

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

REPLY COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (“SouthernLINC Wireless”), by its attorneys, hereby replies to issues raised by commenting parties in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking released by the Commission on October 14, 2010.¹ The record in this proceeding demonstrates widespread agreement that universal service reform is necessary but that the Mobility Fund, though well-intentioned, would be little more than an unwelcome and potentially harmful distraction from the Commission’s efforts to ensure sustainable reform. SouthernLINC Wireless submits these reply comments to supplement the initial and reply comments of the Universal Service for America Coalition, of which SouthernLINC Wireless is a member.²

I. THE PROPOSED MOBILITY FUND WOULD HARM EXISTING COMPETITION FOR SUB-3G SERVICES AND PREVENT COMPETITION FOR 3G AND FASTER SERVICES IN SUPPORTED AREAS

The proposed Mobility Fund makes little sense for local and regional providers like SouthernLINC Wireless. As noted by the USA Coalition, the Mobility Fund appears intended to act as a transition mechanism whereby wireless carriers will receive a one-time capital injection in order to upgrade existing facilities to 3G levels or build entirely new cell sites so that they will be in a position to compete with wireline carriers for Connect America Fund (“CAF”) subsidies

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).

² For the sake of brevity, SouthernLINC Wireless does not repeat here all of the points made in the initial and reply comments of the USA Coalition, which SouthernLINC Wireless hereby incorporates in their entirety.

(i.e., to be eligible to bid in reverse auctions for CAF subsidies).³ However, many local and regional carriers, including SouthernLINC Wireless, may not be in a position to compete for funding from the Mobility Fund (or the CAF) due to a number of reasons, including lack of available spectrum, unavailability of compatible equipment, and other obstacles such as the unavailability of data roaming on fair and reasonable terms.

Under the proposed Mobility Fund, however, only a single carrier offering 3G speeds or better would receive support in areas currently are not served by any carriers offering 3G speeds or better. As CTIA correctly observed, many areas that are “unserved” by the Commission’s definition of 3G services are currently being served by providers “offering something less than 3G.”⁴ In those cases, the selection of a single winner to provide 3G in that area *via* a single-winner reverse auction mechanism “will have an acute impact on the competitive environment and the choices available to consumers.”⁵ Going forward, these existing sub-3G carriers would likely be squeezed out by their subsidized competitor, creating a monopoly environment where competition had existed before.⁶ In short, if local and regional carriers like SouthernLINC Wireless are summarily barred from competing for Mobility Fund support, it would be difficult, if not impossible, for them to deploy additional facilities to serve, or continue to serve, areas where a competitor offering faster speeds is subsidized.

This competitive harm would be compounded by the fact that the FCC proposes to eliminate current universal service funding completely, which would compound the difficulty of serving rural areas with low populations. This scenario would play out across various locations across the country, likely driving local and regional carriers out of the market, increasing the

³ Comments of USA Coalition at 18 (“USA Coalition”).

⁴ Comments of CTIA at 7 (“US Cellular”).

⁵ *Id.*; accord Comments of US Cellular at 22 (“US Cellular”) (explaining how reverse auctions could potentially damage competition beyond the immediate supported area).

⁶ *Accord* Comments of Alaska Communications Systems at 5 (“ACS”).

concentration of service providers in rural areas to the detriment of consumers who live and work there. Further, future competitive entry will be inhibited in the supported area since, as pointed out by Cellular South, larger carriers may use aggressive reverse auction bids to erect barriers to entry by competitors, forcing unsubsidized carriers to compete on a uneven playing field.⁷ For these reasons, SouthernLINC Wireless shares the concerns raised by commenting parties expressing concern that selecting a single carrier to receive Mobility Fund support in a given area would both destroy existing competition and inhibit the development of future competition, and thereby denying consumers in subsidized areas the benefits of competition.⁸

Not only are the proposed reverse auctions bad policy, but they are also explicitly barred by the competitive neutrality requirements of Section 254 of the Communications Act of 1934, as amended (the “Act”). As defined by the Commission, competitive neutrality prohibits using universal service support mechanisms to favor one provider over another.⁹ Thus, as argued by RCA, “while a reverse auction might bring competition within an electronic auction room, it would not have a competitively neutral effect in the marketplace.”¹⁰ Indeed, the Commission itself has noted that it “do[es] not believe that Congress intended to protect the imposition of requirements that are not competitively neutral in their effect on the theory that the non-neutral requirement was somehow imposed in a neutral manner.”¹¹ Thus, the Mobility Fund’s reverse auction distribution proposal is inherently anti-competitive and fundamentally at odds with the Commission’s competitive neutrality requirement and must be rejected.

⁷ Comments of Cellular South at 8 (“Cellular South”).

⁸ Comments of Sprint at 2 (“Sprint”); *accord* US Cellular at 18; USA Coalition at 11-12.

⁹ *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... [C]ompetitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another.”).

¹⁰ Comments of RCA at 2 (“RCA”).

¹¹ *See Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of Section 253*, Memorandum Opinion and Order, 14 FCC Rcd 21697, 21724 (1999).

II. THE RECORD CONFIRMS THAT THE PROPOSED SIZE OF THE MOBILITY FUND IS INSUFFICIENT TO MEET THE COMMISSION'S GOALS

The comments reflect nearly universal agreement that the proposed budget for the Mobility Fund would be insufficient to bridge the Nation's wireless broadband connectivity gap.¹² As many commenters have pointed out, a fund of this size would have a negligible impact upon ubiquitous mobile broadband deployment, perhaps resulting in only a few hundred additional cell towers nationwide.¹³ In the words of CTIA, taking into account "the amount of support and the one-time nature of the Mobility Fund, as proposed, would render the fund inadequate to the task of ensuring the availability of mobility services to *all* Americans."¹⁴

Indeed, as argued by many commenters, the Commission must provide for ongoing operating expense support either through the Mobility Fund or *via* another mechanism or else place at substantial risk the sustainability of Mobility Fund-subsidized infrastructure.¹⁵ It is puzzling why the Commission would ignore the need for ongoing operating expense support when several commenters pointed out that the Commission's own staff analysis demonstrates that wireless providers experience a significant portion of their cost of providing service as ongoing operating expenses, especially in "unserved areas"¹⁶ and in light of the fact that ongoing operating expenses support was expressly called for by the Joint Board when that body first

¹² Comments of AT&T at 3 ("AT&T") (describing the proposed budget is "a potentially useful, but... by no means sufficient, first step to close the Commission-recognized 'mobility gap.');" Comments of T-Mobile at 4 ("T-Mobile") (arguing that \$100 to \$300 million fund "woefully inadequate"); US Cellular at 14 (describing level of support as "token").

¹³ RCA at 9.

¹⁴ Comments of CTIA at 11 ("CTIA") (emphasis in original).

¹⁵ AT&T at 3 (recommending that the Commission consider a permanent fund to support mobile broadband service as a part of the Connect America Fund); Comments of California Public Utilities Commission at 8 ("California is concerned that the need for on-going operating support may be greater than the FCC envisions."); Comments of Telecommunications Industry Association at 10.

¹⁶ CTIA at 6.

proposed that basic wireless services be supported by universal service mechanisms.¹⁷ As it currently stands, a wide range of parties have called upon the Commission to ensure that operating expense support is forthcoming.¹⁸ Thus, the Commission must adopt some support mechanism that provides permanent and sufficient support for ongoing operating expenses – either through the Mobility Fund itself or another mechanism.¹⁹

Finally, SouthernLINC Wireless would like to join fellow commenters in reiterating that the Commission’s proposed source of funding for the Mobility Fund is legally deficient. As the USA Coalition and SouthernLINC Wireless demonstrated in their pending *Petition for Partial Reconsideration of the Corr Wireless Order*,²⁰ the Commission lacks the authority to “reserve” the funding earmarked for the Mobility Fund. Though SouthernLINC Wireless will not rehash its argument at length here, the pending *Petition for Reconsideration* firmly establishes that the Commission lacks the statutory authority to “establish a pool of funds to be used for unspecified purposes as an undetermined point in the future,” an argument that was supported by several parties in the present proceeding.²¹

The Commission should recognize commenters’ justifiable concerns that the inadequate size and shaky legal underpinnings of the proposed Mobility Fund would do little to close the mobile broadband connectivity gap, while the effect would be disastrous to the competition that currently exists in the areas to be subsidized. Not only that, but the new mechanism would be

¹⁷ Comments of Rural Telecommunications Group, Inc. at 6 (“RTGI”); USA Coalition at 10.

¹⁸ Comments of California Public Utilities Commission at 8 (“California is concerned that the need for on-going operating support may be greater than the FCC envisions.”).

¹⁹ *Accord* ACS at 8; CTIA at 6; GCI at 4; RTGI at 5.

²⁰ *Petition for Partial Reconsideration of SouthernLINC Wireless and the USA Coalition*, WC Docket No. 05-337, CC Docket No. 96-45 (filed Sep. 29, 2010) (“*Petition for Reconsideration*”).

²¹ RCA at 11-12; US Cellular at 16-18; USA Coalition at 25-26.

disproportionately expensive to create and administer.²² To make matters worse, the further development of the Mobility Fund would siphon the Commission's time and resources from the larger task of truly comprehensive universal service reform. As such, SouthernLINC Wireless respectfully urges the Commission to heed the advice of the commenting parties and focus first and foremost on comprehensive universal service reform rather than engage in piecemeal rulemakings that would do little to close the Nation's wireless connectivity gap.²³

III. IF THE COMMISSION NONETHELESS MOVES FORWARD WITH THE MOBILITY FUND, THE COMMISSION SHOULD ADOPT THE SOUTHERNLINC WIRELESS REVERSE AUCTION PROPOSAL

If, despite all the sound arguments to the contrary, the Commission decides to implement the Mobility Fund, the Commission should consider alternative distribution mechanisms that would not have the same deleterious effect upon competition in supported areas and are consistent with the competitive neutrality requirements of the Act. CTIA, in its comments, suggested that that the Commission consider the proposal of SouthernLINC Wireless for a "clock proxy" auction for multiple packages of support based upon a variety of service components, filed with the Commission in 2008.²⁴ Indeed, several parties called for the Commission to consider auction designs that distribute support to more than one bidder in each

²² USA Coalition at i-ii.

²³ Comments of CenturyLink at 1-3; *accord* Comments of Alaska Telephone Association at 3 (urging Commission to focus on reforming the universal service program rather than focus on making one-time investments in infrastructure in areas where operations will be unsustainable without ongoing support); US Cellular at 5 ("the Commission would better serve its broadband deployment goals by shelving its Mobility Fund proposal, by taking other actions that would more effectively support near-term broadband deployment, and by addressing a comprehensive reworking of universal service support mechanisms [under] the CAF."); Comments of California Public Utilities Commission at 6 (recommending that support for wireless infrastructure in unserved or underserved areas be funded through the proposed Connect America Fund, obviating the need for a stand-alone Mobility Fund); Indiana Utility Regulatory Commission at 7-8 (proposing that comprehensive universal service reform be considered "prior to the implementation of the Mobility Fund.").

²⁴ Comments of SouthernLINC Wireless, WC Docket No. 05-337, CC Docket No. 96-45 at 16-30 (filed Apr. 17, 2008) .

service area.²⁵ SouthernLINC Wireless welcomes the opportunity to elaborate upon its multiple package, “clock-proxy” proposal.²⁶

A) The Commission Should Determine Which Services to Support and Define at Least Two Service Packages Based Upon Those Determinations Using the Smallest Possible Geographic Area

In consideration of the Act’s requirements that rural, high-cost, and insular areas be afforded reasonably comparable rates and services as those available in urban areas, the Commission must decide determine which services should be supported based upon typical availability in urban areas. The Act makes clear that universal service support is to be used for services that have already been adopted by the substantial majority of residential consumers rather than for services the Commission believes that the substantial majority of residential consumers should adopt.²⁷ The Commission should base the types of quantity of service packages that it defines on the facts about the types of services that a substantial majority of residential consumers have adopted and the number of services providers from which they can choose to purchase these services.

The Commission should conduct clock-proxy auctions on a state-by-state basis using the smallest competitively-neutral geographic support areas that are administratively feasible in order to ensure competitive neutrality and to ensure that support is targeted only to where it is needed. In practice, this would mean the Commission should hold auctions at a level no larger than a county and perhaps at a level as small as a zip code.

²⁵ ACS at 2; CTIA at 9; T-Mobile at 7.

²⁶ For the Commission’s convenience a copy of SouthernLINC Wireless’s 2008 filing is attached hereto.

²⁷ 47 U.S.C. § 254(c)(1)(B); *accord* USA Coalition at 7-8.

B) The Commission Should Auction Off Multiple Packages In Each Supported Area In Order to Afford Those Areas Access to Reasonably Comparable Levels of Service as Those Enjoyed in Urban Areas

With the types of packages set, the Commission should auction off multiple packages in each auction area. Based upon the record regarding available communications service options in urban areas, SouthernLINC Wireless submits that the Commission would have to auction, at a minimum, two or three service packages in order to meet the Act's statutory requirement that rural consumers have access to reasonably comparable service options as their urban counterparts.²⁸ With multiple carriers serving the subsidized area, the multiple winners in each territory will have incentives to compete for customers, ensuring technological innovation, lower prices, and quality service so long as it meets the Commission's price and service requirements. This approach would be preferable to a single-winner system in which carriers have an incentive to "race to the bottom" in terms of service and pricing, knowing that consumers have no available alternative.

The winning bidder could also offer services over and above the Commission's mandated services, for which customers could choose to pay more, in order to provide services not included within the definition of the package required by the Commission (*e.g.*, texting, web-browsing, or other enhanced features). This approach would ensure that rural and high-cost areas are not deprived the benefits of otherwise available technology simply because the area's monopolist chose not to include those services in an attempt to keep its bid as low as possible.

C) The clock-proxy auctions would then be conducted on a state-by-state basis using the smallest competitively-neutral geographic support areas that are administratively feasible

The clock-proxy auction, which would be used to establish support within defined geographic areas on five-year intervals, would consist of two stages: the "Clock" stage and the

²⁸ The service packages do not need to be identical for the reasons SouthernLINC Wireless has explained in past filings.

“Proxy” stage. During the “Clock” stage of the auction, the Commission will offer a certain amount of per-line support, using the current support levels as a reserve for each package. Over multiple rounds providers anonymously indicate whether they would serve a given area at a decreasing level of subsidy. When the number of bidders willing to provide a particular service package at the subsidy level available in a particular round equals the total number of service packages available in the support area, the auction ends. The winning bids in each auction area would set the “reserve” price for that area in the Proxy Stage.

During the Proxy Stage of the auction, auction participants can submit bids for bundled support areas across multiple support areas, identifying identify the lowest subsidy amount they would be willing to accept to provide a service package if they were assured of receiving support for providing that package across the entire support area they have defined. These bundled bids would then be evaluated by the Commission (or its designated auctioneer) to determine which combination of bids in all previous rounds would result in the lowest possible aggregate support payment from the universal service fund. This process would continue until the proxies had no further bids to submit. At this point, the winning bids are made public, and the auction is concluded.

D) SouthernLINC Wireless’s “Clock-Proxy” Best Meets the Goals of the Act While Minimizing Fund Size

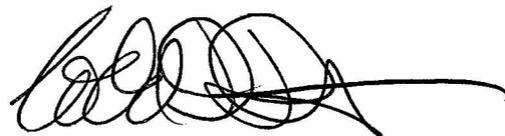
Unlike the Commission’s current proposal, SouthernLINC Wireless’s Clock-Proxy Auction proposal is consistent with the Act and the Commission’s USF regulations. Not only would support be distributed on a competitively neutral playing ground (since multiple providers would be funded), but the packages would also be defined without regard to the underlying technology used. Most importantly, from a consumer’s perspective, the SouthernLINC Wireless proposal would ensure that comparable services are available to consumers in rural, insular and high cost areas at just, reasonable and affordable rates. In addition the rules of the Clock-Proxy

auction would create incentives for carriers to bid as low as possible in order to capture the subsidy, but, unlike the Commission's current reverse auction proposal, the Clock-Proxy auction provides for competition, thereby ensuring that carriers compete on the metrics of price and service, rather than attempting to offer the bare minimum of service required by the Commission. This proposal is likely to result in the smallest fund possible that still achieves the goals of the Act. Given the inherent problems associated single-winner reverse auctions, the Commission should explore alternatives like SouthernLINC Wireless's proposal before implementing the Mobility Fund. Creative alternatives exist to Commission's single-winner reverse auction proposal that are consistent with the Act, and they should be seriously considered before the Commission moves forward with a proposal that threatens to systematically dismantle the competition in rural America by providing support to only one carrier.

CONCLUSION

For the reasons set forth above, SouthernLINC Wireless urges the Commission to focus on long-term reform rather than implementing a Mobility Fund.

Respectfully submitted,



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