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

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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

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SECOND REPORT AND ORDER

Adopted: June 26, 2012 **Released: June 27, 2012**

By the Commission:

I. INTRODUCTION

1. In this Order, we adopt a limited forbearance, pursuant to section 10 of the Communications Act of 1934, as amended (the Act), from requiring that the service area of an eligible telecommunications carrier (ETC) conform to the service area of any rural telephone company serving the same area, pursuant to section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules.[1] In particular, this forbearance applies only with respect to conditional ETC designations for participating in the Mobility Fund Phase I auction – that is, ETC designations conditioned on receipt of Mobility Fund Phase I support.[2] Such conditional ETC designations, and thus this forbearance, are also limited to the specific areas in which such an ETC becomes authorized to receive Mobility Fund Phase I support.

[1] 47 U.S.C. §§ 160, 214(e)(5); 47 C.F.R. § 54.207(b).

[2] 47 C.F.R. § 54.1003(a). *See also* 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, 26 FCC Rcd 17663, 17798-99 ¶¶ 389, 392 (2011) ("*USF/ICC Transformation Order*"), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

2. We conclude that forbearance in these limited circumstances furthers the public interest, advancing the Act's and the Commission's goals of promoting access to mobile service over current and next generation wireless networks in areas currently without such service by reducing barriers to participation in Phase I of the Mobility Fund. Moreover, we find that application of the service area conformance requirements set forth in section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules in these limited circumstances is not necessary to ensure that rates remain just and reasonable or to protect consumers.[3] We emphasize that the forbearance we are granting is limited to petitioners seeking conditional designation as ETCs in areas eligible for Mobility Fund Phase I support in order to participate in the Mobility Fund Phase I auction and receive support. Parties petitioning for designation as an ETC for this purpose must satisfy all of the other statutory requirements applicable to ETCs under the Act. This forbearance order does not apply with respect to petitions for designation as an ETC for other purposes. In light of the requirement that, with one exception for Tribal entities, an applicant for the Mobility Fund Phase I auction, Auction 901, must be designated as an ETC in every geographic area on which it wishes to bid by the time it applies to participate and in light of the short time remaining before the July 11, 2012, deadline for filing Auction 901 applications, we find that case-by-case forbearance is not feasible and grant blanket forbearance for this limited purpose.

II. BACKGROUND

3. In the recent *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the universal service system to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation.[4] As part of this comprehensive reform effort, the Commission adopted the goal of ensuring universal availability of modern networks capable of providing advanced mobile voice and broadband service.[5] To further achievement of that goal, the Commission created the Mobility Fund to ensure availability of mobile broadband networks in areas where a private-sector business case for those networks is lacking.[6] In particular, the Commission provided that in Phase I of the Mobility Fund, it would award by reverse auction up to $300 million in one-time support to immediately accelerate deployment of current and next generation networks providing mobile voice and broadband services in areas not presently covered by such networks.[7]

4. Auction 901 is scheduled to take place on September 27, 2012, and those wishing to participate must file an auction application by July 11, 2012.[8] The Wireless Telecommunications Bureau and the Wireline Competition Bureau have identified, pursuant to the Commission's criteria, particular census blocks that are eligible for Mobility Fund Phase I support in Auction 901.[9] In Auction 901, applicants will bid for the amount of support they need to meet the Mobility Fund Phase I service and other public interest obligations in the eligible census blocks covered by the geographic area on which they bid. Applicants, except for Tribally-owned and controlled entities, must be designated as ETCs in the areas on which they wish to bid prior to filing their auction applications.[10] The designation may be

[3] *See* 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b).

[4] *See generally USF/ICC Transformation Order*, 26 FCC Rcd 17663

[5] *USF/ICC Transformation Order*, 26 FCC Rcd at 17682 para. 53.

[6] *Id.* at 17674-75 para. 28.

[7] *Id.* at 17773 para. 299.

[8] *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, Public Notice, DA 12-641 (rel. May 2, 2012) ("*Auction 901 Procedures Public Notice*") at paras. 40, 83, 113.

[9] *Auction 901 Procedures Public Notice* at paras. 9-23, Attachment A.

conditional subject to the receipt of Mobility Fund Phase I support.[11] The Commission currently has pending three petitions for conditional designation as an ETC for purposes of participating in Auction 901.[12]

5. Congress directed the Commission to establish policies to help ensure that "[q]uality services [are] available at just, reasonable, and affordable rates [and a]ccess to advanced telecommunications and information services [are] provided in all regions of the Nation."[13] The Commission's Mobility Fund Phase I will help achieve this goal by providing support for the expansion of current and next generation wireless networks in areas currently unserved by such networks. Section 254(e) of the Act provides that only an entity designated as an eligible telecommunications carrier shall be eligible for universal service high-cost and low-income support.[14] To become an ETC, a carrier must offer and advertise the services supported by the federal universal service support mechanisms throughout its designated service area.[15]

6. The Act and the Commission's rules define the term "service area" and how it is established for each ETC. An ETC's "service area" is a geographic area within which an ETC has universal service obligations and may receive universal service support.[16] A carrier seeking to become an ETC typically requests designation in a specific service area, but it is the commission designating that carrier that establishes the ETC's service area.[17] When a competitive carrier seeks to serve an area already served by a rural telephone company,[18] section 214(e)(5) of the Act requires that the competitive ETC's service area must conform to the rural telephone company's service area.[19] Accordingly, if a commission wishes to designate a competitive ETC for an area that differs from a rural telephone

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[10] *Auction 901 Procedures Public Notice* at para. 32, citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17798-801 paras. 388-99; 47 C.F.R. § 54.1003. A Tribal entity may participate provided it has applied for designation as an ETC for the relevant area and that application is still pending. Any such entity must still receive designation prior to support being awarded. *USF/ICC Transformation Order*, 26 FCC Rcd at 17823 para. 491; 47 C.F.R. § 54.1004(a).

[11] 47 C.F.R. § 54.1003(a). *See also USF/ICC Transformation Order*, 26 FCC Rcd at 17798-99 ¶¶ 389, 392.

[12] *Wireless Telecommunications Bureau and Wireline Competition Bureau Seek Comment on Petitions for Designation as Eligible Telecommunications Carriers Filed by SI Wireless and T-Mobile*, WC Docket No. 09-197; WT Docket No. 10-208; AU Docket No. 12-25, Public Notice, DA 12-718 (rel. May 4, 2012); *Wireless Telecommunications Bureau and Wireline Competition Bureau Seek Comment on Petition for Designation as Eligible Telecommunications Carriers Filed by Carolina West*, WC Docket No. 09-197; WT Docket No. 10-208; AU Docket No. 12-25, Public Notice, DA 12-779 (rel. May 17, 2012).

[13] 47 U.S.C. § 254(b)(1), (2).

[14] 47 U.S.C. § 254(e). An entity need not be an ETC to participate in the schools and libraries or rural health care universal service programs. 47 U.S.C. § 254(h)(1)(A), (B)(ii); *see Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9015 para. 449 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Order on Reconsideration, 14 FCC Rcd 20106, 20114–15 para. 19 (1999) (*Fourteenth Order on Reconsideration*).

[15] 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

[16] *See* 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

[17] *See* 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

[18] *See* 47 U.S.C. § 153(44) (defining "rural telephone company").

[19] 47 U.S.C. § 214(e)(5); *see also* 47 C.F.R. § 54.207(b).

company's existing service area, that rural service area must first be redefined under the process set forth under the Act.[20]

7. In particular, the Act defines the service area of each rural telephone company to be that "company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board . . . establish a different definition of service area for such company."[21] The Commission has interpreted this language to mean that "neither the Commission nor the states may act alone to alter the definition of service areas served by rural carriers."[22] In reviewing a potential redefinition of a rural service area in evaluating a request for ETC designation, the Commission and the states have traditionally taken into account the three factors recommended by the Federal-State Joint Board on Universal Service: cream skimming, the Act's special treatment of rural telephone companies, and the administrative burdens of redefinition.[23] The Commission's rules set forth the procedures for considering redefinition petitions and allow either the state commission or the Commission to propose to redefine a rural telephone company's service area.[24] A proposed redefinition, however, does not take effect until the Commission and the appropriate state commission agree upon a new definition.[25]

8. In the *Mobility Fund NPRM*, the Commission sought comment generally on the ETC designation requirements of section 214(e) and on how best to interpret the provisions of that section so as to achieve the objectives of the Mobility Fund.[26] In their comments, Verizon and Verizon Wireless (together, "Verizon") suggested that we should forbear altogether from the requirements of section 214(e) for purposes of participating in the Mobility Fund.[27] Verizon also noted that the service area conformance requirement of section 214(e)(5) could create uncertainty for potential Mobility Fund applicants and discourage participation, and suggested that the Commission take steps to prevent this from happening.[28] NTCH, Inc.'s (NTCH) comments suggested that the Commission "streamline" the process of ETC designation to facilitate participation in the Mobility Fund, making the ETC designation process part of the application for Mobility Fund support, such that designation would occur upon award of support by

[20] 47 U.S.C. § 214(e)(5); *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1582 para. 41 (2004) (*Virginia Cellular Order*) ("In order to designate [a competitive carrier] as an ETC in a service area that is smaller than the affected rural telephone company [service] areas, we must redefine the service areas of the rural telephone companies in accordance with section 214(e)(5) of the Act."); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6439 paras. 37–38 (2004) (*Highland Cellular Order*) (same).

[21] 47 U.S.C. § 214(e)(5); *see also* 47 C.F.R. § 54.207(b).

[22] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8880 para. 187 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

[23] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80 paras. 172-74 (1996) (*1996 Recommended Decision*); *see also Highland Cellular Order*, 19 FCC Rcd at 6426 para. 9. A carrier "cream-skims" when it serves only those consumers that are least expensive to serve. *See Universal Service First Report and Order*, 12 FCC Rcd at 8881-82 para. 189.

[24] 47 C.F.R. § 54.207(c), (d).

[25] 47 C.F.R. § 54.207(c)(3), (d)(2).

[26] *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716, 14732 para. 49 (2010) (*Mobility Fund NPRM*).

[27] Verizon *Mobility Fund NPRM* Comments at 22.

[28] *Id.* at 23-24.

the Commission.[29] In addition, NTCH filed a petition for reconsideration of the *USF/ICC Transformation Order* that proposed, for those seeking Mobility Fund Phase I support, blanket forbearance from the requirement that a competitive ETC's service area conform to any underlying rural telephone carrier's study area.[30]

III. DISCUSSION

9. The Act allows the Commission to forbear from applying any requirement of the Act or of our regulations to a telecommunications carrier if the Commission determines that: (1) enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest.[31]

10. We consider here whether we should forbear from applying the section 214(e)(5) service area conformance requirement to parties petitioning for ETC conditional designation in areas eligible for Mobility Fund Phase I support in order to participate in the Mobility Fund Phase I auction and receive such support. We conclude that forbearance is appropriate and in the public interest under these limited circumstances.[32] Accordingly, for the limited purpose of conditional designation as an ETC in areas eligible for Mobility Fund Phase I support in order to participate in the Mobility Fund Phase I auction, we forbear from applying section 214(e)(5) of the Act and section 54.207(b) of our rules, insofar as those sections require that the service area of such an ETC conform to the service area of any rural telephone company.[33] We note that forbearing from the conformance requirements eliminates the need for redefinition of any rural telephone company service areas in the context of Mobility Fund Phase I.[34]. We emphasize, however, that this decision does not change the requirements that apply if a party petitions to be an ETC for other purposes in part of a service area served by a rural telephone company.

11. We conclude that blanket forbearance from the service area conformance requirement is warranted in these limited circumstances. As noted above, the Mobility Fund Phase I rules require that most applicants must be designated as ETCs in every geographic area on which they wish to bid for support, prior to filing an Auction 901 application. Those rules also provide that a conditional designation is sufficient to meet the requirement, *i.e.*, a designation effective only for the areas, if any, in which the ETC becomes authorized to receive Mobility Fund Phase I support.[35] We find that case-by-case forbearance is not feasible in the short time available before the filing deadline.

12. We take this action after considering the record we received in response to the *Mobility Fund NPRM*, where we sought comment on how to assure that the provisions of section 214(e) would align with the objectives of this new mechanism for providing high-cost universal service support. As

[29] NTCH *Mobility Fund NPRM* Comments at 5-6. *See also* AT&T Inc. *Mobility Fund NPRM* Comments at 6.

[30] *See* Petition for Reconsideration of NTCH, Inc., filed December 29, 2011, at 7, 9.

[31] 47 U.S.C. § 160(a). In making a public interest determination, section 10(b) requires the Commission to consider whether forbearance will promote competitive market conditions. 47 U.S.C. § 160(b).

[32] *See* 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207.

[33] The Commission has forborne from applying these requirements before, where circumstances met the applicable criteria. *See Telecommunications Carriers Eligible to Receive 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*, Order, 26 FCC Rcd 13723 (2011) (granting forbearance from service area conformance requirement to petitioners for Lifeline-only ETC designations).

[34] Accordingly, Commission rules regarding the redefinition process are inapplicable to petitions that are subject to this order. *See* 47 C.F.R. § 54.207(c), (d).

[35] 54 C.F.R. § 54.1003(a).

noted above, the record identified the possibility that the service area provisions of section 214(e), including the service area conformance requirement of section 214(e)(5), could discourage participation in the Mobility Fund Phase I auction.[36] By granting blanket forbearance of the conformance requirement for the limited purpose of petitions for conditional designation to participate in the auction, we seek to prevent that requirement from creating an obstacle to participation by any carrier considering it. Removing such disincentives to participation may increase competition in the auction resulting in lower bids for support and enabling greater coverage within the Mobility Fund Phase I budget.[37] We note that by granting forbearance in these limited circumstances, we are allowing new ETCs, and those existing ETCs that wish to conditionally expand their service areas for Auction 901, to match their specific new and additional service areas to the geographic area for which they incur obligations under Mobility Fund Phase I. We do not address relinquishment or redefinition with respect to the service areas of existing ETCs with respect to new targeted support mechanisms other than Mobility Fund Phase I. To the extent that an existing ETC seeks Mobility Fund Phase I support for areas within its existing service area, the new obligations will apply only to the portion of their existing service area for which they win such support and will not have any impact on pre-existing obligations and support mechanisms with respect to the existing service area.

13. *Just and Reasonable.* Section 10(a)(1) of the Act requires that we consider whether enforcement of the provisions from which forbearance is sought is necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory.[38] We conclude that compliance with the service area conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is not necessary to ensure that the charges, practices, and classifications of carriers conditionally designated as ETCs in areas eligible for Mobility Fund Phase I support for purposes of participation in Mobility Fund Phase I auction and receiving such support are just and reasonable and not unjustly or unreasonably discriminatory.[39] As discussed below, we find that the three factors traditionally taken into account by the Commission and the states when reviewing a potential redefinition of a rural service area pursuant to section 214(e)(5) of the Act no longer apply in the context of conditionally designating ETCs in areas eligible for Mobility Fund Phase I support for purposes of participation in the Mobility Fund Phase I auction.[40] Forbearance from the service area conformance requirement would not prevent the Commission from enforcing sections 201 or 202 of the Act, which require all carriers to charge just, reasonable, and non-discriminatory rates.[41] Moreover, all ETCs – whether rural ETCs or carriers designated as ETCs in areas eligible for Mobility Fund Phase I support for purposes of participation in Mobility Fund Phase I auction and receiving such support – will continue to be subject to the requirements of the Act and of the Commission's rules that consumers have access to reasonably comparable services at reasonably comparable rates.[42] In fact, the expansion of current and next generation wireless networks supported by Mobility Fund Phase I will expand the choice of telecommunications services for consumers in the relevant area. The resulting

[36] *See* Verizon *Mobility Fund NPRM* Comments at 23-24.

[37] *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17797-98 para. 387 ("ensure serious participation without being unduly burdensome").

[38] 47 U.S.C. § 160(a)(1).

[39] A provision or regulation is "necessary" if there is a strong connection between the requirement and regulatory goal. *See CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

[40] *See infra* paras. 18-20 (finding that service area conformance in these limited circumstances is not essential to protect the ability of rural telephone companies to continue to provide service nor will forbearance harm competitive market conditions).

[41] *See* 47 U.S.C. §§ 201, 202.

[42] 47 U.S.C. § 254(e)(3); *see also, e.g.*, 47 C.F.R. §§ 54.313(a)(10), 54.314.

competition is likely to help ensure just, reasonable, and nondiscriminatory offerings of services. For these reasons, we find that the first prong of section 10(a) is met.

14. *Consumer Protection.* Section 10(a)(2) requires that we consider whether applying the service area conformance requirement to a mobile wireless voice service provider that seeks a conditional ETC designation in areas eligible for Mobility Fund Phase I support is necessary for the protection of consumers. Forbearance from the conformance requirement in these limited circumstances will not harm consumers currently served by the rural telephone companies in the relevant service areas. To the contrary, these consumers will benefit from the use of Mobility Fund Phase I support to expand current and next generation mobile services. Indeed, as the Commission has noted, the national goal of ubiquitous mobile broadband depends in part on offering targeted and efficient support for mobile services through the Mobility Fund.[43] Finally, every ETC, including any party receiving Mobility Fund Phase I support, must certify that it will satisfy applicable consumer protection and service quality standards in its service area.[44] For these reasons, we find that the second prong of section 10(a) is met.

15. *Public Interest.* Section 10(a)(3) requires that we consider whether applying the service area conformance requirement to a facilities-based mobile wireless carrier that seeks conditional ETC designation in areas eligible for Mobility Fund Phase I support in order to participate in Mobility Fund Phase I and receive such support is in the public interest. Absent forbearance, we find that parties seeking support may be required to take on unsupported ETC obligations in portions of rural carriers' study areas – areas that may not be eligible for support or for which they may not win support – and that this is likely to discourage participation in Mobility Fund Phase I. Geographic eligibility for Mobility Fund Phase I support is based on whether specific census blocks are presently served by current or next generation wireless networks, a definition that is unrelated to the boundaries of rural carrier service areas. Moreover, our current rules to redefine service areas require concurring decisions by both the Commission and the related state commission, a process not likely to be completed before parties seeking Mobility Fund Phase I support will have to apply to participate in Auction 901. Hence, we find that forbearing from the conformance requirement will encourage participation by assuring that obligations of new ETCs will not extend to portions of rural service areas for which a new ETC may not receive support. By providing this assurance, we reduce the cost of auction participation, encourage lower bids, and improve auction outcomes.

16. Enabling new ETC service areas to be defined in a more targeted manner for Mobility Fund Phase I is consistent with our approach of targeting support to areas with a specific need for the support, helps preserve those efficiencies, and thus serves the public interest. As set out in the *USF/ICC Transformation Order,* Mobility Fund Phase I support will be determined by a competitive bidding process in which ETCs will bid for the support they need to serve a specific area, rather than any larger area such as an underlying rural telephone company study area. This targeted and efficient provision of support is critical to furthering the public interest goal of ubiquitous mobile service in a fiscally responsible manner.[45] To require Mobility Fund Phase I support recipients to serve a wider area runs counter to the Commission's recent and ongoing efforts to serve the public interest by focusing USF resources on defined areas of need.

17. The public interest benefits go beyond efficiently expanding current and next generation wireless networks to expanding access to such services by consumers. An ETC with a conditional designation will have the obligations of any other ETC receiving Mobility Fund Phase I support for the areas in which the condition is satisfied, including an obligation to make available Lifeline service to eligible for low income consumers.[46] Thus, an ETC expanding advanced wireless networks to new areas

[43] *USF/ICC Transformation Order*, 26 FCC Rcd at 17771-72 para. 295.

[44] 47 C.F.R. § 54.202(a)(3).

[45] *USF/ICC Transformation Order*, 26 FCC Rcd at 17771-73 paras. 295-99.

[46] *See* 47 C.F.R. § 54.405 (ETC obligation to offer Lifeline).

as part of the Mobility Fund Phase I also will be making their networks available to low-income consumers who may qualify to receive reduced charges for these next generation services.

18. In addition, we find that in these limited circumstances requiring conformance is not essential to protect the ability of rural telephone companies to continue to provide service. Past concerns that an ETC serving only a relatively low cost portion of a rural carrier's service area might cream skim by receiving per line support based on the rural carrier's costs of serving the entire area do not apply to Mobility Fund Phase I support. Unlike the legacy identical support rule, under which a competitive ETC received the same per-line support as an incumbent calculated based on the incumbent's cost of serving its entire service area, the amount of Mobility Fund Phase I support is not linked to the support received by an overlapping rural carrier but is determined by the results of competitive bidding for support. Consequently, cream skimming concerns that arose under the identical support rule are not relevant in considering the conditional designation of an ETC for purposes of seeking Mobility Fund Phase I support. Moreover, we note that the Commission decided in the *USF/ICC Transformation Order* that universal service would support both mobile and fixed services in a given area. Consequently, we see no inherent conflict between a mobile provider receiving support to offer previously unavailable service in a portion of a rural telephone company's study area and the rural telephone company continuing to provide its pre-existing service.

19. For similar reasons, we conclude that forbearance in these circumstances will not harm competitive market conditions.[47] We expect forbearance to enhance competition by introducing new service providers and, as discussed above, not to eliminate any existing market participants or to introduce concerns about cream skimming.

20. We further note that forbearance from the conformance requirement and redefinition process for these limited purposes should not affect rural carriers' abilities to serve the entire rural service territories. Moreover, the Act contains safeguards to address any such potential concerns. The Act already requires designating commissions to affirmatively determine that designating a carrier as an ETC within a rural service area is in the public interest, and this is not affected by this grant of forbearance.

21. Finally, forbearance in these limited circumstances preserves the role of states in ETC designation. State commissions are still required to consider the public interest, convenience and necessity of designating an ETC in a rural area already served by a rural telephone company.[48] Our action does not disturb the roles of state commissions and this Commission in the ETC designation process or in the redefinition process in other circumstances when redefinition is required.[49]

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act

22. This Second Report and Order does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

[47] *See* 47 U.S.C. § 160(b) (requiring the public-interest determination to consider whether forbearance would promote competitive market conditions).

[48] 47 U.S.C. § 214(e)(3); 47 C.F.R. § 54.201(c).

[49] The redefinition process is still required for ETCs seeking other kinds of support and nothing in this order alters the redefinition process for such ETCs.

B. Final Regulatory Flexibility Act Certification

23. The Regulatory Flexibility Act ("RFA")[50] requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[51] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[52] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[53] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[54]

24. We hereby certify that forbearance decision in this Second Report and Order will not have a significant economic impact on a substantial number of small entities. In this Second Report and Order, the Commission eases the regulatory compliance burden on ETCs by forbearing from the requirement that the service area of an ETC conform to the service area of any rural telephone company serving the same area. This Second Report and Order does not modify any of our reporting requirements. The Commission will send a copy of this Second Report and Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.[55] In addition, the Second Report and Order (or a summary thereof) and certification will be published in the Federal Register.[56]

C. Congressional Review Act

25. The Commission will send a copy of this Second Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[57]

D. Effective Date

26. We conclude that good cause exists to make the forbearance adopted in this Second Report and Order effective immediately upon publication in the Federal Register pursuant to section 553(d)(3) of the Administrative Procedure Act[58] and sections 1.103(a) and 1.427(b) of the Commission rules.[59] This grant of forbearance applies only to those seeking conditional ETC designation for areas eligible for Mobility Fund Phase I support in order to participate in the Mobility Fund Phase I auction,

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[50] *See* 5 U.S.C. § 601 *et seq*. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857.

[51] 5 U.S.C. § 605(b).

[52] 5 U.S.C. § 601(6).

[53] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[54] Small Business Act, 15 U.S.C. § 632.

[55] *Id.*

[56] *Id.*

[57] *See* 5 U.S.C. 801(a)(1)(A).

[58] 5 U.S.C. § 553(d)(3). In addition, because forbearance serves to "grant[ ] or recognize[ ] an exemption or relieve[ ] a restriction," the exception contained in section 553(d)(1) also applies. 5 U.S.C. § 553(d)(1).

[59] 47 C.F.R. §§ 1.103(b), 1.427(b).

and, given the short time remaining before the July 11, 2012, deadline for filing an auction application, may promote wider participation and generate more competitive bids. In turn, this increases the chances that the Mobility Fund Phase I budget will provide greater benefits in the form of expanded coverage of mobile voice and broadband service. We therefore find there is good cause to make the changes we implement with this Second Report and Order effective upon Federal Register publication, without the usual 30-day period.

V. ORDERING CLAUSE

27. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, 214, 254, we FORBEAR from applying the conformance requirement of section 214(e)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(5), and section 54.207(b) of the Commission's rules, 47 C.F.R. § 54.207(b), to petitions for conditional designation as an eligible telecommunications carrier in areas eligible for Mobility Fund Phase I support in order to participate in the Mobility Fund Phase I auction and receive such support to the extent discussed herein.

28. IT IS FURTHER ORDERED that, pursuant to section 553(d) of the Administrative Procedures Act, 5 U.S.C. § 553(d), and sections 1.103(a) and 1.427(b) of the Commission's rules, 47 C.F.R. §§ 1.103(a), 1.427(b), this order SHALL BE effective upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary