

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	

To: The Commission

COMMENTS OF NTCH, Inc.

NTCH, Inc. (“NTCH”) submits these Comments in connection with the Commission’s Further Notice of Proposed Rulemaking in this proceeding. NTCH has previously submitted a Petition for Reconsideration urging the Commission to consolidate the Phase I and Phase II Mobility Funds into a single support process and to rationalize the sequence of pre-auction events and requirements so that all interested parties could intelligently assess the business case for providing service to unserved or underserved areas with a given level of initial and ongoing support. NTCH therefore incorporates by reference its argument in the Petition for

Reconsideration but will summarize them briefly here. NTCH also has several other comments in response to the Commission's request for input on some of its new procedures.

A. The Phase I and Phase II Funding Processes Should be Consolidated

It is unclear why the Commission opted to split the funding for mobility operations and support into two distinct phases. Looked at holistically, any service provider assessing the viability of constructing a telecommunications system in an underserved area and providing service there for the long term would need to know both how much USF support is available at the outset and how much will be available for operating expenses. The areas in question are areas where, by definition, normal market forces would not support such a system. That being the case, a prudent prospective operator would need to know how much money it could count on from the Connect America Fund to meet the anticipated expenses of constructing and operating the system. Indeed, in establishing the criteria for evaluating Phase I applicants, the Commission itself recognized that a realistic business plan must include not only construction expenses but operating expenses as well. That being the case, a prospective bidder considering offering service in one of these areas would need to know both levels of support and base its bid on the receipt of that level. If it did not receive in the auction the level of support which it had deemed necessary for both purposes, its business plan could not be achieved. By leaving a prospective carrier in the dark as to what level of funding it will have, the Commission will effectively guarantee failure of the program.

B. The Sequence of Pre-Auction Events Should be Rationalized

The scenario currently envisioned by the Commission for the Phase I auction is backwards in key respects. In order to participate in the auction process, a bidder must not only know what geographic areas are available to be filed for but also must have obtained

ETC status for that area. The Commission should certainly encourage the widest range of bidders to offer to provide service to these problematic areas, since it will thereby have the greatest chance of getting a least cost bidder qualified to provide the supported services. If eligible bidders are limited to just one or two bidders, the Commission is far more likely to pay more money to, and get worse service from, the “winning” bidder. To avoid this result, the Commission should:

1. Identify at the very outset of the process which areas are eligible for support. It would seem obvious that the very first step in this process should be to identify those census tracts that need supported services. To do otherwise is to repeat the mistake of the BIP and BTOP programs which raced forward to provide money for service to underserved and unserved areas without clearly defining in advance where those areas were. While we can appreciate the Commission’s desire to roll broadband out immediately to those areas that need it, it’s not too much to ask that those areas be identified first. Let’s understand what the problem is before we try to remediate it. And once we know where the problem is, we can let prospective service providers know so they can determine whether they are willing and able to offer service there. This will, regrettably and inevitably, delay the date of the initial Phase I funding auction, but it is a delay that makes sense. It will permit prospective bidders to plan, and will ultimately target CAF dollars to the areas that need it most and are most susceptible of being served with USF subsidies.

2. Award ETC status to the low bidder in the auction. The Commission’s current scenario requires bidders to have been designated as ETCs prior to the auction. Again, this places the cart before the horse. A carrier probably will be unable to offer the full slate of supported services in these areas without CAF support. Yet the carrier must

apply for ETC status and pledge to provide these services whether it gets the support or not. The Commission requested comment on whether a carrier should be held to its ETC commitments if it does not receive support, and the logical answer is certainly “no.” A proposal predicated entirely on receipt of support cannot reasonably be expected to be fulfilled in the absence of support. So by all means after a carrier finds that it is not getting needed support, it should be relieved of its ETC commitments. But instead of fixing the problem on the back end, why not limit the ETC obligation at the outset to carriers who receive support?

This could be accomplished by simply requiring winning bidders in the auction process to certify to their commitment to provide the services to be supported by the CAF funding. They would then be designated as ETCs in the areas they have proposed to serve. This process would eliminate the need to overlapping and unnecessary processing of ETC petitions which will never be implemented because the designated entities will not receive support. It will also eliminate the lengthy lead time which now exists between filing an ETC petition and action on that petition. By automating the ETC process somewhat, the Commission could largely eliminate the incentives and opportunities for incumbents to use ETC proceedings to stall the entrance of new competition into “their” markets, an unfortunate circumstance which now too often occurs.

3. Detach ETC designations from study areas and entire wire centers. Mobility Funding will be made available based on the census tracts deemed to need service. These geographic areas will rarely if ever coincide with wireline study areas or wire centers, both of which are relics of the now abandoned support system. The Commission should forbear from the provisions of the Act that tie ETC designations to study areas and simply allow

willing providers to provide service in the areas eligible for support that they bid on. The bidders will have to have the right to use spectrum in those areas either by license or lease, and the authorized service areas would obviously have to encompass the census tracts to which service will be provided, but other than that there is no need for ETC service areas to be otherwise constrained.

C. Use AWS-3 to Provide Service to Unserved Areas

NTCH suggested in its Petition for Reconsideration a concept that merits consideration here as well. The Commission envisions Mobility Funding being provided only to bidders who have existing access to mobile spectrum. An alternative approach would be to dramatically prioritize mobile service to unserved and underserved areas by making AWS-3 spectrum initially available for this purpose. Briefly, the Commission could have an AWS-3 auction in which the winning bidders would be required to provide the services on the timetable now envisioned for Mobility I and II funding. Instead of *paying* people to provide these services, the FCC would essentially *be paid* for the same thing by offering the available spectrum at a discount determined by the market to offset the cost of providing the services. This offering would obviously only apply to areas that are eligible for this type of funding – elsewhere the AWS-3 spectrum would be auctioned under normal procedures.

The benefits of this approach are manifest. (i) The number of potential providers of mobility services in these markets would be substantially increased because anyone other than existing licensees who is interested in the spectrum would be able to bid on it as long as they committed to the required services. (ii) The winning bidder would have a strong incentive to deliver on its commitments since the license award would be revocable if the

condition of sale were not met. (iii) The Commission would be relieved of short term and long term distribution of funds from the CAF. Instead, it might take a small one-time hit at the auction stage but would provide no other monetary support for the services. This would save the Commission the entire Phase I cost as well as the annual \$500 million dollar amount now budgeted for Phase II, a savings of \$5.3 billion over ten years. (We have assumed there would be some lessening of the amount that the Commission would otherwise realize from the auction because of the additional responsibilities that a winning bidder would have to take on, but it is not at all clear that the hit would be significant. The desire to get the spectrum might outweigh other considerations.) (iv) The administrative process would be highly streamlined because the Commission could eliminate Phase I and Phase II auctions as well as ETC designation procedures for multiple applicants. The auction could be rolled into the larger AWS-3 auction which would include the offering of this spectrum in most of the country that would not qualify for Mobility Phase I or Phase II treatment. So there would only have to be the expense of conducting a single auction.

This approach transforms a perpetually subsidized service with all the attendant administrative oversight and paperwork into a simple one-time auction at little or no cost to the Treasury and no cost to the taxpayers who indirectly contribute to the CAF. To facilitate this approach, two further elements should be included. First, as noted above, the availability of spectrum for this purpose should be limited to (a) entities which do not currently use or lease out spectrum which they hold in the markets at issue and (b) entities who do not currently get USF support in these areas. Basically, if a company has not provided broadband service in these areas with the spectrum or support it already has, it should not be entrusted with additional spectrum for the same purpose. At worst, the

company would default on its obligations; at best it would likely leave some of its spectrum fallow since it would have a surfeit. Second, the Commission should require all AWS licensees to ensure that handsets are interoperable over the entire AWS spectrum band. This will prevent AWS-3 licensees who will have undertaken the special responsibilities associated with service to unserved and underserved areas from being isolated into a small segment of the band with no ability to roam over the larger national AWS network. And finally the Commission must ensure that roaming rates offered by all carriers, but especially the national carriers, are reasonably related to their costs and do not exceed the rates they charge retail or wholesale customers for similar services.

Respectfully submitted,

NTCH, INC.

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January 18, 2012