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 OF
RURAL CELLULAR ASSOCIATION

Rural Cellular Association ("RCA"), by its counsel, hereby submits these reply comments in response to the comments filed December 16, 2010 in the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.[1] RCA represents the interests of nearly 100 regional and rural wireless carriers with licenses covering more than 80% of the United States. Most of RCA's members receive high cost support provided by the Universal Service Fund ("USF"), and these members effectively and efficiently utilize such support to construct and upgrade high-quality networks. Nevertheless, the record in this proceeding clearly reflects industry opposition to the Mobility Fund, as proposed. RCA recommends the FCC focus on broader, targeted, success-based USF reform.

I. INTRODUCTION

In its Comments, RCA applauded the Commission for recognizing the value of advanced mobile wireless services and the importance of making these services available to all Americans. At the same time, RCA opposed the proposed Mobility Fund because it would not be an effective means of promoting improved mobile wireless coverage. In particular, the record

[1] *Universal Service Reform, Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716 (2010).

demonstrates that single winner reverse auctions would be highly anti-competitive; the proposed Mobility Fund would not result in expanded service to the areas that most need it; and the proposed $100-$300 million one-time funding level is wholly inadequate. In light of such widespread industry concerns, RCA urges the FCC to focus first and foremost on comprehensive reform of universal service support in the Connect America Fund ("CAF") proceeding. After the FCC adopts such comprehensive reform, the FCC then can consider targeted mechanisms for supporting wireless mobile broadband services.

II. COMMENTERS EXPRESS BROAD CONCERN WITH THE PROPOSED MOBILITY FUND

A. There Is Wide Agreement That Single Winner Reverse Auctions Are Anti-Competitive

The record demonstrates that single winner reverse auctions are inherently anti-competitive. As RCA stated, such auctions essentially create a government-sanctioned and government-funded monopoly in the relevant service area.[2] Monopoly service will inevitably result in higher prices and/or reduced services – or it will require intensive government regulation to monitor service levels and pricing. MTPCS argues that "[a] single carrier with government support could decimate the competition across a large region[,]"[3] Sprint contends that a single-winner reverse auction "could well limit or even foreclose the possibility of competitive entry."[4] USA Coalition concludes that "subsidizing a single provider would prevent competition from ever developing in areas where support is necessary today."[5]

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[2] RCA Comments at 2-7.

[3] MTPCS, LLC, d/b/a Cellular One ("MTPCS") Comments at 2.
[4] Sprint Comments at 2.

[5] Universal Service for America Coalition ("USA Coalition") Comments at 11. *See* United States Cellular Corporation ("U.S. Cellular") Comments at 19 (arguing that a reverse auction model would "substantially reduce mobile broadband competition, as well as incentives for investment, in rural and high-cost markets").

RCA also expressed concern that single winner reverse auctions would encourage highly aggressive, economically unsustainable bids. Several commenters agree with the concerns raised by RCA. Rural Telecommunications Group ("RTG") "fears that the use of reverse auctions will produce a 'race to the bottom' in which participants will submit bids that are too low and provide inferior service."[6] In addition, USA Coalition contends that reverse auctions create perverse incentives for auction participants, "who may be willing to temporarily serve an area at a loss, in the expectation of receiving additional support or resorting to monopoly pricing."[7]

B. The Proposed Mobility Fund Will Not Result In Expanded Service To The Areas That Need It Most

The selection of winning bidders based on nationwide lowest per-unit bids would defeat what should be the FCC's overarching goal: to provide USF funding to the geographic areas where the need is greatest — where financial support is absolutely necessary for carriers to provide new or expanded advanced mobile services.[8] By contrast, the FCC's proposal unduly, and unjustly, favors carriers proposing to expand service to geographic areas with the highest density, since these areas can be served at the lowest per-unit cost. Yet, these are the very same geographic areas where expanded or improved facilities might have been built out in the near future as a result of market forces, without the need for support (at least not for infrastructure costs).

Commenters agree with RCA that Mobility Fund support should be targeted to the areas with the greatest need, and that the Commission's proposal to select auction winners based on

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[6] RTG Comments at 7.

[7] USA Coalition Comments at 13.

[8] RCA Comments at 8.

the lowest per-unit bids would work against this objective. MetroPCS, for example, favors awarding support to carriers proposing to deploy mobile broadband in unserved areas, in part because "this will target the areas of greatest need."[9]

ACS agrees with RCA that the FCC should not award support based on the lowest per-unit bids:

> 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. The concept of assigning funds to the areas that are the lowest cost to remediate merely accelerates deployment that would likely occur anyway, and leaves the truly high-cost and under/unserved areas unchanged in any way.[10]

C. The Proposed Funding Level Is Wholly Inadequate

RCA provided empirical evidence in its comments that the proposed funding level of $100-$300 million would be wholly insufficient to have a meaningful impact on the current mobility gap because only a very limited number of new cell sites, covering a limited geographic area with a small population, could be constructed with the proposed funds. Further, RCA pointed out that the FCC's proposal to fund projects on a one-time basis, covering only capital expenditures, would be wholly inadequate to support the long-term provision of quality service.

RCA's concerns regarding the limited amount of funding proposed by the FCC are shared by other commenters. The Indiana Utility Regulatory Commission sums up the problem

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[9] MetroPCS Communications, Inc. ("MetroPCS") Comments at 8. *See* AT&T Inc. ("AT&T") Comments at 5.

[10] Alaska Communications Systems ("ACS") Comments at 4. *See* Alaska Telephone Association Comments at 4 (contending that "[t]he reverse auction method ranking distribution of funds based on lowest per-unit bids would . . . marginalize rural areas as per-unit amounts will tend to be smaller where population densities are higher"); Blooston Rural Carriers Comments at 7 (arguing that "the proposed 'lowest per-unit bids across all areas' selection mechanism appears to ensure that AT&T, Verizon and Sprint Nextel will receive virtually all the Mobility Fund support they want that is awarded by reverse auction"); General Communication, Inc., Comments at 5 (contending that "the areas most likely to win a 'lowest [support] per-unit' auction are areas that are in the process of transforming from rural communities to exurbs. Those areas are likely to have larger populations over which support could be spread to yield low support per unit. Thus, such areas are the most likely to get to service within a small number of years, even without additional USF support.").

with the FCC's proposal by stating flatly that "the FCC's proposed funding of an upper limit of $300 million does not provide sufficient funds necessary for a successful Mobility Fund trial."[11] RTG observes that "the proposed size of the Mobility Fund is woefully inadequate …."[12] CTIA asserts that the limited amount of funding proposed by the FCC "would render the fund inadequate to the task of ensuring the availability of mobile services to *all* Americans."[13] T-Mobile contends that the level of funding "is simply too small to make deployment of mobile broadband services economically attractive in some areas."[14]

The record reflects that the industry generally objects to the Commission's proposal to provide Mobility Fund support only for capital expenditures, and not for ongoing expenses. U.S. Cellular, for example, argues that such "restriction would likely reduce the effectiveness of the distributed support, as a practical matter, and could discourage carriers from participating in the [Commission's proposed] auction mechanism . . . ."[15] T-Mobile contends that "both initial funding and ongoing support are necessary to sustain the viability of broadband service and ensure that customers in those areas have access to advanced communications and information services."[16] CTIA argues that a support mechanism for mobile broadband services cannot be successful unless wireless carriers are able to receive support for ongoing costs.[17]

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[11] Indiana Utility Regulatory Commission Comments at 6.

[12] RTG at i.

[13] CTIA-The Wireless Association® ("CTIA") Comments at 11 (emphasis in original).

[14] T-Mobile USA, Inc., ("T-Mobile") Comments at 4. *See* U.S. Cellular Comments at 14 (contending that "the problem with the Commission's proposed approach is that the amount of support needed to bring advanced broadband technologies to unserved areas dwarfs the amount of funding the Commission is proposing to allocate").

[15] U.S. Cellular Comments at 15.

[16] T-Mobile Comments at 4.

[17] CTIA Comments at 6.

D. The Proposed Source of the Mobility Fund is Legally Insufficient

The proposed source of funding for the Mobility Fund is legally insufficient[18] because: (1) the FCC lacks any statutory authority "to establish a pool of funds to be used for unspecified purposes at an undetermined point in the future";[19] (2) the FCC's decision not to redistribute to other competitive ETCs the high-cost support surrendered by Sprint and Verizon was arbitrary and capricious because the Commission's decision hinged on the mistaken conclusion that Sprint and Verizon continued to be "eligible" carriers for USF purposes even after they agreed to surrender their support;[20] and (3) the FCC's decision to hold the surrendered funds in reserve for future use was procedurally defective because the Commission failed to give any prior notice to the public that it planned to reserve the funds instead of redistributing them pursuant to the terms of the *Interim Cap Order*.[21] As MTPCS, RCA, RTG and U.S. Cellular stated in their comments,[22] the FCC's reservation of funding, and the procedures followed by the Commission in deciding to reserve the funds, are neither legally permissible nor sufficient.[23]

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[18] The Commission proposes to set up the Mobility Fund "by using a portion of the several hundred million dollars in annual USF support voluntarily relinquished by Verizon Wireless and Sprint Nextel, which . . . the Commission recently reserved [in the *Corr Wireless Order*] as a down payment on broadband USF reform . . . ." *See NPRM*, ¶ 5. *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, FCC 10-155 (rel. Sept. 3, 2010), *recon. pending* ("*Corr Wireless Order*").

[19] SouthernLINC Petition at 3; *see id*. at 7-11.

[20] Joint Petition at 15-20.

[21] *Id*. at 20-21. *See* SouthernLINC Petition at 11-16.

[22] MTPCS Comments at 6-7; RCA Comments at 11-12; RTG Comments at 4-5; U.S. Cellular Comments at 16-18.

[23] *See* Allied Wireless Communications Corp., Cellular South Licenses, Inc., Commnet Wireless, LLC, Corr Wireless Communications, L.L.C., East Kentucky Network, LLC d/b/a Appalachian Wireless, Leaco Rural Telephone Cooperative, Inc., MTPCS, LLC d/b/a Cellular One, N.E. Colorado Cellular, Inc., PR Wireless, Inc., Union Telephone Company d/b/a Union Wireless, and U.S. Cellular, Joint Petition for Reconsideration, *Corr Wireless Order* Proceeding, filed Oct. 4, 2010 ("Joint Petition"); Southern Communications Services, Inc. d/b/a

III. VERIZON'S PROPOSALS TO TARGET CETC FUNDING ARE UNTIMELY, MISPLACED AND WHOLLY WITHOUT MERIT

In its comments, Verizon shamelessly seeks to hijack this limited proceeding to instantly re-make universal service support in a manner detrimental to consumers and beneficial only to Verizon. In particular, Verizon requests that the FCC act as soon as possible to phase-out legacy voice support, starting with the phase-out of all remaining CETC support.[24] Verizon proposes a stand-alone FCC item with a fast-track comment cycle to address CETC funding restrictions.[25] Verizon goes so far as to suggest that "[t]he FCC should adopt final rules for … CETC funding reductions at the next available opportunity – which may be the Commission order establishing the Mobility Fund."[26]

Verizon's comments serve to highlight the broad concerns expressed by many commenters that the Mobility Fund must not undercut current universal service support, and that comprehensive USF reform is required before the FCC examines programs such as the Mobility Fund. If adopted, the Mobility Fund must not, in any manner, be deemed a substitute for current high-cost support for CETCs. As noted previously, the level of proposed funding is wholly insufficient to make even a dent in the current mobility gap. Further, any successful program will require on-going support for operating expenditures. RCA has repeatedly urged that there be no phase-down of high-cost support until, and unless, the FCC implements an adequate replacement support mechanism(s). The Mobility Fund is not an adequate replacement.

SouthernLINC Wireless and the Universal Service for America Coalition, Petition for Partial Reconsideration, *Corr Wireless Order* Proceeding, filed Sept. 29, 2010 ("SouthernLINC Petition").

[24] Verizon and Verizon Wireless ("Verizon") Comments at 8 – 13.

[25] *Id.* at 12.

[26] *Id.*

The Mobility Fund NPRM clearly is not the appropriate forum to consider funding reductions for CETCs. The NRPM does not, in any manner, raise this issue for consideration. These issues are appropriate for consideration in the FCC's CAF proceeding and any related broad-based proceedings to consider universal service reform. In all events, any FCC action must be technologically neutral – it must apply to both wireline and wireless carriers.

As part of its attempt to hijack the Mobility Fund proceeding, Verizon asserts that it is unfair that it is already well into its phase-down while other CETCs have not even started their phase-down.[27] Verizon complains that it did not contemplate such a long delay at the time it made its phase-down commitments.[28] Verizon appears to forget that its commitments were *voluntary* made in exchange for securing a grant of its Alltel acquisition, and in accepting these *voluntary* commitments, the FCC did not specify that it would take any particular action, let alone within any specific time frame, with regard to the reduction of support for CETCs.

In any event, what is truly unfair is that CETCs have been subject to an "interim" cap on high-cost support that is almost three years old. Unlike Verizon's *voluntary* merger commitment, the interim cap was imposed on CETCs. Further, the interim cap was imposed with FCC representations that the broader issue would be promptly addressed.[29]

Verizon's comments also serve to highlight the broad concerns expressed by many commenters that the structure of the reverse auction proposed in the Mobility Fund would both

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[27] *Id.* at 10–11.

[28] *Id.* at 10.

[29] *See High-Cost Universal Service Support*, Order, 23 FCC Rcd 8834, 8845 (para. 23) (2008), *aff'd*, *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009) (rejecting arguments that the cap should not be imposed because it would it would be in effect for longer than an interim period, and concluding that "[t]he interim cap will remain in place only until the Commission adopts comprehensive, high-cost universal service reform. Thus, we are satisfied that the interim cap's life will be of limited duration.") (footnote omitted).

incent the largest Tier 1 carriers to bid aggressively and would favor the bidding of such carriers. In this light, it is hardly surprising that Verizon enthusiastically supports a single winner reverse auction. RCA reiterates its concern that participants in the reverse auction may well have a financial incentive to win any such auction at a price that will not generate a positive return, if the effect is to: (1) provide that carrier with an offsetting benefit of reducing its contributions into the universal service fund; (2) eliminate support for existing competitors or prospective new entrants so as to dominate the market; or (3) push competitors out of the market. In fact, given Verizon's dominant position in both wireline and wireless markets, Verizon would benefit more than any other provider from a mechanism that reduces or eliminates potential competition.

The fact that one bidder could win the entire amount allotted to the fund serves only to make the Mobility Fund proposal even more enticing to Verizon. As RCA noted in its comments, given the anti-competitive bidding incentives described above, that winning bidder could well be a nationwide carrier seeking to reduce competition in adjacent markets. RCA concurs with the assessment of the RTG that "reverse auctions … unfairly favor the largest carriers who have the economies of scale and scope to provide services below the actual cost in a rural area."[30] Large carriers also gain an advantage from the high transactional costs to participate in an auction, because such costs will deter smaller bidders, for whom such costs will be disproportionately greater. This deterrence will be exacerbated by the proposal to compare bids on a nationwide basis and by the distinct possibility that a single entity could win the entire allotted amount.

If the FCC decides to proceed with the Mobility Fund, Verizon should be prohibited from participating in it. Put simply, it would be absurd and contrary to good public policy to permit

[30] RTG Comments at 16.

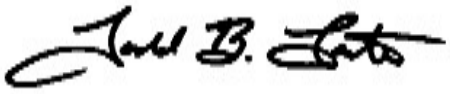
Verizon to be able to take back the very same funds that it voluntarily relinquished as a condition of the FCC's approval of Verizon's acquisition of Alltel.

IV. CONCLUSION.

Similar to many in the record, RCA opposes the proposed Mobility Fund because it would not be an effective means of promoting improved mobile wireless coverage. In particular, single winner reverse auctions would be highly anti-competitive; the proposed Mobility Fund would not result in expanded service to the areas that most need it; and the proposed $100-$300 million one-time funding level is wholly inadequate. In light of such widespread concerns, RCA urges the FCC not to adopt its proposal for a Mobility Fund.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION



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