Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

REPLY COMMENTS OF TEXAS 10, LLC AND CENTRAL LOUISIANA CELLULAR, LLC

Texas 10, LLC d/b/a Cellular One and Central Louisiana Cellular, LLC (collectively, "Cellular One"), facilities-based providers of cellular service in Texas and Louisiana and designated winners of a total of $9,957,783.15 in the Phase I Mobility support auction, submit these comments in response to the Commission's Further Inquiry Into Issues Related to Mobility Fund Phase II.[1]

Cellular One commends the Bureau for seeking to develop a more robust record in preparation for Mobility Fund Phase II. In light of Cellular One's experience in Auction 901, we respectfully provide the following suggestions for the next auction.

I.A. *Overall Design: Identifying Areas Eligible For Support.*

The Bureaus asked commenters to address identification of the areas eligible for support.[2] Cellular One agrees that areas receiving one-time Mobility Fund Phase I support should remain eligible to receive Mobility Fund Phase II support.[3] The Commission should facilitate continued operation by making available Phase II support, rather than stranding the government investments in Phase I facilities. In light of the lack of development and population concentrations in areas eligible for Phase I support, these areas will not suddenly become cost-efficient to serve. They remain rural areas with few residents and, correspondingly, too few customer accounts to produce revenues sufficient to support the costs of service. The fact that no

[1] / Public Notice, *Further Inquiry Into Issues Related to Mobility Fund Phase II*, WC Docket No. 10-90, WT Docket No. 10-208, DA 12-1853 (November 27, 2012) ("*Public Notice*").

[2] / *Public Notice*, at ¶ 6 - 9.

[3] / *See Public Notice*, at ¶ 7, *citing Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 at 18070 n. 2247 (2011) (*Order* or *FNPRM*, as applicable), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

carriers were providing broadband in eligible areas prior to the Phase I auction is evidence that these are the very areas where recurring costs are very high – so high that even nationwide carriers have not reached these areas with broadband, despite years of receiving legacy support.

While operating and maintaining a rural cell site often tends to be more efficient than the costs of operating rural landlines,[4] the costs of cell site operation still are significant, requiring payments in categories such as the following.

- Cell site realty (taxes and bank loan/mortgage or lease payments),
- Backhaul channels (microwave equipment maintenance costs and/or monthly payments for fiber access – these amounts increase over time with the technology generation, because greater capacity is required for 3G, 4G, and so on),
- Infrastructure vendors' maintenance and support program payments (recurring, significant payments that major equipment manufacturers require for their assistance in diagnosing and remedying problems relating to equipment they sell to carriers, such as base station transmitters and controllers),
- Utilities for electric power consumed by cell sites,
- Hurricane recovery in the storm-intensive Gulf states where Cellular One operates (payments to subcontractors and vendors for replacement of damaged cell site equipment and services in the team effort to rapidly restore site operations after natural disasters); regular severe weather events also can occur, for example, in states such as Montana (ice storms), in Oklahoma (tornadoes) and Arizona (monsoon storms).

In areas where Phase I support was won, the availability of support from Phase II would help pay these costs and ensure the benefits of broadband will continue to benefit these areas.

The Commission also asks whether the Commission should consider other factors in identifying eligible areas. Other factors might be considered *instead of* the availability of unsubsidized service, such as costs: a Cellular One affiliate and U.S. Cellular both filed wireless cost models independently developed by CostQuest in the record of this proceeding, and the Commission could ask CostQuest or another cost model developer to further expand upon such a model in order to address all states. We urge the Commission, however, not to consider other factors *in addition to* the availability of unsubsidized service. The number of eligible areas should not be contracted. As noted in the Comments of U.S. Cellular, the eligible areas already

[4] / *See* Comments of United States Cellular, WC Docket No. 10-90 *et al.* (filed Dec. 21, 2012), at 6.

represent only a small fraction of the U.S. map, excluding numerous areas where the costs of providing service exceed the potential revenues.[5]

As stated in the Comments of the Competitive Carriers Association (CCA), the Commission should return to eligibility the areas where rural citizens have access only to a single broadband service.[6] This would avoid governmental dependence upon legacy carriers to subsidize their services to rural areas from accrued past universal service payments or from urban customers' account payments. Rather than permitting such implicit subsidies, which are largely unknown to urban customers making the payments, support from the universal service fund (now CAF / Mobility Fund) renders explicit and measurable the existence and extent of the nation's investment in rural service. This sunlight permits regulatory management, rather than government reliance upon existing broadband carriers, without any written, enforceable promises from such carriers, to continue service in the future to areas excluded from the mobility auctions.

All mobile broadband in the United States was deployed in recent years, because the equipment was not previously available domestically. Should a carrier withdraw broadband service from certain rural areas, having decided that some of its recent deployments failed to provide it with sufficient commercial returns, the residents of such areas will be stranded without any mobile broadband. Such a result would injure implementation of the National Broadband Plan and would harm the nation's economic recovery.

Accordingly, Cellular One urges the Commission to avoid such a result by returning eligibility to (a) areas where broadband service is not cost-effective in light of the Costquest wireless cost models that have been submitted in this proceeding by Cellular One and U.S. Cellular, or, at the very least, to (b) areas served with broadband by only a single carrier.

I.B. *Overall Design: Public Interest Obligations.*

In the Public Notice, at Section III.D, the Bureaus ask:

> how often, and through what process, [should the Commission] modify the performance metrics applicable to Phase II support recipients[?] Commenters should address the threshold question of whether an evolving standard is appropriate given the proposed term of support and anticipated advances in technology. For example, should the Commission require that broadband networks built with support be capable of meeting increasing consumer demand

[5] / *See id.*, at 4 & nn. 10-11 (noting that, in fact, Phase I support will be used to provide service to only 12.83% of the road miles that were eligible for support).

[6] / *See* Comments of Competitive Carriers Association, WC Docket No. 10-90 *et al.* (filed Dec. 21, 2012), at 8-9.

for capacity and over a specified time period? If so, should the Commission mandate any specific network attributes?"[7]

Cellular One advocates against modification of performance metrics after the auction has concluded. An auction is akin to a contract, an exchange of promises. Individual bidders participate in an auction with the expectation of bidding a certain amount in exchange for certain obligations and benefits. Increasing the burden of a material obligation after a bid has been accepted would breach the agreed upon auction terms and violate the due process rights of participants under the Administrative Procedure Act, as well as reliance upon regulations that governed their commitments and the extent of benefits promised thereunder.

In the event the Commission alters performance obligations nevertheless, in light of the experience of planning to meet Phase I obligations, we urge the Commission to subtract from drive testing obligations any roads that are private and not open to the public, or for other reasons unreachable during the entire drive testing period (due to ice, snow, etc.). In addition, the Commission should consider less burdensome alternatives, because drive testing a large state can take professional engineers days to accomplish, at an expense of time and labor which is burdensome for small companies and possibly also burdensome for large companies. With input from IEEE or other standards setting organizations, the Commission should determine two or more computer modeling approaches that are acceptable in lieu of the drive testing.[8]

We urge the Bureaus to advocate against any increased speed or capacity requirement. While technological potential advances over time, mobile broadband deployment and operation already requires extensive private investment coupled with the public support. It would not be fiscally prudent for a carrier to enter regulatory obligations without knowing whether its costs might suddenly increase, in some unknowable amount, in the middle of the term. Boards of Directors and lenders would veto such an arrangement before it could even commence. In addition, spectrum becomes more crowded over time, as history has shown. When a network becomes crowded, traffic flow slows due to this congestion. As the expert agency, the Commission knows carriers often cannot acquire additional licenses rapidly when needed to supplement spectrum in precise license areas, not to mention acquisition and deployment of supplemental equipment in order to utilize such spectrum. In many cases, spectrum bands are

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[7] / *Public Notice,* at ¶ 14.

[8] / *See* Atlantic Tele-Network, Inc., WC Docket No. 10-90 *et al.* (comments filed Dec. 21, 2012), at 4.

offered for auction years before any equipment enabling small or mid-sized carriers to utilize such spectrum is sold in the United States. Accordingly, we urge the Bureaus to advocate against increased speed or capacity requirements, or other material additional obligations.

I.C. *Overall Design: Term of Support.*

In light of commercially ordinary timeframes in this industry for private financing and investment, and repayment of lenders, Cellular One agrees with the Commission's conclusions in the *FNPRM* that a ten-year term of support is appropriate for the Phase II Mobility Fund.[9] Any lower support term should be accompanied by lesser obligations, as stated by CTIA.[10]

II.A. *Provider Eligibility: Interplay with Other Universal Service Mechanisms.*

In the event mobile-only providers become eligible for Connect America Fund support (aside from the Mobility Funds), consideration of public interest obligations should accommodate the fact that the Commission has previously weighed and balanced the obligations for mobility deployment as it deemed appropriate, with the input of commenters. The Commission should utilize the Mobility Fund public interest obligations for CAF winners, provided such obligations are not more burdensome on wireless carriers than the CAF obligations are burdensome on landline companies. In addition, however, as stated in the Comments of CTIA, any obligations on mobile providers must be specifically designed for mobile carriers and should not simply copy the obligations for local exchange carriers, which are in many ways very different from wireless companies.[11] Not only will technology and deployment construction vary depending upon whether a company is building wireless broadband or landline, but also history has imposed unique burdens upon small wireless carriers, such as lack of access for decades to universal service support, RUS loans, state universal service funds, and the like. As customers increasingly "vote with their feet" by moving to mobile service, we call upon the Commission to encourage rather than discourage participation by the majority of mobile carriers in the national broadband plan, with obligations that can be readily met by small and mid-sized carriers. Any such obligations should be preceded by a reasonable opportunity for comments and replies on specific proposed rules.

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[9] / *See id.*, Section III.E & nn. 34, 35.
[10] / *See* Comments of CTIA, WC Docket No. 10-90 *et al.* (filed Dec. 21, 2012), at 10.
[11] / *Id.* at 9.

II.B. *Provider Eligibility: Small business participation*.

In response to the questions in paragraph 18 of the *Public Notice*, Cellular One continues to believe that a bidding credit is important to smaller carriers' ability to effectively compete at auction for support. In the *FNPRM*, the Commission sought comment on whether small businesses should be eligible for a bidding preference in the Phase II auction, and asked whether a small business "should be defined as an entity with average gross revenues not exceeding $40 million for the preceding three years, or whether it should use a larger size definition, such as average gross revenues not exceeding $125 million for the preceding three years".[12] Companies such as MTPCS, LLC have proposed that the Commission adopt the definition used by the Small Business Administration – the expert agency on small businesses. Cellular One agrees that the SBA definition is well suited to the modern economy. The FCC definitions date back two decades to the first broadband PCS auctions and were developed for spectrum acquisition rather than USF support. These definitions must be updated to track the recommendations of the SBA, the expert agency, so as to reflect inflation and numerous changes in the economy and this industry. Accordingly, *if and only if the SBA definition is used*, a preference should be adopted to enable meaningful auction participation by small businesses, even if the bidding credit would result in less coverage than would occur without the bidding credit.

III. *Procedural Matters.*

In connection with the IRFA,[13] Cellular One is concerned about the potential impacts of the proposals in this proceeding on small entities. Small wireless carriers have forged the way in meeting the needs of rural areas and providing various services and pricing options. By adopting the cap and now reducing the support available to small wireless carriers in comparison to the amounts and areas available to legacy landline services, the federal government is at risk of being viewed as actively placing a modern technology and innovative, nimble competitors at a competitive disadvantage, absent a change of course. We urge the Commission to avoid any appearance of favoritism, level the playing field, and ensure consumers will have a choice of mobile broadband provider in rural service areas, not just in urban areas.

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[12] / *Id.*, at ¶ 18 & n. 43.
[13] / *See id.*, at ¶ 22.

IV. *Use of Declined Support.*

Cellular One urges the Commission to provide more support to the Mobility Fund, in order to ensure the success of the National Broadband Plan. Phase I support was awarded in fewer areas than were put up for auction. While certain eligible areas may be difficult or impossible to reach with cellular construction,[14] other areas may not have received support simply because the Mobility Fund requires additional funding. We agree with CCA, which asks the Commission to shift declined funding to the Mobility Fund.[15] Wireless technology is the efficient and beneficial choice for rapid broadband deployment. Without sufficient support to the Fund, the nation would suffer from a lack of mobile broadband in rural areas. The Commission should adopt CCA's proposal, so as to comply with the statutory description of universal service support. This also would reassure rural America of the federal government's commitment to a fair playing field for development of the tele-businesses and jobs that result from mobile broadband deployment.

In conclusion, Cellular One commends the Bureau for seeking to develop a more robust record regarding support for mobile broadband. In light of experience in Auction 901, and grateful for this opportunity to comment, Cellular One provides the foregoing suggestions and responses to the Bureaus in connection with implementation of Phase II of the Mobility Fund.

Respectfully submitted,

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[14] / Examples include mountainous cliffs, swamps that will not support stable cell towers, private land whose owners are unwilling to lease or sell space, parklands where carriers cannot obtain permits, and the like.

[15] / *See* Comments of Competitive Carriers Association, WC Docket No. 10-90 *et al.* (filed Dec. 21, 2012), at 3-6.

CERTIFICATE OF SERVICE

I hereby certify that, on January 7, 2013, I caused a true and correct copy of the foregoing Comments to be served by electronic mail on the following:

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