Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Universal Service Reform	)	WT Docket No. 10-208
Mobility Fund	)	

COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES;
EASTERN RURAL TELECOM ASSOCIATION; and
WESTERN TELECOMMUNICATIONS ALLIANCE

I. INTRODUCTION AND SUMMARY

The Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding requests comment on a proposal to create a separate "Mobility Fund."[1] The *NPRM* describes this as the first in a series of initiatives to promote broadband deployment and mobile services by transforming the Universal Service Fund (USF).[2]

In proposing a separate, limited Mobility Fund, the Commission appears to recognize the need to develop specific funding methods for mobile broadband services. However, several aspects of the proposed Mobility Fund, in particular the use of reverse auctions to determine universal service support in rural areas, raise significant concerns for members of the

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[1] *Universal Service Reform Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716 (2010) at ¶ 1 (*NPRM*).

[2] *Id* at ¶ 4.

Associations participating in these comments.[3] If the Commission decides to move forward with the proposed Mobility Fund, it should not allow such activity to delay development of revised broadband universal support programs for fixed broadband services. Nor should the Commission attempt to apply techniques developed in the limited context of this proceeding to support programs other than the proposed Mobility Fund. Programs intended to implement nationwide broadband service, such as the Connect America Fund (CAF), must assure *all* Americans in high-cost rural areas have access to reliable broadband services, at speeds and prices reasonably comparable to those available to urban and suburban consumers.

II. ON A LIMITED BASIS, A PROPOSED MOBILITY FUND MAY BE A REASONABLE WAY TO ENCOURAGE EXPANSION OF MOBILE BROADBAND SERVICES.

The Commission proposes to use a portion of high-cost support surrendered by Verizon Wireless and Sprint Nextel as a condition of their merger agreements[4] to "make available non-recurring support to providers to deploy 3G or better networks where these services are not currently available."[5] The *Mobility Fund NPRM* suggests that between $100 million to $300

[3] The National Exchange Carrier Association, Inc. (NECA) is responsible for preparation of interstate access tariffs and administration of related revenue pools, collection of certain high-cost loop data, and administering the interstate Telecommunications Relay Services (TRS) fund. *See generally,* 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983). The National Telecommunications Cooperative Association (NTCA) is a national trade association representing more than 580 rural rate-of-return regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing approximately 470 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. The Western Telecommunications Alliance (WTA) is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River. The Eastern Rural Telecom Association (ERTA) is a trade association representing approximately 68 rural telephone companies operating in states east of the Mississippi River.

[4] *NPRM* at ¶¶ 3, 8.

[5] *Id.* at ¶ 11.

million dollars would be utilized to create the proposed fund,[6] and suggests use of a reverse auction, modeled on existing spectrum auctions, to determine which providers and which specific geographic areas will receive support.[7]

The *NPRM* further suggests unserved areas will be identified using publicly available signal coverage data,[8] and proposes a number of methods to qualify applicants, including financial and spectrum requirements.[9] Finally, the *NPRM* proposes various ways to measure compliance with bid requirements, including drive tests, certifications, and other enforcement measures.[10]

In proposing these mobile-specific funding and compliance measures, the Commission appears to correctly recognize, as the Universal Service Joint Board did in 2007,[11] that mobile and fixed services are complementary and require separate approaches to universal service funding.[12] Further, the one-time construction support payments described in the *NPRM* appear to be similar to grants made available under the American Recovery and Reinvestment Act of

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[6] *Id.* at ¶ 13.

[7] *Id.* at ¶¶ 16-19, 56.

[8] *Id.* at ¶ 27.

[9] *Id.* at ¶¶ 45, 50-53.

[10] *Id.* at ¶¶ 40, 44.

[11] *High-Cost Universal Service Support,* WC Docket No. 05-337, *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (2007) at ¶ 16 (*2007 Joint Board Recommended Decision*). *See also*, *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) at ¶ 9 (*Identical Support Rule NPRM).*

[12] The Associations have previously suggested the Commission recognize the complementary nature of mobile services in designing support programs. *E.g*., NECA Comments at 15, OPASTCO Comments at 12, 27, WTA Comments at 10-11, all filed separately in GN Docket No. 09-47 (Dec. 7, 2009), supporting a separate Mobility fund. NECA Comments at 9-11, OPASTCO Comments at 9, NTCA Comments at 19, all filed WC Docket No. 05-337 (Apr. 17, 2008); NECA Replies at 5, OPASTCO Replies at 16, NTCA Replies at 7 (June 2, 2008).

2009 (the "ARRA").[13] While such infrastructure subsidies might be legitimately funded through one-time grants,[14] the mechanisms described in the *NPRM* are not a viable way to determine or distribute ongoing operational support for broadband services.

Use of reverse auctions to determine high-cost universal broadband service support in rural areas raises particularly serious policy concerns. The Associations and numerous other parties have made clear in prior comments that the unpredictability associated with reverse auctions is likely to inhibit network investment, a significant problem where large investments in long-lived infrastructure are required for reliable service in areas that would otherwise not be economical to serve.[15] Reverse auctions will also encourage bidders to "race to the bottom" in terms of service quality and sustainability, a result inconsistent with the universal service objectives of the 1996 Act.[16]

The reverse auction mechanism proposed for the Mobility Fund would rank bids based on lowest per-unit costs,[17] and could also include preferential treatment for larger companies at

[13] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)D), 123 Stat. 115, 516 (2009).

[14] As the *NPRM* appears to recognize, one-time construction support payment systems provide significant room for bidders to err on total project costs, leaving systems either partially constructed or requiring additional infusions of cash. *See, NPRM* at ¶¶ 40-44.

[15] *E.g.,* RTG Comments at 14, MoSTG Comments at 9, Rural Telecom Service Providers Coalition Comments at 9, TCA Comments at 16, TSTCI Comments at 18, Utah Rural Telecom Association Comments at 3, all filed separately in GN Docket No. 09-51 (July 12, 2010).

[16] NECA, NTCA, OPASTCO, WTA, and the Rural Alliance Comments, WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51 (July 12, 2010) at 23 (*Associations' Comments*).

[17] Under proposed auction rules, a provider submits the dollar amount of support it requires to provide coverage in an unserved area on a per-unit basis (*e.g.,* per person served) for particular census tracts. Bids will be aggregated and then ranked on a nationwide basis, with support awarded to the lowest per-unit cost bidders. *NPRM* at ¶ 18.

the expense of small companies in the event they submit tied bids.[18] Such mechanisms could unfairly advantage larger bidders at the expense of small companies seeking to create jobs and expand service throughout their rural service areas. Sadly, it is the customers of these smaller companies who are the costliest to serve, and who would benefit the most from mobile service.

Concerns have also been expressed that administration of reverse auctions on any significant scale would be time and labor intensive, prohibitively expensive, and technically burdensome, making it challenging for the Commission to enforce compliance with ongoing quality standards.[19] While the *Mobility Fund NPRM* proposes methods to determine whether winning bidders actually complete promised build-outs and provide service, it is by no means clear whether these methods, which primarily rely on provider certifications, will actually be effective in assuring high-quality service will be provided to rural consumers on a long-term basis assuming initial deployments are successful.

III. PROCEDURES DESIGNED TO DISTRIBUTE MOBILITY FUND SUPPORT SHOULD NOT BE APPLIED TO PROGRAMS DESIGNED FOR RURAL RATE-OF-RETURN CARRIERS.

In developing and implementing the proposed Mobility Fund the Commission must not divert its attention from efforts to develop a workable funding mechanism for fixed broadband services, particularly in areas served by rural rate-of-return carriers (RLECs).[20] Developing a workable, ongoing funding mechanism for fixed broadband services, such as the CAF

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[18] *Id.* at ¶ 70 (requesting comment on whether the Commission should have discretion to identify winning bidders among tied bids by awarding support to the combination of tied bids that would most nearly exhaust available funds).

[19] Associations' Comments at 23-24 (July 12, 2010).

[20] *See id.* at 4-9.

mechanism described in the National Broadband Plan,[21] presents many more challenges than those addressed by the Mobility Fund.

If the Commission moves forward with its proposal to find an appropriate funding mechanism for this one-time capital expenditure mobility build-out, it must not assume methods used to distribute proposed Mobility Fund amounts can be applied outside the context of the specific circumstances described in the *NPRM*. For example, the proposed Mobility Fund is designed to provide a one-time distribution of capital funding, aimed at increasing incremental infrastructure build-outs in relatively lower-cost unserved areas. The CAF, in contrast, must assure the long-term availability of affordable, robust broadband services to all Americans living in high-cost rural areas of the country, consistent with the universal service requirements of the 1996 Act. As the Associations have previously explained, effective universal service support mechanisms must support both capital expenditures and ongoing costs[22] to reach the goal of having reliable broadband services at speeds and prices reasonably comparable to those available to urban and suburban consumers.

As noted above, using reverse auctions to determine universal service support under the CAF would pose a serious threat to universal service. Rural consumers, small businesses, public safety organizations, anchor institutions, and other service providers (including mobile wireless providers) all depend heavily on the robust, in-place networks operated by RLECs as providers of last resort (POLRs). Replacing existing RLEC POLR support mechanisms with a reverse auction mechanism would seriously limit the number of lenders, if any, that would step forward with financing for needed rural infrastructure upgrades and ongoing operations. This, in turn,

[21] Connecting America: The National Broadband Plan, FCC (rel. Mar. 16, 2010) at 144-146 (*NBP*).

[22] *Id.* at 145.

would jeopardize the ability of RLECs to provide service in outlying areas, and may well cause some consumers to be left without service.[23]

These concerns are not new. Reverse auctions have been proposed on several occasions over the past decade as a universal service reform "solution" for perceived problems with existing rural mechanisms.[24] The Associations and other commenters have repeatedly explained the harms rural customers would suffer if such procedures are implemented for POLRs, including losses in service quality, rate increases, decreased deployment, and potential service terminations.[25]

Attempting to apply a reverse auction mechanism across the entire country to each rural service area would also increase potential administrative burdens by an order of magnitude and would likely result in enforcement nightmares for the Commission and affected consumers. For all these reasons, procedures developed for distributing support amounts to mobile broadband providers via the proposed Mobility Fund should not be considered viable for fixed broadband service funding under the CAF.

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[23] Associations' Comments at 23-25 (July 12, 2010). NTCA Comments at 7-8, 30-31, 42; OPASTCO Comments at 17-18; ITTA Comments at 38, all filed in WC Docket No. 05-337 (Apr. 17, 2008); NECA Comments, WC Docket No. 05-337 (Nov. 26, 2008) at 16-17.

[24] *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, 21 FCC Rcd 9292 (2006); *Federal State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, CC Docket No. 96-45, WC Docket 05-337, Public Notice, 22 FCC Rcd 9023 (2007); *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495(2008).

[25] Associations' Comments at 25, Alexicon Consulting Comments at 36, Fidelity Telephone Company Comments at 4, Telephone Association of Maine Comments at 4, MoSTG Comments at 8, TCA Comments at 17, NTCH Comments at 3, ATA Comments at 8, all filed in WC Docket No. 10-90 (July 12, 2010); Associations' Replies, WC Docket No. 10-90 (Aug. 11, 2010) at 26.

IV. CONCLUSION

A Mobility Fund may be helpful in advancing the availability of mobile broadband service in unserved areas. However, the Commission must continue its efforts to develop a workable ongoing funding mechanism for the provision of broadband services in rural high-cost areas, one that assures all Americans, including those that live in rural areas served by RLECs, have access to affordable, robust broadband services that are reasonably comparable to those available to urban and suburban customers.

Respectfully submitted,

December 16, 2010

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 16th day of December, 2010 by electronic filing and e-mail to the persons listed below.

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