Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Connect America Fund Mobility Fund Phase I Auction	))	WC Docket No. 10-90 AU Docket No. 12-25
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

REPLY COMMENTS OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission (Pa. PUC) files these Reply Comments addressing Comments filed on February 24, 2012 that responded to the FCC notice of February 2, 2012. The FCC Notice sought input on the Mobility Fund I auction set for September 27, 2012 (MF I) and set Comment and Reply Comment deadlines of February 24, 2012, and March 9, 2012, respectively.[1] The Comments raise issues concerning the auction set out in the FCC's *Connect America Fund Order (CAF Order)* released on November 18, 2011, and published in the Federal Register at Vol. 76, No. 229 on Tuesday, November 29, 2011, at pp. 73830 through 73882 (the *CAF Order).*

[1] On February 16, 2012, the FCC extended the deadline for filing Reply Comments on challenges to the identified Census Blocks eligible for MF I support for filing Comments and Reply Comments to March 16, 2012, and March 26, 2012. This reflects the January 2012 American Roamer Data (ARD) update.

The Pa. PUC appreciates an opportunity to file Reply Comments. As an initial matter, these Pa. PUC Reply Comments should not be construed as binding on the Pa. PUC in any matter before the Pa. PUC. Moreover, these Pa. PUC Reply Comments could change in response to later events, including Ex Parte filings or the review of other filed Reply Comments and legal or regulatory developments at the state or federal level.

These Pa. PUC Reply Comments reiterate the concerns set forth in prior filings of the Pa. PUC, including the Reply Comments filed with the FCC on February 24, 2012, in the rulemaking for this proceeding. Those concerns include previously expressed issues with auctions and the bidding components for auctions.[2]

1. *The Legality of Census Blocks and Tracts.* Although the Pa. PUC generally supports allocating federal universal service support on a more granular basis, the Pa. PUC shares the concern of the U.S. Cellular Association about the legality of using auctions that tie federal support to study areas based on Census Blocks or Tracts, as opposed to those study areas already existing, under Section 214.[3] 47 U.S.C. § 214. In short, the Pa. PUC's concern is rooted in what it views as a failure to follow the existing federal statutory framework, which allocates study area designations to the states.

The first sentence of Section 214(e)(5) requires the state commissions, not the FCC, to establish the geographic area when determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5). That responsibility applies to all study areas, including study areas served by carriers that are not rural telephone companies. The state commissions have not been asked about revising their geographic study area definitions to a new definition using Census Blocks or Tracts before the FCC's determination to revise the states' study areas for this MF I auction.

[2] *In re: Connect America Fund,* Docket No. 10-90, Reply Comments of the Pa. PUC (January 12, 2012).
[3] *In re: Connect America Fund,* Comments of U.S. Cellular (February 24, 2012), pp. 2-3.

The second sentence of Section 214(e)(5) specifies that, in the case of rural telephone companies, the study area is synonymous with the service area of the carrier. That provision prohibits a change in study areas definition unless and until the FCC and the states, not the FCC alone, establish a different definition. A different definition (such as basing support on Census Blocks or Tracts) can arise only after the states and the FCC take into account recommendations of a Federal-State Joint Board established under Section 410(c). 47 U.S.C. § 410(c). The Pa. PUC is aware of no consultation with any Joint Board under Section 410(c) on changing the service area of rural telephone companies from their current definition to one that relies on Census Blocks or Tracts.

Section 214(e)(6) limits the FCC's authority to define a study area to cases where a common carrier provides service and is not subject to the state commissions' jurisdiction. 47 U.S.C. § 214(e)(6). In those instances where state law prohibits a commission from regulating the terms and conditions for service supported from the federal fund, the FCC would probably be able to make study area designations for MF I. Pennsylvania is not one of those jurisdictions.

There is no record evidence that states benefitting from the upcoming auction are unwilling or unable to perform the study area designation responsibilities set out in Section 214(e)(5). The FCC cannot exclude states that make designations under current law in order to dispense support based on new study areas using Census Blocks or Tracts for MF I. Such unilateral action would be arbitrary, capricious, and discriminatory.

The FCC has not consulted with the states, much less reached agreement, on service area definitions consistent with Section 214(e)(5). If the FCC intends to use a study area definition different from the service area of a rural telephone company or any study areas currently set by a state commission, the FCC and the state commission must reach that result after taking into account a recommendation from a Joint Board.

Otherwise, more appeals will likely delay the auction or, possibly, result in a remand or invalidation of the result. This can be avoided by implementing an MF I program that reflects Section 214(e)(5) and (6), even if it means a delay in the MF I auction. The FCC should also seriously consider the wisdom of proceeding with this auction given these legal concerns and the concerns with auctions in general.[4] If, however, the FCC proceeds with an auction, the Pa. PUC makes the observations below.

2. *MF I and Pennsylvania.* Pennsylvania is one of the three states with the largest number of populations, 142,856, unserved by mobile voice. The other two jurisdictions, Kentucky and West Virginia, have 267,927 and 240,331 unserved populations, respectively.[5] All three are mountainous, which is a challenge to deploying wireless, and are members of the Middle Atlantic Conference of Regulatory Utility Commissioners (MACRUC), a net contributor region in excess of $600M in 2011 alone.[6]

The Pa. PUC suggested to the FCC in prior comments that broadband pilot programs should be limited to net contributor regions with a ubiquitous broadband network in place but that support should be distributed equally between their rural and urban areas.[7] The Pa. PUC believes this suggestion is equally appropriate for MF I for net contributor regions.

If a program giving all support to net contributor regions is untenable as a matter of policy, the Pa. PUC alternatively believes that at least a substantial portion of MF I should be set aside for jurisdictions from net contributor regions with large numbers of unserved consumers and relatively low total square miles and that it be limited to carriers with ubiquitous wireline networks and affiliated or partnering wireless providers. This

[4] *In re: Connect America Fund,* Docket No. 10-90, Joint Board Plan (May 2011).
[5] *In re: Mobility I Auction,* Docket No. 12-25, FCC Public Notice (February 2, 2012), DA 13-121 (Attachment A), pp. 1-2. The FCC's update of February 10, 2012 at DA 12-187 has not appreciably changed these numbers.
[6] *In re: Joint Board USF Monitoring Report,* Docket No. 98-292 (October 2012), Table 1.12, p. 1-32.
[7] *In re: Intercarrier Compensation Reform*, Docket Nos. 01-92 and 06-122, Reply Comments of the Pa. PUC (December 22, 2008), p. 5.

approach allocates benefits on a more granular basis to jurisdictions like Pennsylvania, West Virginia, and Kentucky in a way that does not harm others.

The benefits for Pennsylvania in particular and the MACRUC region in general from allocating all or a substantial portion of MF I are illustrated by comparing the impact of MFI support distributed by populations and total square miles in unserved Census Blocks.[8] If all or a substantial portion (at least 50%) of the $300M were allocated to the net contributor MACRUC region, Pennsylvania and MACRUC's net contribution declines, while also positively benefitting about 650,000 people over 25,000 miles without negatively impacting current federal support for net recipients for other services. This translates into a more granular and positive MF I impact for about 26 persons per square mile if MFI is allocated to three states in this region because they have the three largest unserved populations in the nation in unserved Census Blocks.

Any MF I allocation to areas that are already net recipients would supplement the federal support already received for other services. And, if the MF I allocates an amount of support to an area that is already a net recipient as opposed to net contributors, the benefit for the recipient states or regions would be disbursed to 51,000 unserved persons over about 52,000 square miles in unserved Census Blocks. This net benefit from that expenditure of MF I resources, however, impacts only about 1 person per square mile.

This approach also would buttress the Blooston Comments request for bidding credits as a way of ensuring that smaller Tier III providers can benefit from the MF I auction. This way, Tier III providers affiliated or partnering with already existing wireline networks in unserved study areas can draw upon their experience and deliver service to that large number of unserved populations in net contributor regions. This reduces deployment and backhaul costs and returns a portion of the support provided by net contributor regions, while deploying networks capable of providing broadband to

[8] Appendix A to Pa. PUC Reply Comments (attached).

larger numbers with limited resources consistent with the FCC's goals.[9] The granular impact is greater than that produced from allocating all or a substantial portion of MF I to net recipients with fewer unserved populations, higher costs, more square mileage, and fewer customers that will probably require long-term support for those MF I networks.

3. *Bids from Tier I, Tier II, and Tier III Providers.* The Pa. PUC shares the Blooston Comment concern that the auction should not disadvantage rural study areas or providers.[10] Detriment will occur if the bidding rules do not reflect Tier III providers' smaller scale by making allowances for that with the use of bidding credits or the like. The Pa. PUC does not support the unilateral exclusion of Tier I or Tier II carriers because that ignores the reality of their market presence and the possible benefits from leveraging their economies of scale.

4. *Rate Comparability.* The Pa. PUC shares Verizon's concern about attempting to micromanage the requirement that MF I rates be reasonably comparable to urban rates.[11] The Pa. PUC agrees with Verizon that there are several workable approaches. One approach could be to ensure rate comparability by requiring that the winning bidder's bid be and remain similar to the bidder's urban rates or an urban rate average. Another would be requiring a bidder to provide services at rates in a supported area that are similar to those provided in their urban or unsupported area.[12]

5. *Letters of Credit (LOC) and Financial Sureties.* The Pa. PUC agrees with U.S. Cellular that LOC costs could require a successful bidder to set aside considerable capital that would otherwise be available for MF I deployment. The Pa. PUC also agrees

[9] *In re: Connect America Fund,* Docket No. 10-90 (November 18, 2011), Paras. 5, 18 and 28.
[10] *In re: Mobility Fund,* Docket No. 12-25, Comments of Blooston Rural Carriers, pp. 1-12.
[11] *In Re: Mobility I Auction,* Docket No. 12-25, Comments of Verizon and Verizon Wireless (February 24, 2011).
[12] *In re: Mobility I Auction,* Docket No. 12-25, U.S. Cellular Comments, p. 6.

with the Blooston Comment that a blanket LOC mandate could force small bidders out because they lack the business arrangements with larger banks needed to secure a LOC.[13]

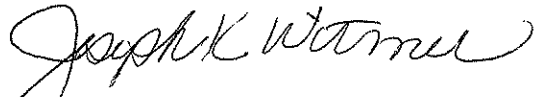
These inadvertent exclusions should be avoided. However, the Pa. PUC agrees with the FCC that LOCs or other less expensive surety options are needed because they ensure compliance with federal mandates without the use of draconian measures like revocation or refusals to certify.[14] The FCC should evaluate less costly ways to ensure the availability of resources. This could be Surety Bonds or including a portion of the LOC as an MF I cost depending on the circumstances or size of the bidder.

The Pa. PUC does not agree with U.S. Cellular that prior ETC Designation or prior operation for a period of time justifies a blanket exemption.[15] These are not adequate justifications to avoid the costs for assuring the FCC and the states that a bidder with experience in delivering a related service will meet their obligation. Bidders should have to shoulder at least a portion of the costs that will arise to compensate the public or other providers if a bidder takes public resources and then fails to meet their commitment. This will be particularly acute if problems arise after the auction and the provider is the sole provider delivering supported service to consumers. No penalty, forfeiture, or revocation will comfort consumers in supported study areas that lose service because the provider failed or did not deliver.

[13] *In re: Mobility Fund,* Docket No. 12-25, Comments of Blooston Rural Carriers, p. 11.
[14] *In re: Connect America Fund,* Docket No. 10-90 (November 18, 2011), Para. 1115.
[15] *In re: Mobility Fund,* Docket No. 12-25, Comments of U.S. Cellular, p. 4.

For these reasons, the Pa. PUC urges the FCC to reevaluate and move cautiously in implementing the MF I. The Pa. PUC thanks the FCC for providing this opportunity to file Reply Comments.

Respectfully Submitted On Behalf Of,
Pennsylvania Public Utility Commission



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Attachment A

		Current USF Status		MFI Benefit Per Dollar Distributed to Unserved Population/Square Miles = Granular Impact		
		2011 USF Net Cont.	Impact Net Recip.	Unserved Population.	Unserved Sq. Miles	Granular MFI Impact
MACRUC Net Contributor Region						
Jurisdiction	Region					
KY	MACRUC		$40M	267,927	8,321	32 per mile
WV	MACRUC		$18M	240,331	10,151	24 per mile
PA	MACRUC	$149M		142,856	6,509	21 per mile
2011 Net Support:		$600M*				
MFI Granular Benefit Per Dollar				650,000	25,000	26 per mile
Other Region Net Recipients**						
Jurisdiction	Region					
Area 1	Northeast		$ 8M	10,000	10,000	1.00 per mile
Area 2	Southwest		$80M	40,000	39,000	1.02 per mile
Area 3	Upper Midwest		$88M	2,000	2,500	.80 per mile
2011 Net Benefit:			$176m***			
MFI Granular Benefit Per Dollar				52,000	51,000	.94 per mile

* Net MACRUC Regional Contribution
** Sample State/Region
*** Net Recipient Benefit in 2011 Not Impacted.