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 THE RURAL TELECOMMUNICATIONS GROUP, INC.

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Summary

In their comments, RTG and other commenters advocated for the use of bidding credits for small businesses, carriers that serve rural areas, and carriers that seek to serve unserved areas. Some commenters also support the creation of a bidding credit for areas that have a low population density and areas that currently lack a certain level of service. RTG supports these proposals and the proposal to give carriers the ability to utilize multiple bidding credits in Phase II to create a cumulative bidding credit effect. Utilizing bidding credits like the ones proposed by RTG and others will be the easiest way for the FCC to target Phase II support to unserved areas, areas that have coverage below 3G, rural areas, and areas that would lose service absent the receipt of ongoing support. Bidding credits will also allow the Commission to target Phase II support to those carriers that are willing to serve rural, remote, and high-cost areas and can leverage existing assets to provide service more effectively.

The record shows that commenters have not identified a source of data that is superior to Mosaik in depicting the availability of wireless coverage throughout the United States. RTG agrees that the Mosaik data is not perfect. RTG also agrees with those commenters supporting the establishment of a lengthy period of time in which carriers may provide input on the accuracy of whatever data the Commission ultimately uses to designate areas as unserved or served. Generally, the challenge period should be based on well-defined rules which give carriers a sufficient amount of time to analyze the list of eligible areas, challenge data, and respond to challenges made by other carriers.

The Commission should adopt a 10-year term of support for Phase II because it will provide the certainty needed for RTG members and other carriers that serve high-cost, sparsely populated rural and remote areas. Recovery of investment in these hard-to-serve areas cannot

reasonably occur in a timeframe less than 10 years. A 10-year term of support for Phase II is in line with the way rural carriers plan, build, and operate their networks, and will provide the regulatory certainty needed to operate networks in high-cost areas.

The Commission can provide even greater regulatory certainty by adopting performance obligations that do not change during the Phase II term of support. A majority of commenters oppose adopting any type of performance obligations that may change or become more demanding throughout the Phase II term of support, and instead, support clear, well-defined performance obligations. RTG opposes performance obligations that evolve throughout the Phase II term of support because they will cause uncertainty. Evolving performance obligations that kick-in during the latter portion of the Phase II term of service will make it difficult for carriers to develop effective bidding plans for the Phase II reverse auction. The Commission will be unable to define with any true accuracy "anticipated advances in technology." Nor will carriers be able to accurately predict the costs of utilizing advances in technology or predict whether their current spectrum holdings will be sufficient.

RTG joins those commenters that oppose the adoption of a Phase II Letter of Credit (LOC) requirement. The record shows that the LOC requirement used in Phase I was overly burdensome and stood as a barrier to participation for smaller carriers.

Additionally, the Commission should resolve all outstanding Phase II issues. Many commenters identified additional issues not contained in the *Further Notice* that need clarification before the Commission adopts final rules for Phase II of the Mobility Fund. For example, the Commission should clarify exceptions for Alaska and increase the amount of funding available in Phase II.

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To: Wireline and Wireless Telecommunications Bureaus

REPLY COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.

The Rural Telecommunications Group, Inc. ("RTG"), by its attorneys, hereby submits its reply comments in response to the Wireless Telecommunications Bureau's and the Wireline Competition Bureau's (the "Bureaus") Public Notice[1] in the above-captioned proceeding.

I. THE USE OF BIDDING CREDITS IN PHASE II WILL BENEFIT RURAL AREAS.

In their comments, RTG and other carriers advocated for the use of bidding credits for small businesses, carriers that serve rural areas, and carriers that seek to serve unserved areas.[2] If the Bureaus ultimately adopt a reverse auction mechanism to distribute Phase II Mobility Fund support, the use of bidding credits will benefit consumers living, working, and travelling in rural and unserved areas because it will allow the Commission to target ongoing support to rural areas that lack coverage, rural areas that have coverage below 3G, and rural areas that would lose service absent the receipt of ongoing support.

[1] *Further Inquiry Into Issues Related To Mobility Fund Phase II*, WC Docket No. 10-90, WT Docket No. 10-208, Public Notice, DA 12-1853 (Nov. 27, 2012) (*Further Inquiry*).
[2] *See* Comments of RTG, WC Docket No. 10-90 et al., at 13-16 (filed Jan. 18, 2012); Comments of the USA Coalition at 9; Comments of The Blooston Rural Carriers at 6-8; Comments of Atlantic Tele-Network, Inc. at 5-7. *See also* Comments of the Alaska Rural Coalition at 12 (supporting making bidding credits available to carriers based on the poverty level of their customers and to carriers serving areas not accessible by the National Highway System).

Bidding credits will also help increase the number of auction participants and allow smaller carriers seeking to serve rural areas to compete on more equal footing in a reverse auction with larger carriers who also serve urban areas. Larger carriers are able to place artificially lower bids than small, rural carriers because large carriers are able to subsidize the cost of serving rural areas with excess revenue from more populated urban and suburban areas. The use of bidding credits will allow smaller carriers who cannot subsidize or cross average their costs with a more densely populated area to be competitive in a reverse auction.

If the Commission ultimately decides to prioritize support, bidding credits can help the Commission achieve that goal. Bidding credits will enable the Commission to better target Phase II support to areas that need it the most. The Blooston Rural Carriers suggest making bidding credits available for rural carriers and for areas that are sparsely populated.[3] Specifically, the Blooston Rural Carriers support a bidding credit for carriers that qualify as a "rural telephone company" under Section 51.5 of the FCC's rules and for carriers whose license areas have a population density significantly below 100 persons per square mile.[4] RTG supports the creation of a bidding credit for rural carriers and for areas that have a low population density. RTG also supports giving carriers the ability to utilize multiple bidding credits in Phase II to create a cumulative bidding credit effect.[5]

The Universal Service for America Coalition ("USA Coalition") supports a bidding credit for coverage of areas that currently lack 2G or 3G service. It believes such a bidding credit will

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[3] *See* Comments of Blooston Rural Carriers at 6-8.
[4] *Id*.
[5] For example, if a carrier receives a 25 percent bidding credit because it qualifies as a small business and it receives another 25 percent bidding credit for serving an unserved area, the carrier would receive a cumulative bidding credit of 50 percent. *See also* Comments of Blooston Rural Carriers at 8. (The Blooston Rural carriers propose that bidding credits be cumulative. "If not directly additive (*i.e.*, 25% + 35% = 60%), a significant portion of each credit should be allowed when multiple credits are used together.").

help "bring all Americans up to a baseline of communications services that are reasonably comparable to those available in urban areas."[6] The USA Coalition suggests the Commission issue a larger credit for areas that currently have no 2G service and a smaller credit for areas that have no 3G service. RTG supports the creation of a bidding credit for areas that currently lack a certain level of service.

In its comments, RTG proposed awarding bidding credits to carriers that are small businesses, carriers that are already providing mobile wireless service to rural areas (with the size of the credit based on the size of the rural coverage area and length of time the area has been served), and carriers that seek to serve unserved areas.[7] A system of bidding credits like the ones proposed by RTG and others will be the easiest way for the FCC to target Phase II support to unserved areas, areas that have coverage below 3G, rural areas, and areas that would lose service absent the receipt of ongoing support. Bidding credits will also allow the Commission to target Phase II support to those carriers that are willing to served rural, remote, and high-cost areas and can leverage existing assets to provide service more effectively.

II. ALLOWING CARRIERS TO CHALLENGE THE DETERMINATION OF WHETHER AN AREA IS SERVED OR UNSERVED WILL HELP ADDRESS ERRORS THAT ARE INHERENT IN MOSAIK DATA.

The record shows that commenters have not identified a source of data that is superior to Mosaik in depicting the availability of wireless coverage throughout the United States. Because Mosaik data is not perfect, a large majority of commenters support a lengthy challenge period for correcting any of the data's mischaracterizations of areas that are served or unserved. RTG agrees with CTIA that the Mosaik data is not perfect.[8] RTG also agrees with those commenters

[6] Comments of USA Coalition at 9.
[7] Comments of RTG at 14-15.
[8] *See* Comments of CTIA at 4.

supporting the establishment of a period of time in which carriers may provide input on the accuracy of whatever data the Commission ultimately uses to designate areas as unserved or served.[9] Generally, the challenge period should be based on well-defined rules which give carriers a sufficient amount of time to analyze the list of eligible areas, challenge data, and respond to challenges made by other carriers.

The Bureaus must craft a challenge period that provides enough time for all interested parties to provide input. In addition to mobile wireless carriers, in Phase I, state public utilities commissions and state agencies participated in the challenge period.[10] There must be enough time for state entities to evaluate the data that shows whether or not an area is eligible ("unserved") or ineligible ("served"). Entities at the state level, such as state public utilities commissions or state broadband agencies, often have good information on the availability of mobile wireless service throughout their states. For example, the Mississippi Public Service Commission ("MPSC") referenced a multi-state initiative named "Zap the Gap" which is used to identify areas with "deficient wireless coverage."[11] If states have a methodology for identifying coverage gaps or larger unserved areas, the Commission should urge state commissions or the relevant entity to submit such data in this proceeding.

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[9] *See* Comments of USA Coalition at 11-12 (urging that challenges to "unserved" or "served" determinations be entertained for as long as possible); Comments of Blooston Rural Carriers at 5 (supporting a challenge period similar to the Phase I challenge period but urging the Commission to allow more time to prepare the filing and advertise the availability of the procedure more visibly); Comments of CTIA at 5-6 (calling for a process for carriers to identify under- and over-inclusions in the list of eligible areas to increase the accuracy of the eligibility data); Comments of the Alaska Rural Coalition at 6-7 (supporting a process by which carriers can challenge the factual accuracy of Mosaik data).

[10] *See, e.g.*, Comments of the Indiana Regulatory Utility Commission; Minnesota Department of Commerce; The Commonwealth Office of Broadband Outreach and Development.

[11] *See* Comments of the Mississippi Public Service Commission at 1-2.

During the Phase I challenge process, if parties thought certain census blocks should not be eligible for support of if they thought certain census blocks should be eligible for support, they had to provide evidence that supported their claims.[12] Carriers should be required to provide data that supports their conclusions during the Phase II challenge process. During Phase I, the Bureaus correctly rejected challenges made by large nationwide carriers concerning coverage areas if they made an insufficient showing, and the Bureaus should do the same during Phase II. The determination of eligible or ineligible areas is simply too important to allow carriers to merely submit a link to a website containing an advertisement map of a carrier's coverage area. RTG urges the Commission to establish standards for challenging areas that are classified as either served or unserved.

III. THE COMMISSION SHOULD ADOPT A 10-YEAR TERM OF SUPPORT WITH PERFORMANCE OBLIGATIONS THAT DO NOT CHANGE.

Even though the Bureaus have recognized that carriers generally agree that a 10-year term of support is appropriate for Phase II, it sought "additional comment on establishing an appropriate term of support, in light of the timeframes for deployment and private investment and the pace of new technology and marketplace developments."[13] The record now indicates that the Commission should set a 10-year term for Phase II support. A 10-year term of support will provide the certainty needed for rural carriers to plan networks, make infrastructure investments, allocate costs, determine cost recoveries, and attract separate private investment. The Commission can provide even greater certainty by adopting performance obligations that do not change during the Phase II term of support.

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[12] *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, ¶19 (Feb. 2, 2012).
[13] *Further Inquiry* at ¶15.

RTG's position that the Phase II term of support must coincide with the way rural carriers plan, build, and operate their networks is supported by other commenters, including U.S. Cellular.[14] In its Comments, U.S. Cellular calls for a 10-year term of support "because such a term would provide a level of regulatory certainty necessary to ensure efficient planning for the construction, upgrading, and extension of mobile broadband networks."[15] The Alaska Rural Coalition ("ARC") also supports a 10-year Phase II term of support because it will provide predictability and sustainability. While ARC's comments are focused on applying Phase II to the unique characteristics of Alaska, RTG agrees with ARC's view that "[r]ecovery of investment in sparsely populated areas cannot reasonably occur in a timeframe less than 10 years."[16] A 10-year term of support for Phase II is in line with the way rural carriers plan, build, and operate their networks, and will provide the regulatory certainty needed to operate networks in high-cost areas.

A majority of commenters are also opposed to adopting any type of performance obligations that may change or become more demanding throughout the Phase II term of support. Rather, most commenters support clear, well-defined performance obligations.[17] While AT&T supports a five-year term of support, rather than a 10-year term, it maintains that service obligations should not change during the term of service: "As we have explained elsewhere, no high-cost recipient should be subject to requirements that are undefined or not in effect as of the

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[14] *See* Comments of United States Cellular Corporation at 25; Comments of the Alaska Rural Coalition at 15.
[15] Comments of United States Cellular Corporation at 25.
[16] Comments of The Alaska Rural Coalition at 16.
[17] *See* Comments of the Blooston Rural Carriers at 10-11 (calling for bilateral negotiations between the Commission and recipients of Phase II support before changing performance obligations or support amounts); Comments of Verizon at 4 (arguing that obligations must be made clear before an auction); Comments of AT&T at 11-12 (stating that service obligations should not be modified after a provider has elected to receive support); Comments of CTIA at 7 (arguing that the scope of obligations must be clear to bidders prior to an auction).

date when a carrier either is designated an eligible telecommunications carrier (ETC) or must elect whether to participate in the particular funding mechanism. Imposing obligations retroactively could materially alter a provider's business case that made its acceptance of high-cost support possible."[18] RTG opposes performance obligations that evolve throughout the Phase II term of support because they will cause uncertainty.

If the Commission adopts an undefined set of "evolved" performance obligations that will kick-in during the latter portion of the Phase II term of service, it will be difficult for carriers to develop effective bidding plans for the Phase II reverse auction. For example, in order to formulate a bid for an area, a carrier would have to consider the cost of providing service that meets the Commission's initial 4G performance obligations and the cost of providing service that meets performance obligations that will have been "modified…to reflect anticipated advances in technology." (FI ¶14) It is difficult, if not impossible, to formulate a realistic bid or confidently make the decision to participate in Phase II based on these criteria. Ultimately, rural areas and rural consumers will suffer if rural carriers are deterred from auction participation due to uncertain performance obligations. RTG also opposes the establishment of tiered Phase II performance obligations that are based on defined obligations for the second portion. The Commission will be unable to define with any true accuracy "anticipated advances in technology." Nor will carriers be able to accurately predict the costs of utilizing advances in technology or predict whether their current spectrum holdings will be sufficient.

Phase II of the Mobility Fund is far too important to be designed using uncertain, speculative rules. The Commission should adopt a single set of performance obligations that apply throughout the entire Phase II 10-year term of support. As RTG set forth in its comments,

[18] Comments of AT&T at 12.

any modified performance obligations should go into effect only after the completion of the initial Phase II term of support.[19] RTG urges the Commission to initiate a rulemaking process to establish any new performance requirements at least three years prior to the end of the initial Phase II term so that carriers can plan and prepare for the next phase of the Mobility Fund (i.e., Phase III).

IV. THE COMMISSION SHOULD NOT REQUIRE WINNING BIDDERS TO OBTAIN A LETTER OF CREDIT FOR EACH WINNING BID IN PHASE II OF THE MOBILITY FUND.

Although the Bureaus did not specifically ask for comment on the subject in the *Further Inquiry*, many commenters addressed the requirement that winning bidders in the Phase I reverse auction obtain a letter of credit ("LOC") from an "FCC approved" bank for each winning bid. Commenters that addressed the LOC requirement favored either eliminating the requirement in its entirety for Phase II, or making fundamental modifications to the requirement.[20] RTG takes this opportunity to join those commenters that oppose the adoption of a Phase II LOC requirement.

Those RTG members that were winning bidders in Phase I of the Mobility Fund found the LOC requirement to be overly burdensome and costly. Pursuant to Section 54.1007, before being authorized to receive Mobility Fund Phase I support, a winning bidder is required to obtain an irrevocable standby letter of credit from a bank that: (i) is among the 50 largest United States banks, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit; (ii) whose deposits are insured by the Federal

[19] Comments of RTG at 10-11.
[20] Comments of the USA Coalition at 16; Comments of The Blooston Rural Carriers at 13; Comments of CoBank; Comments of Mescalero Apache Telecom, Inc. at 6-7; Comments of Atlantic Tele-Network, Inc. at 7-9; Comments of the Alaska Rural Coalition at 18; Comments of Competitive Carrier Association at 8.

Deposit Insurance Corporation, and (iii) who has a long-term unsecured credit rating issued by Standard & Poor's of A- or better (or an equivalent rating from another nationally recognized credit rating agency).[21] Support from Phase I of the Mobility Fund went to many rural carriers to provide mobile wireless services in rural areas. Many of these rural carriers do not have existing relationships with "FCC approved" banks.[22] "Simply put, many rural carriers are small businesses that do not have the financial resources or the established relationships with major banks that would enable them to reasonably obtain a letter of credit meeting the Commission's Phase I standard."[23] They typically receive loans through the U.S. Department of Agriculture's Rural Utilities Service, local banks, regional banks, and banks such as CoBank that primarily lend to rural businesses. For many carriers, the LOC requirement was the most burdensome requirement of the Long Form process. The short amount of time that winning bidders had to file their long forms made the LOC requirement even more burdensome. Burdensome requirements discourage participation. Indeed, for at least one commenter, the Commission's LOC requirement stands as a "barrier" to participation in the Mobility Fund.[24]

Additionally, the FCC would not initially accept an LOC from CoBank, which is one of the largest lenders to the rural communications industry. Winning bidders in Phase I were precluded from using CoBank to issue LOCs because the bank does not meet all of the specific requirements outlined in the FCC's Rules. The Bureaus eventually issued an eleventh hour waiver allowing the use of LOCs from CoBank. Because the waiver was issued only three

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[21] 47 C.F.R. § 54.1007(a). The FCC accepted LOCs from non-U.S. banks subject to nearly identical conditions.
[22] *See* Comments of The Blooston Rural Carriers at 13 (stating that a majority of rural carriers do not have existing relationships with "FCC approved" banks).
[23] *Id*.
[24] Comments of Mescalero Apache Telecom, Inc. at 6. *See also* Comments of The Blooston Rural Carriers at 13 (explaining that Commission's LOC requirement often amounts to an insurmountable barrier to entry).

business days before Long Forms were due, RTG's members were not able to utilize CoBank by the deadline.[25]

More importantly, the hazards the Commission is attempting to prevent by requiring an LOC can be and are addressed by other requirements for Phase II. The LOC requirement was adopted in Phase I to protect the integrity of USF funds in the event a support recipient defaults on its Mobility Fund obligations.[26] Since Phase II is also for ongoing support, annual reporting requirements will keep the Commission apprised of whether or not a winning bidder is using Mobility Fund support to meet the performance obligations. Funding can be withheld if the carrier is not complying with any aspects of the support criteria.[27]

If the burdensome LOC requirement is carried over into Phase II, it will discourage participation. The Commission should not require Phase II winning bidders to obtain an LOC for each bid in Phase II. In the alternative, if the Commission adopts an LOC requirement for Phase II, it should be much less burdensome than the one adopted for Phase I and there should be an exemption for certain carriers. Carriers that have a proven track record of receiving universal service support and using that support to provide service to rural areas should not be required to obtain a LOC. If the LOC requirement is carried over to Phase II, only relatively new ETCs should be required to provide an LOC, and even then, support recipients should not be required to have an LOC in place for an extended period of time. Ten years is too long to tie up capital for this purpose.

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[25] *Mobility Fund Phase I, Waiver of Section 54.1007(a)(1) of the Commission's Rules*, DA 12-1747, Order (Rel. Nov. 1, 2012).
[26] *See Connect America Fund*, et *al*., WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶446 (Nov. 18, 2011) (*USF/ICC Transformation Order*).
[27] Because the LOC only covers one-third of the winning bid amount (plus ten percent), the FCC's ability to withhold funding should provide protection beyond that of an LOC.

V. OTHER ASPECTS OF THE PHASE II PROCESS MUST BE ADDRESSED.

In the *Further Inquiry*, the Bureaus sought further comment on a limited number of specific issues relating to the implementation of Phase II of the Mobility Fund. Many commenters identified a host of additional issues that need clarification before the Commission adopts final rules for Phase II of the Mobility Fund. The Bureaus should take the time to work with carriers to work out every detail of Phase II. The Commission was able to adopt Phase I of the Mobility Fund, craft final rules, and implement the reverse auction all within the time-frame of one year. RTG cautions the Bureaus not to move too quickly. Before acting, the Bureaus should clarify all outstanding issues to ensure Phase II is efficient and its rules are clear

A. The Commission Should Clarify Exceptions for Alaska

The Commission must clarify how the Phase II rules will apply in Alaska. Because of Alaska's unique characteristics, exceptions must be made. The state of Alaska contains very large census blocks, and many of the unserved areas in Alaska do not contain roads. ARC states that "[i]f the Commission were to determine Alaska's need for Mobility II funding based on road miles, the resulting data would likely suggest that Alaska is a very small state with little need for Mobility funds."[28] RTG agrees with the ARC proposal to use an alternative metric such as terrain, topography, or average cost of service per square mile to determine Mobility Fund Phase II bidding units for Alaska. RTG also questions whether a Phase II reverse auction that is structured in primarily the same way as the Phase I auction will provide "sufficient" universal service support for high-cost areas in Alaska.

[28] Comments of Alaska Rural Coalition at 14.

B. The Commission Should Increase the Size of The Mobility Fund

A few commenters suggested increasing the size of the Mobility Fund by adding support that was turned down by price cap wireline carriers.[29] The Commission could very easily incorporate this leftover funding into the Mobility Fund. Unlike price cap carriers who rejected over $180 million in Connect America Fund Phase I support, mobile wireless carriers jumped at the chance to bring broadband to unserved areas. Mobility Fund Phase I winning bidders received $300 million in one-time support to provide 3G or better mobile broadband services covering roughly 83,494 road miles in 795 biddable geographic areas located throughout 31 states and one U.S. territory.[30] In comparison, price cap carriers rejected an overwhelming majority of the CAF Phase I funds allocated to them. These carriers have a poor record of serving rural areas – over 80 percent of the more than 18 million Americans unserved by broadband live in price cap territories. Rather than search for ways to get price cap carriers to take support and deploy broadband, the Commission should use a portion of the leftover CAF Phase I support to increase the size of Phase II of the Mobility Fund.

VI. CONCLUSION

It is extremely important that Phase II of the Mobility Fund provides ongoing support for mobile wireless services to rural and remote areas where it is needed the most. To ensure support is targeted where it is needed the most and the Phase II process is efficient as possible, there must be a lengthy, meaningful challenge period to allow carriers to correct flawed Mosaik data; bidding credits should be made available in Phase II; performance obligations should not change during the Phase II term of support; the post-auction requirement that carriers obtain an

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[29] *See* Comments of Competitive Carriers Association at 5; Comments of the USA Coalition at 3-4; Comments of NTCH, Inc. at 2.

[30] *See Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901; FCC Form 680 Due November 1, 2012*, Public Notice, DA 12-1566, ¶1 (Oct. 3, 2012).

LOC for each winning bid should be eliminated; and the Commission should resolve all outstanding Phase II issues.

Respectfully submitted,

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