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. 96-45
Lifeline and Link-Up	WC Docket No. 03-109
Universal Service Reform – Mobility Fund	WT Docket No. 10-208

OPPOSITION OF CORAL WIRELESS D/B/A MOBI PCS TO T-MOBILE USA, INC.'S PETITION FOR RECONSIDERATION OR CLARIFICATION

Coral Wireless d/b/a Mobi PCS ("Mobi") respectfully submits this Opposition to the Petition for Reconsideration or Clarification (the "Petition")[1] filed by T-Mobile USA, Inc. ("T-Mobile") in response to the Federal Communications Commission's ("FCC" or "Commission") Report and Order and Further Notice of Proposed Rulemaking released by the FCC on November 18, 2011. *Connect America Fund*, WC Docket No. 10-90, *Report & Order & FNPRM*, FCC 11-161 (rel. Nov. 18, 2011) (the "*Order*"). Mobi respectfully urges the FCC to reject T-Mobile's Petition, as the changes sought by T-Mobile would result in wasteful spending that runs contrary to the rationale of the Order, could result in stranded plant and wasted investment, and threatens to increase the size of the high-cost fund without benefit to consumers.

[1] T-Mobile USA, Inc. Petition for Reconsideration or Clarification, *Connect America Fund*, WC Docket No. 10-90 (filed Dec. 29, 2011).

I. Newly-Designated ETCs and Carriers With ETC Designations Pending Are Not Entitled to High-Cost Support

In the *Order*, the FCC sought to "to control costs and improve accountability" in the high-cost program by establishing a budget for the program of no more than $4.5 billion. *Id.*,¶¶ 123- 125. Of that budget, the FCC has designated $500 million for a Mobility Fund, of which up to $100 million is reserved for funding wireless networks in Tribal lands. *Id.*, ¶ 126. To transition to this new program, the FCC established a five-year transition period "in order to avoid shocks to service providers that may result in service disruptions for customers." *Id.*, ¶ 513. Importantly, the transition period was not intended to provide a means by which newly-designated ETCs could begin participating in the high-cost program, but rather to permit both existing ETCs and their customers a smooth transition into the new regime. As such, there is no basis for providing transitional support to newly-designated ETCs if those ETCs were not receiving support prior to the *Order*.

Despite the rationale behind the transition period, in its Petition, T-Mobile seeks to obtain for itself and other newly-designated ETCs "transitional support" in states where these carriers were designated as an ETC in 2011 or later, despite the fact that these carriers have not historically received high-cost support in those states. Specifically, T-Mobile proposes that

> [C]arriers with ETC designation applications for high-cost USF support that were pending prior to adoption of the [Order] and ultimately granted [an ETC designation] too late to receive support for 2012 should receive monthly support keyed to the average monthly high-cost support they would have received in 2011, "absent reform," if they had been designated ETCs and received support for 2011 under the prior rules.

Petition at 8. T-Mobile's Petition claims that such support is necessary despite the fact that the affected competitive ETCs have not received such support in the past and have not necessarily made the infrastructure commitments necessary to justify the support. In fact, such support will be, at best, unnecessary and at worst wasteful, resulting in stranded plant paid for by the consumers that contribute to the Universal Service Fund.

T-Mobile's Petition relies upon a twisted understanding of the manner in which competitive ETCs have received and used high-cost support in the past. Historically, competitive ETCs have received high-cost support based on the amount of per-line support the incumbent received in the study area that the competitive ETC served and on the number of customers served in that study area (*i.e.*, the identical support rule).[2] The rationale for this was that, because an ETC was required to make the uneconomic decision to serve all customers within the study area, regardless of the customer's location within that area, universal service support was necessary to make the build out and maintenance of the ETC's service an economically sustainable proposition. As part of their ETC obligations, carriers were required to provide five-year plans showing how high-cost universal service support would be used to improve its coverage, service quality, or capacity and then provide annual updates on its compliance with that plan. 47 C.F.R. §§ 54.202, 54.209.

Here, the carriers awaiting ETC designation and newly-designated ETCs that would benefit from the grant of the Petition have not yet had to make the investment necessary to serve these high-cost areas. Indeed, even if some of these newly-designated ETCs have begun providing service in some portions of a study area prior to obtaining its ETC designation, the build out and commencement of those services is a strong indication that USF support for that portion of the network is not necessary. If such support were necessary, the carrier would not have built out its network prior to obtaining its ETC designation. Further, to the extent that some of these carriers may have received high-cost program support for part of 2011, the amount

[2] Section 54.307 of the FCC's rules (eliminated in the *Order*), also known as the "identical support rule," provided competitive ETCs the same per-line amount of high-cost universal service support as the incumbent local exchange carrier serving the same area. 47 C.F.R. § 54.307.

received during that time period does not justify T-Mobile's request for an increase (via annualization) of the amount of annual support these carriers will receive during the transition period.

As a newly-designated ETC in a high-cost area, such newly-designated ETCs have not yet had the time or USF-support necessary to make significant USF-supported investments in serving their designated service area. As such, there is no reason to believe that they should be entitled to a full-year's support based solely on USF amounts received for a small portion of 2011. Rather, the additional funds requested by T-Mobile would be out of proportion to the initial USF-supported infrastructure investments these carriers may have made based on their 2011 support.[3] The fact that an ETC may have been designed just prior to the release of the *Order* and may even have received support during a portion of 2011 which it used for valid universal service purposes should not entitle that carrier to more support than that already provided under the *Order*.

Nor can any ETC claim that it undertook its investment in its network based on the assumption that its network would eventually be eligible for support and that it was blindsided unfairly by the elimination of the identical support rule in the *Order.* As a practical matter, the FCC has been working on reform of the high-cost program for many years, and all participants in the program have known that major reform (including the near-certain elimination of the identical support rule) could be announced at any time. Carriers with pending ETC applications before either the FCC or a state commission that predicated business plans on an assumption that support would continue to be available as it had in the past did so at their own risk, and these

[3] To the extent that the individual circumstances of a specific carrier justify a different outcome, the FCC has already committed to a waiver process. *Order*, ¶ 32 ("As a safeguard to protect consumers, we provide for an explicit waiver mechanism under which a carrier can seek relief from some or all of our reforms if the carrier can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice service, with no alternative terrestrial providers available to provide voice telephony.")

carriers should not be heard to claim otherwise. The same holds true for ETCs designated in 2011 and which may have received some support during that year. The fact that such newly-designated ETCs may have received some support during 2011 should not entitle them to additional support – particularly since these carriers are unlikely to have incurred the one-time or recurring costs in their short time serving as ETCs that long-serving ETCs have borne and which justifies the five-year transition away from the current high-cost mechanism for these carriers.

II. T-Mobile's Petition Runs Contrary To The Rationale Of The Order.

If granted, T-Mobile's Petition would dramatically increase the economic losses for existing ETCs associated with the implementation of the FCC's universal service reforms. In the *Order*, the FCC concluded that "[its] prior policy of supporting multiple networks may not be the most effective way of achieving [its] universal service goals." *Order*, ¶ 319. Further, the FCC, at least with respect to Phase I of the Mobility Fund, determined that its emphasis should be on the "expansion of networks into currently unserved communities," and for that reason the FCC determined to award support to only a single provider in each unserved area under Phase I of the Mobility Fund. *Id.*, ¶¶ 319-20. The FCC also made a similar, tentative conclusion with respect to Phase II of the Mobility Fund. *Id.*, ¶¶ 1136-37.

While Mobi believes that limiting support to a single provider is ill-advised and will be detrimental to the consumer,[4] there is no justification for providing new ETCs with support to which (1) they have never previously been entitled and (2) may be used in a manner that will result in stranded plant and wasted support. As an initial matter, providing high-cost support to newly-designated ETCs that have not previously received such support under the legacy support mechanism will result in those carriers taking advantage of the same perceived inefficiencies that led to the recent reform of that system. For example, newly-certified carriers that have not

[4] *See, e.g..*, Comments of the USA Coalition, *Connect America Fund*, GC Docket No. 10-90, at 8-13(filed Jan. 18, 2012). Mobi PCS is a member of the USA Coalition.

previously received USF support are unlikely to have built a customer-base in the most expensive and least profitable portions of a study area to serve.[5] Instead, newly-certified carriers are likely to have focused on building their customer base in those portions of the study area that are the most profitable (*i.e.*, the least costly to serve and most densely populated portions of the service territory). Further, with the knowledge that USF support will be phased out over the next five years, newly-designated ETCs will have little incentive to build out their networks to the more expensive areas, but instead will seek to maximize the short term benefits of receiving USF support. As such, providing these carriers with access to transitional support is unlikely to lead to the benefits the high-cost program is designed to promote.

Indeed, even if these newly-designated carriers do use their USF support to build out their networks in a manner consistent with the historical goals of the high-cost program, it is possible (and perhaps likely) that the carrier will not receive the ongoing USF support necessary to keep such plant profitable and functioning under the new regime established by the FCC in the *Order*. Regardless of whether the FCC ultimately adopts policies to support one or multiple ETCs in a study area, the FCC is unlikely to support more than a few carriers in each service area. However, in many service areas, there are more than four mobile ETCs offering service. For instance, in Mississippi, which is one of the states in which T-Mobile's application for designation as an ETC is currently pending and where support would likely become available to T-Mobile if this Petition were granted, there were 13 existing ETCs designated in 2010 to serve the majority of the state.[6] Similarly, in Louisiana, in which T-Mobile was certified as an ETC in 2011 and which would also be affected by this Petition, there were 14 existing ETCs designated

5 *Order*, ¶¶ 502- 511 (concluding that "identical support does not provide appropriate levels of support for the efficient deployment of mobile services in areas that do not support a private business case for mobile voice and broadband.').

6 FCC Response to U.S. House of Representatives Committee on Energy and Commerce USF Data Request of June 22, 2011 Request 7 -- Study Areas with the Most Eligible Telecommunications Carriers, available at http://democrats.energycommerce.house.gov/sites/default/files/documents/Request7_CT_07.27.11.pdf.

to serve the majority of the state in 2010. Given the abundance of supported networks and carriers, providing support for an additional carrier (and in particular, a carrier as large as T-Mobile) without ensuring that universal service support would not be used for yet another duplicative network would be wasteful.

Further, even if T-Mobile and similarly situated carriers used some of the support they receive to expand their networks into unserved areas (and there is no indication that this would be the case), there remains the strong probability that any plant built using the transitional USF funding would be stranded. This is because the right to serve such areas using universal service funds is likely to be the subject of intense competition under Phase II of the Mobility Fund, and many currently-supported carriers are likely to lose access to the USF support necessary to keep its high-cost plant operational. If this occurs, the newly-designated ETC will either sell its newly-built plant at a cut-rate price or simply take the plant offline; neither outcome is an efficient use of transitional universal service funds.

Finally, then FCC should disregard T-Mobile's claims that a failure by the FCC to grant the Petition (and make additional support available) will result in newly-designated ETCs being forced to renege on commitments made to state regulatory authorities to build-out their networks. Specifically, in the Petition, T-Mobile claims its "commitments in support of its pre-*CAF Order* ETC applications … are inextricably intertwined with and dependent upon the anticipated high-cost USF support 'that [it] would currently expect to receive, absent reform.'" Petition at 16 (citing *Order*, ¶ 515).While this may be true, it is true of <u>all carriers</u> that will receive less support from the high-cost fund as a result of the reforms in the *Order*. Indeed, it is likely that exisitng carriers who have made commitments to state PUCs to expand their networks as a condition of their ETC certifications will have to seek modification of those requirements or relinquish their ETC certifications in the event that they do not obtain adequate universal service support under the new regime and the T-Mobile Petition simply exacerbates that possibility. This is a predictable (and predicted) outcome of the *Order* which can be handled at the state level, and there is no reason to provide T-Mobile (or any other carrier) with special treatment here based on those commitments.[7]

III. Grant of T-Mobile's Petition Would Unnecessarily Increase The Size Of The High-Cost Fund.

Permitting T-Mobile and other newly-designated ETCs to receive USF support in excess of that provided for in the *Order* would unnecessarily increase the size of the high-cost program. In its Petition, T-Mobile explains that in 2011, it was designated as an ETC in four states: Hawaii, Idaho, Minnesota, Louisiana. Based on its actual 2011 receipts, T-Mobile already can expect to receive $11.9 million in frozen USF high cost support in across eight states in 2012. USAC Appendices to Report, High Cost Supported Projected by State by Study Area - 2Q2012 *available at* http://www.usac.org/about/governance/fcc-filings/2012/quarter-2.aspx. If T-Mobile's support in 2012 were calculated on an annualized-basis as requested in the Petition, Mobi estimates that T-Mobile would likely increase in size over the frozen $11.9 million in USF support in eight states. Further, while Mobi has no basis for estimating the amount of support to which T-Mobile would be entitled in the four states where its requests for ETC designation remain pending (Arizona, Mississippi, Oregon and Georgia), it is safe to assume that the total amount of support that T-Mobile would receive as a result of certification in those states would increase that total significantly.

Further, this calculation excludes all other carriers in a similar position to T-Mobile. While it is unlikely any single carrier would be entitled to the same total amount as that to which T-Mobile (the nation's fourth largest wireless carrier) would be entitled, the aggregate total of support owed to carriers that either first received support in 2011 or that have ETC designations pending is likely to

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[7] *Order*, ¶ 83 ("[W]e encourage states to review their respective regulations and policies in light of the changes we adopt here today and revisit the appropriateness of maintaining those obligations for entities that no longer receive federal high-cost universal service funding").

exceed the amount paid to T-Mobile. The FCC should not place that burden on the high-cost fund or existing ETCs when, as discussed above, the benefits of providing such support remain doubtful.

IV. The Designation of New CETCs Should not Result In Less Support for other CETCs Going Forward

Regardless of whether the FCC grants T-Mobile's request for a modification of the manner in which newly-designated ETCs are provided USF support, the FCC's determination should not affect the amount of support other ETCs can expect to receive under the *Order*.[8] In the *Order*, the FCC determined that "each competitive ETC's baseline support amount will be equal to its total 2011 support in a given study area, or an amount equal to $3,000 time the number of reported lines as of year-end 2011, whichever is lower."*Order*, ¶ 515. The amount of support a competitive ETCs received in 2011, however, was determined by the *Order*, which mandated support for each ETC using a calculation based on the number of lines an ETC served within a given state and the total amount of high-cost program support available in that state in 2008.[9]

In its Petition, T-Mobile does not precisely explain where it expects the FCC to find the funds necessary to grant its Petition. However, T-Mobile asserts that "the relief requested by T-Mobile [will not] increase the total amount of CETC support to be disbursed during the transition . . . [because] the baseline [support] amount is limited by the 2008 interim CETC cap." Petition at ii.

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[8] Mobi notes that the loss of its USF support to T-Mobile and other newly-designated ETCs is particularly concerning following the release of the *Clarification Order*, which reduces the amount of support available to competitive ETCs in the highest-cost incumbent study areas by imposing a $3,000 cap on per-line USF support based upon the incumbent study area, rather than based on the competitive ETCs entire study area. To the extent that the grant of the Petition will require reductions in support below the $3,000 cap in these areas, carriers and consumers in the highest-cost areas will suffer additional hardship. *Connect America Fund*, WC Docket No. 10-90, Order, DA 12-147, ¶ 15 (rel. Feb. 3, 2012) (*Clarification Order*).

[9] *High-Cost Universal Service Support*, 23 FCC Rcd 8834 ¶ 1 (2008) ("*Interim Cap Order*"). Under the Interim Cap, competitive ETCs could not receive in the aggregate more support in any given state than the total aggregate support they were eligible to receive during March 2008, calculated on an annualized basis. *Id.*, ¶ 38. If the aggregate support that competitive ETCs in a state are entitled to receive pursuant to the identical support rule exceeds the "interim, emergency" cap amount, then each competitive ETC's support in that state is reduced by a proportionate amount to ensure that the total competitive ETC support distributed equals the "interim, emergency" cap amount.

This statement can only be true if T-Mobile intends for the FCC to reduce the total amount of support available to other carriers under the Interim Cap by the amount necessary to provide support to T-Mobile and other newly-designated carriers. The FCC should reject this request; any modification to the *Order* in response to T-Mobile's Petition should not further reduce the amount of support available to other competitive ETCs in a study area. Instead, competitive ETCs should be provided the certainty of set amounts of support during the transition period, regardless of whether T-Mobile or other carriers receive ETC designations.

As discussed above, the transition period established by the *Order* is designed to minimize disruptions associated with the transition to the new regime, and to avoid service interruptions. Already, the 20% annual reductions and $3,000 per line limitation included in the plan threaten the ability of many carriers to provide service in the highest-cost areas. Permitting T-Mobile and other carriers to come in at the eleventh hour and, by virtue of their *ex post facto ETC* designation and the functioning of the *Interim Cap Order*, reduce the amount of support that existing ETCs are entitled to under the transition established in the *Order*, will result in additional service disruptions and the delay of network expansion, with (as discussed above) very little in the way of consumer benefits.

CONCLUSION

For the reasons expressed above, Mobi respectfully urges the FCC to reject T-Mobile's Petition for Reconsideration and/or Clarification.

Respectfully submitted,

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