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
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

To: The Commission

COMMENTS OF THE BLOOSTON RURAL CARRIERS

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Summary

The Blooston Rural Carriers appreciate the opportunity to file these comments and look forward to participating in the Mobility Fund Phase II auction. With that in mind, the Blooston Rural Carriers urge the Commission to apply the lessons learned from the Mobility Fund Phase I auction, by (1) using Phase II funding to support the deployment of 4G LTE technology; (2) allowing bidding to provide 4G service in areas where other carriers received one-time support in Phase I but are not deploying 4G with such funds; (3) maintaining the originally proposed funding level for Mobility Fund Phase II; and (4) allowing Phase II bidders to seek ETC status after the auction, and to avoid default penalties if certain safe harbor actions are taken. In addition, the Blooston Rural Carriers repeat their call for the Commission to (1) create a system of bid credits for rural telephone carriers and small businesses; and (2) eliminate the letter of credit and other requirements that hinder small business and rural telephone participation in the auction.

Table of Contents

Statement of Interest 2

I. Phase II Funding Should be Reserved for 4G LTE Service.....2

II. Proposal to Define Eligible Areas for Support as Areas Unserved by Verizon or AT&T 4G LTE 3

III. The Commission Should Not Reduce the Level of Phase II Funding 5

IV. Timing of ETC Designation 8

V. Bidding Credits Should Be Implemented for Rural Carriers and Areas with Low Population Density 10

VI. The Standby Letter of Credit Requirement Should be Eliminated As Unduly Burdensome 11

CONCLUSION 12

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The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP ("BloostonLaw"), on behalf of its rural wireless clients (the "Blooston Rural Carriers"), hereby submits these comments concerning the Mobility Fund Phase II ("Phase II") proposals contained in the Commission's *Further Notice of Proposed Rulemaking*.[1] The Blooston Rural Carriers urge the Commission to apply the lessons learned from the Mobility Fund Phase I auction, by (1) using Phase II funding to support the deployment of 4G LTE technology; (2) allowing bidding to provide 4G service in areas where other carriers received one-time support in Phase I but are not deploying 4G with such funds; (3) maintaining the originally proposed funding level for Mobility Fund Phase II; and (4) allowing Phase II bidders to seek ETC status after the auction,

[1] *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2014) (*FNPRM*).

and to avoid default penalties if certain safe harbor actions are taken. In addition, the Blooston Rural Carriers repeat their call for the Commission to (1) create a system of bid credits for rural telephone carriers and small businesses; and (2) eliminate the letter of credit and other requirements that hinder small business and rural telephone participation in the auction.

Statement of Interest

The Blooston Rural Carriers include providers or resellers of wireless telecommunications and information services over licensed and/or unlicensed frequency bands, or entities that are planning to commence the provision of wireless services within the foreseeable future. All are rural telephone companies or rural telco subsidiary/affiliate companies. The Blooston Rural Carriers have participated extensively in the proceedings below by filing comments, reply comments and a petition for reconsideration with regard to the Mobility Fund in the Commission's *USF/ICC Reform* rulemaking.[2]

I. Phase II Funding Should be Reserved for 4G LTE Service

Based on marketplace developments, the Commission is proposing to target the Mobility Fund Phase II funds on expanding access to 4G LTE in those areas that the market will not serve. The Blooston Rural Carriers support this proposal. With LTE being deployed in more populated areas, limiting Phase II support to this technology rather than funding older technologies makes sense. As part of this targeting of LTE, the Commission should confirm that bidders for Phase II

[2] *See, e.g.*, *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Comments of the Blooston Rural Carriers (*filed* December 16, 2010); Petition for Partial Reconsideration of the Blooston Rural Carriers (*filed* December 29, 2011); Comments of the Blooston Rural Carriers (*filed* January 18, 2012); Reply Comments of the Blooston Rural Carriers (*filed* February 17, 2012); Comments of the Blooston Rural Carriers (*filed* February 24, 2012).

continuing support will be able to bid on areas that were awarded one-time support in Phase I, and are using that funding for a technology other than 4G LTE.

In mandating that Phase II winners deploy 4G LTE, and provide voice as well as data service (by virtue of the requirement that Phase II recipients obtain ETC status), the Commission should build in protections to make sure that smaller carriers are not harmed by the somewhat uncertain status of Voice over LTE (VoLTE) technology. It is well documented that VoLTE has "stumbled out of the gate."[3] Indeed, the two largest carriers in the nation have both had to push back their announced VoLTE target dates.[4] Therefore, small and rural carriers should be given a flexible schedule to comply with the Mobility Fund Phase II voice service obligations, until a reasonable amount of time after VoLTE-enabled handsets and network capability are readily available from multiple vendors at reasonable cost.[5]

II. Proposal to Define Eligible Areas for Support as Areas Unserved by Verizon or AT&T 4G LTE

The FCC is proposing to focus competitive bidding for Mobility Fund Phase II support on extending mobile 4G LTE to the remaining U.S. population that will not have it available from either Verizon or AT&T.[6] It proposes to identify eligible areas using data reported on FCC Form 477, which was revised in June 2013. The Commission expects to begin collecting more

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[3] *See, e.g.*, Hill, Kelley "VoLTE: Progress and Problems," RCR Wireless (April 16, 2014).

[4] *See, e.g.*,Dano, Mike "AT&T admits to VoLTE delay, won't offer new launch date," FierceWireless (Feb. 26. 2014); Meyer, Dan "Carrier Wrap: Verizon Wireless further delays VoLTE, RCR Wireless (March 6, 2014).

[5] The Commission has recognized that smaller service providers often do not have access to new products on the same timetable as nationwide carriers and may reasonably need additional time to meet regulatory benchmarks. *See, e.g.*, Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets, *First Report and Order*, 23 FCC Rcd 3406 (2008) at Para. 46.

[6] *FNPRM* at para. 241.

granular data regarding mobile broadband service, as well as new data regarding mobile voice service availability, beginning in September 2014.[7]

In the absence of a better method for confirming AT&T and Verizon Wireless mobile 4G LTE coverage, and availability of service throughout the mobile wireless service area, the Blooston Rural Carriers believe that reliance on data reported by AT&T and Verizon on Form 477 may provide a starting point, but by definition this information contains room for bias. Form 477 requires facilities-based providers of mobile wireless broadband service to submit polygons in an ESRI shapefile format to depict their geographic coverage for each particular transmission technology, such as LTE; but there is no objective definition of what constitutes reliable service. Reliance on carrier coverage maps submitted to third parties (such as Mosaik Solutions) to demonstrate service availability may also significantly overstate coverage.

Similar to the process used to award Mobility Fund Phase I support, the FNPRM indicates that the Commission expects to identify proposed eligible areas prior to the commencement of Phase II bidding, and to have a challenge process to add or subtract areas from the original proposed areas.[8] The adoption of such process is vital, as the Mobility Fund Phase I challenge process showed that there can be numerous errors/exaggerations in the identification of both served areas and unserved areas.[9]

The FNPRM asks for comment on the best way to verify that proposed ineligible areas are in fact served by LTE and that proposed eligible areas are indeed eligible because they lack

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[7] *Id*.

[8] *Id.* at Para. 242.

[9] The Commission received comments from 15 carriers identifying census blocks for removal and/or addition during the Phase I challenge process, and it found all of the demonstrations to be credible. *See Public Notice* DA 12-641, "Mobility Fund Phase I Auction Scheduled for September 27, 2012, Notice and Filing Requirements and Other Procedures for Auction 901 (*dated* May 2, 2012) at Para. 20.

LTE.[10] In this regard, the Blooston Rural Carriers believe that the Commission should accept proposed corrections in the form of maps, drive tests, and explanation of methodologies for determining coverage and certifications by one or more individuals as to the veracity of the material provided. For this process to be meaningful, the FCC must make available to prospective bidders the proposed eligible areas map well in advance of the Phase II auction, and provide sufficient time for companies to verify this data. In this regard, if individual and unredacted Form 477 data for AT&T and Verizon Wireless is not made available for prospective bidders to review freely, or pursuant to a confidentiality agreement, the Commission should publish a composite map depicting the LTE coverage areas of AT&T and Verizon Wireless together. In disputed areas, the Commission should place the burden on AT&T and Verizon to demonstrate that a challenged area should be foreclosed from Phase II support.

The Commission must also define parameters for what constitutes "reliable service" that would remove an area from the eligibility map for Phase II funding. While the Commission has refrained from defining a particular signal level as reliable service for purposes of license buildout showings, there should be some measure of objectivity in determining what sparsely populated areas will be unavailable for bidding in Phase II.

III. The Commission Should Not Reduce the Level of Phase II Funding

Based on the current level of mobile broadband deployment, the Commission is proposing to adjust downward the budget for a retargeted Mobility Fund Phase II.[11] According to February 2014 disbursement figures, the FCC estimates that that wireless CETCs are currently receiving $590 million in annual support, with about $185 million going to Verizon and AT&T.

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[10] *Id.* at Para. 242.

[11] *Id.* at Para. 243.

Thus, it concludes that about $400 million is going to smaller and regional wireless providers. It also believes that this $400 million in funding is not always well-targeted, and in some areas goes to support multiple networks with overlapping coverage, or network that overlaps with coverage provided by one of the four national wireless providers that is not relying on federal USF support. The FCC seeks to further develop the record on how much of that $400 million in competitive ETC support provided today to smaller and regional wireless providers is covering ongoing operating expenses, and how much is being used to extend service to unserved areas. The Commission also asks to what extent is existing frozen support being provided to areas that are not expected to receive 4G LTE from either Verizon or AT&T.[12]

The Blooston Rural Carriers oppose any reduction in the amount of funding for Mobility Fund Phase II. While the Commission theorizes that it can reduce the fund because of overlapping coverage by multiple carriers, this overlooks the fact that for the Mobility Fund Phase II to serve its true purpose, mobile broadband service will be extended to numerous areas that currently have no coverage. The reason these areas lack coverage is often because of low population densities and extremely high costs associated with buildout. The proposed reduction of Phase II funding underestimates the need and expense of reaching these unserved rural areas. In some areas where there is already wireless service but it is less than 4G LTE, carriers may already have significant infrastructure in place to support a less expensive network upgrade. However, in other areas where there is currently no wireless service, or where a service provider does not have existing facilities, Phase II funding will be needed for construction and ongoing

[12] The Blooston Rural Carriers note that the way in which the FNPRM frames this question could be read as suggesting that the Commission will reserve for Verizon and AT&T (the Nation's two largest wireless incumbents) any areas that they may "plan" to eventually serve. It is respectfully submitted that is an inappropriate approach to the Mobility Fund. First, it would show undue favoritism to a duopoly in an ever-more concentrated wireless marketplace. Second, history has shown that when it comes to rural areas, the largest carriers have often overstated their service intentions.

support of new facilities. Based on its experiences with Mobility Fund Phase I and Tribal Mobility Fund Phase I, the Commission has recognized that "*demand for universal service support far exceeded the supply of available funding"*, and that "*there is a need and desire on behalf of providers to extend mobile service, consistent with our universal service goals."*[13] In light of these observations, it is not reasonable or appropriate to reduce the size of Mobility Fund Phase II.

The Mobility Fund Phase I auction, the Stimulus Grant program and other available information shows that true rural build out and operation can be tremendously expensive. As the Connected Nation Policy Brief on Mobility Fund Phase I auction results points out, "the average winning subsidy per road mile in states varied widely, from $130 per mile in Oregon to $31,619 per mile in Iowa," and, "[t]he average bid per road mile across all winning bids was $3,593 per road mile." Connected Nation Report at p 2. This significant cost disparity is likely attributable (at least in part) to the high cost of building towers, backhaul facilities and other infrastructure to reach unserved areas, versus the cost of upgrading existing 2G network facilities so they support 3G/4G service. One only has to look as far as the BTOP program, with numerous projects in the $20-50 million range (and some much higher still), to see examples of the tremendous cost of rural network buildout. Given the demonstrated costs of building and maintaining wireless networks in rural areas, the Commission should avoid any reduction in the amount of funding available for Mobility Fund Phase II.

In this regard, the Blooston Rural Carriers believe that the Commission's focus on existing identical support as a way to justify a reduction in Phase II funding is misplaced. The identical support rule was designed in significant part to encourage competition against

[13] *FNPRM* at Para. 241.

incumbent wireline and other service providers.[14] The Mobility Fund Phase II is designed largely to bring advanced 4G broadband services to rural areas for which a business case cannot be made in the absence of support. [15] Thus, in many respects it is an "apples to oranges" comparison. It can be expected that numerous entities did not participate in the Mobility Fund Phase I auction because they will need both construction funding and ongoing support to make a business case for service to truly rural areas that will pose an ongoing financial challenge to serve.

The Blooston Rural Carriers suggest that the Commission hold the Phase II auction once new rules are adopted, and determine at the end of the auction whether there are in fact surplus funds to be reallocated. The Commission can make decisions regarding any reallocation at that time.

IV. Timing of ETC Designation

The Commission's current rules require Mobility Fund bidders to secure ETC designation before applying to participate in Mobility Fund competitive bidding. In light of the Commission's decision to enable participants in the CAF Phase II competitive bidding process to seek ETC designation after being chosen as a winning bidder for CAF Phase II support, the Commission seeks comment on whether it should likewise allow Mobility Fund Phase II bidders to seek ETC designation after they have won competitive bidding.

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[14] *See* In the Matter of Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776 , 8933 (1997).

[15] *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*) at Para. 1121.

The existence of a pending petition for ETC designation with the relevant state commission should be sufficient to allow a carrier to participate in Phase II of the Mobility Fund. The Commission has heretofore set a breakneck pace for the implementation of its reformed universal service fund; for Mobility Fund Phase I, the Commission allowed only a matter of weeks from the official announcement of the short form deadline for carriers to not only apply for, but actually receive ETC designation.[16] Thus, requiring that ETC status be granted prior to submission of a short form application discourages auction participation. Instead, the Commission should announce a filing window for applications for ETC designation for the purpose of participating in Phase II with the relevant state commission, thereby allowing carriers to participate without arbitrarily reducing state commissions' time frame for considering such applications. Alternatively, if the FCC allows Mobility Fund Phase II applicants to apply ETC designation after the auction, the Commission should consider extending to the Mobility Fund Phase II context its proposal (discussed in the context of its CAF Phase II and Remote Areas Fund proposals)[17] to adopt a rebuttable presumption that a state commission lacks jurisdiction over ETC designations if it fails to initiate and complete an ETC designation proceeding within a specified time frame or by a specified date. Such a mechanism would help to ensure that winning bidders timely obtain ETC status, and aren't put at jeopardy of default if a State regulatory body fails to act in timely fashion.

The Commission's concern that a particular bidder's ETC application may not ultimately be granted can be addressed by offering the funding to the next lowest bidder in the Commission's ranking of award candidates from the Phase II auction, if the original winner is

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[16] *See, Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901,* Public Notice, AU Docket No. 12-25, DA 12-641, released May 2, 2012.

[17] *See FNPRM* at Para 182.

not able to secure ETC status. Sanctions would only be appropriate if a winner showed bad faith in pursuing its ETC application. Unlike spectrum auctions, the Mobility Fund Phase II auction involves support spread out over a number of years, with ongoing service obligations. Therefore, the Commission does not need the security of immediate and drastic sanctions in order to ensure it can take enforcement measures in the event of default. The Commission can simply withhold payments going forward.

Finally, the Blooston Rural Carriers note that carriers will still have the option of seeking ETC status in advance of the auction, and the Commission should make it clear that State regulators can and should grant *conditional* ETC status to qualified Mobility Fund Phase II applicants. This will avoid the imposition of ETC obligations on a carrier that is ultimately unsuccessful in obtaining Phase II funding it needs to implement service.

V. Bidding Credits Should Be Implemented for Rural Carriers and Areas with Low Population Density

The Commission should prioritize its support to rural carriers in Phase II by offering a bidding credit for entities that qualify as a "rural telephone company" under Section 51.5 of the Commission's Rules, or a subsidiary or affiliate of a qualified rural telephone company.[18] This would help eligible companies compete with large regional and nationwide carriers, just as it did in the Commission's previous auctions conducted under Section 309.[19] A rural telco bidding credit should be available in addition to any other credit for which an applicant may be eligible. A rural telco bidding credit would also address many of the other prioritization concerns raised in the *Further Inquiry*, as rural companies and their wireless affiliates almost uniformly target

[18] 47 CFR 51.5; see also 47 USC 153(44).

[19] 47 USC 309.

areas with little or no existing mobile voice or mobile broadband service.[20] This avoids the need to create multiple tiers of "unserved" designation to differentiate between areas that are "more unserved" or "less unserved" than others, which would needlessly complicate the auction process. To this end, a bidding credit of 35 percent would be appropriate for a rural telephone company.

VI. The Standby Letter of Credit Requirement Should be Eliminated As Unduly Burdensome

The Commission should reduce or eliminate the irrevocable letter of credit and default payment requirements it adopted for Phase I of the Mobility Fund. As the Blooston Rural Carriers demonstrated in the past, this requirement does more harm than good, at least when applied to small rural carriers, often amounting to a complete barrier to entry.[21] Simply put, most 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. Additionally, the process of obtaining an LOC is an added expense the burden of which is multiplied by the Commission's recent universal service and intercarrier compensation reforms, which limit reimbursements for operating expenses.[22] As a result, most rural wireless carriers may not be able to obtain the LOCs contemplated by the Commission from any of the institutions with which they have established financial relationships, and would thereby be effectively excluded from Mobility Fund. At the same time, small rural carriers are bound to the communities they serve by more than just the prospect of profit, and often have outstanding records when it comes to commitments to their communities,

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[20] *Further Inquiry* at ¶10.

[21] *Comments of the Blooston Rural Carriers*, WT Docket No. 10-208, et. al., *filed* December 21, 2012, at 13.

[22] *USF/ICC Order* at ¶214.

and to the Commission. The Commission should therefore reduce or eliminate the LOC requirement.

CONCLUSION

The Blooston Carriers and its members appreciate this opportunity to submit comments on the Commission's Mobility Fund Phase II proposals. The Commission should adopt the rule changes discussed herein, for the reasons stated above.

Respectfully submitted,

THE BLOOSTON RURAL CARRIERS

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