

**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 a 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
)	
Mobility Fund Phase I Auction)	AU Docket No. 12-25

COMMENTS of UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation (“U.S. Cellular”), by counsel, hereby submits these Comments, pursuant to the Public Notice issued by the Commission in the above-captioned proceeding.¹ U.S. Cellular favors an auction process that simplifies entry for carriers who have been

¹ *Mobility Fund Phase I Auction Scheduled For September 27, 2012, Comment Sought On Competitive Bidding Procedures For Auction 901 And Certain Program Requirements*, AU Docket No. 12-25, Public Notice, DA 12-121 (rel. Feb. 2, 2012) (“*Public Notice*”). A summary of the *Public Notice* was published in the Federal Register at 77 Fed. Reg. 7152 (Feb. 10, 2012). Auction 901, as so designated by the *Public Notice*, will be the first reverse auction for disbursement of high-cost universal service support, “as envisioned by the Commission” in the *Order. Public Notice* at para. 2. See *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, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011), 76 Fed. Reg. 73830 (Nov. 29, 2011), 76 Fed. Reg. 78384 (Dec. 16,

designated as eligible telecommunications carriers (“ETCs”), in order to promote efficiency and to accelerate investment in rural areas.

I. Use of Census Blocks as the Supported Service Area Is Inconsistent With Section 214 of the Act.

As U.S. Cellular has previously stated,² a unilateral FCC decision to provide high-cost support in areas served by a rural telephone company based on census block boundaries is inconsistent with Section 214(e)(5) of the Communications Act of 1934 (“Act”).³ In the case of areas served by rural telephone companies, the area to be used for purposes of providing universal service support must be the rural telephone company’s study area, unless the Commission *and the states* agree to “establish a different definition of service area for such company.”⁴

If the Commission seeks to disburse support based on census blocks, then census blocks would first need to be defined as “service areas” pursuant to the requirements of Section 214(e). The Commission has not consulted the states, much less reached agreement on service area definitions for Mobility Fund or Connect America Fund (“CAF”) purposes.⁵

If the Commission intends to define service areas using census block boundaries, then it should reach agreement with each state commission on this decision, pursuant to the Section 214

2011), 76 Fed. Reg. 81562 (Dec. 28, 2011) (“Order” and “Further Notice”), recon., FCC 11-189 (rel. Dec. 23, 2011), *further recon. pending*.

² See, e.g., U.S. Cellular Comments, WC Docket No. 10-90, *et al.* (filed Jan. 18, 2012) (“U.S. Cellular Further Notice Comments”) at 25-26.

³ 47 U.S.C. § 214(e)(5).

⁴ *Id.* The Commission has forborne from the Section 214(e)(5) requirement that the service area of a competitive ETC must conform to the service area of any rural telephone company serving the same area, for the limited purpose of becoming designated as a Lifeline-only ETC. *Telecommunications Carriers Eligible for Universal Service Support; NTCH, Inc. Petition for Forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b); Cricket Communications, Inc., Petition for Forbearance*, WCB Docket No. 09-197, Order, 26 FCC Rcd 13723 (2011).

⁵ See U.S. Cellular Comments, WC Docket No. 10-90, *et al.* (filed Apr. 18, 2011) at 27.

process. This issue is likely to be addressed by the U.S. Court of Appeals for the Tenth Circuit,⁶ and therefore the Commission should take steps now to minimize the possibility that a remand could significantly disrupt the Phase I auction process, or invalidate auction results.

II. A Letter of Credit Requirement Is Burdensome and Unnecessary for Carriers That Have a Demonstrated Record of Compliance.

For the first time, the Commission requires a carrier to post a letter of credit (“LOC”) to secure performance of its universal service obligations.⁷ U.S. Cellular opposes this requirement for carriers with a demonstrated record of compliance, as it is burdensome, it will constrain capital investment by all carriers, and it is unnecessary because the Commission can rely on other mechanisms (such as its forfeiture rules) to enforce compliance with public interest obligations.

The requirement is burdensome because as long as an LOC is outstanding, it takes up lending capacity and reduces the amount available for capital and operating expenses. For example, if a carrier wins an auction with a bid of \$1 million, and the LOC requirement is \$1.2 million, then the carrier must either deposit that amount with an institution, or it must treat that amount as borrowed under an existing credit facility. So, if a carrier has a \$10 million credit facility, it must tie up \$1.2 million, or 12%, of its commitment. This does not come without cost. Banks charge carrying fees for an LOC each year that the LOC is in place.

In the above example, 12% of a carrier’s borrowing capacity is taken up, limiting investments that would otherwise be made. This burden disproportionately affects smaller carriers, but is also a significant burden for companies such as U.S. Cellular.

While ensuring performance is an appropriate goal, U.S. Cellular does not believe the use of an LOC is necessary in most circumstances. For ten years, U.S. Cellular and many other wire-

⁶ See *Direct Commc’ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases) (seeking review of the *Order*). U.S. Cellular notes that it has filed a Petition for Review of the *Order*. See *United States Cellular Corporation v. FCC*, No. 12-1065 (D.C. Cir. filed Jan. 30, 2012).

⁷ See *Order* at para. 447; *Public Notice* at paras. 7, 13.

less carriers have been responsible stewards of universal service funding, investing support as required by law and demonstrating for state commissions and the FCC how high-cost support is being invested in America's rural areas.

Moreover, U.S. Cellular has previously argued that, instead of imposing LOC requirements, the FCC should rely upon forfeiture penalties and revocation of ETC status as a means of enforcing compliance with public interest obligations applicable to Mobility Fund and CAF support recipients.⁸ The Commission's investigation and complaint processes, together with the Commission's and state commissions' ETC designation procedures, serve as effective accountability mechanisms.

If, however, LOC requirements are imposed, then carriers with demonstrated track records of performance as ETCs should not be subject to these requirements. U.S. Cellular recommends that carriers that have been designated as ETCs and that have been receiving high-cost support for three or more years be exempted from the LOC requirement unless the Commission finds circumstances warranting an LOC in particular cases. Newcomers to the program, and those which have received funds under the CETC program for less than three years, should be required to post an LOC until their build plans are substantially complete. Because these carriers would not have any demonstrated track record, the imposition of an LOC requirement is warranted to help to ensure their performance.

III. Some of the “Long Form” Application Requirements Are Unnecessary.

The Wireless Telecommunications and Wireline Competition Bureaus (“Bureaus”) indicate that “[a]t the conclusion of the auction, winning bidders will be required to file an in-depth

⁸ U.S. Cellular *Further Notice* Comments at 50-51; see U.S. Cellular Reply Comments, WC Docket No. 10-90, *et al.* (filed Feb. 17, 2012) (“U.S. Cellular *Further Notice* Reply”) at 53.

‘long-form’ application to demonstrate that they qualify for Mobility Fund Phase I support.”⁹ The application will include ownership and eligibility information. It is unclear why such requirements are necessary, when carriers go through a rigorous application process when they apply for ETC status. These requirements appear redundant and unlikely to yield any new information for the Commission. Worse yet, if such a long form application is subject to challenge, then an applicant will have to go through a second litigation to access high-cost support.

U.S. Cellular believes the better approach is to focus post-auction analysis on a carrier’s build plan, to ensure that carriers provide a solid commitment to provide high-quality service to the area, and to focus on a carrier’s performance. This approach will reduce administrative burdens on regulators that have little or no value in determining a carrier’s qualifications to be an ETC or its ability to carry out its commitments.

IV. Carriers Should Demonstrate Rate Comparability in an Efficient Manner.

As a threshold matter, U.S. Cellular renews its concern regarding the Commission’s attempt to adopt policies to promote the comparability of broadband services available in rural and urban areas, while at the same time refusing to classify broadband as a supported service.¹⁰ U.S. Cellular agrees with AT&T’s argument that “the Commission has no statutory obligation to ensure that broadband service rates in rural and urban areas are reasonably comparable *unless it makes broadband service a supported service.*”¹¹

Given the fact that the Commission treats broadband as an information service regulated under Title I of the Act, it has no statutory authority to impose rate or service comparability requirements on broadband service providers. The Commission should adopt the simple solution to

⁹ *Public Notice* at para. 13.

¹⁰ *See, e.g., U.S. Cellular Further Notice Reply* at 27-29.

¹¹ *AT&T Further Notice Comments* (filed Jan. 18, 2012) at 27 (emphasis added).

this problem by taking the more straightforward and legally defensible approach of including broadband on the list of supported services.

The Bureaus offer several options for carriers to demonstrate that rural rates are comparable to those in urban areas.¹² At the outset, U.S. Cellular is concerned that some of the options appear to place a significant burden upon carriers, such as comparing their rates to those in thirty urban markets.¹³ As U.S. Cellular understands Section 254 of the Act, it is the Commission that is required to base its universal service policy choices on, among other things, promoting reasonably comparable rates in urban and rural areas.¹⁴ Accordingly, the onus for measuring rate comparability and taking steps to promote it, should be on the Commission, not carriers.

To the extent that carriers should be assisting the Commission in meeting its obligation to measure rate comparability, any rate comparability requirement should be limited to demonstrating that the carrier has at least one rural rate that is reasonably comparable to rates in urban areas for comparable service.¹⁵ The law, which requires reasonable comparability, disfavors rules that which would require a rural rate to be equal to or lower than those available in urban areas.

As a practical matter, wireless carriers operating in otherwise competitive markets must be able to adjust rates quickly in response to competitive forces. It would be counterproductive for the FCC to require one wireless carrier to be subjected to strict rate regulation, while allowing other carriers freedom from rate regulation. This is especially destructive in the marketplace

¹² *Public Notice* at paras. 65-70.

¹³ *Id.* at para. 70.

¹⁴ *See* 47 U.S.C. §254(b)(3).

¹⁵ U.S. Cellular has argued for the adoption of a presumption that, if a carrier demonstrates that its service offerings to rural customers do not differ from its offerings to urban customers, then the carrier should not be required to make any further showing to establish that its services in rural areas are reasonably comparable to those provided to urban customers. U.S. Cellular *Further Notice Reply* at 43-44.

when virtually all wireless carriers receiving Mobility Fund support will be operating in competitive markets that have been free from rate regulation since the industry's inception.

Here, a simple rule is the best way for the FCC to discharge its statutory responsibilities. A carrier receiving Mobility Fund support must have at least one basic service rate plan that is reasonably comparable to those offered by mobile carriers operating in urban areas, or offer rural consumers the same rate plans that it offers its customers in urban areas. A carrier receiving support that charges significantly higher rates in rural areas should demonstrate why such higher rates do not threaten the affordability of telephone service in areas where it is receiving support.

V. A Carrier Receiving Support Should Cover at Least 75% of Eligible Road Miles in Its Proposed Service Area.

The Bureaus propose to require wireless carriers to cover 100% of the eligible road miles in the supported area.¹⁶ If the Bureaus plan to use a “one size fits all” requirement, then the threshold should be set at no more than 75% of eligible road miles.

U.S. Cellular believes that a lower threshold will stretch program dollars further and provide rural areas with more benefits than will a threshold of 95% or greater. For purposes of this discussion, U.S. Cellular assumes that the last 25% of road miles between the 75% and 100% thresholds will be either (or perhaps all) (i) the hardest to cover due to, for example, terrain, power access, or available site locations, (ii) located in the least densely populated areas, (iii) the highest-cost areas, (iv) uncovered due to unexpected real-world signal propagation that differs from that which was modeled, or (v) uncovered due to irregular census block boundaries.

U.S. Cellular recognizes that this assumption may not be true in all areas of the country. However, if the Bureaus are serious about ensuring that the Commission gets the most bang for its buck in a nationwide auction, then setting the threshold lower at this early stage will spread

¹⁶ *Public Notice* at para. 36. The proposal is made in the context of bidder-defined aggregations of census blocks. The Bureaus also seek comment on using a different coverage requirement, such as 95%. *Id.*

program dollars further. Individual carrier bids will be generally higher on a per-unit basis to meet a 95% or 100% threshold and therefore the extra support needed to cover the areas above 75% will yield fewer benefits nationwide. By lowering the threshold to 75%, carrier bids nationwide will be lower, increasing the overall reach of the \$300 million budget because more investment dollars will be spent in rural areas with no 3G service and with a greater density of eligible road miles on a per-cell site basis.

U.S. Cellular also believes that a 95% or 100% coverage threshold would prejudice mountainous areas such as West Virginia, Oregon, Washington, Maine, Kentucky, New Hampshire, and Virginia, where the cost of reaching the last mile is much higher than in other areas. Such areas are much less likely to prevail in a nationwide auction if the coverage threshold is set at 95% or 100%.

Accordingly, U.S. Cellular recommends a 75% coverage threshold as likely to deliver greater benefits to rural areas nationwide.

VI. U.S. Cellular Favors Allowing Carriers To Pre-Define a Census Tract.

As a general matter, once a carrier has qualified as an ETC, the Commission should make it as simple as possible for it to participate in the auction process. Accordingly, U.S. Cellular supports an approach that would allow carriers to pre-define a census tract as the area for which they are bidding, in addition to giving the carriers the option of aggregating eligible census blocks into a package bid.¹⁷ Listing hundreds, or even thousands, of census blocks in an application is not only tedious, but it is likely to encourage erroneous service area definitions that could delay the roll out of service in rural areas while disputes are litigated.

¹⁷ See *id.* at para. 31.

As part of their bidder-defined aggregation approach, the Bureaus propose to require that all the census blocks covered by any given bid must be within a single cellular market area (“CMA”).¹⁸ U.S. Cellular agrees with this approach, since it would not impair the opportunity for bidders to closely configure bids to the geographic coverage of specific cell sites that they would plan to upgrade or deploy to provide advanced wireless service with Mobility Fund Phase I support, and it would help to limit the number of partially overlapping package bids.¹⁹

At every turn, U.S. Cellular urges the Commission to consider simplicity for Phase I auction rules, to minimize litigation risk and accelerate investment. This is especially important in a “one time” auction.

VII. The Bureaus Should Not Impose “Pre-Defined” Census Block Aggregations.

If the Commission’s objective is to increase carrier participation, then the Bureaus should not impose an approach that limits bidding to aggregations of census blocks pre-defined by the Bureaus.²⁰ In an area where a census block aggregation is pre-defined, there is a risk that otherwise eligible carriers will be disqualified from participating because the predefined area will be larger than a carrier’s ETC service area. Any pre-defined aggregation that disqualifies an otherwise eligible carrier is counterproductive to the goal of increasing participation in the auction process.

By allowing carriers to define the areas they wish to bid for, the Commission will maximize the number of eligible carriers who will actually participate in the auction process. In most areas, there are not many wireless ETCs eligible to participate in the auction process to begin

¹⁸ *Id.* at para. 32.

¹⁹ *See id.* (also proposing to limit bidders to three bids per CMA, as a further means of reducing the number of overlapping bids). While U.S. Cellular has advocated limiting package bids to aggregations of geographic areas that are within the boundaries of a county, it believes that placing the limit at the CMA level would also be effective in curbing the ability of larger carriers to manipulate reverse auction outcomes to their advantage by packaging bids that cover extensive geographic areas. *See* U.S. Cellular *Further Notice* Comments at 38.

²⁰ *See Public Notice* at paras. 38-44.

with. Accordingly, if a pre-defined aggregation disqualifies one or more otherwise eligible bidders, the Commission reduces competition at the auction, which must be disfavored.

Conclusion.

U.S. Cellular respectfully requests that the Bureaus, in developing processes and bidding procedures for Auction 901 and in addressing auction-related programmatic issues, keep the auction rules as simple as practicable, not only to minimize the risks of litigation but also to encourage auction participation and to accelerate investment by mobile broadband providers in unserved rural areas.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION



By: _____

David A. LaFuria
John Cimko

LUKAS, NACE, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678

Grant B. Spellmeyer
Executive Director – Federal Affairs &
Public Policy
UNITED STATES CELLULAR CORPORATION
8410 West Bryn Mawr
Chicago, Illinois 60631
(773) 399-4280

February 24, 2012