

**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**

**REPLY COMMENTS OF  
THE BLOOSTON RURAL CARRIERS**

John A. Prendergast  
Salvatore Taillefer, Jr.

Blooston, Mordkofsky, Dickens,  
Duffy, & Prendergast, LLP  
2120 L Street NW, Suite 300  
Washington, DC 20037  
Tel: 202-659-0830  
Fax: 202-828-5568

Filed: February 17, 2012

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## Executive Summary

The Blooston Rural Carriers respectfully submit the following reply comments in the Commission's proceeding regarding the Mobility Fund Phase II Rules.

First, a well defined and fast-tracked waiver process is necessary to assist rural areas that may lose support as a result of the Commission's proceedings. It is imperative that the gains rural carriers have already made in rural areas are not lost as a result of the transition of funding mechanisms.

Second, the Commission should delay making final rules applicable to Mobility Phase II funding until Phase I is complete and the Commission and the public have had the chance to fully understand its effects.

Third, the Commission must also ensure that rural carriers are able to obtain fair and reasonable roaming rates with recipients of USF funds, including Mobility Phase II funds, by making the roaming requirement discussed in the *Order and FNPRM* 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. To this end, the Commission should adopt a "most favored nation" requirement, under which small rural carriers would be entitled to the same roaming rates the larger carriers offer to others, regardless of traffic volume.

Fourth, the Commission should implement bidding credits to ensure small and rural carriers have a realistic chance at obtaining support if a reverse-auction format is used. The Blooston Rural Carriers support proposals to provide bidding credits to carriers serving low population density areas and demonstrating long term provision of service to rural areas.

Fifth, carriers should not be completely unrestrained in the creation of bidding packages, 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. Instead, to the extent that package bidding is allowed, it should be restricted to smaller service area sizes; the maximum package area should not exceed a Census Tract.

The Commission should also ensure that any auction mechanism used to distribute Phase II support provides bidders with an opportunity to submit, and subsequently take into account, alternative bids based upon technical rule waivers in order to maximize cost savings where possible.

Sixth, public safety demands the inclusion of a wider array of types of roads which count toward funding eligibility. The definition of “road miles” should not be limited to interstate highway miles, but instead includes "local" roads and Section roads, such as those that connect farms to towns or provide access to remotely located plants and infrastructure.

Finally, the Blooston Rural Carriers agree with US Cellular’s assertion that letters of credit (“LOCs”) are not an appropriate device for enforcing compliance with public interest obligations. As many commenters point out, 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 and, even in the rare instances that a rural carrier might be able to obtain a standby LOC, it would be very expensive.

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THE BLOOSTON RURAL CARRIERS**

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of the Blooston Rural Carriers, hereby submits these reply 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 (“*FRPRM*”),<sup>1</sup> in the captioned proceeding.

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<sup>1</sup> *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-

## **I. The Commission Must Protect Existing Services**

In their initial comments (at p. 9), the Blooston Rural Carriers asserted that reverse auctions are not the appropriate mechanism to award Mobility Fund support; and, 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. The comments of RTG support this notion, by asserting that the Commission must take care to ensure that the new mechanisms do not interfere with the success rural carriers have had in bringing services to rural areas.<sup>2</sup> It is imperative that the Commission proceed with caution to ensure that none of these gains is lost in the transition to CAF and Mobility Fund support. Indeed, if the Commission is to maximize the use of funds available under both programs, it must avoid stranding existing investment and failing to support existing gains.

The Blooston Rural Carriers agree with other commenters concerning the need for a "well defined waiver process ... to assist rural areas that may lose support" as a result of the Commission's proceedings.<sup>3</sup> Moreover, as other commenters have pointed out, the waiver process must actually be workable for rural carriers. The new USF waiver petition process requires, at minimum, the submission of: (1) extensive and expensive geographic and

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337, 03-109; CC Dockets No. 01-92, 96-45; GN Docket No. 09-51; WT Docket No. 10-208, released November 18, 2011 (*Order and FNPRM*).

<sup>2</sup> Comments of the Rural Telecommunications Group ("RTG"), filed January 18, 2012, at 2.

<sup>3</sup> See Comments of RTG at 3; 10.

demographic information<sup>4</sup>; (2) information regarding the existence or lack of alternative voice providers, and whether any such alternative providers offer broadband; (3) Part 32 and Part 36 accounting information regarding unused and/or spare equipment; (4) detailed breakdowns of corporate operations expenses; (5) descriptions of all end user rate plans; (6) lists of all non-voice services provided over supported plant; (7) descriptions of all cost allocation procedures; (8) audited (if available) or unaudited financial statements for most recent three fiscal years (including costs and revenues of unregulated operations); (9) information regarding outstanding loans (including loan terms and recent restructuring discussions); and (10) information regarding the specific facilities that will be taken out of service if the waiver is not granted.

As has been shown time and again, no set of rules ever qualifies as a “one-size-fits all” solution. The Communications Act, as well as the Commission’s rules, contain provisions for waiver of many of the regulations therein.<sup>5</sup> The Commission should ensure that a workable waiver process, such as the existing waiver proceeding under Rule Section 1.3, is in place.

## **II. The Commission Should Delay Making Final Phase II Rules**

The Blooston Rural Carriers agree with the numerous commenters proposing that the Commission delay making final rules applicable to Mobility Phase II funding until Phase I is complete and the Commission and the public have had the chance to fully understand its effects.<sup>6</sup> In the *Order and FNPRM*, the Commission anticipates specifically that Phase I “will provide the

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<sup>4</sup> Which information includes total square miles, subscribers per square mile, road miles, subscribers per road mile, mountains, bodies of water, “lack of roads,” “remoteness,” challenges and costs associated with transporting fuel, “lack of scalability” per community, satellite and backhaul “availability,” “extreme” weather conditions, “challenging” topography, short construction season, or any other characteristics that contribute to the area’s high costs.

<sup>5</sup> See, e.g., 47 CFR § 1.948.

<sup>6</sup> See, e.g., Comments of US Cellular; Comments of AT&T; Comments of CTIA; and Comments of NTCA.

Commission with experience running reverse auctions for universal service support.”<sup>7</sup> As Commissioner Copps succinctly stated, “[w]hile we have considerable experience with spectrum auctions, this is in many ways a new species of auction and we will need to be very careful in how we approach and evaluate it.”<sup>8</sup> Many commenters protested the untested reverse-auction mechanism as applied to Phase I, and in response, the Commission has emphasized its expectation that Phase I is a targeted, one-time funding effort that it expects to learn from before applying this model to other funding.

As proposed by numerous commenters, the Commission should modify its time-table for Mobility Fund Phase II so that the Commission can give itself and interested parties time to evaluate the effectiveness of the reverse-auction mechanism.<sup>9</sup> The risks associated with the reverse-auction mechanism are considerable, and have been enumerated by the Blooston Rural Carriers and others throughout this proceeding.<sup>10</sup> Common sense demands that the Commission take the time necessary to evaluate and learn from the experience before applying it in Phase II.

### **III. The Commission Must Ensure Fair Roaming Terms with Funding Recipients**

The Commission must also ensure that rural carriers are able to obtain fair and reasonable roaming rates with recipients of USF funds, including Mobility Phase II funds. Like other commenters, the Blooston Rural Carriers have pointed out that the Commission’s collocation and roaming requirements are not enough to protect small and rural carriers.<sup>11</sup> Rather, the roaming requirement discussed in the *Order and FNPRM*<sup>12</sup> 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

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<sup>7</sup> *Order and FNPRM* ¶299.

<sup>8</sup> Statement of Commissioner Copps, *Order and FNPRM* at p. 740.

<sup>9</sup> Comments of US Cellular at 7.

<sup>10</sup> Comments of the Blooston Rural Carriers at 6-9, 15-19.

<sup>11</sup> Comments of the Blooston Rural Carriers at 13-14; Comments of RTG at 3-5; Comments of US Cellular at 31.

<sup>12</sup> *Order and FNPRM* at ¶¶397-398.

to obtain roaming rights on other networks in order to compete.<sup>13</sup> Such reciprocal roaming requirements are necessary so that small rural carriers are able to build networks with Mobility funding which meet the expectations of American consumers: namely, that their devices will work across the country.<sup>14</sup>

To this end, the Commission should adopt a “most favored nation” type requirement, under which small rural carriers would be entitled to the same roaming rates the larger carriers offer to others, regardless of traffic volume. The Blooston Rural Carriers agree with RTG’s assertion that Mobility Fund support will be best utilized if the Commission imposes roaming regulations which “compel low rates across the board while at the same time incentivizing small and rural carriers’ network build-out.”<sup>15</sup> The Commission’s current data roaming regulatory framework “unintentionally imposes a chilling effect on the actions of both rural carriers and the rural customers of wireless carriers,” as large carriers are able to set “artificially inflated intercarrier wholesale data roaming rates for roaming traffic between themselves and small rural carriers.”<sup>16</sup> Rural carriers have limited options when it comes to dealing with these costs, and the Commission will seriously hamstring the goals of the Mobility Fund and rural carriers’ ability to make effective use of that support if it does not take steps to ensure small rural carriers have access to reasonable roaming rates. By requiring large carriers to offer the lowest rates available to rural carriers, the Commission can overcome these issues.

For another potentially mitigating measure, the Blooston Rural Carriers also agree with US Cellular’s proposal to implement a “shot clock” mechanism to ensure that roaming

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<sup>13</sup> Comments of the Blooston Rural Carriers at 13-14.

<sup>14</sup> See, e.g., Comments of US Cellular at 32; Comments of RTG at 3.

<sup>15</sup> Comments of RTG at 4.

<sup>16</sup> Comments of RTG at 3.

negotiations are not manipulated by the nationwide carriers.<sup>17</sup> While currently the subject of another proceeding, the Commission should take this opportunity to apply such requirement in this proceeding, given the high importance of ensuring small carriers are able to obtain reasonable roaming arrangements in order to effectively make use of Mobility Fund funding.

#### **IV. Bidding Credits are Necessary to Ensure Small Businesses Can Participate**

In its initial comments, the Blooston Rural Carriers proposed a number of bidding credits, which are vital to ensure that small and rural carriers have a realistic chance at securing support for mobile services in their rural communities.<sup>18</sup> Similarly, RTG has proposed that the Commission provide bidding credits to carriers serving low population density areas and demonstrating long term provision of service to rural areas.<sup>19</sup> Such areas are notoriously challenging to serve, and therefore are not often very profitable from a business-case standpoint.<sup>20</sup> As a result, such carriers are not necessarily in a position to post bids which reflect their experience and ability to provide service in these areas. Bidding credits that accurately reflect these entities' years of experience providing service in such areas are therefore warranted. Further, bidding credits would help achieve the Commission's goal of maximizing participation.

As the Blooston Rural Carriers and others have pointed out, the reverse-auction process has the potential to create a "race to the bottom" in which project quality will suffer in favor of lower bids.<sup>21</sup> While the Commission has emphasized the importance of stretching Mobility Fund support as far as possible, the use of bidding credits as described will help to ensure that carriers

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<sup>17</sup> Comments of US Cellular at 32.

<sup>18</sup> Comments of the Blooston Rural Carriers at 11-12.

<sup>19</sup> Comments of RTG at 15-16.

<sup>20</sup> Indeed, the Commission specifically intends to target funding at areas for which a business case for service cannot be made.

<sup>21</sup> Comments of the Blooston Rural Carriers at p. 6; see also Comments of the USA Coalition at p. 13; Comments of the Nebraska Public Service Commission at p. 8.

with the expertise necessary to best serve rural areas are able to obtain funding. This is an important balance to the risk of attracting the artificially low bids that can result in low quality build-outs that will ultimately amount to a waste of limited resources.

The Commission should reject AT&T's argument to the contrary. As discussed above and more extensively in initial comments,<sup>22</sup> the mentality that the lowest bid price should be the only factor in awarding support is flawed. AT&T's suggestion that a small business bidding credit would cause the Commission to spend "more than is necessary to achieve ubiquitous broadband deployment" is meritless; rather, much more than minimized spending is "necessary to achieve ubiquitous broadband deployment."<sup>23</sup> Bidding credits have served an important and acknowledged role in the Commission's auction-based proceedings since their inception.<sup>24</sup> Indeed, the Communications Act itself recognizes the benefits of such credits.<sup>25</sup>

AT&T's assertion that bidding credits provide an unfair advantage to small providers is likewise without merit. Indeed, when implementing bidding credits in the context of competitive spectrum auctions under 309(j), the Commission specifically found that bidding credits "satisfies Congress's objectives without unduly favoring rural telephone companies in markets where there is no compelling reason to do so."<sup>26</sup> Giant carriers like AT&T enjoy overwhelming competitive advantages over small providers, such as economies of scale and exclusive handset arrangements, against which small providers already struggle to compete. The value of competition by small business has been noted both by the Commission and by the President of

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<sup>22</sup> Comments of the Blooston Rural Carriers at p. 6-7.

<sup>23</sup> Comments of AT&T at p. 34.

<sup>24</sup> See, e.g., *In the Matter of Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, 9 FCC Rcd 2348, 2389 (FCC 1994) (agreeing with Congressional concerns in assuring rural consumers the benefits of new technologies and providing opportunities for participation by rural telephone companies in the provision of wireless services).

<sup>25</sup> 47 USC 309(j).

<sup>26</sup> *In the Matter of Implementation of Section 309(j)*, 9 FCC Rcd at 2391.

the United States.<sup>27</sup> Not only do bidding credits help small businesses compete on an already uneven playing field, but they also force the larger carriers to do better than they would otherwise have to, in order to compete. As mentioned above, the Communications Act requires small businesses and rural carriers to be able to compete with large carriers like AT&T, and bidding credits are an established and effective mechanism for doing so.

#### **V. Bidding Packages Should be Subject to Certain Restrictions**

The Blooston Rural Carriers disagree with the assertion that carriers should be completely unrestrained in the creation of bidding packages. Verizon asserts that carriers should be free to “tell the Commission what they can do.”<sup>28</sup> As the Blooston Rural Carriers point out in their initial comments, “the ability to accumulate census blocks into one large bid proposal will create an apples-to-oranges comparison that will heavily favor large carriers.”<sup>29</sup> As with many of the proposals by the large carriers, small rural carriers cannot realistically compete under such circumstances. To the extent that package bidding is allowed, it should be restricted to smaller service area sizes; the maximum package area should not exceed a Census Tract.<sup>30</sup>

#### **VI. Any Auction Should Include an Opportunity to Consider Waiver-Dependent Bids**

The Commission should also ensure that any auction mechanism used to distribute Phase II support should provide bidders with an opportunity to submit, and subsequently take into account, alternative bids based upon technical waivers in order to maximize cost savings where

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<sup>27</sup> “Small businesses are the backbone of our economy and the cornerstones of our communities. They create two of every three new jobs in America, spur economic growth, and spark new industries across the country,” *White House Releases the Small Business Agenda*, Office of the Press Secretary, the White House (available at <http://www.whitehouse.gov/the-press-office/2011/05/16/white-house-releases-small-business-agenda-growing-americas-small-busine>, last visited February 16, 2012.)

<sup>28</sup> See Comments of Verizon at p. 24.

<sup>29</sup> Comments of Blooston Rural Carriers at p. 12.

<sup>30</sup> Comments of Blooston Rural Carriers at pp. 12-13.

possible. Take, for example, a situation in which a potential bidder can bring service to an unserved area by building ten towers that meet the Commission's power restriction rules for \$1 million, but could serve that same area with four towers at a cost of \$400,000 if the Commission were to grant a waiver of its power restriction rules. Such waiver-dependent bids increase a bidder's flexibility and would also encourage participation and creative problem solving. The Blooston Rural Carriers propose that in such a situation, the potential applicant be provided an opportunity to submit two business cases – one that does not make use of the power restriction waiver, and one that does – in order to afford the Commission the opportunity to take advantage of cost savings represented by a waiver grant.

If the Commission is truly committed to funding the most unserved area for the least amount of support possible, it is necessary to entertain all potential methods of doing so. It should not, therefore, let the necessity of a waiver foreclose the possibility of funding a project.

## **VII. The Commission Should Not Require Letters of Credit from Rural Carriers**

Finally, the Blooston Rural Carriers agree with U S Cellular's assertion that letters of credit ("LOCs") are not an appropriate device for enforcing compliance with public interest obligations. In the first place, as the Blooston Rural Carriers pointed out in their initial comments, the LOC/default mechanism should not be applied to rural carriers in general, and should not be used for Phase II compliance.<sup>31</sup> 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 and, even in the rare instances that a rural carrier might

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<sup>31</sup> Comments of Blooston Rural Carriers at p. 17.

be able to obtain a standby LOC, it would be very expensive.<sup>32</sup> Similarly, as U S Cellular points out, “[t]he LOC requirement has the effect of reducing the amount of capital available to support recipients, and thus diminishes the value realized from the disbursement of CAF and Mobility Fund support,” especially with regard to smaller carriers.<sup>33</sup> The Indiana Utility Regulatory Commission also considered the likely consequences of a LOC requirement in its initial comments, and advises “extreme caution” in requiring irrevocable standby LOCs.<sup>34</sup>

AT&T asks the Commission to relieve a carrier that either: “has an investment grade rating by at least one or more of the three ratings agencies ... has revenues that exceed the amount of CAF support the provider is eligible to receive each year by some large percentage, or ... receives more from other FCC programs ... than its annual CAF support amount...”<sup>35</sup> An even stronger case can be made that rural telephone companies should be exempt from the LOC requirement, since these companies have a decades-long track record of serving those remote areas that the large carriers left unserved due to a perceived lack of profit. Thus, rural telephone companies have made their living serving the exact type of areas to be reached with Phase II funding, and have done so by responsibly borrowing from institutions such as RUS, CoBank and RTFC and then timely repaying such loans. Therefore, these entities have a proven record of trustworthiness and public service, despite not having the gigantic profits enjoyed by the larger carriers.

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<sup>32</sup> *Id. See, also*, Comments of ADTRAN, Inc. at pp. 16-18 (expressing concern that the Commission’s LOC and penalty proposals will impose unnecessary and excessive costs upon high-cost support recipients); Comments of ITTA at p. 11.

<sup>33</sup> Comments of US Cellular at p. 50.

<sup>34</sup> Comments of the Indiana Utility Regulatory Commission, WC Docket No. 10-90 *et al.*, dated January 18, 2012, at p. 7.

<sup>35</sup> Comments of AT&T at p. 30.

In any event, the Blooston Rural Carriers continue to urge the Commission to explore other less burdensome and less expensive alternatives to requiring LOCs.

**VIII. “Road Miles” Must Include Secondary, Tertiary, and other Rural Road Types**

The Blooston Rural Carriers also take this opportunity to re-emphasize the importance of including a wider array of types of roads which count toward funding eligibility. Specifically, the Commission must ensure that the definition of “road miles” is not limited to interstate highway miles, but instead includes 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.

Unfortunately, the recent Public Notice seeking comment on the Mobility Phase I auction specifics shows the Commission does not appear to support this proposition.<sup>36</sup> In addition to the distinct disadvantage the failure to include these rural road types conveys on rural carriers, “[r]ural 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 traveled.”<sup>37</sup> EMT, fire, police, and other public safety entities (including ICE, FEMA, and Corp of Engineers) often rely on public communications networks when operating on these rural roads, since there often is not public safety system coverage there. If the Commission is to fulfill the public interest goals of enhancing safety and providing Phase II support where there is the greatest need, as measured, in part, where the risk of crashes is higher and access to emergency services is reduced.

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<sup>36</sup> Comment Sought on Competitive Bidding Procedures for Auction 901 and Certain Program Requirements, Public Notice, DA 12-121, AU Docket No. 12-25, released February 2, 2012, at ¶21.

<sup>37</sup> Comments of the Blooston Rural Carriers at pp. 15-16.

Similarly, the Blooston Rural Carriers therefore support the proposal of RTG to include vehicular trails and private roads for service vehicles.<sup>38</sup> The Blooston Rural Carriers agree that these roads have heavy traffic and are often used continuously. Covering these unpaved road types is therefore necessary to meet the Commission's goal to provide mobile voice and broadband to the areas Americans live, work, and travel.

**IX. Conclusion**

In light of the foregoing, it is respectfully submitted that the Commission should reform its Mobility Fund Phase II proposal consistent with the initial and reply comments of the Blooston Rural Carriers.

Respectfully submitted,

**BLOOSTON RURAL CARRIERS**

By     s/ John A. Prendergast      
John A. Prendergast  
Salvatore Taillefer, Jr.

Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP  
2120 L Street, NW, Suite 300  
Washington, DC 20037  
Phone: (202) 659-0830  
Facsimile: (202) 828-5568

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<sup>38</sup> Comments of RTG at 10.