

**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
	)	
Mobility Fund Phase I Auction Scheduled for September 27, 2012	)	AU Docket No. 12-25

**To: Chief, Wireless Telecommunications Bureau and  
Chief, Wireline Competition Bureau**

**COMMENTS OF THE BLOOSTON RURAL CARRIERS**

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## SUMMARY

The Blooston Rural Carriers have asked the Commission to reconsider its decision to use reverse auction procedures for the disbursement of Mobility Fund Phase I support because they will undermine the Commission's intention of expanding existing coverage to unserved areas in the most economic way possible. Reverse auctions are susceptible to anti-competitive bidding practices and overwhelmingly advantage publicly traded nationwide carriers that have the least need for the support that the Mobility Fund is supposed to provide. The Commission should instead implement 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, and the treatment of carrier of last resort obligations, costs, as well as past performance and experience providing service in the kinds of areas that generally remain unserved.

If the Commission should nonetheless choose to hold reverse auctions despite these concerns, the Blooston Rural Carriers believe that qualitative factors should play a more significant role in determining what projects receive funding so the Mobility Fund best serves its intended purpose. The Commission should also adopt a system of meaningful bidding credits for *bona fide* rural telephone carriers and small businesses as well as a prohibition on Tier I carrier participation in Auction 901 to ensure that a significant portion of the Mobility Fund goes to the small rural wireless carriers that already serve or hold spectrum to serve areas that are in or adjacent to the rural carriers' certificated telephone service area.

As to matters of auction design, should the Commission proceed with reverse auctions, the Bureaus should adopt single-round bidding procedures for Auction 901 because multiple-round bidding will only allow large carriers to further dominate the auction to the exclusion of small and rural carriers. The Blooston Rural Carriers favor bidding on predefined aggregations of census blocks because this will be far less complicated for small and rural service providers than requiring them to compete in the design and cost-modeling of bidder-defined aggregations. With respect to performance obligations, the Bureaus can help level the playing field for small and rural mobility fund participants, and provide greater opportunities for these entities if they

require Tier I and Tier II service providers to meet a higher coverage threshold for their bids, such as 95 or 100 percent of the aggregate road miles, while allowing *bona fide* Tier III service providers to formulate bids on the basis of 75 percent aggregate road miles coverage.

Finally, with respect to performance default payments, the Blooston Rural Carriers urge the Commission not to apply the letter of credit (“LOC”)/default mechanism to rural carriers. LOCs are not an appropriate device for enforcing compliance with public interest obligations. 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. 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. As a result, most rural wireless carriers and other small businesses will be effectively excluded from Mobility Fund reverse auctions if such LOCs are a required condition of participation.

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The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its rural LEC and wireless clients (the “Blooston Rural Carriers”), hereby submits these comments in response to the FCC’s proposed competitive bidding procedures and certain program requirements for the Mobility Fund Phase I Auction (“Auction 901”), which proceeding is scheduled to begin on September 27, 2012.<sup>1</sup> As an initial matter, the Blooston Rural Carriers

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<sup>1</sup> *Public Notice* DA 12-121 “Mobility Fund Phase I Auction Scheduled for September 27, 2012; Comment Sought on Competitive Bidding Procedures for Auction 901 and Certain Program Requirements (*rel.* Feb. 2, 2012) (“*Auction 901 Procedures Public Notice*”).

note that they have asked the Commission to reconsider its decision in the *Mobility Fund Phase I Order*<sup>2</sup> to use reverse auction procedures for the disbursement of Mobility Fund Phase I support.<sup>3</sup> The Blooston Rural Carriers and others believe reverse auctions are susceptible to shortcomings that will undermine the Commission’s intention of expanding existing coverage to unserved areas in the most economic way possible. Construction and equipment quality short-cuts and other gaming strategies by reverse auction participants are also likely to result in deceptively low “winning bids” and require larger disbursements of high-cost support to replace inferior facilities over the long-run.<sup>4</sup> Moreover, commenters have criticized reverse auction proceedings as being susceptible to anti-competitive bidding practices by large carriers that do not need the funds to expand service.<sup>5</sup> Instead of reverse auctions, the Blooston Rural Carriers have urged the Commission to 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, and the treatment of carrier of last resort obligations, costs, as well as past performance and experience providing service in the kinds of areas that generally remain unserved.<sup>6</sup>

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<sup>2</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 Inter-carrier 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 (“*Mobility Fund Phase I Order*”).

<sup>3</sup> See *Petition for Partial Reconsideration of the Blooston Rural Carriers*, 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, filed December 29, 2011 (“*Blooston Petition for Reconsideration*”).

<sup>4</sup> *Id.* at p. 3.

<sup>5</sup> See *Comments of the Rural Cellular Association*, WT Docket No. 10-208, filed December 16, 2010, at p. 11.

<sup>6</sup> *Blooston Petition for Reconsideration* at p. 4.

If the Commission should nonetheless choose to hold reverse auctions despite these concerns, the Blooston Rural Carriers believe that qualitative factors should play a more significant role in determining what projects receive funding so the Mobility Fund best serves its intended purpose.<sup>7</sup> The Commission should also adopt a system of meaningful bidding credits for *bona fide* small businesses<sup>8</sup> and a prohibition on Tier I carrier participation in the Mobility Fund in order to ensure that a significant portion of the Mobility Fund goes to the small rural wireless carriers that already serve or hold spectrum to serve areas that are in or adjacent to the rural carriers' certificated telephone service area.<sup>9</sup>

With these priorities in mind, the Blooston Rural Carriers respectfully request that the Bureaus modify their proposed procedures for the Mobility Fund Phase I Auction in accordance with the following comments:

**I. Identifying Areas Eligible for Mobility Fund Support**

Of significant concern to small and rural wireless service providers that seek high-cost universal service support, and a threshold question for many hopeful participants in Auction 901, is whether or not there are sufficient areas that are eligible for Mobility Fund support in a wireless carrier's licensed (or leased) territory. If eligible areas are limited to census blocks having the types of roadways that are prevalent in more developed (and less agrarian) parts of the country, or if unserved area data is more accessible to large wireless incumbents that have significant IT resources and entire mapping and planning departments at their disposal, the very

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<sup>7</sup> *Id* at pp 4-5.

<sup>8</sup> *Id.* at pp. 6-7.

<sup>9</sup> *Id.* at pp 10-12.

carriers that have the greatest need for universal service support will be foreclosed from participation in the Mobility Fund Phase I Auction.

The Blooston Rural Carriers applaud the Bureaus for listening to their and other rural carriers' concerns and extending the comment and reply deadline for census block eligibility challenges.<sup>10</sup> Ensuring that a more comprehensive record is developed on areas eligible for Mobility Fund Phase I support is clearly in the public interest and should help to ensure that limited Mobility Fund dollars are spent on projects where support is needed. However, to further assist small and rural carriers in matching up their own network and service area information with the American Roamer data, the Blooston Rural Carriers urge the Bureaus to make the maps necessary for determining the objections to the Phase 1 Auction Mobility Fund readily available in a format that would permit operators to directly overlay their existing network layouts, as well as census block and TIGER data in a GIS or CAD program. The ability to directly overlay the broadband availability map would provide for more accurate evaluation of existing network coverage. The broadband availability map is a matter of public record, and the Blooston Rural Carriers respectfully request that the mapping data be provided to small businesses and rural carriers in format that operators can fully utilize, similar to the FCC's records of wireless service area boundaries. In particular, the preferred format of the broadband availability map would be .SHP, .DWG, or .KML. The Blooston Rural Carriers have received indications that obtaining a mapping capability and the required American Roamer data files that a carrier would need to do

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<sup>10</sup> See *Public Notice* DA 12-236 "Mobility Fund Phase I Auction Limited Extension of Deadlines for Comments and Reply Comments on Census Block Eligibility Challenges" (*rel.* February 16, 2012). See also Blooston Rural Carriers, Motion for Extension of Time and Separate Comment Cycle, filed February 13, 2012 ("Blooston Motion") and Rural Telecommunications Group, Inc., Motion for Extension of Time, filed February 13, 2012 ("RTG Motion").

its own overlay mapping in an effective manner would cost well over \$10,000, which is an unnecessary burden on small rural carriers.

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" and “section” roads such as those that connect farms to towns or provide access to remotely located plants and infrastructure.

Unfortunately, the Phase I Public Notice proposes to use only the first three categories of TIGER designated roads, and does not currently include section roads, vehicular trails and private roads for service vehicles.<sup>11</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>12</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. These roads have heavy traffic and are often used

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<sup>11</sup> *Auction 901 Procedures Public Notice* at ¶21.

<sup>12</sup> Comments of the Blooston Rural Carriers at pp. 15-16.

continuously. Covering these smaller and in some cases 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.

## **II. Establishing Auction Procedures**

The Blooston Rural Carriers offer the following comments on the specific auction procedures that will govern the conduct of Auction 901.

### **A. Auction Design**

#### **1. Single-Round Reverse Auction Design**

The Bureaus have proposed to utilize a single-round format because it is simple and quick, and because we believe multiple bidding rounds are unnecessary in this auction for bidders to make informed bid decisions or submit competitive bids.<sup>13</sup> The Blooston Rural Carriers have significant concerns about the use of reverse auctions in this context since they will overwhelmingly advantage publicly traded nationwide carriers that have the lowest marginal costs and that have the least need for the support that the Mobility Fund is supposed to provide. However, if the Commission should nonetheless proceed with reverse auctions, it should limit bidding to a single round format. The Commission should not adopt multiple-round bidding procedures for Auction 901 because this will only allow large carriers to make incremental changes to some or all of their proposed bids once information about initial bids is publicly available and this will allow them to even further dominate the auction to the exclusion of small and rural carriers.

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<sup>13</sup> *Auction 901 Procedures Public Notice* at p. 9.

## 2. Census Blocks and Aggregations

The Commission determined that the census block should be the minimum geographic building block for which support is provided, but left to the Bureaus, as part of the pre-auction process of developing auction procedures, the task of deciding how to facilitate bidding on aggregations of eligible census blocks.<sup>14</sup>

The Blooston Rural Carriers pointed out in their Mobility Fund Phase I comments that “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>15</sup> As with many of the proposals by the large carriers, small rural carriers cannot realistically compete under such circumstances. To the extent that aggregation of census blocks is allowed, the Blooston Rural Carriers agree with the Bureaus that aggregations should be restricted to smaller service area sizes and the maximum “package” area should not exceed a census tract.<sup>16</sup> Pursuant to the *USF/ICC Transformation Order*, a recipient of Mobility Fund Phase I support will be obligated to provide voice and broadband service meeting the established minimum standards over at least 75 percent of the aggregate road miles associated with the census blocks covered by any individual bid.<sup>17</sup> The Blooston Rural Carriers believe the Bureaus can help level the playing field for small and rural mobility fund participants if they require Tier I and Tier II service providers to meet a higher coverage threshold for their bids, such as 95 or 100 percent of the aggregate road miles.

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<sup>14</sup> *Id.*

<sup>15</sup> Comments of the Blooston Rural Carriers, WT Docket No. 10-208, filed December 16, 2010 (“*Blooston Mobility Fund Comments*”) at p. 12.

<sup>16</sup> *Blooston Mobility Fund Comments* at 12-13.

<sup>17</sup> The required minimum standards for service will depend on whether a winning bidder elects to deploy 3G or 4G service. *USF/ICC Transformation Order* at para. 365, 47 U.S.C. § 54.1006(a) and (b).

With respect to census block aggregation, the Blooston Rural Carriers favor an approach that would require bidding on predefined aggregations of census blocks, with support to be awarded for the eligible unserved blocks that lie within the predefined aggregations. This is far less complicated for small and rural service providers than requiring them to compete in the design and cost-modeling of bidder-defined aggregations. Many Tier I and Tier II carriers currently employ teams of economists, and they can afford to hire additional engineers and experts to come up with hundreds (if not more) of self-designed service proposals. Small and rural carriers simply cannot expect to bid successfully if they are forced to compete on the basis of “custom designed” proposals. The use of pre-defined aggregations will help to level the playing field between large and small carriers, though the use of reverse auctions will still provide a significant (if not insurmountable) advantage to large carriers. It will also simplify the decision-making process for the Commission when comparing bids, and make the process more objective.

Should the Bureaus determine it is in the public interest to permit bidder-defined aggregations of census blocks, the Blooston Rural Carriers agree with the Bureaus’ proposal to require all census blocks covered by any bid to be within a single CMA and to limit the number of different, contingent bids to be three bids per CMA. At the same time, the Bureaus should impose a limit of one bid per census block for the individual census blocks within a CMA. The selection of winning bids should be designed to maximize the potential coverage of eligible road miles, but not factoring in the *actual* coverage threshold required, which would be somewhat greater for Tier I and Tier II carriers under the coverage proposal favored by the Blooston Rural Carriers.

### **3. Other Aggregation Options**

With respect to the alternative package bidding auction design similar to that described by Paul Milgrom and Assaf Eilat in an *ex parte* submission on behalf of ViaSat,<sup>18</sup> the Blooston Rural Carriers urge the Bureaus not to permit the use of package bidding options that will uniquely or unduly favor service providers that utilize a particular technology (*e.g.*, satellite) over terrestrial wireless carriers.

### **4. Evaluating the Aggregation Options**

As noted above, the Blooston Rural Carriers believe the Bureaus can help level the playing field for small and rural mobility fund participants, and provide greater opportunities for these entities if they require Tier I and Tier II service providers to meet a higher coverage threshold for their bids, such as 95 or 100 percent of the aggregate road miles, while allowing *bona fide* Tier III service providers to formulate bids on the basis of 75 percent aggregate road miles coverage. Using pre-defined CMA-based aggregations should help simplify an already complex and unfamiliar proceeding for the benefit of small and rural carriers, if the Commission does not reconsider its proposal to utilize reverse auctions for the award of Mobility Fund Phase I support, as the Blooston Rural Carriers have urged.

#### **B. Auction Information Procedures / Auction Structure / Bidding Procedures**

Consistent with recent spectrum license auctions, the Bureaus have proposed to conduct Auction 901 using limited information procedures. In particular, the Bureaus have proposed to withhold from public disclosure, until after the close of bidding and announcement of auction results, (1) information from bidders' short-form applications regarding their interests in

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<sup>18</sup> *Auction 901 Procedures Public Notice* at p. 13 *citing* ViaSat, Inc. and Wild Blue Communications, Inc., *Ex Parte Notice*, WC Docket No. 10-90, July 29, 2011, Enclosure.

particular eligible census blocks and (2) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. After the close of bidding, bidders' area selections, bids, and any other bidding-related actions and information would be made publicly available. Again, should the Commission conclude that reverse auctions are in the public interest, the Blooston Rural Carriers support the Bureaus' proposal to use limited information procedures for Auction 901. Likewise, and with the same qualifications, the Blooston Rural Carriers have no objections to the auction structure and bidding procedures that have been proposed by the Bureaus.

### **C. Auction Default Payments / Performance Default Payments**

If a bidder selected by the auction mechanism does not become authorized to receive support after the close of the bidding, *e.g.*, if it fails to timely file a long-form application, if it is found ineligible or unqualified to be a recipient of Mobility Fund Phase I support, if it has its long-form application dismissed for any reason, or if it otherwise defaults for any reason after the close of the auction, the Bureaus have proposed an auction default payment rate of five percent of the total defaulted bid.<sup>19</sup> It is respectfully submitted that, since Auction 901 will be the first-ever reverse auction, and there is room for subjectivity in determining whether, *e.g.*, a business case submitted with a long form application fully supports the bid amount, the Bureaus should refrain from enforcing default payments in the upcoming auction. A default payment may be appropriate for certain egregious failures, such as a failure to submit any long form at all, but there are bound to be gray areas associated with a number of the newly-adopted auction requirements.

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<sup>19</sup> *Id.* at p. 16.

With respect to performance default payments, the Blooston Rural Carriers believe that letters of credit (“LOCs”) are not an appropriate device for enforcing compliance with public interest obligations. As the Blooston Rural Carriers pointed out in their *Mobility Fund Comments*, the LOC/default mechanism should not be applied to rural carriers.<sup>20</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 be able to obtain a standby LOC, it would be very expensive.<sup>21</sup> Similarly, as US Cellular has correctly noted, “[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>22</sup> Moreover, 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 will thereby be effectively excluded from Mobility Fund reverse auctions if such LOCs are a required condition of participation. Nor should a LOC be necessary for established rural telephone carriers, which have made their living serving the exact type of areas to be reached with Mobility Fund support, and have done so by responsibly borrowing from institutions such as RUS, CoBank and RTFC and then timely

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<sup>20</sup> *Blooston Mobility Fund Comments* at 17.

<sup>21</sup> *Id.*

<sup>22</sup> Comments of US Cellular at 50.

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.

#### **D. The Commission Should Implement Bid Credits for the Phase I Auction**

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. 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.' 47 U.S.C. §309(j)(2)."<sup>23</sup> As demonstrated in the Blooston Rural Carriers' Petition for Partial Reconsideration of the Phase I rules (at pp. 6-7), the Commission should therefore take meaningful and concrete steps to ensure an opportunity for rural telephone companies to obtain Phase I support. 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. While most rural telephone companies qualify as small businesses, some have surpassed the Commission's usual measure of

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<sup>23</sup> Blooston Mobility Comments at 4-5.

a "small business" (\$40 million in average gross revenues) 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 particular, the Bureaus should adopt a bid credit program for the Phase I auction that includes the following relief:

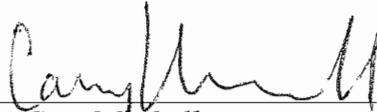
- The size of a small business bidding credit (which would act as a reduction of the bid in a reverse auction context) should be 25 percent for a small business, and 35 percent for a very small business or a rural telephone company as defined by Section 51.5 of the Commission's Rules. A rural telephone 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 in the *FNPRM*.

## CONCLUSION

Wherefore, the Blooston Rural Carriers urge the Bureaus to adopt procedures for the Mobility Fund Phase I auction that are consistent with these comments.

Respectfully submitted,

**BLOOSTON RURAL CARRIERS**

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