

**Before the  
Federal Communications Commission  
Washington, DC 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. 6-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**COMMENTS OF CLEARWIRE CORPORATION TO  
FURTHER NOTICE OF PROPOSED RULEMAKING**

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**COMMENTS OF CLEARWIRE CORPORATION TO  
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Clearwire Corporation (“Clearwire”), by its counsel, respectfully submits these comments in the above-captioned proceedings.<sup>1</sup> Clearwire’s comments are directed at certain parts of the *FNPRM* that address the structure and eligibility requirements for the Mobility Fund Phase II. Phase II of the Mobility Fund is intended to provide ongoing support for mobile broadband and high quality voice services. As explained below, in establishing rules for Phase

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<sup>1</sup> Further Notice of Proposed Rulemaking in WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No., 96-45, and WT Docket No. 10-208, FCC 11-161 (released Nov. 18, 2011) (“*FNPRM*”).

II, the Commission can best achieve its goal of maximum deployment of 3G or better wireless service by maximizing the ability of potential broadband providers to participate in the Fund.

**I. INTRODUCTION AND INTEREST IN THIS PROCEEDING**

Clearwire is one of the nation's leading providers of 4G wireless broadband network services, providing high-speed mobile Internet and residential access services, as well as residential voice services, in communities throughout the country. Clearwire operates open, Internet-Protocol ("IP") 4G wireless broadband networks in markets across the United States and Europe. These networks provide communities with high-speed residential and mobile Internet and interconnected voice over Internet protocol ("VoIP") services. Clearwire is the leader in WiMAX 4G, currently the leading 4G standard in the world and has announced plans to add "LTE Advanced," subject to additional funding, to enable Clearwire to further leverage its deep spectrum position. Clearwire's 4G network reaches 133 million people in the U.S. and covers over 70 of the top U.S. markets. Clearwire currently markets its 4G service through its own brand called CLEAR® as well as through its 4G wholesale relationships with, among others, Sprint Nextel Corporation.

Clearwire provides its services over owned and leased BRS and EBS licenses, and by relying on its self-provisioned microwave wireless backhaul network. Clearwire's deep spectrum resources and all-IP network permit it to maintain a retail business while also serving as a wholesale platform for wireless carriers seeking 4G solutions in an environment of scarce spectrum resources. Clearwire current serves more than 1.3 million retail subscribers and more than 8 million wholesale subscribers, including all of Sprint's 4G customers.

In many instances, Clearwire's network may be adjacent to currently unserved areas and, consequently, its network may offer the best opportunity to extend 4G services into

those areas either by Clearwire directly or through Clearwire's support of a wholesale partner. In order to maximize these opportunities to extend 4G service coverage to unserved areas, the Mobility Fund Phase II rules should permit, to the maximum extent possible, Clearwire and its wholesale customers to qualify for or provide support for participation in the Fund.

**II. RECIPIENTS OF PHASE II MOBILITY FUND SUPPORT SHOULD BE ALLOWED TO PARTNER WITH OTHER PROVIDERS TO FULFILL THE PUBLIC INTEREST OBLIGATIONS**

The *FNPRM* seeks comment on whether and to what extent recipients of Mobility Fund Phase II support should be permitted to partner with other providers to fulfill the public interest obligations associated with Phase II.<sup>2</sup> Clearwire supports a rule that provides flexibility for recipients of Phase II support to enter into the same range of partnerships available in the market for unsupported services. So long as a recipient can satisfy Section 214's facilities requirement for at least one service, the ETC that receives Phase II Mobility Fund support should have the flexibility to enter into other arrangements to partner with an existing provider, including non-ETC wholesale providers, to provide the supported services. These arrangements could range from joint ventures and joint bids to traditional wholesale service and spectrum leasing arrangements. Permitting such partnerships directly advances the Commission's goal of maximizing the coverage of mobile broadband services that are supported by the Mobility Fund.<sup>3</sup>

Permitting partnerships and wholesale arrangements is consistent with Section 254 and the Commission's rules implementing other support programs. Section 254(e) of the Communications Act of 1934, as amended, (the "Act") provides that "only an eligible telecommunications carrier [ETC] designated under section 214(e) shall be eligible to receive

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<sup>2</sup> *FNPRM* ¶ 1137. The specific public interest obligations are expected to be established in this proceeding.

<sup>3</sup> *FNPRM* ¶ 1136.

specific Federal universal service support.”<sup>4</sup> An ETC under section 214(e) of the Act must “offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier).”<sup>5</sup> The Commission has long interpreted the “own facilities” requirement to permit a carrier to offer at least one supported service using its own facilities and to supplement that service with wholesale services.

Consistent with Section 214, the Commission may permit ETCs to fulfill the Mobility Fund public interest obligations through a combination of the provider’s own facilities and wholesale services. For Mobility Fund purposes, the Commission should define the term “own facilities” in section 214(e)(1)(A) to include broadband facilities that are used in offering broadband service but not directly owned by the ETC. Such broadband facilities may be controlled by a separate affiliated company under common ownership with the ETC, or the ETC may enter into arrangements to partner, for example, with a non-ETC wholesale vendor to provide in the ETC’s service area part of the supported broadband services. This approach allows the statutory obligation to be met by giving the ETC maximum flexibility to partner with a non-ETC to provide part of the supported services.

This approach would be consistent with one that the Commission has taken elsewhere with respect to awarding universal service support in served areas. Moreover, such arrangements are commonly used to offer mobile broadband services in areas where no universal service support is necessary. Many wireless operators use their own facilities to provide traditional voice services and 3G services, for example, but rely upon wholesale offerings to

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<sup>4</sup> 47 U.S.C. § 254(e).

<sup>5</sup> 47 U.S.C. § 214(e)(1)(A).

provide 4G service to their customers. For example, Clearwire has leveraged its deep spectrum resources to offer this type of wholesale, and it has more than 8 million subscribers through its wholesale partners.

If an ETC were to be limited to seeking support only in unserved areas where it can build its own 4G network, it is likely that a substantial number of unserved areas will continue to be unserved. These areas, by definition, are areas where carriers to date have determined that providing service through facilities constructed without support is unsustainable. It therefore is imperative that the Commission adopt an approach that provides maximum flexibility to enable unserved areas to become connected. Permitting recipients of support to provide the supported services through wholesale and other partnerships will increase the pool of potential participants, which will maximize coverage areas and will drive down the costs of providing support in unserved areas. Permitting ETCs to establish a wholesale partnership for broadband services would allow ETCs to consider wireless solutions without requiring them to directly hold wireless licenses. In addition, wireless wholesale arrangements represent an efficient and effective use of scarce spectrum resources and may offer ETCs a cost-effective alternative to fiber or cable, thus promoting the FCC's goal of providing robust broadband solutions for unserved areas at the lowest cost.

**III. PROCEDURES SHOULD BE ESTABLISHED TO ENABLE UNCLASSIFIED BROADBAND PROVIDERS TO PARTICIPATE IN AUCTIONS ON A COMPETITIVELY NEUTRAL BASIS AND TO BE DESIGNATED AS ETCs ON A NATIONWIDE BASIS**

The *FNPRM* seeks comment on a number of issues addressing how the Phase II Mobility Fund should be structured. In considering these issues, the Commission must recognize that mobile broadband services today are provided by a number of providers, many of whom are

not traditional telephone service providers. Because mobile broadband services are information services, an entity need not be a telecommunications carrier in order to provide broadband services. Indeed, the pool of potential mobile broadband providers is much larger than the traditional CMRS carriers, and includes stand alone 4G providers (such as Clearwire), cable companies, satellite providers and other providers of unclassified services. In order to maximize the effectiveness of the reverse auction, the Commission's rules must be open equally to these unclassified broadband providers. The Commission should take care to ensure that its eligibility requirements and its auction procedures do not inadvertently favor traditional CMRS providers and thus limit the pool of potential participants.

In fact, the Commission should highly encourage participation by a class of providers that may be the most capable of overcoming the obstacles to service in unserved areas. In many instances, unclassified wholesale broadband providers may be in the best position to provide service in such non-traditional, unserved areas. The Commission therefore should carefully review the eligibility requirements for ETC designation to ensure that they do not preclude an unclassified broadband provider from participating in the Fund. For example, unclassified broadband providers should be given great flexibility to meet the requirement that they provide voice telephony services, including by making available "over the top" VoIP to end users of its broadband services.

The Commission also seeks comment on the Commission's authority to designate providers as ETCs pursuant to section 214(e)(6).<sup>6</sup> To facilitate the provision of Phase II Mobility fund support for mobile broadband services in unserved areas, Clearwire urges the Commission to establish procedures that will ensure the ETC designation process does not become a barrier to

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<sup>6</sup> *FNPRM* ¶ 1235.

entry for unclassified providers that are interested in providing mobile broadband services in unserved areas throughout the country. To that end, Clearwire supports the proposal that the Commission designate unclassified mobile broadband providers as ETCs on a nationwide basis.

Section 214(e)(6) authorizes the FCC to designate on a nationwide basis providers not subject to the jurisdiction of a state commission.<sup>7</sup> Because mobile broadband services are inherently interstate, the Commission has the authority to establish a uniform nationwide certification process for this class of carriers. By using this authority, the Commission would streamline the certification process, thereby lowering barriers for unclassified broadband providers to expand services to the unserved areas.

Further, Clearwire urges the Commission not to replicate its Phase I ETC designation requirement in Phase II. An entity seeking to bid on an unserved area should not be required to already have ETC designation before the auction. Instead, in order to qualify to participate in an auction, a provider should have to demonstrate that it intends to seek ETC designation if awarded support in an area. If the provider wins a bid for support, the grant of ETC designation should be a condition to receipt of any support from the Mobility Fund.

By staging the ETC approval requirement in this order, the Commission would promote participation in the auction process by as many potential providers as possible, including more recent market entrants like Clearwire that offer state-of-the-art advanced networks. Those providers would benefit the process by increasing the pool of potential participants, expanding the service areas subject to potential bid and driving down the cost of serving particular areas.

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<sup>7</sup> 47 U.S.C. § 214(e)(6).

Moreover, staging the approval in this order would recognize that the ETC designation process is costly and time consuming for both the applicant and for the FCC. These costs and time constraints would act as a barrier to entry by otherwise qualified potential providers, and therefore likely would suppress the number of potential participants in the Phase II auction. However, this barrier can be avoided by requiring that ETC designation be obtained as part of the long-form application process after the auction winners are determined.

#### IV. CONCLUSION

For the foregoing reasons, Clearwire urges the Commission to adopt the proposals presented herein in connection with any rules and procedures that apply to Mobility Fund Phase II support.

Respectfully submitted,

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