

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY
CONSUMER ADVOCATES
ON
NOTICE OF PROPOSED RULEMAKING**

I. INTRODUCTION

On October 14, 2010, the Federal Communications Commission (“FCC” or “Commission”) released a Notice of Proposed Rulemaking (“NPRM”) in this docket.¹ The NPRM – which is the focus of these reply comments – sought “comment on using reserves accumulated in the Universal Service Fund (“USF”) to create a new Mobility Fund” in order to “significantly improve coverage of current-generation or better mobile voice and Internet service for consumers in areas where such coverage is currently missing.”² Included in the FCC’s proposals is the plan to implement “market mechanisms – specifically a reverse auction – to make one-time support available to service providers to cost-effectively extend mobile coverage in specified unserved areas.”³

NASUCA supports the concept of utilizing current USF dollars that have, in part, been received from wireless competitive eligible telecommunications carriers

¹ FCC 10-82. The NPRM was published in the Federal Register on November 1 and 12, 2010.

² NPRM, ¶ 1.

³ Id.

("CETCs"), in order to comply with the directives of the Telecommunications Act to make available an evolving level of telecommunications services, including advanced services, to all areas of the nation, both rural and non-rural, at reasonably comparable rates. The Commission has not, however, specifically affirmed that the use of federal universal service funds for mobility services meets the conditions that are clearly spelled out by § 254(c)(1) of the Telecommunications Act.

II. THE NEED FOR FINDINGS UNDER THE ACT

Thus the Commission needs to confirm the finding of the Federal-State Joint Board on Universal Service ("Joint Board") that "mobility satisfies the statutory requirements for inclusion as a separately supported service and should no longer be eligible for support because it happens to satisfy requirements designed for wireline voice communications."⁴ Specifically, the Commission needs to find that: (1) mobility telecommunications services "are a fundamental necessity for an overwhelming majority of consumers for public health, safety and economic development"; (2) that "mobility service is subscribed to by a substantial majority of residential customers"; and (3) that mobility services are being deployed in public telecommunications networks by telecommunications carriers.⁵ Thus the Commission must find that "including mobility service within the list of supported services is consistent with the public interest, convenience and necessity."⁶

Instead, the NPRM makes passing reference to the Joint Board's 2007 Recommended Decision⁷ as justification for the action proposed in the NPRM, without specifi-

⁴ FCC-07J-4, ¶ 63.

⁵ Id., ¶¶ 64-66. See 47 U.S.C. § 254(c)(1).

⁶ Id., ¶ 67.

⁷ NPRM., ¶ 9.

cally reaching a finding that USF funds are appropriate for use in funding mobility services, that mobility telecommunications should be supported separately and independently from landline voice telecommunications services under the USF umbrella in order to achieve the mandates of the Telecommunications Act.

Further, the Commission must find that mobility 3G and 4G broadband services also meet the standards required by the Act. This latter decision is especially important given the focus of the NPRM on such services. Indeed, given the Commission's previous determination that wireless broadband services are classified as information services under the Act,⁸ making USF funding available for any type of broadband is problematic, given that 47 U.S.C. § 254(c)(1) limits universal service funding to "telecommunications services."⁹

This is clearly not a matter of form over function. The FCC's legal authority to provide USF funding to mobility services, and especially mobility broadband services, is entirely dependent on making these findings, based on the record. Further, the FCC should be especially aware that the USF concept involves high-cost states and areas being supported by telecommunications customers nationwide in order to achieve essential, affordable services at comparable rates on a nationwide basis. All customers who contribute to universal service funding should first be assured that the subsidies are essential to the public interest; are critical to the achievement of our national telecommunications policies and goals; and that the FCC will not authorize funding that is more than sufficient to meet the stated goals of the Telecommunications Act.

⁸ *Wireless Broadband Internet Access Services Order*, Declaratory Ruling, 22 F.C.C.R. 5901 (March 23, 2007) (determining broadband over wireless to be information service).

⁹ Advanced services are eligible for funding under 47 U.S.C. § 254(h)(2) when the services are provided in classrooms, health care providers, and libraries. The proposals in the NPRM far exceed that limitation.

NASUCA also takes exception to the FCC's limited action in this NPRM to divert between \$100 million to \$300 million of supposedly excess USF towards a purpose not currently authorized by its current rules. Absent adoption of the findings noted above, elimination of the "excess" USF support would simply work to reduce the future amount of universal service dollars paid by consumers through their serving carriers.

For the long run, NASUCA believes that the contributors to universal service deserve better. The drumbeat for reform of the entire High Cost Fund has been sounding for more than a decade without positive action. Both contributors and recipients need to understand the FCC's plan for wireless universal service funding that would comply with a new definition of supported services, including evolving over time the existing wireless CETC support – that goes almost entirely to wireless carriers – into mobility support focused on areas where mobility services would not exist absent support.

NASUCA believes that a five year transition period may be required to phase out existing CETC support while simultaneously implementing a mobility plan that would guarantee that every American home should have available at least one acceptable mobility signal and that traveling Americans should have at least one acceptable mobility signal on all state and federal highways. These issues must be dealt with in the Final Order that will follow this NPRM.

In summary, NASUCA urges the Commission to include these items in the Final Order:

- (1) A finding that Mobility Services meet the conditions for supported services clearly prescribed by the Act;
- (2) A finding that approves the 2007 Joint Board Recommendation to create a

- separate and distinct Mobility Fund;
- (3) A finding that makes Mobility Broadband services eligible for support under § 254;
 - (4) A finding clearly defining the Mobility Broadband services that are proposed to be eligible for support; and
 - (5) A plan to evolve or eliminate all current wireless CETC funding over time, to the extent required to achieve the goals of the Act.

Absent specific findings relating to the preceding issues, then the FCC is embarking upon a partial step forward in the reform process without clear direction as to where it is heading.

III. OTHER ISSUES

A. Use of current USF dollars

As noted above, the FCC proposes to use \$100 million to \$300 million of annual USF support voluntarily relinquished by Verizon Wireless and Sprint Nextel that the Commission has recently reserved as a down payment on broadband USF reform. NASUCA supports this use of such funding, only to the extent that the receiving carriers fully substantiate the purpose and need of such funding and only to the extent that the FCC has a firm plan to audit and monitor the actual use of the funding. While the auction process may satisfy concerns regarding the need for individual disbursement of funding, there is no evidence in the NPRM that would indicate whether \$100 million, or \$300 million, or some other number is needed to satisfy the goals of the Act.

B. Auctions vs. state grants

The FCC proposes a reverse auction to enable potential providers to compete to

provide mobility services to unserved areas. The use of reverse auctions for this purpose has been subject to much question over the years. NASUCA had supported the use of auctions for mobility or broadband pilot projects¹⁰; perhaps that is all that the amount proposed by the Commission will be able to fund.

But the FCC appears confident that it has the resources to manage such a process effectively and efficiently. NASUCA further notes that the exclusive use of a federal auction to distribute USF dollars to the states overlooks the joint role involving both the states and the federal regulators as laid out by Congress in the USF portions of the Act¹¹ and emphasized by the Joint Board in its 2007 Recommended Decision. The Joint Board for Universal Service considered this issue fully prior to the release of its Recommended Decision and the four state Members, one state Consumer Advocate and three FCC Commissioners voted unanimously for the 2007 recommendation that included use of state grants to distribute future USF mobility funding.¹² The NASUCA view is that the FCC should oversee the Mobility Fund, its direction and its size, and engage the states in the targeting process needed to ensure sufficiency and efficiency.¹³

C. Targeting

The NPRM proposes to identify areas unserved by advanced mobile wireless services and proposes use of coverage data compiled by American Roamer and population data from the Census Bureau. NASUCA would simply point out that the NPRM fails to

¹⁰ See CC Docket 96-45, WC Docket 05-337, Comments of the National Association of State Utility Consumer Advocates on Using Reverse Auctions to Determine High-Cost Universal Service Support (April 17, 2008).

¹¹ See *Qwest Communications International Inc. v. FCC*, 398 F.3d 1222, 1238 (10th Cir., 2005).

¹² FCC-07J-4, ¶¶ 16-18.

¹³ See CC Docket 96-45, WC Docket 05-337, Comments of the National Association of State Utility Consumer Advocates on the Joint Board Recommended Decision (April 17, 2008) at 59-61. NASUCA did caution against the use of the state grant process for the POLR fund. *Id.*

make a distinction as to how it would treat separately the process of awarding and administering contracts to unserved areas based on a population metric, as opposed to awarding and administering contracts based on unserved state and federal highways that may actually have zero population within some census tracts.

D. Minimum coverage and performance requirements

The Commission seeks comment on the minimum performance and coverage requirements that should be established for service to be supported by the Mobility Fund. NASUCA notes that the 2007 recommended decision referred only to wireless voice services, while the current NPRM includes voice and broadband. NASUCA would also note that there should be measures to protect consumers nationwide from supporting isolated and extremely high cost installations to serve fragmented populations that reside in remote and inaccessible areas, by choice. By all means, the maximum amount of support provided should be limited to the cost of satellite alternatives.

In addition, NASUCA would propose that any public support for wireless networks should be totally compatible with the long range broadband network goals of the future to ensure that we are spending current dollars that will not be dismantled and abandoned in the near future. A compatible network constructed and funded today must include an evolutionary plan toward the network of the future, and NASUCA would expect the Commission to require all fund recipients to provide documentation and proof of such a plan prior to receipt of funding.

The FCC proposes that providers must be ETCs and must have access capable of providing 3G or better service in a geographical area that it will serve, on the assumption that there will be only one fund, a Broadband Mobility Fund, and that “mere” wireless voice capability will not be funded. With regard to the broadband piece, it is not clear

why contributing areas should fund a carrier that does not have sufficient spectrum to ultimately provide 4G service, which is the network of the future, regardless of whether the carrier has intent to initially construct 3G facilities to meet the current demand. Carriers that receive federal support should have an attainable goal to achieve 4G deployment. At the very least, the bidding rules should require bidders to demonstrate that they have a clear plan and capability of achieving 4G within a reasonable planning period, if they cannot demonstrate that they have already obtained spectrum licensing needed to achieve 4G within the bidding territory.

E. Waste, fraud and abuse

Finally, the FCC seeks comments on how to avoid waste, fraud and abuse. NASUCA believes the best way to accomplish that worthy goal is to delegate the targeting and contracting job to the states and rigorously audit the results. Since the Commission appears to have already decided to proceed with a federal auction, we encourage the Commission to include plans to evaluate and reverse the auction decision if it fails to achieve success in its pursuit of this worthy goal. In addition, performance goals should be required in the bidding process to establish carrier contribution factors and cost ceilings to ensure that successful bidders have “skin in the game”, or something to lose if they fail to deploy in the most economical manner.

Respectfully submitted,

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