis of which provider offers to accept the least amount of support. RICA has long opposed the use of competitive bidding to determine USF support amounts and will not repeat those points here except by reference.¹³ RICA specifically endorses the following comments of Cellular South and NECA, respectively:

[R]reverse auctions are inappropriate if (a) a public procurement involves only a few asymmetric bidders selling a specialized service, (b) the sellers know more about those services than the buyer, and (c) the buyer wants to save money over a long period of time.¹⁴

Use of reverse auctions to determine high-cost universal broadband service support in rural areas raises particularly serious policy concerns. The Associations and numerous other parties have made clear in prior comments that the unpredictability associated with reverse auctions is likely to inhibit network investment, a significant problem where large investments in long-lived infrastructure are required for reliable service in areas that would otherwise not be economical to serve.¹⁵

Over the last several years the point has been made that proper operation of competitive bidding in this context requires extensive specification of the product or service to be produced. The NPRM does not begin to approach the necessary level of specification. Secondly there must be effective oversight of performance and there is no indication that the Commission has the capability

¹² 47 U.S.C. 214(e)(2). *See, RCA at 8.*

¹³ RICA Comments, WC Doc. No. 05-337. Oct. 10, 2006, 3-5; Reply Comments, Nov. 8, 2006, 1-4.

¹⁴ Cellular South at 5.

¹⁵ NECA et al. at 4.

to provide such oversight. As Cellular South explains, the efforts at oversight will be “... counterbalanced by the economic incentives of auction winners, who seek to bolster auction-eroded profits through a variety of tactics...”¹⁶ GVNW adds: “financial incentives for the winning bidder are to perform the work at a lower cost than was bid.”¹⁷

Many parties point out that the NPRM’s auction proposal creates a dangerous probability that a few large carriers will win all the support available, and then use that support to disadvantage their smaller competitors.¹⁸ RCA, for example explains that unlike spectrum auctions, the proposal is inherently anti-competitive and will create government funded monopolies that will allow low-ball bidders to provide poor service and/or high prices to consumers.¹⁹ RICA agrees with this evaluation, and does not believe the problem can be cured by the use of bidding credits. Not only is it difficult to objectively establish a proper credit, but once established, the large companies need only adjust their bids accordingly to exclude those without unlimited deep pockets.

The public interest will be particularly ill served if the proposal for a single national auction is adopted because it will necessarily reward the provision of service to the least costly unserved areas. As ACS explains: “Allocation of funds based on lowest per-unit cost is diametrically opposed to the concept of targeting ‘areas that lag.’ The areas that lag the most do so precisely because they are the most expensive to serve.”²⁰ AT&T agrees: “... most, if not all, of the

¹⁶ Cellular South at 12.

¹⁷ GVNW at 8.

¹⁸ Cellular South at 7, 13; Indiana URC at 8, MTPC LLC at 4, Mid-Rivers at 6, RTG at 7, US Cellular at 22.

¹⁹ RCA at 2.

²⁰ ACS at 4.

lowest per unit bids will be for network upgrades to provide mobile broadband service in areas that already have mobile voice service, rather than to provide service in truly unserved areas.”²¹

Even if, despite the odds against it, the Commission is able provide some support in a manner that results in consumers in unserved areas gaining access to mobile broadband service, the unique, limited nature of the proposal would not constitute a valid experiment to test the validity of competitive bidding for universal service support generally. As RICA and many others pointed out in reference to the National Broadband Plan, shifting support from existing high cost area providers to new providers in areas without broadband will only mean that consumers in many of the areas with current support will lose their broadband service, and their fixed and mobile voice services along with it.²² The comments of NCTA and Sprint to the contrary are incorrect.²³

The comments point to a number of additional structural problems with the proposal in the NPRM. For example, limitation of support to a one time capital payment will necessarily mean that the areas most in need of support will get none because the high operating expenses make service infeasible, a problem the Joint Board recognized.²⁴ Comments also point out that carriers can’t assume shortfalls in the Mobility Fund will be made up by the CAF, when that program’s details remain unknown.²⁵

²¹ AT&T at 3. *See also*: Commnet at 4; GCI at 2; Native Public Media/NCAI at 6, US Cellular at 11.

²² RICA Comments on NBP Public Notice #19, GN Doc. No. 09-51, Dec. 7, 2009, 6-7.

²³ NCTS at 7, Sprint at 4.

²⁴ Mobile Future at 6; NTTA at 16; T-Mobile at 2, 5; USA Coalition at 20.

²⁵ CA PUC at 6-7; USA Coalition at 3. NCTA at 5; USA Coalition at 20.

IV A SUPPORT MECHANISM FOR MOBILE BROADBAND SHOULD NOT DESTROY SUPPORT FOR NON-BROADBAND MOBILE SERVICE

Verizon's arguments for elimination of support to CETCs are invalid and should be rejected. Verizon urges the Commission to expedite elimination of support to CETCs, arguing first that the funds should be transferred to support mobile broadband services as recommended by the NBP.²⁶ Second, Verizon complains that continuation of support to CETC puts it and Sprint at a competitive disadvantage because they agreed to forgo USF support "on the reasonable assumption that comprehensive reform would, within a short time, restore parity to the robustly competitive wireless industry."²⁷ While the first argument is at least comprehensible as a matter of arithmetic, the second is rather astonishing coming from one of the most extensive, well funded and sophisticated communications carriers. Verizon implies that somehow in its discussions with the Commission regarding merger conditions, it received a commitment that the reduction in USF would be made relatively painless because the Commission would shortly remove the support from all its competitors. Verizon cites to no such commitment; nor does it even try to explain how such a commitment could legally be made. Further, Verizon does not provide any other basis why it would be reasonable to expect such actions, particularly "within a short time."

RICA has advocated USF support for broadband and mobility for many years, but never at the expense of removing support where it continues to be needed. RICA also does not agree that support should be provided for broadband to areas that have voice grade service in lieu of first providing support to areas that have no voice grade service. While most high cost areas have wireline service (that could be lost if support is removed), there are many areas that do not

²⁶ Verizon at 5,8.

²⁷ Verizon at 10.

have basic voice grade mobile service. Native Public Media/NCAI, for example, emphasizes that service to areas of no wireless should take priority over high speed access on high speed highways.²⁸ ATA correctly argues that the “public interest is better served by making access to the voice network as widespread as possible rather than by providing a subset of the population the opportunity to communicate through voice and data.”²⁹

Yet the effect of the NPRM combined with the Commission’s proposed removal of support for CETCs would be to deny many of these rural areas any mobile service at all because of multiple possible scenarios including: (1) No carrier enters the auction to serve the area as the support level needed to “win” the auction combined with the lack of ongoing support makes service infeasible; (2) where the only carrier proposing service does not “win” the auction; and (3) the carrier serving adjoining areas can no longer afford to “edge out” its service because it has lost USF support for its existing operations.

Of course USF resources are finite, but those resources are now under great strain because the Commission has failed to act on the longstanding proposals to eliminate identical support and has even failed or refused to implement its cost study exemption to the CETC.³⁰ In these circumstances where rational alternatives have long been on the record before the Commission, it is not sound public policy to eliminate all support for existing service as the source of funds for improved service. The many will suffer to benefit a few.

Instead of competitive bidding, mobile support should be allocated to the carrier best able to serve the area, based on that carrier’s cost of service. Rather than use Census or other

²⁸ Native Public Media/NCAI at 8

²⁹ ATA at 5. *See also*, CA PUC at 8, IN URC at 1 (“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.”).

³⁰ Mid-Rivers at 4, US Cellular at 7, WorldCall Interconnect at 4, 5.

geographic boundaries unrelated to actual wireless services, ETC licensees should be eligible to receive support over an area defined by their license, including any fill-in license areas.

V CONCLUSION

The need for Universal Service support to remedy the lack of mobile communications, both voice grade and broadband is broadly recognized in the comments. The difficulty is determining how to provide that support in a manner that both improves access for the public in a fair and efficient way while doing no harm to those customers of existing supported universal services. The NPRM's proposed mechanism would not meet these criteria. The Commission should instead eliminate the identical support rule, promptly and clearly enable mobile (and all other) CETCs to qualify for support based on their own costs. Wireless CETCs should be permitted to propose service areas based on their license area, including fill-in licenses. If support is limited to a single carrier in an area, the carrier best able to serve the public should be selected. Finally, the Commission should fully develop its legal rationale so that the mobility fund can proceed expeditiously without substantial risk of being overturned on appeal.

Respectfully submitted

Rural Independent Competitive Alliance

By/David Cosson
Its Attorney

2154 Wisconsin Ave., N.W.
Washington, D.C. 20007
202 333 5275

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Cc: Scott A. Mackoul, WTB

