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 Line-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

To: The Commission

COMMENTS OF
THE BLOOSTON RURAL CARRIERS

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Executive Summary

The Blooston Rural Carriers respectfully submit the following comments for the Commission to reconsider regarding the Mobility Fund Phase II Rules:

First, the Commission should restrict the ability of Tier One carriers to participate in Phase II of the Mobility Fund. USF funds are still limited, and the Mobility Fund rules must recognize that no Tier One carrier requires financial assistance in order to complete its buildout. Further, the Commission should preserve the benefits of the voluntary phase-down commitments made by Verizon Wireless and Sprint in exchange for valuable merger concessions.

Second, the Commission should avoid the reverse auction procedures proposed in Phase II. A reverse auction will create a "race to the bottom" that will not serve the public interest. Construction and equipment quality short-cuts and other gaming strategies can result in deceptively low "winning bids" and are likely to require larger disbursements of high-cost support in the long term to replace inferior facilities. Further, the Commission's proposed reverse auction proceedings unduly and unreasonably favor large carriers that do not need the funds to expand service. Instead of reverse auctions, the Commission should instead let carriers qualify on the basis of qualitative factors including their prudently determined costs to serve (which should not be dependent on hypothetical cost models).

In the event that the Commission nonetheless chooses reverse auctions, a mechanism must be implemented that assures that a significant portion of the Mobility Fund goes to the small rural wireless carriers that have a clear and demonstrated record of service to rural areas or that have focused their spectrum acquisitions upon sparsely populated and low profit rural areas that have long been underserved or unserved. The Commission must adequately address concerns already raised in this proceeding that the 'lowest per-unit bids across all areas' procedure unduly and inequitably favors large carriers when adopting its reverse auction framework. The history of spectrum auctions has shown that small and rural carriers were successful bidders only when adequate protections were implemented, including spectrum set-asides, substantial bid credits, and the restriction of license sizes.

Specifically, the Blooston Rural Carriers respectfully submit that the Commission should implement remedial measures to help ensure that a significant percentage of Mobility Fund dollars go to local businesses that have a significant stake in seeing that the needs of their citizens, communities and anchor institutions are met, including significant bidding credits to *bona fide* small businesses and reasonable restrictions on package bidding.

Third, the Commission should ensure that small, rural carriers are able to obtain affordable roaming rights on any carriers' network. That is, not only must the Commission ensure that Mobility Fund recipients make roaming available to others, as in Phase I, but also that recipients are able to obtain affordable roaming from others as well.

Fourth, the Commission should further require that service providers certify that they will not participate in exclusive arrangements for the design and/or procurement of handsets and other equipment as a condition of receiving Mobility Fund Phase II support. Small and rural carriers have made a substantial showing concerning the harms to competition and to rural consumers that have arisen from the preponderance of exclusivity arrangements for the most sought-after wireless devices.

Finally, the Blooston Rural Carriers make several observations regarding certain other proposals by the Commission. First, in order to be an effective bidding unit, "road miles" must not be limited to main interstate roadways, but instead must also include the secondary and tertiary roadways which comprise the bulk of rural roadways and on which the majority of fatal crashes occur. Second, letters of credit should not be required from rural telephone companies because most rural carriers are small businesses that simply do not have the resources or relationships with major banks that would enable them to obtain the Commission's model LOC. Third, the American Roamer database, while helpful for business planning purposes, is not currently accurate enough to meet the Commission's needs without additional standards.

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The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its clients listed in Attachment A (the "Blooston Rural Carriers"), hereby submits these comments concerning the Mobility Fund Phase II proposal contained in the Commission's *Report and Order and Further Notice of Rulemaking*, FCC 11-161, released November 18, 2011

("*FNPRM*"),[1] in the captioned proceeding. The Blooston Rural Carriers ask the Commission to award Mobility Fund Phase II support via a more appropriate means than a reverse auction mechanism because, as described below, reverse auctions will likely hinder the ability of small, rural carriers to extend wireless services to remote regions within their service areas. The Blooston Rural Carriers also provide their views on other matters raised in the *FNPRM*.

I. Statement of Interest

The Blooston Rural Carriers are providers or resellers of wireless telecommunications and information services over licensed and/or unlicensed frequency bands, or are planning to commence the provision of licensed or unlicensed wireless services within the foreseeable future. Many are wireless divisions or affiliates of rural telephone companies, but are participating in this proceeding on behalf of their existing or prospective wireless operations. The Blooston Rural Carriers participated in the proceedings below by filing comments on December 16, 2010[2] in the Commission's Mobility Fund Notice of Proposed Rule Making in WT Docket No. 10-208.[3] They have also filed a December 29, 2011 Petition for Partial Reconsideration concerning certain aspects of the Phase I Mobility Fund Rules. As described below, most of the Blooston Rural Carriers' concerns with respect to the Mobility Fund Phase I rules apply to the Commission's proposal for Mobility Fund Phase II procedures.

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[1] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Reform – Mobility Fund;* Report and Order and Further Notice of Proposed Rulemaking, WC Dockets No. 10-90, 07-135, 05-337, 03-109; CC Dockets No. 01-92, 96-45; GN Docket No. 09-51; WT Docket No. 10-208, released November 18, 2011 (hereinafter referred to as the *FNPRM* with regard to Mobility Fund Phase II matters, and "*Order*" with regard to Mobility Fund Phase I matters).

[2] Comments of the Blooston Rural Carriers, WT Docket No. 10-208, filed December 16, 2010 ("Blooston Mobility Comments").

[3] *In the Matter of Universal Service Reform – Mobility Fund*, Notice of Proposed Rulemaking, WT Docket No. 10-208, released October 14, 2010. ("Mobility Fund NPRM").

II. The Commission Should Restrict Tier One Carriers' Participation in Mobility Fund Phase II Support.

In paragraph 1140 of the *FNPRM*, the Commission asks for suggestions on eligibility requirements for the award of Phase II support, and for "comment on the ways the Commission can encourage participation by the widest possible range of qualified parties." It is respectfully submitted that one way for the Commission to accomplish the goal of universal service with respect to Phase II support is to restrict the participation of Tier One[4] carriers in Phase II of the Mobility Fund.

Simply put, the Mobility Fund rules must recognize that no Tier One carrier actually requires financial assistance in order to complete its buildout. The Commission stated outright that the purpose of the Mobility Fund is to provide federal funding to promote mobile broadband in areas "where a private sector business cannot be met without federal support."[5] As the Blooston Rural Carriers have pointed out, AT&T had net income of $19.864 billion in 2010 and $12.138 billion in 2009, and a loss of $2.625 billion in 2008 (or an average annual net income of $9.792 billion during the three-year period).[6] Its closest competitor, Verizon, had net income of $10.217 billion in 2010 and $11.601 billion in 2009, and $3.962 billion in 2008 (or an average annual net income of $8.593 billion during the three-year period).[7] The recent annual profits of either AT&T or Verizon could fund the entire proposed $4.5 billion annual high-cost program budget with room to spare (in fact, AT&T could take a complete second lap). The Commission

[4] "Tier One" here refers to the four giant carriers: AT&T, Sprint, T-Mobile, and Verizon.
[5] *Order* at ¶494.
[6] AT&T Inc. 2010 Annual Report, Consolidated Statements of Income, p. 59.
[7] Verizon Communications 2010 Annual Report, Consolidated Statements of Income – As Adjusted, p. 42.

should not give megacarriers substantial new CAF and Mobility Fund support (as well as major access and reciprocal compensation savings) without any reference to their earnings.

Furthermore, the Commission should not allow carriers which have voluntarily committed to phase down support to participate in Phase II of the Mobility Fund. In the *Order*, the Commission stated that it would not bar any party from seeking Mobility Fund Phase I support based solely on the party's past decision to relinquish Universal Service Funds provided on another basis, with specific reference to the relinquishment of support by Verizon Wireless and Sprint in exchange for valuable merger concessions.[8] The Blooston Rural Carriers have asked for reconsideration of this decision, and propose the same restriction be extended in Phase II.

The Commission expressly conditioned recent mega-mergers by both Verizon and Sprint on a phase-down of USF support over a five year period, finding that such a phase-down was unequivocally in the public interest.[9] The Blooston Rural Carriers maintain that nothing has substantially changed. As mentioned above, Verizon's net income has practically tripled (from $3.9 billion in 2008 to $10.2 billion in 2010 and $11.6 billion in 2011) despite the phase down conditions, and Verizon Wireless remains one of the largest wireless providers in the country (rivaled only by AT&T).[10] And, were it not for the Commission's conditioning the merger upon

[8] *Order* at ¶408.

[9] *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008) (*Verizon Wireless Merger Order*); *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570 (2008) (*Sprint Merger Order*).

[10] Verizon Wireless boasts 107.7 million connections, *see* http://aboutus.verizonwireless.com/ataglance.html; AT&T boasts approximately 97 million, *see* http://www.att.com/Investor/Financial/Earning_Info/docs/1Q_11_slide_c.pdf; Sprint is the next closes with some 51 million, *see Sprint Nextel First Quarter 2011 Results*, available at http://phx.corporate-

a phase-down of USF receipts, it stands to reason that the merged entity would have remained the largest recipient of high cost funding, as well.

Throughout the *Order*, the Commission has repeatedly warned of the tight funding limits under which it seeks to accomplish its goal of extending wireless services under the Mobility Fund.[11] The Commission accepted the USF phase-downs proposed by Verizon and Sprint in order to alleviate such cost limitation pressures.[12] Yet, the *Order* would undo any benefits reaped from the withdrawal of Tier One giants like Verizon and Sprint if these companies are allowed to simply re-apply for funding before they have even finished the phase-out conditions on the lucrative mergers they have been allowed to complete. And the same will be true if Tier One carriers are allowed to obtain Mobility Fund Phase II support. The Commission should prevent this form of "corporate welfare" in either phase of the Mobility Fund. Nationwide carriers are able to spread their costs over millions of customers, and garner the advantage of volume discounts and exclusive equipment arrangements.

Therefore, the Blooston Rural Carriers respectfully submit that in order for the Commission to accomplish its goals of directing funding only to areas for which a private-sector business case cannot be made, it must preclude Verizon and Sprint from seeking Mobility Fund support; and a strong case can be made that the Commission should substantially restrict the receipt of funding by AT&T, whose net income clearly shows federal support is unnecessary, even if it is not subject to a phase-down of USF currently.

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ir.net/External.File?item=UGFyZW50SUQ9Mzk1MDg5M3xDaGlsZElEPTQyNDA2OHxUeXBlPTI=&t=1 (Websites last visited December 28, 2011).

[11] *See, e.g., Order* at ¶¶ 321, 323, and 337.

[12] *See Sprint Merger Order*, *supra* at ¶108; *Verizon Wireless Merger Order*, *supra* at ¶196; *Statement of Chairman Martin* ("The offers made by the carriers here provide certainty for the carriers, while reducing the pressure on the fund over time").

III. Reverse Auction Procedures Will Create a "Race to the Bottom" That Will Not Serve the Public Interest.

As with Phase I, the Commission proposes reverse auctions to award Phase II support.[13] The Commission's assumptions, however, are not adequately supported by the record. As discussed below, numerous commenters, the Blooston Rural Carriers among them, have pointed out a number of pitfalls involved in the reverse auction process.

As the Blooston Rural Carriers have noted, reverse auctions are susceptible to a number of shortcomings that ultimately undermine the Commission's intention of extending coverage to unserved areas in the most economic way possible.[14] The Blooston Rural Carriers remain concerned that construction and equipment quality short-cuts and other gaming strategies can result in deceptively low "winning bids" and are likely to require larger disbursements of high-cost support in the long term to replace inferior facilities.[15] Other commenters added to the list of concerns, pointing out that reverse auction proceedings are also susceptible to anti-competitive bidding practices by large carriers that do not need the funds to expand service.[16] These considerations must shape the Phase II rules.

Any funding distribution method requires clear and enforceable standards. However, it is respectfully submitted such measures are not enough in this case. Rather, the only way to effectively encourage high-quality expansion into unserved areas is to ensure that funding is directed to carriers that have a legitimate interest in building and maintaining high-quality service in these areas. Rural carriers have served the areas that the large carriers have ignored for

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[13] *FNPRM* at para. 1122.
[14] Blooston Mobility Comments at 2-3.
[15] *Id.* at 3.
[16] *See* Comments of the Rural Cellular Association, WT Docket No. 10-208, filed December 16, 2010, at 11.

decades, and have a continuing and vested interest to do so through strong ties to the communities they serve.

Instead of reverse auctions, the Commission should choose a method of distributing funds that takes into account an equitable comparison and evaluation of the differing cost and service characteristics of different technologies, rights of creditors and repayments of outstanding loans, local presence and proposals to increase local jobs,[17] as well as past performance and experience providing service in the kinds of areas that generally remain unserved. It is important to take into account more factors than simply which entity can claim to do the job for the least amount of money. The Commission should instead let carriers qualify on the basis of qualitative factors including their prudently determined costs to serve (which should not be dependent on hypothetical cost models).[18]

The *FNPRM* explores a qualitative approach at paragraph 1185, in the context of discussing use of an economic model approach as an alternative to reverse auctions. In particular, the Commission stated:

> In contrast to competitive bidding, we note the model-based approach does not include a mechanism for selecting among multiple parties that might be interested in receiving the support offered. We seek comment on how we should address this issue. Should we determine the party that receives support through a qualitative review of would-be providers? If so, what factors should that review take into account? Should we reserve support for a particular area to the provider currently receiving universal service support that has the most extensive network within a defined area?

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[17] *See, e.g.,* Blooston Mobility Comments at 2.

[18] The Blooston Rural Carriers also pointed out that Broadband Technology Opportunities Program (BTOP) grants and Broadband Initiatives Program (BIP) grant/loans appear to have been distributed equitably to a varied group of large, mid-sized and small entities, and suggested that these programs were successful largely because NTIA and RUS had selected projects on the basis of qualitative factors such as project purpose, benefits, viability, budget and sustainability. Other commenters suggested that qualitative factors should play a more significant role in making sure the Mobility Fund serves its intended purpose. *See, e.g.*, Comments of Rural Telecommunications Group at 8-10.

The Blooston Rural Carriers support an approach that awards Phase II funds based on qualitative factors. Such factors should be aimed at accomplishing the overall purpose of the Universal Service Fund, and the goal of the Mobility Fund to establish mobile services to areas where there is no private sector business case for doing so. Appropriate qualitative factors would include:

- Whether the applicant is a rural telephone company as defined by the Act, and is certificated to serve the proposed area or adjacent areas (and thus has a demonstrated interest in serving the proposed area).
- Whether the applicant is a rural telecommunications cooperative that has members living or working in the proposed area of service.
- Whether the applicant has a local presence in the area, has a demonstrated interest in serving the area, and/or proposes to hire people who reside or will reside in the local area.
- Whether the applicant has demonstrated experience in providing service to rural areas.
- Whether the applicant has provided a showing that its prudently determined costs of constructing and operating the proposed wireless system are such that a private sector business case does not exist for the service.
- The population density of the proposed service area.
- Terrain factors that substantially increase the cost of providing service.
- Whether applicant can efficiently provide both fixed and mobile broadband over the same system, using existing infrastructure for backhaul and other network elements.

While the Blooston Rural Carriers support a qualitative factor evaluation as suggested by paragraph 1185, they have concerns that the economic model approach suggested by certain commenters could create subsidies for large carriers that do not need such support, since they have the resources to complete their buildout without USF, and have a huge customer base over which to spread the cost of the buildout. Several larger carriers were granted USF under the identical support rule, and in the experience of the Blooston Rural Carriers many of these projects covered the interstate highways but little in the way of genuine rural communities.

IV. If Reverse Auctions are Held, a Mechanism Must be Used that Assures that a Significant Portion of Phase II Support Goes to the Small Rural Wireless Carriers that Already Serve or Hold Spectrum to Serve their Sparsely-Populated Service Areas.

In the event that the Commission adopts its proposal to employ reverse auctions, a mechanism must be implemented that assures that a significant portion of Mobility Fund Phase II support goes to the small rural wireless carriers that already serve or hold spectrum to serve the sparsely populated areas found to be unprofitable by the nationwide carriers, particularly those areas that are in or adjacent to the rural carriers' certificated telephone service area.

In the *Mobility Fund NPRM*, the Commission sought comment on whether it should impose any other eligibility requirements on entities seeking to receive support from the Mobility Fund, including whether there are any steps it should take to encourage smaller eligible parties to participate in the Mobility Fund.[19] In response, the Blooston Rural Carriers urged that Mobility Fund procedures give rural telephone companies and other small businesses "a fair and equitable opportunity to receive support, and not employ the proposed 'lowest per-unit bids across all areas' procedure that unduly and inequitably favors large carriers."[20] Similar sentiments were echoed by a number of others in their comments and reply comments.[21] The Blooston Rural Carriers repeat these concerns with respect to the Commission's Phase II proposal.

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[19] Mobility Fund NPRM at ¶55.

[20] *See* Blooston Mobility Comments at 2-3 and 5-8.

[21] *See, e.g.,* Comments of the Joint Center for Political and Economic Studies, WT Docket No. 10-208, filed December 16, 2010, at 4-5; Comments of Rural Cellular Association, WT Docket NO. 10-208, filed December 16, 2010, at 5-6, 9; Comments of Rural Telecommunications Group at 7-8 and 10-14; Comments of Mid-Rivers Communications, WT Docket No. 10-208, filed December 16, 2010, at 6.

The history of spectrum auctions has shown that small and rural carriers were successful bidders only when adequate protections were implemented, including spectrum set-asides, substantial bid credits, and the restriction of license sizes. Even with these measures, the Commission's license records reflect that the larger carriers have dominated the auctions. Without such measures, small carriers would have had no realistic chance at the small measure of success they have been able to achieve. The same can be expected in Mobility Fund reverse auctions. Remedial measures would be consistent with the intent of Section 309(j)(3) of the Communications Act, which requires Commission spectrum auctions to be designed and conducted, *inter alia*, in a manner to 'promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a variety of applicants, including small businesses [and] rural telephone companies.."[22]

The Commission should therefore take meaningful and concrete steps to ensure an opportunity for rural telephone companies to obtain Phase II support. These remedial measures should include, at a minimum, bid credits and limits on package bidding. Each of these measures is discussed below.

A. The Mobility Fund Should Provide Bidding Credits for Rural Carriers and Small Businesses.

At paragraph 1157 of the *FNPRM*, the Commission seeks comment on whether small businesses should be eligible for a bidding preference in a Phase II auction. As described above, the Blooston Rural Carriers are opposed to the use of reverse auctions to award Phase II support. However, as mentioned above, if the Commission chooses nonetheless to use reverse auctions

[22] Blooston Mobility Comments at 4-5.

then measures such as bid credits would be vital to ensure that small and rural carriers have a realistic chance at securing support for mobile services in their rural communities.

In particular, the Commission should establish bidding credits specifically for small businesses, and any entities that qualify as "rural telephone companies" under Section 51.5 of the Commission's Rules.[23] While most rural telephone companies qualify as small businesses, some have surpassed the Commission's usual measure of a "small business" by virtue of their successful introduction of advanced services to rural America; however, these carriers would still stand little chance in bidding against large regional and nationwide carriers.

In response to the questions concerning small business bid credits posed in the *FNPRM* at paragraph 1159-1160:

- The size of a small business bidding credit (which would act as a reduction of the bid in a reverse auction context) should be 25 percent for a small business, and 35 percent for a very small business or a rural telephone company as defined by Section 51.5 of the Commission's Rules. A rural telephone company that also qualifies as a small business should receive a 40 percent credit.
- A small business should be defined as having average gross revenues below $60 million over the three prior audited tax years, and a very small business should be defined as having average gross revenues below $25 million over the three prior audited tax years (i.e., consistent with the standards used in most spectrum auctions, but updated to reflect inflation and growth since those standards were adopted several years ago for the early spectrum auctions).
- If the Commission does not establish a separate credit for rural telephone companies, then in fashioning eligibility for small business bid credits, the Commission should not count against rural telephone companies revenues from joint rural service operations in which they hold a minority interest, such as cellular partnerships in which they are not the managing partner, or statewide fiber ring projects. Rural telephone companies participate in such projects because they bring advanced services to rural areas that no individual carrier can afford to construct; and in the case of cellular partnerships, many rural telephone companies ended up with tiny shares labeled as "general partnership" interests, even though the partnership is usually controlled by a dominant managing partner such as Verizon Wireless. Otherwise, the small business definition should be raised to $125 million as suggested

[23] *See, also,* 47 USC 153(44).

in the *FNPRM*.

B. Package Bidding

At paragraph 1156 of the FNPRM, the Commissions states:

> Here, we ask for any additional comments on the potential advantages and disadvantages of possible package bidding procedures and formats. In particular, we ask for input on the reasons why certain package bidding procedures would be helpful or harmful to providers bidding in an auction, and what procedures might best meet our goal of maximizing the benefits of Phase II support for consumers. For example, regardless of whether we adopt the Census Tract or Bidder-Defined approach, should we impose some limits on the size or composition of package bids, such as allowing flexible packages of blocks or larger geographic units as long as the geographic units are within the boundaries of a larger unit such as a county or a license area (*e.g.*, a CMA)?

The Blooston Rural Carriers respectfully submit that the Commission should restrict the use of package bidding, as the ability to accumulate census blocks into one large bid proposal will create an apples-to-oranges comparison that will heavily favor large carriers. If package bidding is to be allowed, it should be restricted to service area sizes that will allow rural carriers and other small businesses to realistically compete in the auction. The maximum package area should not exceed a Census Tract. This approach would allow small rural carriers to compete on an apples-to-apples basis.

V. The Commission Should Require Phase II Recipients to Provide Fair Roaming Terms.

Regardless of which method for awarding Phase II is chosen, the Commission should also implement safeguards to ensure fair participation by small businesses and rural carriers. Specifically, the roaming requirement discussed in the *Order*[24] must be made to flow in both directions, such that potential recipients of Mobility Fund Phase II support that are small or rural carriers are able to obtain roaming rights on other networks in order to compete. As rural carriers

[24] *Order* at ¶¶397-398.

have long pointed out, large carriers have little or no incentive to negotiate roaming with small rural carriers, despite the requirements of the Commission's rules.[25] As the Commission decided to go beyond its existing roaming rules to ensure Mobility Fund Phase I recipients would offer roaming, so should it go beyond the existing roaming rules to ensure they are able to receive it elsewhere, as well, whether Phase I or Phase II funding is involved.

Additionally, the Commission must ensure that roaming is affordable. Because the customers of a small carrier spend more time roaming on other networks than other networks' customers spend roaming on the small carrier's networks, it is possible for roaming costs under the current rules to mount rapidly. Therefore, the Blooston Rural Carriers also urge the Commission to take steps to ensure that roaming is affordable for the customers of small carriers. Otherwise, customers of many small and rural carriers will be precluded from roaming when they travel because they and their local carrier cannot afford the roaming charges.

VI. Exclusive Equipment Arrangements Should Not be Allowed for Mobility Fund Phase II Applicants.

In its Mobility Fund NPRM, the Commission proposed that recipients of Mobility Fund support would be subject to public interest obligations, including data roaming and collocation requirements.[26] The Blooston Rural Carriers suggested that the Commission should further require that service providers certify that they will not participate in exclusive arrangements for the design and/or procurement of handsets and other equipment as a condition of receiving Mobility Fund support.[27] However, the Commission failed to adopt this measure in its Mobility

[25] *See, e.g.*, Comments of North Dakota Network Company, WT Docket No. 05-265 (*filed* Nov. 18, 2005); Comments of the National Telephone Cooperative Association, WT Docket No. 05-265 (*filed* Nov. 28, 2005); Comments of the Blooston Rural Carriers, WT Docket No. 05-265 (*filed* June 14, 2010).
[26] *See Mobility Fund NPRM* at ¶36.
[27] *See* Blooston Mobility Comments at 8-9.

Fund Phase I rules, and it never discussed why imposing a limitation on handset exclusivity arrangements upon Mobility Fund recipients would not be in the public interest.

Small and rural carriers have made a substantial showing concerning the harms to competition and to rural consumers that have arisen from the preponderance of exclusivity arrangements for the most sought-after wireless devices.[28] It is well established that these arrangements impair the service and competitive options of smaller carriers, deprive the customers of such smaller carriers of roaming capabilities and service features, and increase the cost of the mobile broadband services and equipment available to customers of smaller carriers.[29] The Blooston Rural Carriers repeat the request made in their Petition for Partial Reconsideration that Mobility Fund applicants for Phase I or Phase II support, be required to certify that they do not and will not participate in exclusive equipment arrangements.

VII. Other Questions Posed By the *FNPRM*.

The Blooston Rural Carriers also provide the following comments regarding the Commission's proposals on the use of road miles as the unit for bidding, the default payment/letter of credit mechanism for ensuring carriers meet their obligations, and the use of American Roamer data in defining areas eligible for funding.

A. Use of Road Miles as the Unit for Bidding

At paragraph 1134 of the *FNPRM*, the Commissions proposes to base the number of bidding units and the corresponding coverage requirement for Phase II applicants on the number

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[28] *See* Rural Cellular Association Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, RM-11497, (*filed* May 20, 2008); Comments of Blooston Rural Carriers, RM-11497, (*filed* Feb 2, 2009).

[29] *Id*.

of road miles in each eligible geographic area, as was done with respect to Phase I reverse auctions.

> Because bidders are likely to take potential roaming and subscriber revenues into account when deciding where to bid for support under Phase II, we expect that support will tend to be disbursed to areas where there is greater traffic. We seek comment, however, on the use of other units for bidding and coverage – such as population and workplaces – instead of or in combination with road miles.

The Blooston Rural Carriers are concerned that the use of road miles as the measure of a successful bid will favor large carriers proposing to cover highways, rather than small carriers trying to provide wireless to the truly remote areas that cannot otherwise be served without the benefit of Federal funding – i.e., the stated purpose of the Mobility Fund.

At a minimum, the Commission must ensure that the definition of "road miles" is not limited to interstate highway miles, but instead includes tertiary roads, such as rural-area "arterial" roadways (roads that supplement the interstate system) and "local" roads such as those that connect farms to towns or provide access to remotely located plants and infrastructure (including the "Section roads" maintained by County or township governments to connect farms and ranches, even if these roads are gravel). It is important that all such rural roads receive advanced mobile coverage: "There are more miles of rural roads than any other type of roadway in the U.S. transportation network, and it is on rural roads where the majority of fatal crashes—about 60 percent—occur."[30] Rural roads account for 80 percent of the total U.S. road mileage, but only 40 percent of travel occurs on them. Despite this, they are the site of more crash fatalities; in 2001, 61 percent of all traffic fatalities, but only 39 percent of the vehicle miles

[30] Traffic Safety Center, "The Complexity of Rural Roads", Volume 2, No. 2, Summer 2004 (available at http://www.tsc.berkely.edu/newsletter/Summer04).

traveled. This can be attributed to a number of factors, including increased speeding, less access to emergency services, and worse road maintenance.[31]

Thus, the Blooston Rural Carriers disagree with the Commission's conjecture at paragraph 1134 of the *FNPRM* that "we expect that support will tend to be disbursed to areas where there is greater traffic." If the Commission is to fulfill the public interest goals of enhancing safety and providing Phase II support where there is the greatest need, it will include tertiary roads in rural areas, where the risk of crashes is higher and access to emergency services is reduced. Such tertiary roads are more likely to suffer from poor maintenance and less government supervision, and thus be subject to higher accident rates, than the Interstate highways. For this reason, a Phase II applicant should receive "triple credit" for each mile of tertiary roads that it proposes to serve in a rural area, as compared to an interstate highway.

Moreover, the Blooston Rural Carriers support the use of other units for bidding and coverage – such as population and workplaces – instead of or in combination with road miles. In keeping with the objective to award funding to areas that need mobile coverage but cannot support a private sector business case, applicants should be able to rely on low population density and difficult terrain as factors justifying a Phase II award.

B. Default Payments

At paragraph 1164 of the *FNPRM*, the Commissions states:

> In addition, we propose that a winning bidder for Phase II support will be subject to the same auction default payment adopted for winning bidders of Phase I support, if it defaults on its bid, including if it withdraws a bid after the close of the auction, fails to timely file a long form application, is found ineligible or unqualified to be a recipient of Phase II support, or its long-form application is

[31] Institute of Traffic Studies (available at http://www.tsc.berkely.edu/research/ruralroads.html.

> dismissed for any reason after the close of the auction. In addition, we propose that a recipient of Phase II support will be subject to the same performance default payment adopted for recipients of Phase I support. We seek comment on these proposals.

The Blooston Rural Carriers respectfully submit that the irrevocable line of credit (LOC)/default payment requirements adopted in the Mobility Fund Phase I Rules are onerous and unnecessary, especially when applied to established rural telephone companies that have stellar track records complying with USF rules over a period of years. The LOC/default mechanism should not be applied to rural carriers in general, and should not be used for Phase II compliance. These new accountability remedies are so onerous and expensive that they will impair the ability of existing rural carriers and other small businesses to obtain support for their investments and operations.

Most RLECs are small businesses that do not have the financial resources or the established relationships with major banks that would enable them to obtain the Commission's model LOC. The primary lender for the many rural wireline and wireless carriers is the Rural Utilities Service ("RUS"), which does not appear to have any statutory authority or interest in providing LOCs to Phase I or Phase II Mobility Fund bidders or winners. Likewise, neither the Rural Telecommunications Finance Cooperative ("RTFC"), nor CoBank nor small local banks are likely to have any interest in furnishing LOCs for substantial sums that could be drawn upon by the Commission and that may not be secured by any new collateral. In sum, most rural wireless carriers and other small businesses will not be able to obtain the LOCs contemplated by the Commission from any of the institutions with which they have established financial relationships, and could thereby be effectively excluded from Mobility Fund reverse auctions if such LOCs are a required condition of participation.

C. Use of American Roamer Data in Defining Eligible Areas

The Commission proposes to rely on coverage information from American Roamer Data to help define whether an area has 3G or better coverage, and is therefore ineligible for Phase II support. It is respectfully submitted that American Roamer Data's information database, while helpful for business planning, is not currently accurate enough to be used for the Commission's purposes. At a minimum, standards should be placed on American Roamer Data to requiring a more reliable showing that claimed coverage is in fact accurate, and that the purported service can support the 3G data speeds required in the *Order* for mobile broadband. In addition, the Commission must implement a mechanism to allow rural carriers and others to challenge claims of coverage where there are reliable indicia that the claims are overstated.

VIII. Conclusion

The Blooston Rural Carriers appreciate the Commission's effort to fashion the Mobility Fund as a means of directing support to the remote areas that still lack advanced wireless services. Based on the foregoing, it is respectfully requested that the Commission adopt Mobility Fund Phase II rules that address the issues raised herein.

Respectfully submitted,

BLOOSTON RURAL CARRIERS

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Attachment A

The Blooston Rural Carriers

Buggs Island Telephone Cooperative

Butler-Bremer Communications

Communications 1 Network, Inc.

Custer Telephone Cooperative, Inc.

KTC AWS LLC

Louisiana Cellular, Inc.

MAC Wireless, LLC

Midstate Communications, Inc.

NNTC Wireless, Inc.

Northeast Louisiana Telephone Company, Inc.

Peñasco Valley Telephone Cooperative, Inc.

Public Service Wireless, Inc.

Sagebrush Cellular, Inc.

Smithville Telecom, LLC

Strata Networks

United Wireless Communications, Inc.

Walnut Telephone Company, Inc.

Wapsi Wireless, LLC

WUE, Inc.