

**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 Inter-carrier 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

**REPLY COMMENTS of UNITED STATES CELLULAR CORPORATION**

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## SUMMARY

U.S. Cellular made several suggestions in its Comments for developing a simplified set of rules and requirements for the Mobility Fund Phase I reverse auction, with a view toward encouraging a high level of participation in the auction, promoting the acceleration of investment by mobile broadband providers in unserved rural areas, and minimizing the risk of litigation. Many of the positions taken by U.S. Cellular have received strong support in the record.

Specifically, there is widespread agreement that a letter of credit requirement is burdensome, would impede investment in mobile broadband infrastructure, and is unnecessary. Commenters also support U.S. Cellular's suggestion that carriers that have already demonstrated their ability to comply with Commission requirements in connection with their receipt and management of universal service support should be exempt from the LOC requirement.

U.S. Cellular also has received support for its proposal that the Commission, as a prerequisite to adopting rate comparability requirements, must first adopt rules treating mobile broadband service as a supported service. Any rate comparability requirements that are adopted should avoid imposing significant burdens on carriers and should simplify that rate comparability certification process.

There is support for U.S. Cellular's proposal that a 75 percent road mile coverage requirement should be applied regardless of whether the Wireless Telecommunications and Wireline Competition Bureaus select a bidder-defined or a pre-defined census block aggregation approach. Commenters also urge the Bureaus not to adopt a 100 percent coverage requirement in any scenario.

Concerning the aggregation approach, there is support for U.S. Cellular's view that the Bureaus should adopt their preferred bidder-defined aggregation approach, since this would in-

crease auction participation, help to target support, and enable bidders to adjust their bids to accommodate areas that they can serve effectively and efficiently.

Finally, U.S. Cellular supports suggestions in the record that the Commission should delay the Mobility Fund Phase I reverse auction until pending litigation and pending reconsideration petitions are resolved, and that the Phase II reverse auction also should be delayed so that the results of the Phase I auction can be evaluated by both the Commission and interested parties before the Commission makes any decisions regarding the disbursement of Phase II support.

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United States Cellular Corporation (“U.S. Cellular”), by counsel, hereby submits these Reply Comments, pursuant to the Public Notice issued by the Commission in the above-captioned proceeding.<sup>1</sup>

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<sup>1</sup> *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.

**I. The Record Reflects U.S. Cellular’s Concern That a Letter of Credit Requirement Is Burdensome and Unnecessary.**

U.S. Cellular explains in its Comments that a letter of credit (“LOC”) requirement is burdensome, would impede investment in broadband infrastructure, and is unnecessary because the Commission has other tools already in place to ensure compliance with public interest obligations.<sup>2</sup> If such a requirement is imposed, then carriers with demonstrated track records as eligible telecommunications carriers (“ETCs”) should be exempt.<sup>3</sup>

Several parties agree with this view. ACS, for example, argues that the requirement is both burdensome and unnecessary for certain service providers, “such as wireless service providers that are already known to the Commission from the review process when they purchased their licenses, as well as through their history of providing universal service.”<sup>4</sup> ARC argues that the LOC requirement “represents a hurdle that only very large carriers are likely to meet[.]”<sup>5</sup> and Blooston observes that imposition of the requirement would effectively exclude most rural wireless carriers from participation in Mobility Fund reverse auctions.<sup>6</sup>

At a minimum, the record supports an exemption from the LOC requirement, as suggested by U.S. Cellular, for carriers that have already demonstrated their ability to comply with

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

<sup>2</sup> U.S. Cellular Comments at 3-4.

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

<sup>4</sup> Alaska Communications Systems Group, Inc. (“ACS”) Comments at 5 (footnote omitted).

<sup>5</sup> Alaska Rural Coalition (“ARC”) Comments at 4.

<sup>6</sup> Blooston Rural Carriers (“Blooston”) Comments at 11. Blooston argues that it would be very expensive for these carriers to obtain LOCs, in the unlikely event that they would be able to obtain them at all. *Id.*

Commission requirements in connection with their receipt and management of universal service support.

**II. There Is Agreement with U.S. Cellular’s View That the Commission Should Avoid a Complex and Burdensome Rate Comparability Standard.**

In its Comments, U.S. Cellular begins its discussion of rate comparability by observing that it is problematic for the Commission to attempt to adopt rate comparability standards for broadband when it has failed to classify broadband as a supported service.<sup>7</sup>

NASUCA shares this concern, noting that “it is essential for the FCC to reclassify mobility broadband as a telecommunications service so that it qualifies as a service eligible to receive federal universal service support, under the criteria set out in [Section] 254(c) (1) (A)-(D) [of the Communications Act of 1934].”<sup>8</sup>

In choosing not to treat broadband as a telecommunications service and as a supported service for Connect America Fund and Mobility Fund purposes, the Commission created a dilemma due to the fact that, under the approach it has taken, it does not have any jurisdiction to regulate the rates of broadband under Section 254 of the Communications Act of 1934 (“Act”). The rules adopted by the *Order* illustrate the problem.

Section 54.1005(b)(2)(viii) of the Rules<sup>9</sup> requires a winning bidder to certify that it will offer “service” in an area of support at rates that are within a reasonable range of rates for similar “service plans” offered by mobile wireless providers in urban areas. The Commission’s authority

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<sup>7</sup> U.S. Cellular Comments at 5.

<sup>8</sup> National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, New Jersey Division of Rate Counsel, and Utility Reform Network (collectively, “NASUCA”) Comments at 7 (footnote omitted). NASUCA indicates that it “continue to doubt that the Commission has the authority to use universal service funds to support the deployment of mobility data and broadband service.” *Id.* at 11 (footnote omitted).

<sup>9</sup> 47 C.F.R. § 54.1005(b)(2)(viii) (as adopted by the *Order*).

to regulate the comparability of rates under its Title II Universal Service Fund (“USF”) program is limited to the rates for “services that are supported by Federal universal service mechanisms under [Section] 254(c)” of the Act.<sup>10</sup> Accordingly, the term “service” in Section 54.1005(b)(2)(viii) of the Rules means a service that is either within the Commission’s definition of supported “telecommunications services,”<sup>11</sup> or the “telecommunications services and network capacity”<sup>12</sup> that the Commission has designated as necessary to connect a wireless network to “public institutional telecommunications users”<sup>13</sup> in order to enhance “access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries.”<sup>14</sup>

Thus, the Commission currently has the authority to regulate the rates for “[v]oice telephony service[,]”<sup>15</sup> telecommunications services and Internet access services provided to schools and libraries,<sup>16</sup> telecommunications services properly requested by rural health care providers,<sup>17</sup> and eligible Internet access services selected by such providers.<sup>18</sup> It is without jurisdiction to regulate the rates of any other service under its Title II USF program. The Commission needs to remedy this problem before it can apply rate comparability or other Section 254 mandates to mobile broadband services.

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<sup>10</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>11</sup> *See id.* § 254(c)(1).

<sup>12</sup> *Id.* § 254(h)(3).

<sup>13</sup> *Id.* § 254(h)(2)(B).

<sup>14</sup> *Id.* § 254(h)(2)(A).

<sup>15</sup> 47 C.F.R. § 54.101(a).

<sup>16</sup> *See id.* §§ 54.502, 54.503.

<sup>17</sup> *See id.* §§ 54.601(c)(1), 54.605, 54.607.

<sup>18</sup> *See id.* §§ 54.601(c)(2), 54.621(a).

Turning to the rate comparability issues raised in the *Public Notice*, a carrier currently 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 must offer rural consumers the same rate plans that it offers its customers in urban areas.<sup>19</sup> By simply continuing this approach, the Commission would avoid imposing significant burdens on carriers that would result from some of the options being considered by the Wireless Telecommunications and Wireline Competition Bureaus (“Bureaus”).

AT&T agrees that rate comparability certification requirements should be simplified, and that certifications should be treated as acceptable if they show that a carrier’s rate plans offered in supported areas are the same as nationwide or state-wide plans it offers in urban areas.<sup>20</sup> AT&T suggests that, if a carrier does not serve any urban areas, then it should be able to meet the certification requirement “by certifying that the rates it offers for plans in supported areas are no higher than, or fall within a certain range of, the rates offered by another carrier that offers a nationwide or statewide plan to urban areas.”<sup>21</sup>

The approaches suggested by U.S. Cellular and by AT&T would provide simple rules for certifying rate comparability, which would be sufficient to meet the statutory mandate while also avoiding the imposition of any significant and unnecessary burdens on Phase I support recipients.

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<sup>19</sup> U.S. Cellular Comments at 6-7.

<sup>20</sup> AT&T Comments at 21.

<sup>21</sup> *Id.* at 21-22.

### **III. There Is Support in the Record for Limiting the Coverage Requirement to 75 Percent of Road Miles Associated with Supported Census Blocks.**

U.S. Cellular argues in its Comments that the coverage requirement should be 75 percent of the eligible road miles in a supported area, regardless of whether the Commission uses a bidder-defined or a pre-defined aggregation approach.<sup>22</sup>

ACS agrees with U.S. Cellular's approach, concluding that a 75 percent coverage level would be appropriate for a minimum requirement.<sup>23</sup> Such a requirement would provide appropriate flexibility to bidders, would assist in creating investment incentives, and would avoid unrealistic expectations.<sup>24</sup> Moreover, ACS points out that a 100 percent coverage requirement "favors certain regions of the country—specifically, those with flat terrain where more road miles can be covered with fewer cell sites—and disfavors the mountainous regions such as the Appalachians, the Rockies, and Alaska."<sup>25</sup>

While other commenters suggest that the coverage requirement should vary depending on the size of the service provider<sup>26</sup> or on whether a bidder-defined or pre-defined aggregation approach is used,<sup>27</sup> parties urge the Commission to avoid using a 100 percent coverage requirement in any scenario.<sup>28</sup>

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<sup>22</sup> U.S. Cellular Comments at 7-8. The bidder-defined and pre-defined aggregation approaches are discussed in Section IV., *infra*.

<sup>23</sup> ACS Comments at 5.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* See U.S. Cellular Comments at 8.

<sup>26</sup> Blooston Comments at 7.

<sup>27</sup> See AT&T Comments at 13 (arguing that, if the Bureaus adopt a bidder-defined approach and decide to increase the coverage requirement above 75 percent, then they should not adopt a coverage requirement in excess of 90 percent).

<sup>28</sup> *Id.* at 12-13; Verizon Comments at 3.

U.S. Cellular continues to adhere to its view that applying a 75 percent coverage requirement across the board will achieve the best results for the disbursement and utilization of Phase I support. As ACS explains, “because Phase I Mobility Fund provides only one-time support, it can be expected to do the most good if it serves as ‘seed’ money for additional private investment, and is widely distributed throughout all regions of the country.”<sup>29</sup> A 75 percent coverage requirement would promote this result by facilitating the participation of all carriers, including smaller rural carriers, in the Phase I auction, and by lessening the risk that the coverage requirement would favor certain regions of the country while penalizing other regions.

#### **IV. Other Commenters Support U.S. Cellular’s View That a Bidder-Defined Aggregation Approach Should Be Used for the Mobility Fund Phase I Reverse Auction.**

U.S. Cellular opposes requiring carriers to bid on census block aggregations that have been pre-defined by the Bureaus, arguing instead that bidders should be permitted to aggregate census blocks on their own, subject to the caveat that all aggregated blocks must be within the same Cellular Market Area.<sup>30</sup>

There is strong support in the record for the bidder-defined approach. GCI, for example, argues that “bidders should be allowed to define their own bidding area aggregations to harness geographic economies of scale.”<sup>31</sup> RTG argues that a bidder-defined approach would help to target support and would allow bidders to adjust bids to areas that make the most sense to serve,

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<sup>29</sup> ACS Comments at 4.

<sup>30</sup> U.S. Cellular Comments at 8-10. U.S. Cellular also indicates that carriers should be able to specify that they are bidding on a census tract basis, submitting bids for providing coverage and service in all unserved census blocks within a specified census tract. *Id.* at 8.

<sup>31</sup> General Communication, Inc. (“GCI”) Comments at 2 (footnote omitted).

and to bid on areas where they are qualified ETCs and hold spectrum necessary to participate in the Phase I auction.<sup>32</sup>

Verizon points out that the use of bidder-defined aggregations is the Commission's preferred approach,<sup>33</sup> and argues that "[b]idder-defined aggregations are essential to the success of this early phase of the mobility fund."<sup>34</sup> U.S. Cellular agrees with Verizon's argument that the Commission should strive to maximize participation in Phase I "in order to keep the program on budget and help ensure meaningful 3G (or better) coverage gains that will benefit consumers in rural areas."<sup>35</sup> U.S. Cellular also agrees with Verizon that the best way to achieve these results is to ensure that "wireless carriers seeking to serve consumers in these [rural] areas have input into what they can do, where they can deploy, and how much subsidy is actually required."<sup>36</sup>

A bidder-defined aggregation approach accounts for the fact that, as Verizon explains, carriers are in the best position to make infrastructure decisions and assess local impediments, and the imposition of pre-defined service territories may not appropriately account for localized challenges that carriers would need to address in order to provide 3G (or better) coverage.<sup>37</sup>

AT&T, in arguing in favor of using a pre-defined aggregation approach, expresses concern that the bidder-defined aggregation approach "significantly complicates both the development of bids and the determination of the winners[.]"<sup>38</sup> and that measures proposed by the Bureaus to simplify the process "do not completely solve the problems, and . . . create new prob-

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<sup>32</sup> Rural Telecommunications Group, Inc. ("RTG") Comments at 5.

<sup>33</sup> Verizon Comments at 2 (citing *Public Notice* at para. 30).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 2-3.

lems.”<sup>39</sup> AT&T also asserts that “the fundamental problem with allowing [bidder-defined] package bidding is that it likely will result in numerous partially overlapping bids.”<sup>40</sup>

While AT&T expends considerable effort delving into the details of its various criticisms of the bidder-defined aggregation approach,<sup>41</sup> its analysis overlooks the fact that, as the record reflects, the bidder-defined approach has significant advantages that would promote the Commission’s broadband goals and objectives. Providing bidders with “an opportunity to closely configure their bids to the geographic coverage of the specific cell sites that they would upgrade or build out to provide advanced wireless service with support”<sup>42</sup> is, in U.S. Cellular’s view, “the best way to achieve the Commission’s objective—to maximize the number of additional road miles where advanced wireless service is available without exceeding [the] budget of \$300 million.”<sup>43</sup> The bidder-defined approach would not only encourage participation in the Phase I auction, but would also enable auction participants to tailor bids that would optimize the efficient use of funding.

The Bureaus would best serve the Commission’s Mobility Fund goals by adopting their preferred approach, and then relying on the Phase I auction process as a test bed for determining whether any adjustments to the bidder-defined mechanism should be made, if any of the concerns expressed by AT&T actually materialize.

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<sup>38</sup> AT&T Comments at 6.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *See id.* at 6-12.

<sup>42</sup> *Public Notice* at para. 31.

<sup>43</sup> *Id.* at para. 30.

Finally, several commenters argue that a problem with the bidder-defined approach is that it requires the use of a mathematical optimization algorithm, which the Bureaus have not made available for public comment.<sup>44</sup> U.S. Cellular agrees that, before adopting the bidder-defined approach, the Bureaus should publish their proposed optimization algorithm and provide interested parties with an opportunity to review and comment on the algorithm.

**V. There Is Support in the Record for Delaying the Mobility Fund Reverse Auctions.**

NTCH argues that the Commission should await the outcome of pending reconsideration proceedings involving the *Order*, as well the outcome of pending litigation challenging the source of the \$300 million in funding for the Phase I reverse auction, before proceeding with the auction.<sup>45</sup> With regard to the pending court challenge, NTCH notes that “[i]t would be premature and potentially wasteful to proceed with implementation of an auction to distribute money that may not ultimately be available for distribution.”<sup>46</sup>

U.S. Cellular shares the concerns raised by NCTH. The reconsideration proceeding could lead to decisions by the Commission that have a direct bearing on the implementation of the Mobility Fund Phase I reverse auction and the use of Phase I support. Proceeding with the Phase I auction before relevant issues have been resolved in the reconsideration proceeding would make it difficult to conform the rules and mechanisms for the Phase I auction to applicable decisions made in the reconsideration proceeding. The pending court action referenced by NTCH poses an even more significant problem: It would hardly be prudent for the Commission to commence

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<sup>44</sup> See, e.g., AT&T Comments at 6; Verizon Comments at 4.

<sup>45</sup> NTCH, Inc. (“NTCH”) Comments at 1-2.

<sup>46</sup> *Id.* at 1.

with the disbursement of Phase I support while its authority to use the funds for this purpose remains subject to a legal challenge.

ARC raises a different timing problem, which U.S. Cellular also finds troubling. ARC explains that the award of Mobility Fund Phase I support will be “only the first step in a process to determine if the auction achieves its intended result, namely the deployment of adequate, viable mobile voice and broadband services in the eligible underserved areas.”<sup>47</sup> It will take several years for the Commission to compile “an adequate record to determine how effective a reverse auction process will be in awarding high cost support, since it will take that long for carriers receiving support to construct and operate networks to serve the areas subject to the award.”<sup>48</sup>

ARC concludes that “[t]he Commission’s timeline for deployment of Mobility Fund Phase II funding suggests that the Commission will not have the benefit of a complete record on the viability of a reverse auction process before the Commission begins awarding funds under Mobility II.”<sup>49</sup> U.S. Cellular agrees with ARC’s concern, having previously observed that:

The approach and timetable contemplated by the Commission [for the Mobility Fund Phase I and Phase II auctions], in addition to creating the impression that the Commission may have prejudged the outcome of its proposals for Mobility Fund Phase II disbursement mechanisms, also signals that the Commission may be content with foregoing an opportunity for data-driven decision-making with respect to the adoption of these mechanisms.<sup>50</sup>

U.S. Cellular therefore renews its suggestion that the Commission should “modify its timetable for Mobility Fund Phase II implementation so that the Commission gives itself (and interested parties) ample opportunity to evaluate the extent to which the single-winner reverse auction me-

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<sup>47</sup> ARC Comments at 2.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> U.S. Cellular Comments, WC Docket No. 10-90, *et al.* (filed Jan. 18, 2012) at 7.

chanism adopted by the Commission as the Phase I disbursement mechanism has been effective in meeting the Commission’s objectives . . . .”<sup>51</sup>

**Conclusion.**

The record supports U.S. Cellular’s view that simplicity should govern the Mobility Fund Phase I auction rules, so that litigation risks will be minimized, participation in the auction will be encouraged, and investment by mobile broadband providers in unserved rural areas will be

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<sup>51</sup> *Id.* at 7-8.

accelerated. U.S. Cellular respectfully requests the Bureaus to take this record into account in connection with the development and adoption of auction rules.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION



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