



April 14, 2014

Electronically Filed Via E-mail and ECFS

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

Re: *Connect America Fund et al.*, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208

Dear Chairman Wheeler:

The Rural Wireless Association, Inc. (“RWA”)¹ respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) immediately halt the phase-down of Universal Service Fund (“USF”) support for high-cost wireless carriers because the Mobility Fund Phase II will not be “operational” or “implemented” by June 30, 2014. As outlined below, Section 54.307(e)(5) of the Commission’s rules states the phase-down of legacy USF support will halt if the Mobility Fund Phase II has not been *implemented* by June 30, 2014.² Further, the *USF/ICC Transformation Order* states the phase-down will be halted if Phase II is not “operational” by June 30, 2014.³ However, the Commission did not define the terms “implemented” or “operational” and it is not certain that the phase-down will be halted on June 30, 2014. Furthermore, the Commission’s rules do not clearly state the circumstances under which the phase-down will re-start or what additional mobile broadband public interest

¹ The Rural Wireless Association, Inc. is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural wireless companies who serve rural consumers and those consumers traveling to rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RWA’s member companies serves fewer than 100,000 subscribers.

² 47 C.F.R. § 54.307(e)(5).

³ *Connect America Fund et al.*, WC Docket No. 10-90; GN Docket No. 09-51; GN Docket No. 09-51, WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 519 (Nov. 18, 2011) (“*USF/ICC Transformation Order*”).

obligations, if any, will be placed on wireless carriers during the halt. These discrepancies have created significant uncertainty for wireless carriers receiving legacy USF support and must be clarified as soon as possible.

Section 254(b)(5) of the Communications Act of 1934, as amended, requires the Commission to ensure that it has in place “specific, predicable, and sufficient Federal... mechanisms to preserve and advance universal service.”⁴ Without immediate FCC action, competitive carriers face unpredictability and uncertainty as to whether they will receive specific and predictable USF support as of July 1, 2014 that will allow them to continue providing services or deploy new services to high-cost areas, or whether they will instead be subject to significant reductions of legacy USF support even though no Mobility Fund Phase II funds can possibly be disbursed by July 1, 2014. This uncertainty needs to be rectified immediately.

I. MOBILITY FUND PHASE II WILL NOT BE OPERATIONAL OR IMPLEMENTED BY JUNE 30, 2014 AND THE COMMISSION SHOULD IMMEDIATELY RESOLVE CARRIER UNCERTAINTY BY HALTING THE PHASE-DOWN OF LEGACY USF SUPPORT.

In the *USF/ICC Transformation Order*, the Commission considered the possibility that Phase II funding might not be available to carriers by June 30, 2014, and stated that it would “halt the phase-down of support until it is *operational*.”⁵ Meanwhile, the FCC’s rules set forth a different standard for halting the phase-down of support. Section 54.307(e)(5) of the FCC’s rules states that “[i]n the event that the *implementation* of Mobility Fund Phase II has not occurred by June 30, 2014, competitive eligible telecommunications carriers will continue to receive support at the level described in paragraph (e)(2)(iv) of this section until Mobility Fund Phase II is *implemented*.”⁶ The terms “operational” and “implementation” are not synonymous, nor are they defined by the Commission, which creates significant uncertainty with regard to carriers’ continued access to USF funding. According to Merriam-Webster’s Collegiate Dictionary, the term “operational” means “ready for or in condition to undertake a destined function” and to “implement” means to “carry out, accomplish...”⁷ Under these definitions, to be operational, the Mobility Fund Phase II must be ready to distribute funding to carriers, and for Phase II to be implemented, it must be able to carry out or accomplish the distribution of funds to carriers.

It is highly unlikely for Phase II to be “operational” or “implemented” by June 30, 2014 given the time it has taken the FCC to disburse Phase I funding. In addition, carriers are now in the second quarter of 2014. There is not enough time between now and June 30, 2014 for the Commission to adopt final Phase II rules, have them published in the Federal Register, hold an auction, authorize payments, and disburse funds before the next scheduled phase-down of legacy support.

⁴ 47 U.S.C. § 254(b)(5).

⁵ *Id.* at ¶ 519 (emphasis added).

⁶ 47 C.F.R. § 54.307(e)(5) (emphasis added).

⁷ Merriam-Webster’s Collegiate Dictionary, Tenth Edition, 2000.

Because Mobility Fund Phase II is neither currently “operational” nor has it been “implemented,”⁸ RWA respectfully requests that the Commission clearly state that the phase-down of legacy support will be halted until Phase II funding is capable of being released and that carriers be given practical notice of the revised deadline. RWA recommends that the FCC freeze the amounts received under the current fund until July 1, 2015 and plan to ratchet down the next 20 percent at that time. This will provide certainty to carriers receiving funding and allow the FCC to finalize the Phase II Mobility Fund rules, hold the auction for that funding and distribute the funding to successful carriers. It will also provide a level of financial certainty to carriers attempting to plan 2015 operational expenditures.

Section 254(b)(5) of the Act requires the Commission to ensure that it has in place “specific, predictable, and sufficient Federal... mechanisms to preserve and advance universal service.”⁹ Because of the uncertainty carriers currently face regarding future USF support, the FCC’s mechanism for determining the amount of support carriers will receive is far from “predictable.” Accordingly, the requested halt of the scheduled phase-down will allow the Commission to meet its statutory obligations by establishing a mechanism that will ensure a predictable amount of ongoing USF support.

II. THE COMMISSION SHOULD FIND MOBILITY FUND PHASE II HAS NOT BEEN “IMPLEMENTED” AND IS NOT “OPERATIONAL” UNTIL 50 PERCENT OF AUTHORIZED FUNDS HAVE BEEN DISBURSED TO CARRIERS.

As discussed above, carriers need predictability to formulate their business decisions, and currently there is no predictability with regard to the continued availability of USF funding to competitive ETCs as of July 1, 2014. Legacy funding is currently scheduled to phase-down to 40 percent of the 2011 monthly baseline on July 1, 2014. Such a decline in competitive ETC funding cannot be tolerated absent the actual disbursement of *replacement* support. The Commission cannot consider Phase II “operational” or “implemented” when the auction has begun, or initial disbursements have been made. Rather, a significant portion of support must be disbursed before the Commission can consider Phase II funding “operational” or “implemented.” Carriers cannot operate and continue to deploy essential services if they are receiving only 40 percent of their 2011 monthly USF support.

For this reason, the Commission should clarify that Mobility Fund Phase II has been implemented and is operational only after 50 percent of Phase II funds have been disbursed to carriers. Disbursement of at least 50 percent of the Phase II funds will ensure the phase-down of legacy support does not re-start until carriers have actually received Phase II replacement support. Only by halting the phase-down of legacy support until carriers have at least half of their Phase II funds in hand can the Commission ensure the continued provision of wireless services and deployment of new wireless services to high-cost areas.

⁸ The Commission thoughtfully had the foresight to determine that it might be necessary to halt the phase-down to ensure that carriers continue to receive USF support during the transition period, particularly if the Mobility Fund milestones were not met. *See* 47 U.S.C. § 254(b)(5).

⁹ 47 U.S.C. § 254(b)(5).

III. CONCLUSION.

The Commission's rules and the language of the *USF/ICC Transformation Order* do not clearly state the circumstances under which the phase-down of legacy USF support, which is scheduled to take effect July 1, 2014, will be halted, which has created significant uncertainty for competitive ETCs. Therefore, the Commission should immediately clarify that Mobility Fund Phase II is neither operational nor implemented and halt the July 1, 2014 phase-down. The Commission should also clarify that Mobility Fund Phase II will not be considered operational or implemented until at least 50 percent of Phase II funding has been disbursed to carriers.

Respectfully submitted,

Rural Wireless Association, Inc.

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