

**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 TO OPPOSITIONS TO THE
PETITION FOR PARTIAL RECONSIDERATION OF
THE BLOOSTON RURAL CARRIERS**

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of the Blooston Rural Carriers and pursuant to Section 1.429 of the Commission’s Rules, hereby

replies to oppositions filed regarding their petition for reconsideration¹ of the portion of the Commission's *Report and Order and Further Notice of Rulemaking*, FCC 11-161, released November 18, 2011 ("*Order and FNPRM*")² in the above-captioned proceeding, that adopts final rules for Phase I of the Mobility Fund.

I. The Blooston Rural Carrier Proposals Do Not Violate Competitive Neutrality

The oppositions of AT&T and Verizon suggest that the proposals of the Blooston Rural Carriers violate the Commission's competitive neutrality principle simply because they would treat rural carriers differently than the large carriers.³ However, this is a mischaracterization of that principle, and for clarification one need look no further than the *Order and FNPRM* itself:

The competitive neutrality principle does not require all competitors to be treated alike, but "only prohibits the Commission from treating competitors differently in 'unfair' ways." Moreover, neither the competitive neutrality principle nor the other section 254(b) principles impose inflexible requirements for the Commission's formulation of universal service rules and policies. Instead, the "promotion of any one goal or principle should be tempered by a commitment to ensuring the advancement of each of the principles" in section 254(b).⁴

Thus, the question is whether these proposals, such as excluding Tier I carriers from the Mobility Fund Phase I reverse auction, are "unfair." Neither AT&T nor Verizon advances such an argument. Instead, both simply argue that the Commission cannot discriminate against certain

¹ Petition for Partial Reconsideration of the Blooston Rural Carriers, WC Dockets No. 10-90, et al., filed December 29, 2011. ("Petition").

² *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 ("*Order*").

³ Comments of AT&T, WC Docket 10-90, et al., filed February 9, 2012; Opposition of Verizon, WC Docket No. 10-90, et al., filed February 9, 2012.

⁴ *Order and FNPRM* at ¶176.

providers.⁵ Yet, the Communications Act itself provides for differing treatment of carriers by defining rural telephone companies and providing special provisions such as exemptions that apply only to such entities.⁶ The Commission has also provided for differential treatment of carriers, and has even done so under circumstances practically identical to the current proceeding.⁷ The Blooston Rural Carriers respectfully submit that their proposals are not unfair, given the overwhelming advantages Tier I carriers enjoy (including economies of scale, volume equipment discounts and exclusive handset arrangements), versus the significant benefits associated with competition by small and rural carriers.

As is made clear in the Petition, Tier I carriers have access to a revenue stream which, in recent years, surpasses the entirety of the annual CAF and Mobility Fund budgets combined.⁸ This is so because they have built their businesses serving the most profitable areas of the country. Rural carriers, on the other hand, have a proven track record of reaching the isolated service areas the Mobility Fund purports to target; indeed, rural carriers exist primarily because large carriers like AT&T and Verizon did not see any profit in serving rural areas. Many rural telephone companies are cooperatives, where citizens grew tired of waiting for Ma Bell to provide service, and realized that if they were going to have telecommunications service they

⁵ Comments of AT&T at p. 32; Opposition of Verizon at p. 11. Verizon simply states, without argument, that it is a violation of the competitive neutrality principle.

⁶ See 47 USC §153(44)(defining a rural telephone company); 47 USC §251(providing an exemption for rural telephone companies); see also 47 CFR §1.2110(b)(3)(iii)(exempting rural telephone cooperatives from officer/director attribution).

⁷ See, e.g., *In the Matter of Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, 9 FCC Rcd 2348, 2391 (FCC 1994)(providing for bidding credits only to entities meeting certain criteria in order to ensure successful participation by such entities in spectrum auctions).

⁸ Petition at 10-11.

would have to provide it for themselves. It is therefore disingenuous for AT&T to call rural communities “our customers.”⁹

II. The Commission Must Implement Measures to Ensure Participation by Small and Rural Carriers

AT&T also argues against the inclusion of safeguards to ensure small and rural carriers are able to effectively participate, similar to those used historically in spectrum auctions pursuant to Section 309(j)(3) of the Communications Act of 1934, as amended (the “Act”), simply because the current proceeding does not involve a spectrum auction.¹⁰ Instead, it is AT&T’s position that, since Congress did not include in Section 254 of the Act the same language found in Section 309(j)(3), it is not relevant here. Yet simply because Congress does not specifically provide for something in legislation, does not mean that it is necessarily irrelevant or inappropriate.¹¹ As the Blooston Rural Carriers have shown in several contexts in this proceeding, the reverse auction process naturally and unfairly favors large carriers.¹² Therefore, it is necessary to include safeguards to ensure small carriers are able to meaningfully participate in the auction. That Section 254 does not specifically provide for such safeguards is inapposite. Once the Commission proposed to implement the mobile wireless aspect of Section 254 support through an auction process, and announced its intention to draw heavily from existing spectrum auction procedures, Section 309(j)(3) became relevant. Congress implemented Section 309(j)(3) because it recognized that the rural carriers are more likely to bring service to rural consumers.

⁹ Comments of AT&T at p. 33.

¹⁰ Comments of AT&T at p. 32.

¹¹ *National Broadcasting Co. v. United States*, 319 US 190 at 219. (“[Congress] did not frustrate the purposes for which the Communications Act of 1934 was brought into being by attempting an itemized catalogue of the specific manifestations of the general problems for the solution of which it was establishing a regulatory agency.) Indeed, the Blooston Rural Carriers note that Congress did not provide that universal service funds should be distributed via reverse auction, either.

¹² Comments of the Blooston Rural Carriers, WT Docket No. 10-208, filed December 16, 2010; Petition at p. 3-4.

The principle here is no different. Therefore, the Commission should have no hesitation in applying it to the upcoming reverse auction. Indeed, the award of Mobility Fund support as the means to implement wireless operations in remote areas is the natural next step in accomplishing the goal of prior spectrum auctions: The Mobility Fund can be used to give rural carriers the ability to build out the spectrum they have acquired pursuant to Section 309(j)(3).

Furthermore, as AT&T recognizes, Section 254 *does* include a policy of competitive neutrality which, as shown above, requires that the Commission treat no carrier “unfairly.” The Blooston Rural Carriers have pointed out that the use bid credits and other measures to allow small carriers a reasonable chance of competing is necessary in the reverse auction context, and the Commission has found this to be the fair approach in nearly all prior FCC auctions.¹³ AT&T’s Comments make no argument on this score. Instead, AT&T argues that “the purpose of universal service is to benefit the customer, not the carrier.”¹⁴ Yet there can be no question that competition benefits the customer (indeed, AT&T suggests their own stance is pro-competitive), and rural carriers bring a level of commitment, experience, and local presence that rural customers value and the large carriers do not provide in rural areas. The proposals of the Blooston Rural Carriers merely help ensure that small and rural carriers, which are capable of bringing unique benefits to rural customers, have at least a fighting chance to compete with nationwide and regional carriers to obtain federal support.

More importantly, the availability of bid credits and other benefits for rural carriers, and the exclusion of Tier I carriers, will play a decisive role in determining the geographic areas where supported services are actually provided. The Tier I carriers are primarily interested in

¹³ Petition at p. 6.

¹⁴ Comments of AT&T at p. 33, citation omitted.

providing service to the interstate highways and major roads on which their customers travel. While there may not be an independent business case to cover a particular stretch of highway based on customers living and working along that road, Tier I carriers can make a business case for serving the entire highway (including otherwise unprofitable stretches) because of roaming considerations. In contrast, many rural telephone companies are serving communities that are not immediately along the highway, and for which there will likely never be a business case for profitable service, either as an individual system or as part of a larger coverage strategy. These communities are the areas that should be the object of Mobility Fund support, but the current rules do not guarantee that result.

Likewise, AT&T's argument that Section 254 prohibits the Commission from prohibiting handset exclusivity arrangements is incorrect. Rather, the opposite is true: as argued above, Section 254 includes a policy of competitive neutrality, which compels the Commission to take steps to ensure that in distributing federal support, no carrier is treated unfairly. The proposal to prohibit handset exclusivity arrangements speaks directly to the unfair treatment rural carriers receive in trying to compete against the large carriers. Both the Commission and the Department of Justice have recognized, in the context of the failed AT&T/T-Mobile merger for example, that the wireless industry is becoming more and more consolidated, with adverse impacts on competition. The lack of availability of handsets to rural carriers and their customers is hurting the ability of smaller competitors to offer service and, consequently, is harming rural consumers.¹⁵ By definition, an exclusive handset arrangement is anti-competitive. It is incongruous for AT&T to argue that competition needs to be promoted in one breath, but maintain its ability to enter into arrangements which seriously cripple small carriers' ability to

¹⁵ Petition at p. 14, n. 34.

compete with the next. The Blooston Rural Carriers respectfully submit that if large carriers want federal benefits, they must be forced to end such practices. This, and not AT&T's proposal to the contrary, is what will ensure a level playing field, consistent with the Section 254 competitive neutrality principle.

III. The Public Interest Benefits of Verizon's Merger Commitment Must Be Preserved

Verizon argues that its commitment to phase down its USF support pursuant to merger conditions should have no bearing on whether it has the option to participate in the new Mobility programs, on the grounds that those programs did not exist at the time the merger commitments were made, and that its acceptance of the phase-down commitment was conditional.¹⁶ But these points are inapposite because they do not address the Blooston Rural Carriers' actual position, which is that there are significant public interest benefits associated with the phase-down condition that will be lost if Verizon is allowed to simply re-apply for funding. As highlighted in the Petition, the Commission was, in its own words, compelled to include the phase-down condition as part of the merger in order to ensure granting it was in the public interest.¹⁷ The Commission's finding in the *Order* does not suggest it took those public interest benefits into account in deciding not to bar any party from seeking support based on prior relinquishment commitments, and it should therefore do so upon reconsideration.

¹⁶ Comments of Verizon at p. 11. The Blooston Rural Carriers note that their position applies equally to Sprint, which entered into merger conditions similar to Verizon, but Sprint did not address the Petition in its Opposition.

¹⁷ Petition at p. 10.

IV. The Petition is Properly Before the Commission

Lastly, the National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel (collectively, “Consumer Advocates”), argue that all of the concerns in the Petition are premature, improperly before the Commission for failure to exhaust administrative remedies, and potentially moot.¹⁸ Each argument is without merit. The issues enumerated in the Petition deal squarely with a final action of the Commission and are therefore properly the subject of a petition under the Commission’s rules.¹⁹ While the FNPRM deals with Mobility Fund Phase II issues, the Phase I rules are final. As such, it cannot be said that the petition is premature, or that the Blooston Rural Carriers have failed to exhaust administrative remedies. It is also irrelevant that some of these issues may be affected by the outcome of the proceedings in the Court of Appeals for the Tenth Circuit. The Communications Act specifically provides a party may either seek redress of a final action by the Commission before the Commission itself under §405 or with a court of appeals under §402.²⁰ The fact that other parties have chosen to proceed before a federal court does not foreclose the ability of the Blooston Rural Carriers to proceed before the Commission.

Furthermore, as a practical matter, the Commission has already scheduled the Mobility Fund Phase I reverse-auction for September 27, 2012.²¹ Any opportunity for the Commission to meaningfully address the Blooston Rural Carriers’ concerns in the *FNPRM* proceeding

¹⁸ Comments of National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel, WC Docket No. 10-90, filed February 9, 2012, at p. 6.

¹⁹ See 47 CFR 1.429.

²⁰ See 47 USC 405 and 402, respectively.

²¹ *Mobility Fund Phase I Auction Scheduled for September 27, 2012*, AU Docket No. 12-25, DA 12-121, released February 2, 2012.

associated with the *Order and FNPRM*, or for a resolution of the petitions for review currently before the Court of Appeals for the Tenth Circuit, would likely occur after the auction itself is already completed, to the prejudice of any party following the Consumer Advocates's rationale.

V. Conclusion

For the forgoing reasons, and for the reasons set forth in the Petition for Reconsideration, the Blooston Rural Carriers maintain that the Commission must reconsider the portions of its *Order and FNPRM* addressed in the Petition.

Respectfully submitted,

BLOOSTON RURAL CARRIERS

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Filed: February 21, 2012

Certificate of Service

I hereby certify that on February 21, 2012, a copy of the forgoing **Reply to Oppositions to Petition for Partial Reconsideration of the Blooston Rural Carriers** was served on each of the following via US Mail, postage prepaid:

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