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

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

Central Louisiana Cellular, LLC, MTPCS, LLC ("MTPCS") and Texas 10, LLC, wireless carriers doing business as Cellular One (collectively, "Cellular One"), hereby file these Reply Comments in response to the April 23, 2014 Further Notice of Proposed Rulemaking in the above-captioned proceedings ("FNPRM").

Cellular One urges the Commission not to reduce or eliminate legacy support at least until Phase II of the Mobility Fund has been fully implemented, if not later. Reductions in support can and do lead to outcomes that are harmful to consumers, businesses, and public safety interests. For example, MTPCS is withdrawing from Montana, as a result of the CETC high-cost support phase-down, which will leave some customers in Montana with no current option for service.[1] We urge the Commission to avoid this result for other high-cost and insular areas by

[1] / MTPCS has sold all of its assets, with FCC approval of the applicable transactions. *See* Public Notice No. 9721, at 5, 9 (July 3, 2014). Its network is being turned down. It provided

maintaining its freeze of legacy CETC support until replacement support is being disbursed and, further, the Commission can be satisfied that more consumers will not be similarly impacted by the reduction or elimination of legacy support. This important point, which Cellular One made in the initial comment round with the Rural Wireless Carriers,[2] is supported in the record.[3]

I. Background: Rapid Decrease In Support.

Over the years, numerous operators made substantial investments of private funds in systems in high cost areas, against a statutory backdrop of "specific, predictable and sufficient" support mechanisms required to provide support "explicit and sufficient to achieve the purposes of this section." *See* 47 U.S.C. §§ 254(b)(5), 254(e).

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months of advance notice to its customers, and it has obtained state commission approval of its ETC status relinquishment. *See* Notice of Commission Action, available at http://psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D2007-2-18_OUT_20140905_NCA.pdf ; *see also infra.* n. 8.

[2] / *See* Comments of the Rural Wireless Carriers, at 44 (Aug. 8, 2014).

[3] / *See also, e.g.,* Comments of Cellular South Licenses, LLC, at 3 ("C Spire submits that the Commission should maintain existing support levels (60% of baseline support) until, (1) the first month after the month in which the competitive ETC's Mobility Fund Phase II ongoing support is authorized (in the case of a winning Phase II bidder) or (2) the first month after the month in which a Public Notice announce an award of Phase II ongoing support (in the case of a competitive ETC that is not a winning bidder)"); Comments of the Rural Wireless Association, at 1-4, 4 ("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"); Comments of CCA, at 24 ("The Commission also should ensure that the phase-down of support does not resume until … Phase II of the Mobility Fund should be fully implemented and initial support made available under the program should have been distributed. …[and] the Commission has taken action in its ongoing USF contribution reform proceeding"); Comments of CTIA, at 7 ("CTIA supports the Commission's proposal to maintain existing support levels for competitive ETCs until, in the case of a Phase II winning bidder, the provider's Mobility Fund Phase II support is authorized, and, in the case of other competitive ETCs, the Phase II winners are announced").

For reasons that many, including Cellular One, dispute, the support mechanisms were changed in March, 2008 by immediately capping – and in Montana, as further explained herein, dramatically reducing – support to competitive carriers' networks in high cost areas. Then, in November, 2011, the support mechanisms were changed to rapidly start decreasing all of the remaining support to competitive carriers' high cost networks, rather than decreasing support to the aging landline architecture that was losing customers to new competitive technologies which provided mobility, and the enhanced safety implications thereof, and other beneficial attributes. The notion of further reducing or eliminating legacy CETC support before Phase II of the Mobility Fund has been fully implemented would undermine the provision of service to numerous consumers in high cost areas[4] which clearly is in the public interest.

II. MTPCS Withdrawal Reflected Sound Decision-Making In Connection With Significant Support Reductions.

Cellular One is a financially healthy, long-tenured operator, whose management team has decades of wireless experience. Its withdrawal from Montana is merely a reflection of sound decision-making and, therefore, a potential harbinger of future actions by similar operators. To be prudent, any company would cease providing service where a business case no longer will support such service.

Cellular One urges the Commission to recognize that minor changes to support levels are not the issue. Wireless carriers' support is being reduced dramatically. Even with a fully funded Mobility Fund Phase II, recurring support to CETCs will have been cut from 28% of the Fund ($1.177 billion) before the changes to the high cost mechanism, to 11% of the Fund after the

[4] / Or the only voice service, or the only CDMA or GSM service (each consumer's wireless handset can only receive transmissions in one or the other protocol; not – yet – both) which would enable a particular customer to contact public safety. *See infra.* n. 8.

changes ($500 million, which may include a $100M Tribal Fund and $100M Remote Areas Fund that may have little or no overlap with many carriers' licensed spectrum). This starkly contrasts with the essential nature of rural wireless coverage, as Deere & Co. pointed out in its comments. Competitive carriers provide the only coverage of many parts of the country. Their customers contributed approximately 44% of the entire universal service fund in 2011, and are contributing even more today.[5] For some rural carriers, further support reductions may mean it will no longer make business sense to serve some or all of their high cost areas.[6] Absent an about face on support for competitive services, cellular towers will start rusting in place in middle mile rural America.

In recent weeks, we have heard through the Cellular One call center, the Montana Public Service Commission, and United States Senators and Representatives that customers are calling and saying they will have no option for wireless after Cellular One's Montana network is turned off, or in some cases, any telecommunications service at all. Although the purchaser of Cellular One's network assets is expected to provide service at some point, during the immediate future no carrier will be utilizing these assets.

The MTPCS withdrawal is a direct result of the reductions in support. This situation, which MTPCS sought to prevent,[7] will leave customers in some areas without coverage.[8]

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[5] / We urge the Commission and USAC to start publishing these figures again, as a clear matter of public interest.

[6] / An exception would be wireless carriers whose ILEC affiliates receive enough support to enable special access or other beneficial arrangements based upon high volume or other conditions that can only be met by their wireless affiliates.

[7] / These efforts included filings and meetings at the Commission. *See, e.g.,* Petition for Reconsideration of MTPCS, LLC, filed December 29, 2011; *see also, e.g.,* ex parte letter from Brooks E. Harlow to Marlene H. Dortch, Secretary, FCC, dated March 23, 2012; ex parte letter

Cellular One urges the Commission to help prevent this in other areas by maintaining frozen legacy support at least until replacement support has started to flow, if not longer.

Cellular One has diligently and in good faith utilized all legacy support for its intended, appropriate purposes.[9] MTPCS built and operated numerous cell sites extending service to many thousands of people in remote, rural, high cost areas. Coupled with millions of dollars in financing that MTPCS obtained privately, federal support helped MTPCS provide the only wireless service in some areas, the only GSM service in some areas, and the only telecommunications coverage at all in some areas, including some tribal lands.[10] It is

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from Brooks E. Harlow to Marlene H. Dortch, Secretary, FCC, dated September 19, 2012, available at http://apps.fcc.gov/ecfs/document/view?id=7022017337 ("Montana's CETCs provide rate plans and customer services that they have designed for the customers in that state – and which will no longer exist, along with CETCs' coverage and numerous jobs, if their services are withdrawn.").

[8] / We draw the Commission's attention to local media reporting that the Ruby Valley area will lack mobile service without Cellular One's USF-funded coverage. The local Sheriff stated: "We have major concerns about this in terms of public safety." *See* Abigail Dennis, *Cellular One Customers Must Find New Cell Phone Service*, The Madisonian (June 26, 2014), *available at* http://www.madisoniannews.com/cellular-one-customers-must-find-new-cell-phone-service/ *See also, e.g.*, Jon King, *CellularOne Leaving Montana, Customers to Lose Service August 31*, available at http://newstalkkgvo.com/cellularone-leaving-montana-customers-to-lose-service-august-31/ ("The evaporation of a subsidy by the Federal Communications Commission has triggered the withdrawal of wireless service provider Cellular One from the state of Montana.").

[9] / MTPCS certified annually to the Montana Public Service Commission that it would use all support only in a manner consistent with 47 U.S.C. 254(e); that is, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

[10] / *See, e.g.*, Comments of MTPCS, LLC d/b/a Cellular One, available at http://apps.fcc.gov/ecfs/document/view?id=7021239728, at 4 ("Areas where MTPCS provides the only or the only reasonable levels of coverage, according to our personnel's recent review, include but are not limited to Valier, Lavina, Avon, Bynum and Joliet, Montana…."). *See also supra* n.8 (Ruby Valley situation).

Cellular One currently has engineers working to implement fast wireless broadband in other states with Mobility Phase I support, as well as millions in private financing that Cellular One secured, to help meet the Commission's broadband deployment goals. That construction fundamental to the debate on USF that a carrier cannot *only* seek support for and provide service to the precise areas where it is the only option for consumers. That objective must be met through the funding of a comprehensive business case, certainly including the middle mile.

III. Implementation of the Cap in Montana Placed it 20% "Ahead of the Curve" On Reductions. Accordingly, The MTPCS Withdrawal May Be A Harbinger Of Impacts In Other States With The Next 20% Reduction.

Montana is the fourth largest state in the country, but ranked 44th in population. It has a population density of just 2.7 persons per square mile-- less than 1/100th of the national average of 283 per square mile – and large federally designated tribal lands. It is exactly the sort of state the high-cost fund was designed to reach. MTPCS knew, as other rural carriers have known since universal service was first adopted, that federal support would be important in such a state.[11]

project is proceeding expeditiously but is not at issue here. This Reply is instead focused on Montana as a harbinger of the next stage of the legacy support phase-down.

[11] / This is recognized by state officials as well. *See, e.g.*, Reply Comments of the Montana Public Service Commission filed August 31, 2011 ("In the NPRM the FCC stated, 'Given the strong consumer demand for mobile services, ubiquitous mobile coverage must be a national priority.' The MPSC strongly agrees with that statement and believes that loss of CETC funding for the wireless CETCs in Montana would dramatically reduce wireless coverage in extremely rural areas of Montana."); Reply Comments of the Montana Public Service Commission in Support of MTPCS Petition for Consideration, available at http://apps.fcc.gov/ecfs/document/view;jsessionid=XCQBPGFP9swLQYRvGnnb0nZkV2h2DwfmQh91vndJ99vSm7bNhl1m!-321460796!1471562840?id=7021861934 (February 21, 2012) ("The PSC is concerned that if wireless CETCs in Montana lose a significant portion of their high cost support, it is possible that certain rural areas and tribal lands in Montana may lose access to cellular service. . . . To reduce high cost support so drastically from what wireless CETCs in Montana had expected to receive in 2012, as the FCC Order suggests, puts sunk investments at risk, as well as cellular service for many Montanans in rural communities."); Letter from Montana State Senator Alan Olson to FCC Chairman Genachowski, *available at* http://apps.fcc.gov/ecfs/document/view?id=7021900312 (Feb. 10, 2012) ("Montana is a very large and yet sparsely populated state, and many areas have no landline service at all. … Cell phone coverage is critical for communications purposes and for public safety. … Without support from the federal Universal Service system, it is likely that cell phone service will diminish in rural Montana, because the population levels do not justify installation, operation, and maintenance of the necessary infrastructure.").

The method by which the cap was implemented, however, slashed the support going to Montana CETCs immediately.[12] This placed it 20% "ahead of the curve" on reductions in legacy phase-down support to CETCs. The MTPCS withdrawal, therefore, may demonstrate what other states' CETCs will experience with the next 20% reduction, unless the Commission first ensures that replacement support is being disbursed.

As MTPCS explained in its Petition for Reconsideration filed December 29, 2011, the baseline with which the Commission sought to achieve a 20% reduction only achieved that measure where support was static, which was not the case in Montana.[13] In fact, Montana CETCs experienced an almost 40% reduction in support on the first phase-down date, instead of the 20% the Commission intended. This is because Montana requires its CETCs to build out their networks to cover at least 98% of the populations in their designated areas within five years of designation. MTPCS had to build out its network accordingly, covering many more customers, despite the already low support in Montana.[14] These added lines came with zero

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[12] / Unfortunately, two weeks after MTPCS obtained its competitive ETC status from the Montana commission, the FCC adopted its cap. The cap took effect retroactively, so Montana's CETCs suddenly had to share their funding with MTPCS, rather than including MTPCS's tens of thousands of customers in the cap's frozen support calculations – even though MTPCS was made an ETC before the cap was adopted.

To make matters worse, Montana was unduly pinched by the cap because of MTPCS's rapid buildout due to the state's 98% buildout requirement for CETCs. *See* Petition for Reconsideration, *supra.* Ironically, the exact sort of rapid telecommunications construction in new areas that the Commission seeks caused MTPCS and other wireless carriers to receive even less support (MTPCS's network was IP-based EDGE technology, which was advanced at the time, and it covered many areas not yet served by the other wireless carriers in the state).

[13] / *See id.*

[14] / *See id.*, at 9.

support, due to the cap, so the result was a significant net reduction in per-line support for all Montana CETCs.

Accordingly, Montana is already 20% "ahead of the curve" on reductions and provides a clear example of what other CETCs will experience with the next 20% reduction. After the next reduction, even some companies whose affiliates receive landline support (which can offset transport and similar costs; see supra n.2) may not be able to support wireless operations.[15] Those carriers' customers then may experience the same withdrawal of service that is occurring in Montana, or at a minimum, network deterioration and resulting loss of signals necessary for public safety. Even Phase II, as currently conceived, could help at the margins but will not remedy such results in core areas.[16]

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[15] / The ability depends upon many factors, including the size of the carrier and the nature of the areas it serves.

[16] / While the Mobility Phase II auction is well intentioned, a focus on supporting *only* areas not yet served by an unsubsidized competitor will leave unsupported any competitive service to middle mile areas. This would lead to a high risk of deterioration or abandonment, because the costs of operating wireless networks in high cost areas can be very substantial. These include rent, electricity, cell site technicians, expensive backhaul/transport, core costs such as allocations of six figure annual maintenance payments required by network equipment manufacturers, etc. Middle mile deterioration would not bode well for public safety, particularly in the many areas served solely by smaller competitive carriers. Like Ruby Valley, these areas may not become evident to others until it is too late.

The previous system of dividing up a limited support amount in each area at least permitted various providers to serve customers (ideally including at least one CDMA and one GSM carrier per area) rather than forcing a cage match to determine a single monopoly in each area. It was not duplicative, because only one carrier received the support for each line served. In other words, if an area provided $5 per customer, Carrier A would receive $500 for its 100 customers and Carrier B would receive $1000 for its 200 customers, rather than a single carrier receiving all $1500. This permitted both carriers to receive support for their own customers, *without* being duplicative (as has been incorrectly alleged). CETC support only increased when a customer left a landline carrier and went to a wireless carrier. This would not have increased the size of the Fund if the landline carriers had been required to give up support when they lost

For these reasons, the CETC phase-down should remain halted, including for areas served by an unsubsidized competitor. This issue was already decided by the Commission in its seminal USF/ICC Transformation Order: "If the Mobility Fund Phase II is not operational by June 30, 2014, we will halt the phase-down of support until it is operational."[17] To change this decision now, at the eleventh hour, already post-June 30, 2014, for carriers that have done their best to budget after having their support unpredictably capped and then slashed, would be administrative capriciousness. We trust that the Commission will honor its previous decision, since June 30 has come and gone.[18]

IV. Conclusion.

In conclusion, as demonstrated by MTPCS' experience in Montana, the phase down of legacy support to CETCs must be delayed until funding has commenced under replacement

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customers to wireless carriers. Moving support from aging landline infrastructure to wireless construction and operation will best address not only the need to efficiently use the Fund but also the actual communications needs of consumers, as shown year after year through the marketplace, and public safety, as shown by the fact that most 911 calls are placed through wireless means; *see* Federal Communications Commission, 911 Wireless Services, available at http://www.fcc.gov/guides/wireless-911-services

[17]/ *See* Report and Order and Further Notice of Proposed Rulemaking, *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 an 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, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, 26 FCC Rcd 17663, at ¶ 519 (2011) (*USF/ICC Transformation Order).*

[18] / The alternative would be to equalize the playing field by having "unsubsidized" competitors also give up their affiliates' incumbent landline support in such areas. ILEC support, which for many carriers vastly outweighs competitive support, can in some circumstances reduce the costs of ILECs enough to enable them to provide special discounts to, or sharing arrangements with, their wireless affiliates. The illusion then arises of wireless service to high cost areas without support. Such service is, however, very much the beneficiary of federal subsidies. Were they removed from the full family of companies, the wireless services in high cost areas would, we believe, disappear rapidly, revealing their true subsidized nature.

mechanisms. In addition, we believe the Commission should reconsider its one-per-area support system for future Mobility mechanisms, because that would exclude middle mile high cost areas from ongoing wireless support, leading to the deterioration and abandonment of towers. The result would be gaps in coverage, to the detriment of public health, safety, and other consumer needs. Instead, the Commission should reconsider a system whereby in each area, a set amount of support is divided up among carriers. This is not duplicative, but permits competition to flourish.

Respectfully submitted,

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