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

REPLY COMMENTS OF THE USA COALITION

The Universal Service for America Coalition ("USA Coalition" or "Coalition"), by its attorneys, respectfully submits these reply comments on the issues raised by the Federal Communications Commission ("FCC" or "Commission") in the Report and Order and Further Notice of Proposed Rulemaking released by the FCC on November 18, 2011.[1] The comments in this docket support the Coalition's contention that additional support should be redirected to remedy the inadequate support available to mobile broadband services. Further, there is also broad agreement with the Coalition's call for the Commission to reject any USF support distribution mechanism that would provide support to only a single provider. Finally, the record also supports adopting measures such as small business credits or limitations on participation in the Mobility Fund for the largest carriers to protect smaller carriers from unfair competition.

1 *Connect America Fund*, WC Docket No. 10-90, Report & Order & FNPRM, FCC 11-161 (rel. Nov. 18, 2011) ("*USF/ICC Reform Order*").

I. THE COMMISSION SHOULD DIRECT ADDITIONAL SUPPORT TO WIRELESS SERVICES

The record reflects the need for additional support to accomplish President Obama's and the Commission's goal of ubiquitous deployment of advanced mobile broadband services throughout rural America. As such, the USA Coalition joins with RCA and other commenters urging the Commission to take the FNPRM as an opportunity to mitigate the harms caused by the decision to dramatically limit the funding available to wireless carriers.[2] As RCA explains:

> The record compiled previously demonstrates that the $400 million in annual non-tribal support budgeted for the Phase II Mobility Fund will be grossly inadequate. At the same time, consumers have demonstrated a strong, sustained, and growing preference for mobile wireless services, and the President has advanced the goal of providing at least 98 percent of Americans with access to 4G high-speed wireless service. Additionally, studies have shown that consumers are inclined to adopt mobile rather than landline technologies when given the opportunity.[3]

The growth in demand for wireless services stands in sharp contrast to the disbursement allocations made by the Commission. As U.S. Cellular points out, "rate-of-return carriers [alone] are slated by the Commission to receive <u>*five times as much funding*</u> as mobile broadband providers."[4] Given the clear and growing preference for wireless services among all consumers, both urban and rural, the Commission should look to redirect this support to wireless services where possible.[5]

For this reason, the USA Coalition urges the Commission to adopt the steps proposed by RCA to redirect funding currently intended for wireline incumbents to wireless services. Specifically, the Commission, in areas where the price cap carrier declines the state-level commitment required by the Connect America Fund, should transfer the available support to the

---

2 RCA Comments at 4; US Cellular at 52.

3 RCA Comments at 5.

4 US Cellular at 52 (emphasis in original).

5 *Id.*

Mobility Fund and increase the Mobility Fund's budget accordingly.[6] Similarly, the Commission should consider RCA's proposal to gradually reduce the $2.05 billion program that guarantees rate-of-return carriers an interstate profit margin of 11.25.[7] As RCA correctly points out, "the current 11.25 percent rate of return is no longer appropriate," and when the Commission eventually determines a new, lower rate that more accurately reflects market realities, the USA Coalition urges the Commission to redirect the remaining funding into the Mobility Fund.[8]

Finally, the USA Coalition joins with the Rural Telecom Group ("RTG") in urging the Commission to "ensure that it does not harm existing rural mobile voice and broadband services" as it "moves forward to craft the second phase of the Mobility Fund."[9] Specifically, the Commission's "driving motivation must be to ensure that rural areas do not lose service or have existing coverage levels deteriorate as a result of decisions made about how to distribute ongoing support."[10] Any reform not consistent with the goal must be rejected.

II. COMPETITION IS ESSENTIAL TO ENSURING THAT THE BENEFITS OF THE MOBILITY FUND REACH CONSUMERS

The USA Coalition joins the chorus of commenters urging the FCC to reject any support mechanism that would provide support only to a single provider in a supported area. As C Spire explains, "[t]he Commission has long acknowledged that Congress, in the 1996 Act, 'established principles for the preservation and advancement of universal service in a competitive telecommunications environment[,]' and that competition and universal service are dual goals that must be given equal weight by the Commission's policies."[11] Further, as T-Mobile notes,

---

6 RCA Comments at 4-6.

7 *Id.*

8 *Id.*

9 RTG Comments at 2.

10 *Id.*

11 C Spire Comments at 16 (citing *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 96-45,

"[t]he success of the independent wireless sector demonstrates the value of competition in bringing better services to the widest base of consumers at the lowest costs."[12] In contrast to the benefits of competition, an auction mechanism that would disperse support to only a single provider would "risk isolating rural markets from competition and reinforcing the market strength of the most dominant carriers," while at the same time denying consumers the benefits of a vibrant and competitive market for wireless services.[13] Competitive concerns are particularly acute given that, as RCA notes, "the wireless industry is verging on a national duopoly."[14]

For this reason, it is essential , regardless of whether the Commission ultimately adopts a reverse auction mechanism , a cost model-based mechanism, or some other alternative for the distribution of support under Phase II of the Mobility Fund, that the mechanism promote, rather than supplant, competition among providers. As the Blooston Rural Carriers explain, the single-winner auction proposed by the Commission "will create a 'race to the bottom' that will not serve the public interest."[15] Specifically, single-winner reverse auctions provide incentives for carriers to engage in "construction and equipment quality short-cuts and other gaming strategies can result in deceptively low 'winning bids' [that] are likely to require larger disbursements of high-cost support in the long term to replace inferior facilities."[16] Further, as C Spire points out, even assuming that the Commission could successfully set standards for broadband deployment quality and enforce those standards, the question remains "why the Commission would find it more attractive to set up such a regulatory superstructure to police the service quality short-cuts and similar actions of reverse auction winners, instead of adopting mechanisms that would

---

CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244, 11252 (¶ 14) (2001).

12 T-Mobile Comments at 4.

13 C Spire Wireless Comments at 16.

14 RCA Comments at 14.

15 Blooston Rural Carriers at iii.

16 Blooston Rural Carriers at 6.

prevent the emergence of such short-cuts and other incentives harmful to consumers and competition."[17] The USA Coalition joins with C Spire in its belief that "it would be more effective to rely on the marketplace to provide incentives for carriers to improve service quality in order to attract and retain customers."[18]

The record provides ample alternatives for the Commission to consider. For instance, RCA, T-Mobile, and others have proposed the use of a forward-looking cost-based model to determine the amount of support a carrier requires to provide service in a given area.[19] As these commenters point out, the Commission has long believed that " forward-looking cost models 'best approximate[] the costs that would be incurred by an efficient carrier in the market' and thus 'send the correct signals for entry, investment, and innovation.'"[20] Indeed, as T-Mobile notes, the "economies of scale that mobile wireless networks have generated … render mobile wireless service costs well suited for predictive economic modeling."[21] Alternatively, T-Mobile has suggested modification to the reverse auction mechanism currently in favor with the Commission, wherein support would be provided to a limited number of ETCs that make winning bids – noting that "reverse auctions … could encourage a more competitive market if more than one bidder could be awarded support in a given area."[22] Providing support to a limited number of carriers in each supported area can address the Commission's concerns about supporting multiple competing networks in a high-cost area while still ensuring that consumers reap the benefits of a competitive marketplace. As a third alternative, C Spire has proposed the use of a "consumer coupon system" that makes use of a cost-based model to determine the

---

17 C Spire Comments at 23.

18 *Id.*

19 C Spire Comments at 7; T-Mobile at 3; RCA Comments at 10

20 RCA Comments at 10-11 (citing *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 ¶ 224 (1997)).

21 T-Mobile Comments at 3.

22 T-Mobile Comments at 6.

support amount.[23] Under such a program, the Commission would provide coupons directly to consumers, which could then be spent on the purchase of mobile services, functioning in effect much like the Lifeline program with each household free to use its coupon with the ETC of its choice.[24] To the extent that any of the programs threaten to drive the Mobility Fund beyond a sustainable level, the Commission could adopt a cap on total spending within a given study area, such as that proposed by MTPCS.[25]

The Commission should explore any and all of these options further before deciding on a specific mechanism, and the USA Coalition encourages the Commission to put forth for comment specific proposals on how these different options may function. Further, as RTG explains, the Commission should also monitor and evaluate the results of Phase I of the Mobility Fund and include the results of Phase I in its analysis.[26] Regardless of the outcome, however, the Commission must and should reject any proposal that threatens to turn rural areas into wireless monopolies, and instead ensure that consumers in insular, rural, and high-cost areas are able to benefit from competition in the same manner as consumers in urban areas.

III. THE COMMISSION SHOULD ADOPT MEASURES TO ENSURE SMALLER CARRIERS ARE NOT EXCLUDED FROM THE MARKET

The USA Coalition agrees with commenters who urge the Commission to adopt measures designed to prevent the nation's largest carriers from using the Commission's reform of the universal service and intercarrier compensation mechanisms to gain an unfair advantage over smaller carriers with a history of providing service in rural areas. [27] As T-Mobile explains, "the

---

23 C Spire Wireless Comments at 15.

24 *Id.*

25 Comments of MTPCS, LLC d/b/a Cellular One at 20, *Connect America Fund*, WC Docket No. 10-90 (Aug. 24, 2011) ("A CETC may be required to divide its support with other CETCs, and collectively the entities could never exceed the total modeled support for the area.").

26 RTG Comments at 17.

27 *See, e.g.*, , T-Mobile Comments at 5; Blooston Comments at 12.

largest carriers do not need additional support."[28] Further, if the Commission were to move ahead with reverse auctions, the largest carriers "might submit 'low-ball' bids that would not cover their forward-looking costs, or even zero bids, in an effort to deprive smaller rivals of any Mobility Fund Support."[29] For this reason, the USA Coalition agrees with RCA that any "auction procedures that enable AT&T and Verizon to foreclose participation by smaller rivals would greatly exacerbate existing concerns about market concentration and the deleterious effects [of that concentration] on consumers."[30]

Similarly, C Spire has expressed legitimate concerns that any bidding mechanism that permits package bids over large geographic territories could provide large carriers with an unfair advantage:

> If the Commission decides to use reverse auctions as the disbursement mechanism for Phase II, it will be important for the Commission to establish package bidding rules that do not further enhance the anti-competitive consequences of reverse auctions. If there are no limitations on package bidding, then larger carriers could have the capability to manipulate reverse auctions by packaging bids that cover extensive geographic areas. Smaller carriers participating in the reverse auctions would not have the resources to compete against this type of bidding strategy, placing them at yet another competitive disadvantage.[31]

The USA Coalition agrees with T-Mobile and C Spire, and if the Commission moves forward with reverse auctions, urges the Commission to adopt rules to address this threat to competition.

The record also provides ample evidence to exclude the nation's two largest carriers from participation in the Mobility Fund altogether. As the Blooston Rural Carriers explain:

> [In the Order & FNPRM] 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." As the Blooston

---

28 *Id.*

29 T-Mobile Comments at 5.

30 RCA Comments at 14.

31 C Spire Comments at 26.

> 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). 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). 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 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.[32]

Despite clearly having the resources to do so, the nation's largest carriers have thus far indicated an unwillingness to expand their networks to cover these rural areas. It is naïve to think that, even with the promise of some additional financial support, these largest carriers will meaningfully change their deployment strategy – particularly since any support received will represent a small portion of their revenues.

For this reason, the USA Collation joins with RCA in calling upon the Commission to provide rural and regional carriers with "bidding credits [for smaller companies] . . . and/or eligibility restrictions or negative bidding credits for large national carriers to ensure that competition can survive alongside universal service."[33] For instance, the Commission could, "award bidding credits to carriers that are small businesses or meet certain public interest objectives associated with delivering mobile broadband to unserved markets," as proposed by the RTG.[34] As RTG explains, qualifying carriers would receive bidding credits for meeting additional criteria that are deemed in the public interest, including the carrier's status as a small business, the carrier's willingness to service low population density areas, and its demonstrated

32 Blooston Rural Carriers Comments at 3-4.
33 RCA Comments at 13-14.
34 RTG Comments at 13.

commitment to the service of rural areas.[35]

In implementing these credits, the USA Coalition urges the Commission to adopt RTG's proposal to redefine "small business" to reflect the fact that many "small" wireless carriers have average gross revenues in excess of that generally used to identify small businesses.[36] Further, the Commission should exclude any current USF-support revenues from the determination of whether the company is a "small business." Similarly, the USA Coalition joins with RTG in believing that "bidding credits should also be awarded to carriers already "providing mobile wireless service to rural communities and serving few people per square mile."[37] Finally, the Commission should also consider awarding credits to "carriers with a history of offering telecommunications services to rural markets, with the size of the credit increasing with the number of years of service."[38]As RTG explains, "Such credits will reward carriers that have already made a long-term commitment to serving some of the most high-cost areas of the nation" and "allow small, rural carriers to outbid better-financed carriers who have not previously made a commitment with their own resources and have no 'skin in the game.'"[39]

IV. THE COMMISSION SHOULD RELEASE ANY FUTURE ORDER FOR COMMENT AS AN FNRPM

Before finalizing the rules intended to govern Phase II of the Mobility Fund, the USA Coalition urges the Commission to put out for notice and comment a proposed draft of any Mobility Fund Phase II order. As is indicated by the comments in this docket, the FNPRM attached to the *USF/ICC Reform Order* covers a wide range of legal and policy issues and requests comment on a number of different proposals, making it impractical for commenters to

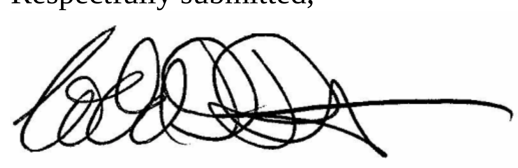
35 *Id.* at 14
36 *Id.* at 15.
37 *Id.*
38 *Id.* at 16.
39 *Id.*

address the specifics of any one proposal. Further, the number of variables make comprehensive analysis of every permutation on the various proposals impossible. The best way to address this problem is for the Commission to release a draft Mobility Fund Phase II order for comment prior to its adoption by the full Commission. Release of a draft order will permit the many stakeholders an opportunity to review the Order, identify the major problems, and hopefully provide the Commission with constructive suggestions to address them. This process will both ensure a better Order and may even mitigate the need for stakeholders to file Petitions for Reconsideration and/or appeals.

CONCLUSION

The USA Coalition urges the Commission to base any of its reforms upon the requirements of the Act and to pursue rational and sustainable methods to ensure that all Americans have access to reasonably comparable telecommunications and information services at reasonably comparable rates.

Respectfully submitted,



Todd D. Daubert
J. Isaac Himowitz
Aaron M. Gregory
SNR DENTON US LLP
1301 K Street, N.W.,
East Tower, Suite 600
Washington, DC 20005
todd.daubert@snrdenton.com

Counsel for the USA Coalition

Date: February 17, 2012