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**Via Electric Submission**

Ms. Marlene Dortch  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

*Re: WC Docket No. 10-90, Connect America Fund; WT Docket No. 10-208, Universal Service Reform - Mobility Fund*

Dear Ms. Dortch,

On July 12, 2013, Michael Goggin, counsel for AT&T, and I met with Margaret Wiener, Martha Stancill, Elliott Maenner, and Jeremy Marcus of the Wireless Bureau staff regarding the application of 47 C.F.R. § 1.2105(c) (the “Prohibition of Certain Communications” rule) in the planned Mobility Fund Phase II process. In the meeting, AT&T expressed its support for the Commission policy of encouraging the widespread deployment of mobile broadband service. Moreover, AT&T underscored the need for laws designed to deter and punish collusive behavior that would reduce competition in a system of competitive bidding for Mobility Fund Phase II support.

AT&T noted, however, that the application of the Commission’s rule on prohibited communications in this context might actually discourage the participation of potential bidders in a Mobility Fund competitive bidding process. The rule, which seeks to prevent anticompetitive behavior, does not punish actual collusion, but the mere communication or receipt of information, whether or not any collusion or anticompetitive conduct actually occurs as a result. Because even the involuntary receipt of information that has the *potential* to affect one’s bidding strategy can result in a violation, rule violations may be difficult to avoid. Accordingly, on balance, the application of the rule in the Mobility Fund context likely deters participation and thus might actually reduce competition in the process rather than enhance it. Enhancing competition in the Mobility Fund Phase II competitive bidding process is clearly in the public interest since it will drive bids down and ensure that the allocated funding has the greatest impact.

The Mobility Fund process is similar to many government procurement processes, where vendors engage in competitive bidding and the government awards a contract to the low bidder. To deter anticompetitive conduct in competitive bidding, agencies that operate under the Federal Acquisition Rules rely on the antitrust laws both to deter and punish anticompetitive behavior. The Sherman Act prohibits “bid-rigging” and other forms of collusive behavior, and it carries criminal penalties that include jail sentences and fines (as well as treble damage civil remedies). Given these severe penalties, antitrust law is a particularly effective deterrent in a situation like the Mobility Fund process, as it is in other government contract settings. Adding the Commission’s prohibited communications rule in this context is unlikely to add much in the way of deterring collusive behavior, but it very well could deter participation. Accordingly, AT&T recommended that for Mobility Fund Phase II, the Commission rely, as other agencies

do, on the sufficiency of the antitrust laws as a means to deter and punish collusion in the competitive bidding process.

AT&T suggested that, to the extent that the Commission nevertheless determines to apply the “prohibited communications” rule to the process as an additional deterrent, some adjustments should be made to increase the ability of applicants to ensure compliance with the rules. First, the Commission should limit the application of the rule to clarify that information received by those not responsible for an applicant’s bidding strategy would not automatically be deemed a violation of the rule. For example, the Commission should consider allowing participants to certify that their Mobility Fund auction strategy/bidding team has been screened from communications from other auction applicants during the quiet period. Under this approach, provided that the auction team is appropriately insulated, the inadvertent receipt of prohibited information from another applicant by someone not on the auction team would not be considered a violation of the anti-collusion rules. Second, the Commission should accelerate the process of publishing the list of applicants (including those deemed to be applicants by virtue of their ownership interests in applicants) so that all applicants can know at the earliest possible date—preferably on the date the quiet period begins--the identity of those with whom mere communication carries heightened risk. Third, as in spectrum auctions, the rule should only be applied in the case of information exchanges between applicants who have applied to bid in the same geographic areas. The risk to the competitive bidding process from an inadvertent disclosure is likely to be small in the case of a disclosure by an applicant that has applied to bid only in Maine to a recipient that has applied to bid only in Wisconsin.

In short, AT&T submits that the prohibited communications rule, designed for the spectrum auction context, is, on balance, counter-productive in the Mobility Fund process as it discourages participation in the process and therefore might itself reduce competition. The criminal and civil penalties that already apply to collusive behavior by virtue of the antitrust laws sufficiently protect the competitive bidding process in this context.

If you have any questions regarding this information please do not hesitate to contact me at (202) 457-2041. Pursuant to Section 1.1206 of the Commission’s rules, this ex parte notice is being filed electronically for inclusion in the record of the above-referenced proceedings.

Sincerely,

*/s/ Mary L. Henze*  
Mary L. Henze

Cc: M. Wiener  
M. Stancill  
E. Maenner  
J. Marcus