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MOBILITY FUND PHASE I AUCTION SCHEDULED FOR SEPTEMBER 27, 2012

NOTICE AND FILING REQUIREMENTS AND OTHER PROCEDURES FOR AUCTION 901

AU Docket No. 12-25

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I. GENERAL INFORMATION

A. Introduction and Summary

1. By this Public Notice, the Wireless Telecommunications Bureau ("Wireless Bureau") and the Wireline Competition Bureau ("Wireline Bureau") (collectively, the "Bureaus") establish the procedures that will be used for the reverse auction that will award $300 million in one-time Mobility Fund Phase I support.[1] This auction, which is designated as Auction 901, is scheduled to be held on September 27, 2012. This Public Notice establishes the procedures, terms, and conditions governing Auction 901 and the post-auction application process, and provides other important information for parties that wish to seek Mobility Fund Phase I support.

2. Auction 901 will award one-time support to carriers that commit to provide 3G or better mobile voice and broadband services in census blocks where such services are unavailable.[2] Support will be allocated to maximize the road miles covered by new mobile services without exceeding the budget of $300 million. Winning bidders will be obligated to choose whether to deploy 3G service within two years or 4G service within three years of the award of support.

3. Auction 901 will be the first auction to award high-cost universal service support through competitive bidding. The *USF/ICC Transformation Order* established the Mobility Fund as a universal service support mechanism dedicated expressly to mobile services and adopted rules for distribution of the $300 million initial budget through Mobility Fund Phase I.[3] In the *USF/ICC Transformation Order*, the Commission delegated authority to the Bureaus to implement Mobility Fund Phase I, including the authority to prepare for and conduct an auction and administer program details.[4] On February 2, 2012, the Bureaus released the *Auction 901 Comment Public Notice*, which identified a preliminary list of census blocks potentially eligible for Mobility Fund Phase I support and sought comment on whether census blocks should be added or removed from the list of potentially eligible census blocks, on the details of auction procedures, and on certain related program requirements for Auction 901.[5]

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[1] Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*") , *pets. for review pending sub nom. Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

[2] We use the terms "3G," "3G or better," "current generation," and "advanced" interchangeably to refer to mobile wireless services that provide voice telephony service on networks that also provide services such as Internet access and email. We refer throughout this Public Notice to "awarding" or "selecting awardees" by auction for simplicity of expression. As provided by the Commission's rules, *see* 47 C.F.R. §§ 54.1005(b) and 54.1008(a), and discussed further below, each party that becomes a winning bidder in the auction must file an application for support. Only after review of the application to confirm compliance with all the applicable requirements will a winning bidder become authorized to receive support.

[3] *USF/ICC Transformation Order*, 26 FCC Rcd at 17674-75 paras. 28-29

[4] *Id*. at 17783 para.329, 17803 para. 411.

[5] "Mobility Fund Phase I Auction Scheduled for September 27, 2012; Comment Sought on Competitive Bidding Procedures for Auction 901 and Certain Program Requirements, AU Docket No. 12-25," *Public Notice*, DA 12-121, 27 FCC Rcd 530 (WTB/WCB 2012) ("*Auction 901 Comment Public Notice*"). On February 10, 2012, the Bureaus (continued….)

4. After considering 69 separate filings in response to the *Auction 901 Comment Public Notice*, in this Public Notice the Bureaus, among other things:

- Provide the final list of census blocks eligible for Mobility Fund Phase I support in Auction 901;
- Conclude that to establish the number of qualifying road miles associated with each eligible census block, we will add three additional Census road categories to the three categories of roads that we proposed in the *Auction 901 Comment Public Notice*;
- Conclude that we will conduct Auction 901 as a single round, sealed bid auction;
- Provide for bidding on predefined aggregations of eligible census blocks by census tracts, except in Alaska, where bidding will be permitted on individual eligible census blocks;
- Require that each winning bidder provide coverage, consistent with the performance requirements of the rules adopted in the *USF/ICC Transformation Order*, to a minimum of 75 percent of the road miles in each census tract for which it wins support, calculated as the total of the road miles in the eligible census blocks in the tract; and
- Permit winning bidders to demonstrate that they offer supported services at rates comparable to those in urban areas by offering one (1) stand-alone voice and one (1) data plan in supported area(s) that match plans in urban areas, *i.e*, in top 100 Cellular Market Areas (CMAs), and cost no more than the matching plans.

5. In addition, this Public Notice reviews important Mobility Fund Phase I program requirements, including eligibility requirements for participation and the public interest obligations of winning bidders; describes in detail pre-auction procedures and deadlines, including auction application requirements; explains requirements and details related to the structure and procedures for bidding as outlined above; and provides an overview of the post-auction procedures, requirements, and deadlines, including information on the post-auction application and on payment requirements that will be used to enforce carriers' obligations.

B. Overview of Mobility Fund Phase I

1. Background

6. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost component of the Universal Service Fund (USF) to help ensure the universal availability of fixed and mobile communication networks capable of providing voice and broadband services where people live, work, and travel. The Commission's universal service reforms include a commitment to fiscal responsibility, accountability, and the use of market-based mechanisms, such as competitive bidding, to provide more targeted and efficient support than in the past. For the first time, the

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released an updated list of potentially eligible census blocks. "Mobility Fund Phase I Auction; Updated List of Potentially Eligible Census Blocks, AU Docket No. 12-25," *Public Notice*, DA 12-187, 27 FCC Rcd 1476 (WTB/WCB 2012) ("*Auction 901 Updated Blocks Public Notice*"). Comments and reply comments on most issues were due on February 24, 2012, and March 9, 2012, respectively. The Bureaus extended the deadlines for filing comments and reply comments on census block eligibility challenges to March 16, 2012, and March 26, 2012, respectively. "Mobility Fund Phase I Auction; Limited Extension of Deadlines for Comments and Reply Comments on Census Block Eligibility Challenges, AU Docket No. 12-25," *Public Notice*, DA 12-236, 27 FCC Rcd 1682 (WTB/WCB 2012). A listing of parties that filed comments, reply comments and *ex parte* notices or other filings may be found in Attachment D. Filings are identified in this Public Notice by the abbreviated names shown in Attachment D. Comments specifically addressing census block eligibility issues are identified as "ECB" filings.

Commission established a universal service support mechanism dedicated expressly to mobile services – the Mobility Fund.

7. Phase I of the Mobility Fund will provide up to $300 million in one-time support to address gaps in mobile services availability by supporting the build-out of current-and next-generation mobile networks in areas where these networks are unavailable.[6] The support offered under Phase I of the Mobility Fund is in addition to any ongoing support provided under existing high-cost universal service program mechanisms. Phase II of the Mobility Fund will provide $500 million annually for ongoing support of mobile services.[7] The Commission sought comment on the details for Mobility Fund Phase II in the Further Notice of Proposed Rulemaking (FNPRM) adopted in the *USF/ICC Transformation Order*.[8]

8. The goal for Mobility Fund Phase I is to extend the availability of mobile voice and broadband service on networks that provide third generation (often called "advanced" or "3G") or better performance and to accelerate the deployment of fourth-generation ("4G") wireless networks in areas where it is cost effective to do so with one-time support.[9] To maximize coverage in eligible unserved areas within the established budget of $300 million, the *USF/ICC Transformation Order* established general rules for a reverse auction to identify those areas where additional investment can make as large a difference as possible, in a transparent, simple, speedy, and effective way.[10] In this reverse auction, bidders will indicate the amount of one-time support they require to deploy service meeting the defined performance standard in given unserved areas. Because the auction will generally award support based on the lowest per-unit bid amount irrespective of geographic area, bidders will compete not only against other carriers that may be seeking support in the same areas, but also against carriers bidding for support in other areas nationwide. Support will be awarded based on the lowest bid amounts submitted, but will not be awarded to more than one provider per area.[11] Successful bidders will be awarded support for an area at the price they bid.

2. Identification of Unserved Census Blocks Eligible for Mobility Fund Support

9. In the *USF/ICC Transformation Order*, the Commission decided to target Mobility Fund Phase I support to census blocks without 3G or better service at the geometric center of the block, referred to as the centroid, and concluded that American Roamer data[12] is the best available data source for

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[6] *USF/ICC Transformation Order*, 26 FCC Rcd at 17773 para. 299. The Commission also designated an additional $50 million for one-time support targeted exclusively for advanced mobile services on Tribal lands, which will be awarded by auction in 2013. *Id.* at 17819-20 para. 481. We will seek separate comment at a later date on issues relating to the Tribal Mobility Fund.

[7] *Id.* at 17824 para. 494. Up to $100 million of this amount annually is designated for support to Tribal lands.

[8] *Id*. at 18069-85 paras. 1121-88.

[9] *Id*. at 17781 para. 322.

[10] *Id.* at 17781-83 paras. 322-28. We refer to areas without 3G or better services and the road miles within them as "unserved." Those unserved areas and road miles eligible for Mobility Fund Phase I are determined as described in Sections I.B.2 and I.B.3, below.

[11] The Commission also provides for a 25 percent bidding credit for Tribally-owned or controlled providers that participate in Auction 901. *Id*., 26 FCC Rcd at 17807 para. 430; 47 C.F.R. § 54.1004(c).

[12] Since the *USF/ICC Transformation Order* and *Auction 901 Comment Public Notice* were released, American Roamer changed its company name to Mosaik Solutions. *See* http://www.mosaik.com/. The coverage data analyzed (continued….)

determining where such service is unavailable.[13] More specifically, the Commission concluded that it would consider any census block in the 2010 Census as unserved and thus eligible for support, if an analysis of the American Roamer data indicated that the centroid is not covered by networks using EV-DO, EV-DO Rev A, or UMTS/HSPA or better.[14]

10. In the *Auction 901 Comment Public Notice*, the Bureaus concluded that January 2012 American Roamer data was the most recently available for the purpose of doing an analysis to identify eligible census blocks and described the methodology for identifying potentially eligible blocks.[15] The Bureaus used geographic information system (GIS) software to determine whether the American Roamer data show 3G or better wireless coverage at the centroid of each block.[16] If the American Roamer data did not show such coverage, the block was determined to be unserved. In the *Auction 901 Updated Blocks Public Notice*, the Bureaus identified potentially eligible unserved blocks based on their analysis of 2010 Census data and January 2012 American Roamer data.[17] Because Mobility Fund Phase I support will be awarded based on bid amounts and the number of road miles in each unserved census block, the list of potentially eligible census blocks did not include any unserved census blocks without road miles. The updated list consisted of 467,604 census blocks that lacked 3G or better service at the centroid of the block.

11. Pursuant to the *USF/ICC Transformation Order*, we will also make ineligible for support census blocks for which, notwithstanding the absence of 3G service, any provider has made a regulatory

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to determine eligible census blocks were released when the company was known as American Roamer, and we continue to refer to that data as "American Roamer data" for purposes of this Public Notice.

[13] *USF/ICC Transformation Order*, 26 FCC Rcd at 17783-84 paras. 332, 334. US Cellular and the Pennsylvania Commission contend that targeting support to unserved census blocks makes those blocks into service areas in a manner that conflicts with Section 214 of the Communications Act of 1934, as amended ("Communications Act"). US Cellular Comments at 2; Pennsylvania Commission Reply at 2. However, the Commission's targeting of support does not redefine any existing ETC's service area based on the census blocks in which it may receive Mobility Fund Phase I support. Rather, the support and obligations related to it apply to those census blocks within the ETC's service area. *USF/ICC Transformation Order* at 17798-99 para. 391. With respect to any ETC newly designated in connection with Mobility Fund Phase I, nothing in the Communications Act bars the use of census blocks as a method of defining service areas. The Pennsylvania Commission correctly notes that the Communications Act prescribes the use of a rural telephone company's study area as a service area in certain circumstances. Pennsylvania Commission Reply at 3 (citing 47 USC § 214(e)(5)). However, the Commission's decision to target support to specific census blocks does not define a "service area" for purposes of determining the scope of an ETC's obligations, so this provision is not relevant. Finally, the Pennsylvania Commission asserts that the Commission's use of census blocks requires the states to utilize census blocks in defining ETC study areas. *Id.* at 2. We disagree. The Commission's decision does not require the States to use any particular geography in defining a study area, though a carrier might naturally seek to have its study area defined in conjunction with the areas in which it may receive support.

[14] *USF/ICC Transformation Order*, 26 FCC Rcd at 17786-87 paras. 343-44.

[15] *Auction 901 Comment Public Notice*, 27 FCC Rcd at 534-35 para. 15.

[16] Specifically, the Bureaus used ArcGIS software from Esri to determine whether the American Roamer data showed 3G or better coverage at each block's centroid. The following technologies were considered 3G or better: EV-DO, EV-DO Rev A, UMTS/HSPA, HSPA+, WiMAX, and LTE. We use the term "centroid" to refer to the internal point latitude/longitude of a census block polygon. For more information, see U.S. Census Bureau, Putting It All Together, http://lehd.did.census.gov/led/library/doc/PuttingItTogether_20100817.pdf (last visited April 30, 2012).

[17] *Auction 901 Updated Blocks Public Notice*, 27 FCC Rcd at 1476-77 paras. 3-4.

commitment to provide 3G or better wireless service, or has received a funding commitment from a federal executive department or agency in response to the carrier's commitment to provide 3G or better wireless service.[18] Such federal funding commitments include, but are not limited to, those made under the Broadband Technology Opportunities Program (BTOP) and Broadband Initiatives Program (BIP) authorized by the American Recovery and Reinvestment Act of 2009 (ARRA).[19]

12. Furthermore, the Commission established certain bidder-specific restrictions.[20] Specifically, each applicant for Mobility Fund Phase I support is required to certify that it will not seek support for any areas for which it has made a public commitment to deploy, by December 31, 2012, 3G or better wireless service.[21] In determining whether an applicant has made such a public commitment, we anticipated that we would consider any public statement made with some specificity as to both geographic area and time period. This restriction will not prevent a bidder from seeking and receiving support for an unserved area for which another provider has made such a public commitment.

13. In the *USF/ICC Transformation Order*, the Commission, responding to concerns about potential errors in determining coverage of a particular area, provided for a limited timeframe for challenges to those initial determinations. The Commission explained that it would "make public a list of unserved areas as part of the pre-auction process and afford parties a reasonable opportunity to respond by demonstrating that specific areas identified as unserved are actually served and/or that additional unserved areas should be included."[22] In the *Auction 901 Comment Public Notice*, the Bureaus therefore asked commenters to indicate which blocks included in the revised list should not be eligible for Mobility Fund Phase I support "and provide supporting evidence." Similarly, we asked commenters to indicate which blocks *not* included in the revised list should be eligible for support "and provide supporting evidence."[23]

14. We received numerous comments, reply comments, *ex parte* and other submissions relating to census block eligibility.[24] Three states requested that we add census blocks to the revised list based on State Broadband Initiative data.[25] Five BIP and/or BTOP awardees submitted comments

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[18] *USF/ICC Transformation Order*, 26 FCC Rcd at 17786 paras. 341-42.

[19] *See* ARRA, P.L. No. 111-5, 123 Stat. 115 (2009). The ARRA authorized BTOP and BIP. ARRA provided $4.7 billion to the National Telecommunications and Information Administration (NTIA) for BTOP and the State Broadband Data and Development Plan. NTIA's BTOP grants support the deployment of broadband infrastructure, enhance and expand public computer centers, and encourage sustainable adoption of broadband service. http://www2.ntia.doc.gov/about (last visited April 30, 2012). The U.S. Department of Agriculture's Rural Utilities Service (USDA RUS) administers BIP, provides over $3.5 billion in loans, grants, and loan/grant combinations to assist with addressing the challenge of rapidly expanding the access and quality of broadband services across rural America and to meet the objectives of the ARRA. http://www.rurdev.usda.gov/utp_bip.html (last visited April 30, 2012).

[20] *USF/ICC Transformation Order*, 26 FCC Rcd at 17802-03 para. 410.

[21] *See* 47 C.F.R. § 54.1005(a)(5).

[22] *USF/ICC Transformation Order*, 26 FCC Rcd at 17785 para. 337.

[23] *Auction 901 Comment Public Notice*, 27 FCC Rcd at 536 para.19.

[24] "Mobility Fund Phase I Auction Limited Extension of Deadlines for Comments and Reply Comments on Census Block Eligibility Challenges, AU Docket No. 12-25" *Public Notice*, DA 12-236, 27 FCC Rcd 1682 (WTB/WCB 2012).

[25] "Launched in 2009, NTIA's State Broadband Initiative (SBI) implements the joint purposes of the Recovery Act and the Broadband Data Improvement Act, which envisioned a comprehensive program, led by state entities or non-
(continued….)

requesting that we remove census blocks. Twenty-two other providers also requested that we either add or remove census blocks from our updated list of potentially eligible blocks. We received *ex parte* submissions as well, including submissions from USDA RUS and NTIA.

15. Indiana Commission, Kentucky and Minnesota requested through state agencies that we add to our list census blocks they identify as unserved based on the State Broadband Initiative data gathered by the individual states for the National Broadband Map, arguing their data differs from our analysis of American Roamer data.[26] In the *USF/ICC Transformation Order* the Commission rejected the use of the National Broadband Map generally because of inconsistencies in the initial phase relating to wireless services data.[27] While we appreciate that data submitted for and displayed in the National Broadband Map may have improved, we conclude that the states have not provided us with enough information to justify a conclusion that the states' data is more reliable than the Bureaus' analysis of American Roamer and other data, which the Commission determined to use as a consistent basis for determining eligible census blocks across all states. We therefore decline to add as eligible census blocks those listed by Indiana Commission, Kentucky and Minnesota in their filings.

16. We received *ex parte* submissions from USDA RUS and NTIA providing information on the location of their BIP and BTOP awards in response to our request for awards proposing mobile wireless projects using 3G or better technology.[28] We made this request in light of the Commission's determination to make ineligible for support census blocks where a carrier had made a commitment to provide 3G or better mobile service in return for a federal funding commitment such as those made under BIP and BTOP awards.[29] Five carriers submitted comments listing census blocks to be removed from our list of potentially eligible blocks based on their receipt of BIP and/or BTOP awards to provide 3G or better service.[30]

17. USDA RUS provided us with a list of Census 2000 census blocks associated with BIP awards for mobile wireless projects.[31] After converting the USDA RUS list to 2010 census blocks[32] and

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profit organizations working at their direction, to facilitate the integration of broadband and information technology into state and local economies. . . . [t]he SBI program . . . assist[s] states in gathering data twice a year on the availability, speed, and location of broadband services, as well as the broadband services that community institutions, such as schools, libraries and hospitals, use. This data is used by NTIA to update the National Broadband Map, the first public, searchable nationwide map of broadband availability launched February 17, 2011." http://www2.ntia.doc.gov/SBDD (last visited April 30, 2012).

[26] Minnesota ECB Comments; Kentucky ECB Comments; Indiana Commission ECB Comments; Indiana Commission ECB Reply.

[27] *USF/ICC Transformation Order*, 26 FCC Rcd at 17784 para. 335.

[28] NTIA ex parte; USDA RUS ex parte.

[29] *USF/ICC Transformation Order*, 26 FCC Rcd 17786 at paras. 341-42.

[30] Commnet et al. ECB Comments; Keystone ECB Comments; Pine Telephone ECB Comments; PTI Pacifica ECB Comments; VTel ECB Comments.

[31] USDA RUS ex parte.

[32] Wireless Bureau staff used the US Census Bureau method for converting Census 2000 tabulation blocks to Census 2010 tabulation blocks found at: http://www.census.gov/geo/www/2010census/rel_blk_overview.html (last visited April 30, 2012). These files contain the census block identification number (FIPS number) for 2000 census vintage geography and its associated 2010 vintage census block identification number. Three distinct cases occur in this relationship: a) a single 2000 block number is linked to a single 2010 block number, b) a single 2000 block number is linked to many 2010 block numbers and c) many 2000 block numbers are linked to a single 2010 block (continued….)

comparing the results to the 2010 census blocks submitted by the three carriers claiming BIP awards,[33] we find that the blocks submitted by the carriers were also reported by USDA RUS. This consistency leads us to conclude that the full list of census blocks receiving BIP awards, as identified by USDA RUS, should be removed from our list of eligible census blocks to comply with the *USF/ICC Transformation Order*.[34] As a result, the Census 2000 census blocks submitted by USDA RUS, which relate to seven awards made to six parties including three that commented in this proceeding, will be converted to 2010 census blocks as described, and removed.

18. NTIA provided us a list of Census 2000 census tracts associated with BTOP awards potentially for mobile wireless projects. The NTIA BTOP list may be over inclusive because the NTIA list describes areas at the census tract rather than the census block level, and it may include middle mile infrastructure projects rather than projects expressly expanding mobile services.[35] We compared this list with the 2010 equivalents of the census tracts associated with the 2010 census blocks submitted by the three commenters claiming BTOP awards. The census block data submitted by two of the three commenters corresponded closely to areas identified by NTIA.[36] Based on that correspondence, we remove the census blocks submitted by the two commenters from the list of eligible census blocks.[37] However, because the likely over inclusiveness of the NTIA data reduces our ability to ensure that we would be targeting areas with planned expansion of 3G or better coverage, we do not remove all of the areas on the NTIA list from consideration for Mobility Fund Phase I support. Further, we decline to remove the blocks that a third commenter identified as associated with a BTOP award, because the award and areas referenced by the commenter are not included in the NTIA list.[38]

19. We turn now to the comments we received from 22 carriers requesting changes to our list of potentially eligible blocks – either removals based on assertions that census blocks listed as potentially

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number. The Census Bureau publishes these relationship files precisely for the purpose of linking geography files from one year to geography files of another year. Commission staff acquired these crosswalk files from this Census location above, and pushed them into the FCC Geographic Information Systems database. The resulting database was a single table containing every 2000 census block identification number and its associated 2010 census block identification number, for every state and territory. The staff then took the 2000 vintage block numbers filed in the proceeding and, using the relationship file database established above, published by Census, linked them to their defined 2010 geography. This link was performed using standard primary/foreign key matching (also known as tabular joins) in the FCC master database system. The relationship files generated 2010 census geography identification numbers for all input 2000 census block identification numbers. With this match, we are able to analyze the comments as they relate to the 2010 census block identification numbers in the list of potentially eligible areas released in the *Auction 901 Updated Blocks Public Notice*.

[33] Keystone ECB Comments; Pine Telephone ECB Comments; VTel ECB Comments.

[34] *See* USDA RUS ex parte; *USF/ICC Transformation Order*, 26 FCC Rcd at 17786 para. 341.

[35] *See*, *e.g.*, Level 3 EON, LLC, *Broadband Infrastructure Application Submission to RUS (BIP) and NTIA (BTOP)*, submitted August 19, 2009 at http://www2.ntia.doc.gov/files/grantees/level3_texas_application_part1_review_redacted.pdf (last visited April 30, 2012).

[36] Pine Telephone ECB Comments; Commnet et al. ECB Comments.

[37] In reply comments, Smith Bagley challenged the list of census blocks, and in particular, the BTOP blocks that Commnet et al. requested be removed from eligibility. In a subsequent filing, Commnet et al. provided additional information supporting its request. Commnet et al. ECB ex parte. Smith Bagley submitted a further challenge to this additional information. Smith Bagley ECB ex parte.

[38] PTI Pacifica ECB Comments.

eligible currently have 3G or better service (or would in the relatively near future) or additions based on assertions that census blocks not listed as potentially eligible actually lack 3G or better service. First, we note that three parties, Mid-Rivers, PSW and WUE, filed comments listing census blocks for removal from the potentially eligible list based on assertions, at least in part, that they would be covered in the future, i.e., after the close of the record on March 26, 2012.[39] We conclude that we will not make census blocks ineligible based on these assertions. Pursuant to the *USF/ICC Transformation Order*, we provided parties with an opportunity to demonstrate "that specific areas identified as unserved are actually served"[40] or that parties had made a "regulatory commitment" to serve particular areas.[41] We find that these assertions of coverage after the close of the record do not demonstrate actual service or a regulatory commitment that should be reflected in our final list of eligible census blocks.[42] Although Mid-Rivers and PSW also claimed that they currently provide service with respect to some of their listed census blocks, because they do not differentiate between current and future coverage in their submissions, we reject their requested exclusions.

20. We received comments from 15 carriers identifying census blocks for removal and/or addition to our list of potentially eligible census blocks based on demonstrations of current coverage at the centroid, or the lack thereof, in the form of maps, discussions of drive tests, explanation of methodologies for determining coverage and in numerous cases, certifications by one or more individuals as to the veracity of the material provided.[43] We find these demonstrations to be sufficiently credible and

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[39] Mid-Rivers ECB Comments at 4 ("Mid-Rivers Wireless is in the midst of a 3G network upgrade that will be completed well in advance of the September 27 Auction . . . ."); PSW ECB Comments at 3 ("[T]he Bureaus should exclude those census blocks to which PSW intends to provide 4G coverage prior to the start of Auction 901"); WUE ECB Comments at 2 ("WUE is providing (or will by the close of the comment period provide) 3G service to the census blocks identified in Attachment A"); WUE ECB Reply at 1-2 (indicating that not all sites discussed in its comment were completed by the close of the comment period). *See also* Horry Telephone ECB ex parte (requesting the removal of census blocks, again based in part on assertions of future coverage).

[40] *USF/ICC Transformation Order*, 26 FCC Rcd at 17785 para. 337.

[41] *Id.*, 26 FCC Rcd at 17786, paras. 341-42. Mid-Rivers asserts that its actions regarding future coverage constitute a "regulatory commitment" to provide coverage that should make the areas involved ineligible for Mobility Fund Phase I support. Mid-Rivers EBC Comments at 4-5. In the *USF/ICC Transformation Order*, the Commission stated that support "will not be offered in areas where . . . any provider has made a regulatory commitment to provide 3G or better wireless service, or has received a funding commitment from a federal executive department or agency in response to the carrier's commitment to provide 3G or better service." *USF/ICC Transformation Order*, 26 FCC Rcd at 17786 para. 341. As discussed above, the Commission cited funding commitments under programs authorized by ARRA, including BTOP and BIP, as examples of federal funding commitments that alter an area's eligibility. *Id.* We interpret the "regulatory commitment" provision to cover circumstances in which a provider has undertaken an obligation to perform where the failure to perform will carry meaningful consequences, just as recipients of BTOP and BIP funding and/or parties that accept conditions related to Commission approval of transactions are obligated to perform. While Mid-Rivers cites various statements that might indicate the sincerity of its commitments, *e.g.*, assertions that it will make representations in future license modification applications and statements in Board minutes regarding future actions, *see* Mid-Rivers ECB Comments at 5, it has not demonstrated that any of these statements obligate it to perform in a way that will lead to meaningful consequences should it fail to do so. Accordingly, we decline to remove these areas from the list of eligible areas on this basis.

[42] As noted below, we make this determination mindful of the Commission's goal of moving quickly to award Mobility Fund Phase I support. *USF/ICC Transformation Order*, 26 FCC Rcd at 17785 para. 337.

[43] Bluegrass ECB Comments; Carolina West ECB Comments; Cellular Network ECB Comments; Commnet et al. ECB Comments; Cross Valliant ECB Comments; Cross Wireless ECB Comments; CT Cube ECB Comments; Eagle Telephone ECB Comments; Leaco ECB Comments; Matanuska ECB Comments; Nemont ECB Comments; NNTC ECB Comments; Panhandle ECB Comments; Texas RSA ECB Comments; WUE ECB Comments; WUE ECB (continued….)

convincing to meet the requirements of the *USF/ICC Transformation Order* and incorporate the requested changes in our final list of eligible census blocks, to the extent that they contain road miles in any of the six categories we identify in our discussion below.

21. Finally, we received comments from five carriers listing census blocks for removal from the potentially eligible list based on bare assertions that their own coverage maps show they serve census blocks on our potentially eligible list.[44] In contrast to the submissions of the 15 carriers discussed immediately above, these five did not provide any information regarding the basis for their assertions. Reply commenters challenged several such submissions as inadequate.[45] We conclude that these assertions without supporting evidence do not demonstrate actual service, as envisioned by the *USF/ICC Transformation Order*, that provides a basis for us to depart from our determination of potentially eligible census blocks.[46]

22. The list of census blocks released with this Public Notice is our final list of eligible census blocks that were identified by analyzing U.S. Census data, January 2012 American Roamer data, and information submitted by third parties. The difference between this list and the list provided with the *Auction 901 Updated Blocks Public Notice* is that we have removed and added blocks based on the comments of the 15 carriers that provided sufficiently credible and convincing demonstrations, we have removed blocks based on BTOP and BIP awards as discussed above, and we have removed blocks that do not have road miles in any of the six road categories that we identify below. We recognize that no such list will be perfect or perfectly up-to-date. We are mindful of the Commission's goal of moving quickly to expand the availability of advanced mobile services by providing one-time support with the limited funds budgeted for this purpose. We also heed the Commission's warning that more extended dialog and pre-auction review of these issues might risk undue delay in the award of this support.[47] Accordingly, the list of census blocks we release today contains our final determinations with respect to the areas eligible for Mobility Fund Phase I support. As discussed elsewhere in this Public Notice, these census blocks will, in most cases, be aggregated into their associated census tracts for bidding purposes.[48]

23. We remind those interested in seeking Mobility Fund Phase I support that applicants for Auction 901 are required to certify that they will not seek support for any areas in which they have made a public commitment to deploy 3G or better service by December 31, 2012.[49] We discuss this requirement in greater detail in section II.E., where we describe the disclosures and certifications required in the short-form application for Auction 901. Here we note that we view the submission of the comments just discussed by carriers that identified census blocks to be removed from our list based on

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Reply. Nemont filed two comments challenging eligible census blocks, one requesting that blocks be added and another requesting that blocks be removed. Smith Bagley ECB Reply ("Reply Comments of Smith Bagley, Inc., regarding February 2, 2012, Public Notice") provided evidence in support of the addition of census blocks to our list, but did not provide a list of the specific census blocks they wanted to add. Absent a list of the specific census blocks in question, we are unable to amend our list as Smith Bagley requests.

[44] AT&T ECB Comments; Clearwire Comments; Sprint ECB Comments; T-Mobile ECB Comments; Verizon ECB Reply.

[45] US Cellular ECB Reply; Union Cellular ECB ex parte.

[46] *USF/ICC Transformation Order,* 26 FCC Rcd at 17785 para. 337.

[47] *USF/ICC Transformation Order*, 26 FCC Rcd at 17785 para 337.

[48] There are some exceptions to the tract-level aggregation for census blocks in Alaska and in tracts with Tribal lands. *See* Section IV.A.2. "Aggregation Method – Predefined Aggregations," below.

[49] *USF/ICC Transformation Order*, 26 FCC Rcd at 17802-03 para 410.

future coverage or without an adequate demonstration of current actual service as public commitments to deploy 3G or better service by December 31, 2012, in the census blocks they list, for purposes of this certification.

3. Establishing Unserved Road Mile Units

24. In the *Auction 901 Comment Public Notice*, we proposed to establish road mile units based on three road categories defined and reported by the US Census Bureau: S1100, primary roads; S1200, secondary roads; and S1400, local and rural roads and city streets. We sought comment on this proposal and provided data on nine categories — the proposed three categories and six more categories. Several commenters asked us to include additional road categories.[50] Specifically, parties requested the addition of road categories S1500, 4WD vehicular trails; S1640, service drives; and S1740, private roads for service vehicles.[51] Based on our review of these comments and analysis of 2010 census blocks and TIGER road mile data, we have decided to include these additional road categories. These categories will add three types of roads that are particularly important in some rural areas: unpaved dirt trails where a four-wheel drive vehicle is required, service drives that typically connect to highways and other types of roads, and private roads that are used in areas with logging, mining, oil fields, and ranches. Adding these categories provides a better representation of roads where people live, work, and travel since it means that, in every state and territory, we are making support possible for 98 percent or more of the total road miles in eligible blocks. Furthermore, adding these three categories includes more unserved road miles in almost all states and, comparing the road miles in the selected categories to the road miles for all nine categories, increases the parity among the states of the proportion of unserved road miles that are included.

25. The list of census blocks released with this Public Notice includes, for each block, the number of road miles in each of the six selected road categories.

4. Public Interest Obligations

26. *Voice and Broadband Service.* All Mobility Fund Phase I recipients must satisfy specified public interest obligations in exchange for the support they receive, as must all recipients of any Connect America Fund (CAF) support for fixed locations. Specifically, all CAF recipients, including Mobility Fund Phase I recipients, must offer stand-alone voice service to the public.[52] Mobility Fund Phase I recipients must offer voice service with coverage of at least 75 percent or more of the designated road miles within the area for which support is provided.[53] Furthermore, receipt of Mobility Fund Phase I

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[50] Blooston Comments; GCI Comments; RTG Comments and RTG Reply; ACS Reply; Mid-Rivers Reply; and NTCA Reply.

[51] Parties also requested that factors other than road miles be considered, including mileage of waterways used for transportation and the population of eligible areas. *See* ACS Reply at 7-9 (waterways) and NASUCA et al. Comments at 6-7 (suggesting weighting road miles by population). The Commission, however, has determined that the relevant coverage unit for Mobility Fund Phase I will be road miles. *USF/ICC Transformation Order*, 26 FCC Rcd at 17788-89 para. 350; *see* 47 C.F.R. § 54.1002(b). While NASUCA et al. correctly notes that the Commission has sought comment on the use of other factors in connection with Phase II of the Mobility Fund, this does not change the Commission's determination with respect to Phase I. *See* NASUCA et al. Comments at 7 (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 18070 para. 1122). Accordingly, these proposals to change the Commission's rules are beyond the scope of the Bureaus' authority when establishing auction procedures.

[52] *USF/ICC Transformation Order*, 26 FCC Rcd at 17693 para 80, 17791 para. 359; *see* 47 C.F.R. § 54.101(b).

[53] *USF/ICC Transformation Order*, 26 FCC Rcd at 17792 para. 365; *see* 47 C.F.R. § 54.1006(a) and (b). As discussed below, support will be available to any recipient that covers a larger percentage of the designated road miles by the applicable construction deadline, up to 100 percent.

support is conditioned upon the recipient providing service over a network that achieves particular data rates under particular conditions, which the Commission, for this purpose, refers to as third generation (3G) networks or better.[54]

27. *Data Rates.* To provide specificity, and solely for purposes of Mobility Fund Phase I, the Commission refers to a network as a 3G network if it achieves outdoor minimum data transmission rates of 50 kilobits per second (kbps) uplink and 200 kbps downlink at vehicle speeds appropriate for the roads covered.[55] Also solely for purposes of Mobility Fund Phase I, the Commission refers to a network as a fourth generation (4G) network if it achieves outdoor minimum data transmissions rates of 200 kbps uplink and 768 kbps downlink at vehicle speeds appropriate for the roads covered.[56] With respect to both 3G and 4G networks, transmission latency must be low enough to enable the use of real-time applications, such as Voice over Internet Protocol (VoIP).[57]

28. *Performance Deadlines.* Winning bidders in Auction 901 will commit to provide service over either a 3G or a 4G network, as those terms are used with respect to Mobility Fund Phase I, in their post-auction long-form applications for support.[58] Those parties committing to provide service over a 3G network must do so for at least seventy-five percent (75%) or more of the designated road miles within the relevant area within two (2) years of being authorized to receive support.[59] Winning bidders committing to provide service over a 4G network must do so for at least seventy-five percent (75%) or more of the designated road miles within the relevant area within three (3) years of being authorized to receive support.[60] To the extent that a recipient covers road miles in excess of the minimum, support will be available for up to 100 percent of the designated road miles for which the recipient demonstrates coverage within the required timeframe associated with the technology deployed.[61]

29. *Reasonably Comparable Rates.* Recipients of Mobility Fund Phase I support must certify annually that they offer service in areas with support at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas.[62] This requirement extends for a period ending five years after the date of award of support.[63] We describe this requirement in more detail below in our explanation of post-auction application requirements.

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[54] *USF/ICC Transformation Order*, 26 FCC Rcd at 17791 para. 360; *see* 47 C.F.R. § 54.1006(a) and (b). In addition, the Commission expects "that ETCs that offer standalone broadband service in any portion of their service territory will also offer such service in all areas that receive CAF support." *USF/ICC Transformation Order*, 26 FCC Rcd at 17695 para. 86 n.127.

[55] *USF/ICC Transformation Order*, 26 FCC Rcd at 17791-92 para. 361; 47 C.F.R. § 54.1006(a)(1).

[56] *USF/ICC Transformation Order*, 26 FCC Rcd at 17792 para. 362; 47 C.F.R. § 54.1006(b)(1).

[57] 47 C.F.R. § 54.1006(a)(2) and (b)(2).

[58] *USF/ICC Transformation Order*, 26 FCC Rcd at 17791 para. 360; *see* 47 C.F.R. § 54.1005(b)(2)(v).

[59] 47 C.F.R. § 54.1006(a).

[60] 47 C.F.R. § 54.1006(b).

[61] *USF/ICC Transformation Order*, 26 FCC Rcd at 17792 para. 365, 17693 para. 367; *see* 47 C.F.R. § 54.1006(a) and (b).

[62] *USF/ICC Transformation Order*, 26 FCC Rcd at 17917 para 385; 47 C.F.R. §§ 54.1005(b)(2)(viii) and 54.1009(a)(4).

[63] *USF/ICC Transformation Order*, 26 FCC Rcd at 17917 para. 385; *see* 47 C.F.R. § 54.1009. In the *Auction 901 Comment Public Notice*, the Bureaus proposed and sought comment on a standard for assessing compliance with (continued….)

30. *Collocation.* In exchange for the support provided, Mobility Fund Phase I recipients shall allow for reasonable collocation by other providers of services that would meet the voice and data requirements of Mobility Fund Phase I on newly constructed towers that the recipient owns or manages in the area for which it receives support.[64] Consistent with this requirement, a recipient may not enter into facilities access arrangements regarding relevant facilities that restrict any party to the arrangement from allowing others to collocate on the facilities.

31. *Voice and Data Roaming.* Recipients of Mobility Fund Phase I support must provide voice and data roaming on networks built with the support, consistent with the requirements of section 20.12 of the Commission's rules, as those rules were in effect on the date the Commission adopted the *USF/ICC Transformation Order*.[65] This condition of support is independent of subsequent changes to the Commission's rules on voice and data roaming, though to the extent any new rules are generally applicable, recipients of Mobility Fund Phase I support may be subject to those as well. As these requirements, as well as all the public interest obligations, are a condition of Mobility Fund Phase I support, violations may result in the withholding or clawing back of universal service support in addition to any other applicable sanctions.[66]

5. Mobility Fund Phase I Eligibility Requirements

32. In order to participate in Auction 901 and receive Mobility Fund Phase I support, an applicant must demonstrate, for the areas on which it wishes to bid, that it has been designated as an eligible telecommunications carrier (ETC) and has access to the spectrum necessary to satisfy the applicable performance requirements.[67] In addition, an applicant must certify that it is financially and technically capable of providing 3G or better service.[68] Below, in our discussion of the short- and long-form application requirements, we describe in detail how applicants must demonstrate that they meet these eligibility requirements.

33. RTG advocates restricting eligibility to participate in the auction based on additional factors, primarily related to the size of the applicant.[69] The Commission previously considered and rejected similar proposals in the *USF/ICC Transformation Order*.[70] The Commission concluded that the competitive bidding rules and the procedures to be developed by the Bureaus would "promote its objectives for the Mobility Fund and provide a fair opportunity for serious, interested parties to

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this requirement. *Auction 901 Comment Public Notice*, 27 FCC Rcd at 547-49 paras. 65-70. We set forth the standard below, as well as the comments received in response to the proposal, when discussing the post-auction application in which a winning bidder must first make the certification.

[64] *USF/ICC Transformation Order*, 26 FCC Rcd at 17794-95 para 376; 47 C.F.R. § 54.1006(d).

[65] 47 C.F.R. § 54.1006(e).

[66] *USF/ICC Transformation Order*, 26 FCC Rcd at 17794-95 para. 380. *See* Section V.C.2. below.

[67] *Id*., 26 FCC Rcd at 17798-17801 paras. 388-99; 47 C.F.R. § 54.1003. A Tribal entity may participate provided it has applied for designation as an ETC for the relevant area and that application is still pending. Any such entity must still receive designation prior to support being awarded. *USF/ICC Transformation Order*, 26 FCC Rcd at 17823 para. 491; 47 C.F.R. § 54.1004(a). The requirement that parties have access to spectrum applies equally to all parties, including Tribal entities.

[68] *USF/ICC Transformation Order*, 26 FCC Rcd at 17801 paras. 400-03; 47 C.F.R. § 54.1002(c).

[69] RTG Comments at 7.

[70] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17802 paras. 407-09.

participate."[71] We also note that the Bureaus cannot modify the eligibility requirements, because the changes RTG advocates are beyond the scope of the Bureaus' delegated authority and the scope of this proceeding and would require action by the Commission to reconsider its determination in the *USF/ICC Transformation Order*.[72]

6. Annual Reporting and Record Retention Requirements

34. Winning bidders that are authorized to receive Mobility Fund Phase I support are required to submit to the Commission an annual report each year for the five years after being so authorized. The information and certifications required to be included in the annual report are described in section 54.1009 of the Commission's rules.[73] In addition, authorized winning bidders are required to submit certain reports before receiving disbursements of support.[74] Mobility Fund Phase I support will be available for disbursement to authorized winning bidders in three stages, with the first disbursement made when the winning bidder is authorized to receive support.[75] A recipient will be eligible to receive the second disbursement when it submits a report demonstrating coverage of 50 percent of the applicable coverage requirements of section 54.1006 of the Commission's rules.[76] A recipient will be eligible to receive the final disbursement when it submits a report demonstrating coverage meeting the applicable requirements of section 54.1006 of the Commission's rules.[77]

35. A winning bidder authorized to receive Mobility Fund Phase I support and all of its agents are required to retain any documentation prepared for, or in connection with, the award of Mobility Fund Phase I support for a period of not less than ten years after the date on which the winning bidder receives its final disbursement of Mobility Fund Phase I support.[78]

C. Auction Specifics

1. Auction Start Date

36. Bidding in Auction 901 will be held on **Thursday, September 27, 2012**.[79] Unless otherwise announced, bidding for all census blocks will be offered at the same time.

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[71] *Id*. at 17802 para. 409.

[72] Other commenters contend that smaller carriers ought to be provided with a bidding preference, such as a bidding credit, in order to enhance the chance that such carriers might win the auction. *See* Blooston Comments at 12-13; NTCA Reply at 4. While the Commission has sought comment on providing such a preference in the FNPRM adopted in the *USF/ICC Transformation Order*, it did not adopt such a preference for Mobility Fund Phase I and it is beyond our authority to do so in this proceeding. *See USF/ICC Transformation Order*, 26 FCC Rcd at 18077-78 paras. 1157-60. In connection with the *USF/ICC Transformation Order*, the Commission prepared a Final Regulatory Flexibility Analysis concerning the possible impact on small entities of, among other things, the Mobility Fund Phase I rules the Bureaus implement in this Public Notice. *Id*. at 18151 para. 1410.

[73] 47 C.F.R. § 54.1009. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17817 paras. 470-474.

[74] 47 C.F.R. § 54.1008. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17815-16 paras. 464-469.

[75] 47 C.F.R. § 54.1008(b)(1).

[76] 47 C.F.R. § 54.1008(b)(2).

[77] 47 C.F.R. § 54.1008(b)(3).

[78] 47 C.F.R. § 54.1010.

[79] We note that NTCH and US Cellular contend that the auction should be delayed in light of pending litigation regarding the source of funds to be disbursed based on the auction and in light of the pending Petitions for (continued….)

37. The start and finish time of bidding will be announced by public notice approximately one week before the start of the auction.

2. Auction Title

38. Auction 901 – Mobility Fund Phase I

3. Bidding Methodology

39. As discussed in more detail below, the bidding methodology for Auction 901 will be single-round reverse format.[80] The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders are permitted to bid electronically via the Internet. Telephonic bidding will not be available for Auction 901 because it will not be feasible given the number of eligible geographic areas and the manner in which bids will be uploaded.[81]

4. Pre-Auction Dates and Deadlines

40. The following dates and deadlines apply:

Auction Tutorial Available (via Internet) .....June 27, 2012

Short-Form Application (FCC Form 180)
Filing Window Opens .....June 27, 2012; 12:00 noon ET

Short-Form Application (FCC Form 180)
Filing Window Deadline .....July 11, 2012; 6:00 p.m. ET

Mock Auction……September 25, 2012

Auction Begins.....September 27, 2012

5. Requirements for Participation

41. Those wishing to participate in this auction must:

- Submit a short-form application (FCC Form 180) electronically prior to 6:00 p.m. ET, July 11, 2012, following the electronic filing procedures that will be provided in a separate public notice to be released in the near future; and
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

D. Rules and Disclaimers

1. Relevant Authority

42. Prospective applicants in Auction 901 must familiarize themselves with the Commission's general universal service rules, contained in 47 C.F.R. Part 54, and the Mobility Fund

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Reconsideration of various aspects of the *USF/ICC Transformation Order*. *See* NTCH Comments at 1-2; US Cellular Reply at 10-11. We disagree that either the pending litigation or the pending Petitions are a sufficient basis for the Bureaus to delay the scheduled auction start date. The Commission already has considered the issues in the pending litigation at length in proceedings before it. *See USF/ICC Transformation Order*, 26 FCC Rcd at 18258 Appendix F (denying pending Petitions for Reconsideration of High-Cost Universal Service Support, WC Docket No. 05-337, CC Docket No. 96-45, *Order and Notice of Proposed Rulemaking*, FCC 10-155, 25 FCC Rcd 12854 (2010)). With respect to the pending Petitions seeking reconsideration of the *USF/ICC Transformation Order*, we will not take any action here that would prejudge the Commission's review of the Petitions.

[80] *See* Section IV.A.1. "Auction Structure – Reverse Auction Mechanism," below.

[81] *See* Section IV.B.1. "Bidding," below.

specifically, 47 C.F.R. §§ 54.1001- 54.1010. They should also familiarize themselves with the Commission's decision in the *USF/ICC Transformation Order* to implement the Mobility Fund Phase I.[82]

43. Prospective bidders in Auction 901 must be familiar with the specific competitive bidding rules for universal service support contained in 47 C.F.R. §§ 1.21000 – 1.21004, as well as the procedures, terms and conditions contained in this Public Notice, the *Auction 901 Comment Public Notice*, and all other public notices related to Auction 901 (AU Docket No. 12-25).[83] Additionally, prospective Auction 901 bidders will find it helpful to familiarize themselves with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.[84]

44. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

45. Copies of most auction-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at http://wireless.fcc.gov/auctions. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or at http://www.bcpiweb.com.[85]

2. Prohibited Communications and Compliance with Antitrust Laws

46. To ensure the competitiveness of the auction process, section 1.21002 of the Commission's rules prohibits an applicant in a Mobility Fund auction from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and from communicating with any other applicant in any manner the substance of

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[82] *See*, *generally*, *USF/ICC Transformation Order*. *See also* 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; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, FCC 11-13, 26 FCC Rcd 4554 (2011).

[83] *See*, *e.g.*, *Auction 901 Comment Public Notice*, *Auction 901 Updated Blocks Public Notice*.

[84] *See*, *e.g.*, Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, FCC 00-274, 15 FCC Rcd 15293 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)); *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17546 (2001) ("*Part 1 Seventh Report and Order*"); *Eighth Report and Order*, FCC 02-34, 17 FCC Rcd 2962 (2002); *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, FCC 03-98, 18 FCC Rcd 10180 (2003); *Second Order on Reconsideration of the Fifth Report and Order,* FCC 04-295, 20 FCC Rcd 1942 (2005).

[85] When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 12-121 for the *Auction 901 Comment Public Notice*).

its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support, unless such applicants are members of a joint bidding arrangement identified on the short form application(s) pursuant to section 1.21001(b)(3)-(4).[86]

47. Section 1.21002 is based on a similar rule used by the Commission in competitive bidding for spectrum licenses, section 1.2105(c) of the Commission's rules.[87] Potential bidders should familiarize themselves with sections 1.2105(c) and 1.21002, as well as the judicial, Commission and Wireless Bureau decisions addressing application of the rule prohibiting certain communications listed in Attachment E.[88]

a. Entities Subject to Section 1.21002, the Rule on Prohibited Communications

48. Section 1.21002's prohibition on certain communications will apply to any applicant that submits a short-form application to participate in Auction 901. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under section 1.21001(b)(3), applicants in Auction 901 must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy.[89] In some instances, this prohibition extends to communications regarding the post-auction market structure. **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**[90]

49. For the Mobility Fund Phase I auction, all bidders will compete for support with all other bidders in Auction 901, regardless of the geographic areas they seek to serve with Mobility Fund support. Therefore, applicants will be prohibited from making certain communications with all other applicants in Auction 901 regardless of the geographic areas they select, unless the parties disclose agreements reached between the parties on their short-form applications.

50. For purposes of the prohibition on certain communications, section 1.21002 defines "applicant" broadly to include the applicant, each party capable of controlling the applicant, including all

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[86] *See* 47 C.F.R. §§ 1.21001(b)(4), 1.21002; *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17807 para. 431.

[87] 47 C.F.R. § 1.2105(c).

[88] Because section 1.21002 was recently adopted for Mobility Fund competitive bidding, the Commission's prior experience in this area in in the context of section 1.2105(c). Applicants should review information regarding our interpretation of section 1.2105(c) to gain insight into the Commission's views on prohibited communications during competitive bidding for Mobility Fund support.

[89] "Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders," *Public Notice*, DA 96-1460, 11 FCC Rcd 10134 (1996).

[90] *See*, *e.g.*, Star Wireless, LLC, *Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18626, 18628 para. 4 & n.19 (2004), *order granted in part sub nom*, Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., *Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007) ("*Star and Northeast Review Order*"), *petition for review denied, Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (section 1.2105(c) applies to applicants regardless of whether they are qualified to bid); *Letter to Robert Pettit,[Esquire], from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division*, DA 00-2905, 16 FCC Rcd 10080 (2000) (declining to exempt an applicant's controlling interest from coverage by the communication prohibitions of section 1.2105(c), even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

officers and directors, and each party that may be controlled by the applicant or by a party capable of controlling the applicant.[91]

51. Individuals and entities subject to section 1.21002 should take special care in circumstances where their officers, directors and employees may receive information directly or indirectly relating to any competing applicant's bids or bidding strategies. For example, the Wireless Bureau has found that, when an individual serves as an officer for two or more applicants, the bids and bidding strategies of one applicant are conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of the rule prohibiting certain communications occurs.[92] The Wireless Bureau has not addressed a situation where non-principals (i.e., those who are not officers or directors, and thus not considered to be the applicant) receive information regarding a competing applicant's bids or bidding strategies and whether that information should be presumed to be communicated to the applicant.

52. Moreover, Auction 901 applicants are encouraged not to use the same individual as an authorized bidder. A violation of section 1.21002 could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., a law firm or engineering firm or consulting firm), a violation similarly could occur.[93] In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and its bidders will comply with section 1.21002.[94]

b. Prohibition Applies Until Long Form Application Deadline

53. The section 1.21002 prohibition on certain communications begins at the short-form application filing deadline and ends at the long form application deadline after the auction closes, which will be announced in a future public notice.[95]

c. Prohibited Communications

54. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction (as described above).[96] Section 1.21002 prohibits not only communication about an applicant's own bids or bidding strategy, it also prohibits communication of another applicant's

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[91] 47 C.F.R. § 1.21002(a).

[92] *See*, *e.g.*, Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 05-2445, 20 FCC Rcd 14648 (2005) (finding apparent violation of communication prohibitions of section 1.2105(c) where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

[93] *See* Application of Nevada Wireless, *Memorandum Opinion and Order,* DA 98-1137, 13 FCC Rcd 11973, 11977-78 paras. 11-12 (1998) ("*Nevada Wireless Order*").

[94] *Id.*

[95] 47 C.F.R. § 1.21002(b). Unless otherwise provided by public notice, winning bidders for Mobility Fund Phase I support must file an application for Mobility Fund Phase I support (also known as the long form application) no later than 10 business days after the public notice identifying them as winning bidders. 47 C.F.R. § 54.1005(b)(1).

[96] *USF/ICC Transformation Order*, 26 FCC Rcd at 17807 para. 431. *See also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-54 para. 12. For a discussion of the term "applicant" within the meaning of section 1.21002, *see* Section I.D.2.a. above.

bids or bidding strategy.[97] While section 1.21002 does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.

55. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place outside of the auction itself. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly."[98] Moreover, the Commission has found a violation of the rule against prohibited communications where an applicant used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,"[99] and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions."[100] Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, an applicant's statement to the press that it intends to stop bidding in the auction could give rise to a finding of a section 1.21002 violation.[101] Similarly, an applicant's public statement of intent not to participate in Auction 901 bidding could also violate the rule. Applicants are hereby placed on notice that public disclosure of information relating to bids, or bidding strategies, or to post auction market structures may violate section 1.21002.

d. Disclosure of Bidding Agreements and Arrangements

56. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications.[102] Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the Mobility Fund Phase I support they seek, including any agreements relating to post-auction market structure.[103]

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[97] *See* 47 C.F.R. § 1.21002(b). *See also* Notice of Apparent [L]iability for Forfeiture of Western PCS BTA 1 Corp., *Memorandum Opinion and Order*, FCC 99-385, 14 FCC Rcd 21571, 21574 para. 8 (1999).

[98] Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, FCC 94-295, 9 FCC Rcd 7684, 7689 para. 12 (1994) ("*Competitive Bidding Memorandum Opinion and Order*").

[99] Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17970, 17974, 17976 paras. 12, 17 (1997).

[100] Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23755, 23760 para. 11 (1998).

[101] *Compare* "Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction," *Public Notice*, DA 98-37, 13 FCC Rcd 341, 347-48 (1998) ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

[102] 47 C.F.R. § 1.21001(b)(3)-(4).

[103] 47 C.F.R. §§ 1.21001(b)(3)-(4), 1.21002.

57. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under section 1.21001(b)(3), even if the agreement has not been reduced to writing.[104] If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiation, discussion or communication with any other applicants after the short-form application filing deadline.[105]

58. Section 1.21002 of the Commission's rules does not prohibit non-auction-related business negotiations among auction applicants.[106] However, certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, and other transactional agreements.[107]

e. Section 1.21001(b)(4)-(5) Applicant Certifications

59. By electronically submitting a short-form application, each applicant in Auction 901 certifies its compliance with sections 1.21001(b)(3) and 1.21002.[108] In particular, an applicant must certify under penalty of perjury that the application discloses all real parties in interest to any agreements involving the applicant's participation in the competitive bidding for Mobility Fund support.[109] Also, the applicant must certify that it and all applicable parties have complied with and will continue to comply with 47 C.F.R. § 1.21002.[110]

60. The Bureaus caution, however, that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.[111] The Commission has stated that it "intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring."[112] Any applicant found to have violated section 1.21001(b)(4) and (5) may be subject to sanctions.[113]

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[104] 47 C.F.R. § 1.21001(b)(3).

[105] *See* "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, DA 95-2244, 11 FCC Rcd 9645, 9646 (WTB 1995) ("*Anti-Collusion Public Notice*").

[106] *See, e.g.,* Todd Stuart Noordyk, *Memorandum Opinion and Order*, FCC 01-275, 16 FCC Rcd 18113, 18116-17 para. 12 (2001).

[107] *See* Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 374, 467-68 para. 163 (1997).

[108] 47 C.F.R. §§ 1.21001(b)(3), 1.21002.

[109] 47 C.F.R. § 1.21001(b)(4).

[110] 47 C.F.R. §§ 1.21001(b)(5), 1.21002.

[111] *Nevada Wireless Order*, 13 FCC Rcd at 11978 para. 13.

[112] *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 para. 12.

[113] *See*, *e.g.*, 47 C.F.R. § 1.2109(d).

f. Duty to Report Prohibited Communications

61. Section 1.21002(c) provides that any applicant that makes or receives a communication that appears to violate section 1.21002 must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.[114] An applicant's obligation to make such a report continues until the report has been made.[115]

62. In addition, section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application.[116] Thus, section 1.65 requires an Auction 901 applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. An applicant is therefore required by section 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under section 1.21001(b)(4).[117]

63. Sections 1.65(a) and 1.21002 of the Commission's rules require each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment.[118] These rules are intended to facilitate the auction process by making the information available promptly to all participants and to enable the Bureaus to act expeditiously on those changes when such action is necessary.[119]

g. Procedure for Reporting Prohibited Communications

64. A party reporting any prohibited communication pursuant to sections 1.65, 1.21001(b), or 1.21002(c) must take care to ensure that any report of the prohibited communication does not itself give rise to a violation of section 1.21002.[120] For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

65. Parties must file only a single report concerning a prohibited communication and must file that report with Commission personnel expressly charged with administering the Commission's auctions.[121] This rule is designed to minimize the risk of inadvertent dissemination of information in such

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[114] 47 C.F.R. § 1.21002(c); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55 paras. 13-17.

[115] 47 C.F.R. § 1.21002(c).

[116] 47 C.F.R. § 1.65; *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 para. 9.

[117] *See Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 para. 9.

[118] Procedural Amendments to Commission Part 1 Competitive Bidding Rules, WT Docket No. 10-18, *Order*, FCC 10-4, 25 FCC Rcd 521, 523 para. 8 (2010) ("*Part 1 Procedural Amendments Order*").

[119] *Id.*

[120] 47 C.F.R. §§ 1.65, 1.21001(b)(3)-(5), 1.21002.

[121] *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522 para. 4. This process differs from filing procedures used in connection with other Commission rules and processes which may call for submission of filings to the Commission's Office of the Secretary or ECFS. Filing through the Office of Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants.

reports. Any reports required by section 1.21002(c) must be filed consistent with the instructions set forth in this Public Notice.[122] For Auction 901, such reports must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by e-mail to the following e-mail address: auction901@fcc.gov. If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 6423, Washington, DC 20554.

66. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in section 0.459 of the Commission's rules.[123] We encourage such parties to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.[124] This Public Notice provides additional guidance on procedures for submitting application-related information below.[125]

h. Winning Bidders May Need to Disclose Terms of Agreements

67. Each applicant that is a winning bidder may be required to disclose in its long-form applications the specific terms, conditions, and parties involved in any agreement it has entered into.[126] This may apply to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

i. Additional Information Concerning Rule Prohibiting Certain Communications

68. A summary listing of documents issued by the Commission and the Wireless Bureau addressing the application of the rule prohibiting certain communications may be found in Attachment E.[127] These documents are available on the Commission's auction web page at http://wireless.fcc.gov/auctions/prohibited_communications.

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[122] *Id*.

[123] *See* 47 C.F.R. § 0.459 (requests that materials or information submitted to the Commission be withheld from public inspection). Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with "Request for Confidential Treatment Attached" or "Not for Public Inspection." Any such request must cover all of the material to which the request applies. *See* 47 C.F.R. § 0.459(a).

[124] *See* Section VI. "Contact Information," below.

[125] *See* Section II. J. "Maintaining Current Information in Short-Form Applications," below.

[126] *See* 47 C.F.R. § 54.1005(b)(2)(xi) (applicants for Mobility Fund Phase I support will need to provide such additional information as the Commission may require).

[127] As noted above, these documents discuss the rule prohibiting certain communications in the context of competitive bidding for spectrum licenses or broadcast permits, section 1.2105(c). Applicants will find this information helpful to understanding the similar prohibition in the context of competitive bidding for Mobility Fund support.

j. Antitrust Laws

69. We also remind applicants that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.[128] Compliance with the disclosure requirements of section 1.21002 will not insulate a party from enforcement of the antitrust laws.[129] For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application.[130] Similarly, the Wireless Bureau previously reminded potential applicants and others that "[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws."[131]

70. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation.[132] If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to a forfeiture and may be prohibited from participating in future auctions, among other sanctions.[133]

3. Due Diligence

71. The Bureaus remind each potential bidder that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of Mobility Fund Phase I support it submits as a bid in Auction 901. Each bidder is responsible for assuring that, if it wins the support, it will be able to build and operate facilities in accordance with the Mobility Fund obligations and the Commission's rules generally.

72. **Applicants should be aware that Auction 901 represents an opportunity to apply for Mobility Fund support, subject to certain conditions and regulations. Auction 901 does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does Mobility Fund support constitute a guarantee of business success.**

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[128] *See* Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rulemaking*, FCC 99-384, 14 FCC Rcd 21558, 21560-61 para. 4 & n.17 (1999) quoting *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 para. 12 ("[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws."); Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion and Order*, FCC 94-264, 9 FCC Rcd 6858, 6869 n.134 (1994)("[A]pplicants will also be subject to existing antitrust laws.") ("*Fourth Memorandum Opinion and Order*").

[129] *See Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 para. 12. *See also* "Justice Department Sues Three Firms Over FCC Auction Practices," *Press Release* 98-536 (DOJ Nov. 10, 1998).

[130] *See, e.g.*, *Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6869 n.134. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other. *Id.*

[131] *Anti-Collusion Public Notice*, 11 FCC Rcd at 9646.

[132] *See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 para. 226.

[133] *See* 47 C.F.R. § 1.2109(d); *see also Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 para. 226.

73. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureaus strongly encourage each potential bidder to review all underlying Commission orders, including the *USF/ICC Transformation Order*.[134] Each potential bidder should perform technical analyses or refresh its previous analyses to assure itself that, should it become a winning bidder for Mobility Fund Phase I support, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. The Bureaus strongly encourage each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to construct transmitters with Mobility Fund support, to confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding environmental compliance.[135]

74. The Bureaus strongly encourage each applicant to conduct its own research prior to Auction 901 in order to determine the existence of pending administrative or judicial proceedings, including pending allocation rulemaking proceedings that might affect its decision to participate in the auction. The due diligence considerations mentioned in this Public Notice do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

75. The Bureaus also remind each applicant that pending and future judicial proceedings, as well as certain pending and future proceedings before the Commission – including applications, applications for modification, petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review – may relate to particular licensees or applicants for support in Auction 901. Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on Mobility Fund Phase I support available through this auction.

76. **Each applicant is solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect its ability to bid on or otherwise receive Mobility Fund Phase I support.** Each potential bidder is responsible for undertaking research to ensure that any support won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

77. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

4. Use of FCC Auction System

78. Bidders will be able to participate in Auction 901 over the Internet using the FCC Auction System. The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of

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[134] *See*, *generally*, *USF/ICC Transformation Order*.

[135] 47 C.F.R. Part 1, Subpart I.

business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

5. Fraud Alert

79. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 901 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service, Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

80. Information about deceptive telemarketing investment schemes is available from the FCC as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from the following sources:

- the FCC's Consumer Call Center at (888) 225-5322 or by visiting http://wireless.fcc.gov/csinfo#fraud
- the FTC at (877) FTC-HELP ((877) 382-4357) or by visiting http://ftc.gov/bcp/edu/pubs/consumer/invest/inv03.shtm
- the SEC at (202) 942-7040 or by visiting http://sec.gov/cgi-bin/txt-srch-sec?text=fraud&section=Investor+Information&x=8&y=5.

Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060.

6. Environmental Review Requirements

81. Recipients of Mobility Fund support, like all licensees, must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes.[136] The construction of a wireless antenna facility is a federal action, and any entity constructing a wireless antenna facility must comply with the Commission's environmental rules for each such facility.[137] The Commission's environmental rules require, among other things, that the

[136] 47 C.F.R. Part 1, Subpart I.

[137] 47 C.F.R. §§ 1.1301-1.1319.

entity constructing the facility consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the entity constructing the facility must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.[138] The entity must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The entity also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission, or that are over 450 feet in height.[139] Facilities that require antenna registration will also be required to complete an environmental notification process.[140]

II. SHORT-FORM APPLICATION REQUIREMENTS

A. General Information Regarding Short-Form Applications

82. An application to participate in Auction 901, referred to as a short-form application or FCC Form 180, provides information used to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for universal service funding support.[141] The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, each party desiring to participate in the auction must file a streamlined, short-form application in which it certifies under penalty of perjury as to its qualifications.[142] Each applicant must take seriously its duties and responsibilities and carefully determine before filing an application that it has the legal, technical and financial resources to participate in the auction and be able to meet the public interest obligations associated with Mobility Fund Phase I support. Eligibility to participate in bidding is based on the applicant's short-form application and certifications, as explained below. In the second phase of the process, each winning bidder must file a more comprehensive long-form application (FCC Form 680).

83. Every entity seeking support available in Auction 901 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on July 11, 2012. The short-form application requires each applicant to establish its eligibility for bidding for Mobility Fund Phase I support. Among other things, to establish eligibility at the short-form stage, an applicant must certify that it is a designated ETC in any geographic area for which it will seek support or that it is a Tribally-owned or controlled entity with a pending application for ETC designation, and provide the Study Area Code(s) (SAC(s)) associated with its ETC designation and/or provide the name(s) of its corresponding Tribal land(s) in lieu of a SAC. Each applicant will also be required to provide a general narrative description of its access to the spectrum it plans to use to meet Mobility Fund obligations in the particular area(s) for which it plans to bid and certify that it will retain its access to the spectrum for at least five years from the

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[138] 47 C.F.R. Part 1, Appendix C.

[139] The requirement to prepare environmental assessments for towers over 450 feet in height is pending approval by the Office of Management and Budget (OMB).

[140] *See* National Environmental Policy Act Compliance for proposed Tower Registrations, WT Docket Nos. 08-61, 03-187, *Order on Remand*, FCC 11-181, 26 FCC Rcd 16700 (2011). This requirement is also pending OMB approval.

[141] 47 C.F.R. § 1.21001.

[142] *Id*.

date of award of support. If an applicant claims eligibility for a Tribal land bidding credit as a Tribally-owned or controlled[143] entity, the information provided in its FCC Form 180 will be used in determining whether the applicant is eligible for the claimed bidding credit. Below we describe more fully the information disclosures and certifications required in the short-form application. Each applicant filing a short-form application is subject to the Commission's rule prohibiting certain communications beginning on the deadline for filing, as described above.[144]

84. Each applicant bears full responsibility for submitting an accurate, complete and timely short-form application. Each applicant must certify on its short-form application under penalty of perjury that it is legally, technically, financially and otherwise qualified to receive universal service support funding.[145] Each applicant should consult the Commission's rules to ensure that, in addition to the materials described below, all the information required is included in its short-form application.

85. A party may not submit more than one short-form application for Auction 901. If a party submits multiple short-form applications, only one application may be accepted for filing.

86. Each applicant also should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. An applicant is not permitted to make major modifications to its application; such impermissible changes include a change of the certifying official to the application.[146] Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, the forfeiture of universal service support, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. SAC Identification

87. An applicant will not be required to select the specific census blocks on which it wishes to bid when submitting its short-form application. Based on the SAC(s) or Tribal land(s) information entered by an applicant, the FCC Auction System will identify eligible tracts and blocks in the associated state(s) or Tribal land(s) for each applicant during the application process.

C. Disclosure of Bidding Arrangements

88. An applicant will be required to identify in its short-form application all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding for Mobility Fund support.[147]

89. Each applicant will also be required to certify under penalty of perjury in its short-form application that it has disclosed all real parties in interest to any agreements involving the applicant's participation in the competitive bidding for Mobility Fund support.[148] If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the

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[143] *See* Section II.F. "Tribally-Owned or Controlled Providers – 25% Bidding Credit," below.

[144] Section I.D.2. "Prohibited Communications and Compliance with Antitrust Laws."

[145] 47 C.F.R. § 1.21001(b)(6).

[146] 47 C.F.R. § 1.21001.

[147] 47 C.F.R. § 1.21001(b)(3).

[148] 47 C.F.R. § 1.21001(b)(4).

names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.[149]

90. Moreover, each applicant will also be required to certify under penalty of perjury in its short-form application that it and all applicable parties have complied with and will continue to comply with section 1.21002 of the Commission's rules.[150] While section 1.21002 does not prohibit non-auction-related business negotiations among auction applicants, we remind applicants that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.[151] Further, as discussed above, compliance with the disclosure requirements of section 1.21002 of the Commission's rules will not insulate a party from enforcement of the antitrust laws.[152]

D. Ownership Disclosure Requirements

91. Each applicant must comply with the uniform Part 1 ownership disclosure standards and provide information required by sections 54.1005(a)(1) and 1.2112(a) of the Commission's rules.[153] Specifically, in completing the short-form application, an applicant will be required to fully disclose information on the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more, as prescribed in section 1.2112(a) of the Commission's rules.[154] Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

92. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 180) (such as information submitted in an FCC Form 602 or in an FCC Form 175 filed for a previous Commission spectrum license auction using the FCC Auction System), will automatically be entered into the applicant's short-form application. Each applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Any information that needs to be corrected or updated must be changed directly in the short-form application.

E. Specific Mobility Fund Phase I Eligibility Requirements and Certifications

1. ETC Designation Certification

93. In the *USF/ICC Transformation Order*, the Commission concluded that, in order to apply to participate in an auction offering Mobility Fund support, any entity first had to be designated as an ETC pursuant to Section 214 of the Communications Act in any geographic area for which it seeks support, with one narrow exception for Tribally-owned or controlled entities.[155] An applicant must be the

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[149] Section I.D.2. "Prohibited Communications and Compliance with Antitrust Laws," above.

[150] 47 C.F.R. §§ 1.21001(b)(5), 1.21002.

[151] Section I.D.2. "Prohibited Communications and Compliance with Antitrust Laws," above.

[152] *Id*.

[153] *See* 47 C.F.R. §§ 1.2112(a), 1.21001(b)(1), 54.1005(a)(1). *See also USF/ICC Transformation Order*, 26 FCC Rcd at 17804 para. 418. 47 C.F.R. § 54.1005(a)(1) requires the disclosure on the short-form application of the applicant's ownership information as set forth in 47 C.F.R. § 1.2112(a).

[154] 47 C.F.R. §§ 1.2112(a), 54.1005(a)(1).

[155] *USF/ICC Transformation Order*, 26 FCC Rcd at 17769 para. 289; *see also* 47 U.S.C. § 214.

entity designated by a State or the Commission as an ETC in that geographic area. For example, if a designated ETC is a subsidiary of a parent holding company, only the subsidiary that is designated an ETC, and not the holding company, would be eligible to participate in the auction. For purposes of participation in the Mobility Fund, a party's ETC designation may not be limited in any way. Accordingly, a party designated as an ETC solely for purposes of the Low Income Program cannot satisfy the ETC eligibility requirement for the Mobility Fund on that basis.[156] Of course, nothing prohibits such a party from seeking a general designation as an ETC and then, if it receives such a designation, participating in the Mobility Fund.

94. ETC status carries with it certain obligations. So that a party might obtain the required ETC designation but not be subject to those obligations unless and until it wins any Mobility Fund support, the Commission further determined that a party might participate with an ETC designation conditioned upon the party winning support in the auction.[157] At the short-form application stage, an applicant will be required to state that it is designated as an ETC in any area for which it will seek support or is a Tribal entity with a pending application to become an ETC in any such area, and certify that the disclosure is accurate. A winning bidder will be required to provide proof of its ETC designation in all of the areas in which it will receive support before it may receive support.

95. *Pending ETC Designations*. The Commission further decided to permit participation by a Tribally-owned or controlled entity[158] that at the short-form application deadline has an application for ETC designation pending for the provision of service within the boundaries of the associated Tribal land.[159] The Commission did so to afford Tribes an increased opportunity to participate at auction, in recognition of their interest in self-government and self-provisioning on their own lands.[160] A Tribally-owned or controlled entity whose application for ETC designation remains pending at the short-form application deadline is requested to provide the date the application was filed, with whom (*i.e.* the Commission or relevant state regulatory agency), any file or case number associated with the application, and its current status.

2. Access to Spectrum Description and Certification

96. Pursuant to the *USF/ICC Transformation Order*, any applicant for Auction 901 must have access to the necessary spectrum to fulfill any obligations related to support.[161] In an application to

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[156] NTCH has filed a petition for reconsideration of the *USF/ICC Transformation Order*, in which it seeks in part clarification or reconsideration regarding whether Lifeline-only ETCs may participate in the Mobility Fund. *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Petition for Reconsideration of NTCH, Inc. (filed Dec. 29, 2011) ("*NTCH Petition*"). The Bureaus' discussion of the current rule in no way prejudges the Commission's review and action on the pending petition.

[157] *USF/ICC Transformation Order*, 26 FCC Rcd at 17809 para. 439; *see* 47 C.F.R. § 54.1003(a).

[158] Only the following entities may be designated as qualifying Tribal entities: (1) Tribes, which, as previously defined, are federally-recognized American Indian Tribes and Alaska Native Villages; (2) Tribal consortia; and (3) entities that are more than 50 percent owned and controlled by a Tribe or Tribes.

[159] *USF/ICC Transformation Order*, 26 FCC Rcd at 17823 para. 491; 47 C.F.R. § 54.1004(a).

[160] However, allowing such participation at auction in no way prejudges the ultimate decision on a Tribally-owned or controlled entity's petition for ETC designation. Moreover, support will be disbursed only after an applicant receives such designation. A Tribally-owned or controlled entity that does not obtain and provide the required ETC designation will not be entitled to any support payments and may ultimately be in default in accordance with the rules. *See* 47 C.F.R. § 54.1005(b)(3)(v); 47 C.F.R. § 1.21004.

[161] *USF/ICC Transformation Order*, 26 FCC Rcd at 17799 para. 394.

participate in Auction 901, each applicant must describe its required spectrum access and certify that the description is accurate and the applicant will retain such access for at least five (5) years from the date on which it is authorized to receive support.[162] Specifically, an applicant will be required to disclose whether it currently holds or leases the spectrum and whether such spectrum access is contingent on obtaining support in Auction 901. For the described spectrum access to be sufficient as of the date of the short-form application, the applicant must obtain any necessary approvals from the Commission for the spectrum access prior to filing the application.[163] A pending request for such an approval is not sufficient to satisfy this requirement. Furthermore, only assured access is sufficient, which means that the access must be to licensed spectrum subject to limited access.[164] Accordingly, the applicant should identify the license applicable to the spectrum to be accessed, the licensee, and, if the licensee is a different party than the applicant, the relationship between the applicant and the licensee that provides the applicant with the required access. With the exception of the certification, the terms of which are set forth in FCC Form 180, an applicant must provide all required information relating to spectrum access in an attachment to FCC Form 180, designated as a "Spectrum Access" attachment.

3. Financial and Technical Capability Certification

97. The Commission requires that an applicant certify in the pre-auction short-form application that it is financially and technically capable of providing 3G or better service within the specified timeframe in the geographic areas for which it seeks support.[165] This certification indicates that an applicant for Mobility Fund Phase I funds can provide the requisite service without any assurance of ongoing support for the areas in question after Mobility Fund Phase I support has been exhausted. An applicant should be aware that in making a certification to the Commission it exposes itself to liability for a false certification. An applicant should take care to review its resources and its plans before making the required certification and be prepared to document its review, if necessary.

4. Certification that Applicant Will Not Seek Support for Areas in Which It Has Made a Public Commitment to Deploy 3G or Better Service by December 31, 2012

98. The Commission requires each applicant for Mobility Fund Phase I support to certify that the applicant will not seek support for any areas in which it has made a public commitment to deploy 3G or better wireless service by December 31, 2012.[166] In determining whether an applicant has made such a public commitment we would consider any public statement made with some specificity as to both geographic area and time period as well as level of service. For example, in the public record generated in response to the *Auction 901 Comment Public Notice*, which sought comment on a list of census blocks potentially eligible for Mobility Fund Phase I support, more than one party publicly identified areas that

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[162] 47 C.F.R. § 54.1005(a)(4).

[163] 47 C.F.R. § 54.1005(a)(4) (as amended by *Connect America Fund et al*., WC Docket No. 10-90 et al., *Order*, DA 12-147, 27 FCC Rcd 605 (WCB/WTB 2012) ("*USF/ICC Clarification Order*")).

[164] Townes Telecommunications, Inc. has filed a petition for reconsideration of the *USF/ICC Transformation Order*, in which it seeks clarification or reconsideration determining that access to unlicensed spectrum is sufficient to meet the spectrum access requirement. *See Connect America Fund et al.,* WC Docket No. 10-90 et al., Petition for Reconsideration of Townes Telecommunications, Inc. (filed Dec. 29, 2011). The Bureaus' discussion of the current rule in no way prejudges the Commission's review and action on the pending petition.

[165] *USF/ICC Transformation Order*, 26 FCC Rcd 17801 at para. 401.

[166] *Id*. at 17802-03 para. 410; 47 C.F.R. § 54.1005(a)(5).

they intend to cover with 3G or better service no later than December 31, 2012.[167] This requirement helps to assure that Mobility Fund Phase I support will not go to finance coverage that carriers would have provided in the near term without any subsidy. Furthermore, the requirement may conserve funds and avoid displacing private investment by making a carrier that made such a commitment ineligible for Mobility Fund Phase I support with respect to the identified geographic area(s). Because circumstances are more likely to change over a longer term, we do not hold providers to any statements for any time period beyond December 31, 2012. Applicants should note that this restriction does not prevent a party from seeking and receiving support for an eligible geographic area where another provider has announced such a commitment to deploy 3G or better.[168]

F. Tribally-Owned or Controlled Providers – 25% Reverse Bidding Credit

99. The Commission adopted a 25 percent "reverse" bidding credit for Tribally-owned or controlled providers seeking either general or Tribal Mobility Fund Phase I support.[169] In order to be eligible for the bidding credit, a qualifying Tribally-owned or controlled provider must certify in its short-form application that it is qualified and identify the applicable Tribe and Tribal lands.[170]

100. The bidding credit will effectively reduce the Tribal entity's bid amount by 25 percent for the purpose of comparing it to other bids, thus increasing the likelihood that Tribally-owned and controlled entities will receive funding. If the Tribally-owned or controlled entity were to win, support would be calculated at the full, undiscounted bid amount. The preference is available with respect to the eligible census blocks located within the geographic area defined by the boundaries of the Tribal land associated with the Tribally-owned or controlled provider seeking support.

G. Commission Red Light Rules

101. Applications to participate in Auction 901 are subject to the Commission's rules regarding an applicant with delinquent debts, often referred to as the Commission Red Light Rules.[171] Pursuant to the Red Light Rules, unless otherwise expressly provided for, the Commission will withhold action on an application by any entity found to be delinquent in its debt to the Commission for purposes of the Red Light Rule.[172] Accordingly, parties interested in filing applications to participate in Auction 901 should review the status of any debts that they owe the Commission before submitting their application and resolve any delinquent debts. The Commission maintains a Red Light Display System (RLD) to enable entities doing business with the FCC to determine if they have any outstanding delinquent debt. The RLD enables a party to check the status of its account by individual FCC

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[167] *See*, *e.g.*, Mid-Rivers ECB Comments at 4, stating "Mid-Rivers Wireless is in the midst of a 3G network upgrade that will be completed well in advance of the September 27, 2012, Auction[.]" *See also* WUE ECB Comments at 2 ("Based on the attached showings, WUE is providing (or will by the close of the comment period provide) 3G service to the census blocks identified in Attachment A.").

[168] *USF/ICC Transformation Order*, 26 FCC Rcd at 17802-3 para. 410.

[169] *See id.* at 17823 para. 490; 47 C.F.R. § 54.1004(c); *see also* "Further Inquiry into Tribal Issues Relating to Establishment of a Mobility Fund, WT Docket No. 10-208," *Public Notice*, DA 11-702, 26 FCC Rcd 5997 (2011).

[170] 47 C.F.R. § 54.1004(c).

[171] Parties familiar with spectrum license auctions should note that the stricter spectrum license application rules supersede the Commission's Red Light Rules in the context of a spectrum license auction. *See* 47 C.F.R. § 1.1902(f). No corresponding provision applies with respect to Auction 901, however. Accordingly, the Commission's standard Red Light Rules will apply.

[172] 47 C.F.R. § 1.1910(b)(2).

Registration Numbers (FRNs), and links other FRNs sharing the same Tax Identification Number (TIN) when determining whether there are outstanding delinquent debts. The RLD is available at http://www.fcc.gov/redlight/. Additional information is available at http://transition.fcc.gov/debt_collection/.

H. USF Debarment

102. The Commission's rules provide for the debarment of those convicted of or found civilly liable for defrauding the high-cost support program.[173] Applicants are reminded that those rules apply with equal force to the Mobility Fund Phase I.

I. Minor Modifications to Short-Form Applications

103. After the deadline for filing initial applications, an Auction 901 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of the addresses and telephone numbers of the applicant and its contact person. An applicant is not permitted to make a major modification to its application (*e.g.*, change in control of the applicant or change of the certifying official) after the initial application filing deadline.[174] Thus, any change in control of an applicant, resulting from a merger, for example, will be considered a major modification, and the application will consequently be dismissed.[175]

104. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button. After the revised application has been submitted, a confirmation page will be displayed that states the submission time, submission date and a unique file number.[176]

105. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application other than administrative changes (e.g., changing certain contact information or the name of an authorized bidder). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the FCC Auction System once it is available. Moreover, after the filing window has closed, the system will not permit applicants to make certain changes, such as the applicant's legal classification.

106. Any letter describing changes to an applicant's short-form application must be submitted by e-mail to auction901@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 901 and the name of the applicant, for example, "RE: Changes to Auction 901 Short-Form Application of ABC Corp." The Bureaus request that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

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[173] 47 C.F.R. § 54.8.

[174] 47 C.F.R. § 1.21001(d).

[175] We reiterate that, even if an applicant's short-form application is dismissed, the applicant would remain subject to the communication prohibitions of 47 C.F.R. § 1.2105(c) until the long form application deadline after the auction closes.

[176] The Bureaus advise applicants to print and retain a copy of this confirmation page.

107. Any application amendment and related statements of fact must be certified by an appropriate party. For example, one of the partners if the applicant is a partnership; or an officer, director, or duly authorized employee, if the applicant is a corporation; or a member who is an officer, if the applicant is an unincorporated association.[177]

108. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System ("ECFS"), which was used for submitting comments regarding Auction 901. Further, as discussed above, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate section 1.21002 or the limited information procedures adopted for Auction 901.[178] A party seeking to submit information that might reflect non-public information should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to section 1.21002.

J. Maintaining Current Information in Short-Form Applications

109. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application.[179] If an amendment reporting changes is a "major amendment," as defined by section 1.21001(d)(4), the major amendment will not be accepted and may result in the dismissal of the application.[180] As noted above, after the application filing deadline, applicants may make only minor changes to their applications. For changes to be submitted and considered by the Commission, be sure to click on the SUBMIT button in the FCC Auction System. In addition, an applicant cannot update its short-form application using the FCC Auction System after the initial and resubmission filing windows close. If information needs to be submitted pursuant to section 1.65 after these windows close, a letter briefly summarizing the changes must be submitted by e-mail to auction901@fcc.gov. This e-mail must include a subject or caption referring to Auction 901 and the name of the applicant. The Bureaus request that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Applicants must not submit application-specific material through ECFS. A party seeking to submit information that might reflect non-public information should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to section 1.21002.

III. PRE-AUCTION PROCEDURES

A. Online Auction Tutorial – Available June 27, 2012

110. No later than Wednesday, June 27, 2012, the Commission will post an educational auction tutorial on the Auction 901 web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction System, auction rules, and Mobility Fund rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

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[177] *See* 47 C.F.R. § 1.917.

[178] *See* Section I.D.2.f. "Duty to Report Prohibited Communications," above.

[179] 47 C.F.R. § 1.65.

[180] 47 C.F.R. § 1.21001(d)(4).

111. This interactive, online tutorial should provide an efficient and effective way for interested parties to further their understanding of the auction process. The Auction 901 online tutorial will allow viewers to navigate the presentation outline, review written notes, listen to audio of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, e-mail links for contacting Commission licensing and auction staff, and a timeline with deadlines for auction preparation. The online tutorial will be accessible through a web browser with Adobe Flash Player.[181] As always, Commission staff will be available to promptly answer questions posed by telephone and e-mail throughout the auction process.[182]

112. The auction tutorial will be accessible from the FCC's Auction 901 web page at http://wireless.fcc.gov/auctions/901/ through an "Auction Tutorial" link. Once posted, this tutorial will remain available for reference in connection with the procedures outlined in this Public Notice and accessible anytime.

B. Short-Form Applications – Due Prior to 6:00 p.m. ET on July 11, 2012

113. In order to be eligible to bid in this auction, applicants must first follow the procedures to submit a short-form application (FCC Form 180) electronically via the FCC Auction System. This short-form application must be submitted prior to 6:00 p.m. ET on July 11, 2012. **Late applications will not be accepted.** No application fee is required.

114. Applications may generally be filed at any time beginning at noon ET on June 27, 2012, until the filing window closes at 6:00 p.m. ET on July 11, 2012. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the filing deadline on July 11, 2012.

115. An applicant must always click on the SUBMIT button on the "Certify & Submit" screen to successfully submit its FCC Form 180 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 180 will be provided in a separate public notice. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

C. Application Processing and Minor Corrections

116. After the deadline for filing FCC Form 180 applications, Commission staff will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those that are complete; (2) those that are rejected; and (3) those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

117. As described above, after the application filing deadline on July 11, 2012, applicants can make only minor corrections to their applications.[183] They will not be permitted to make major modifications (*e.g.*, change control of the applicant or change of the certifying official).[184]

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[181] Most users will already have the Flash Player browser plug-in, which can be downloaded from http://get.adobe.com/flashplayer/.

[182] Contact information for subject matter experts may be found in Section VI. of this Public Notice, below.

[183] *See* Section II.J. "Minor Modifications to Short-Form Applications," above.

118. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf.[185] Authorizations may be sent by e-mail to auction901@fcc.gov.

D. Auction Registration

119. Approximately ten days before the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted FCC Form 180 applications that are deemed timely-filed, accurate, and complete.

120. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 180 and will include the SecurID® tokens that will be required to place bids, the "FCC Auction System Bidder's Guide," and the Auction Bidder Line phone number.

121. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, September 20, 2012, should call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

122. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

E. Remote Electronic Bidding

123. The Commission will conduct this auction over the Internet. Only qualified bidders are permitted to bid. Each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. A bidder cannot bid without their SecurID tokens. **For security purposes, the SecurID® tokens, a telephone number for bidding questions, and the "FCC Auction System Bidder's Guide" are only mailed to the contact person at the contact address listed on the FCC Form 180.** Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 901.

124. Please note that the SecurID® tokens can be recycled and the Bureaus encourage bidders to return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once the auction has ended.

(Continued from previous page)

[184] 47 C.F.R. § 1.21001(d)(4); *see also* Two Way Radio of North Carolina, Inc., *Memorandum Opinion and Order*, FCC 99-189, 14 FCC Rcd 12035 (1999).

[185] In no event, however, will the Commission send auction registration materials to anyone other than the contact person listed on the applicant's FCC Form 180 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 180. *See* Section III.D. "Auction Registration," below.

F. Mock Auction – September 25, 2012

125. All qualified bidders will be eligible to participate in a mock auction on Tuesday, September 25, 2012. The mock auction will enable qualified bidders to become familiar with the FCC Auction System and to practice submitting bids prior to the auction. We strongly recommend that all qualified bidders participate to gain experience with the bidding procedures. Details will be announced by public notice.

IV. AUCTION EVENT

A. Auction Structure – Reverse Auction Mechanism

126. Auction 901 will be held on Thursday, September 27, 2012. The start and finish time of the bidding round will be announced in a public notice listing the qualified bidders, which will be released approximately 10 days before the start of the auction. Our choice of auction design for Auction 901 – a single round format with other design characteristics described below – is specific to the particular context of the Mobility Fund Phase I auction.[186] The choices we make here do not prejudge our future auction design choices for other phases of the Mobility Fund or other competitive bidding mechanisms related to the USF.

1. Single Round Sealed Bid Reverse Auction Format

127. As proposed in the *Auction 901 Comment Public Notice*, we will conduct Auction 901 using a single round of bidding. Several commenters address our proposal to use a single round auction. AT&T, Blooston, and NASUCA support the proposal, with Blooston noting that it believes a multiple round auction may favor large carriers over small and rural carriers.[187] Verizon recommends a maximum of three rounds, so that bidders can adjust their bids based on auction conditions.[188]

128. Two other commenters indicate a preference for a multiple round auction format. Belloni et al. assert that a single round format would not give bidders adequate opportunity to express their bid strategies, which could involve complex interactions under the bidder-defined combinatorial design that was proposed.[189] Power Auctions also favors a multiple round approach, claiming that it would be strategically simpler for bidders, would enable bidders to adjust the geography of their bids based on other bidders' interests, would economize on bid evaluation costs, and would enable a higher number of road miles to be covered within the budget.[190]

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[186] A few commenters oppose the use of competitive bidding to disburse universal service funds. NTCA Reply at 1, *see also* Blooston Comments at 2 (noting opposition to use of auctions in pending petition for reconsideration). The Commission decided to use a reverse auction for Mobility Fund Phase I in the *USF/ICC Transformation Order* and that decision is not subject to review here by the Bureaus. *USF/ICC Transformation Order*, 26 FCC Rcd at 17781 para. 322. We note that pending Petitions for Reconsideration of the *USF/ICC Transformation Order* present the same issue. *See, e.g., Connect America Fund et al.,* WC Docket No. 10-90 et al., Petition for Reconsideration of Blooston Rural Carriers (filed Dec. 29, 2011). The Bureaus' action here in no way prejudges the Commission's review and action on the pending petitions.

[187] AT&T Comments at 4; NASUCA et al. Comments at 9; Blooston Comments at 6.

[188] Verizon Comments at 4.

[189] Belloni et al. Comments at 3-7. They further argue that the cost of obtaining relevant information about the costs facing other bidders would be lower under a multiple round format. Belloni et al. Reply at 1-2.

[190] Power Auctions Reply at 2.

129. We conclude that a multiple round auction would not be appropriate in the context of the Mobility Fund Phase I, especially in light of the complications involved in conducting multiple rounds with many thousands of items.[191] We recognize that multiple round auctions can have important advantages, and in fact, the Commission generally uses a multiple round format for its spectrum license auctions. However, we do not believe that the circumstances favoring a multiple round auction – i.e., when there are strong interactions among items and when bidders are unsure as to the market value of the item – are significant enough here to outweigh our concerns about the complexity it would add to the auction. As a result, we will conduct Auction 901 using a single round of bidding.

130. We received several comments addressing the alternative single round, Milgrom/Eilat-type auction format that we mentioned briefly in the *Auction 901 Comment Public Notice*.[192] We do not adopt the particular other features of that auction design here, but we note that our choices here do not preclude consideration of other auction designs for future auctions.

2. Aggregation Method – Predefined Aggregations

a. Census Blocks Aggregated to Census Tracts

131. Consistent with the framework laid out by the Commission in the *USF/ICC Transformation Order*, in the *Auction 901 Comment Public Notice* the Bureaus discussed several approaches to aggregating census blocks for bidding, noting that some aggregation of census blocks will be necessary because census blocks are on average far smaller than the average area covered by a single cell tower, which is likely to be the minimum incremental geographic area of expanded coverage.[193] The *Auction 901 Comment Public Notice* proposed an approach that would give bidders the ability to create a limited number of package bids of blocks within a CMA – the bidder-defined option – and also described a predefined aggregation option whereby bidders would bid to cover the eligible blocks within census tracts.[194] The record we received in response to our *Auction 901 Comment Public Notice* was mixed. As we discuss in more detail below, based largely on considerations of speed and simplicity of implementation, we conclude that we will use predefined aggregations of eligible census blocks – i.e., census tracts – for bidding in Auction 901.

132. We received comments on our auction design aggregation options from a number of parties – small and rural carriers, large carriers, and academic auction experts. Generally, the carriers are split on which of the aggregation approaches we should adopt. The small and rural carriers that prefer the bidder-defined approach generally do so based on an interest in tailoring their bids to those areas where they hold spectrum and ETC status.[195] Small and rural carriers that prefer the predefined option cite the greater simplicity and transparency of the auction process made possible by that approach.[196] In supporting the predefined option, Blooston additionally indicates a preference for bidding on packages no larger than a census tract.[197]

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[191] AT&T Reply at 8 (noting the additional complications for bidders).

[192] *See, e.g.*, AT&T Comments at 17-18; McAdams Reply at 18-19; Power Auctions Reply at 3.

[193] *Auction 901 Comment Public Notice*, 27 FCC Rcd at 538 para 28.

[194] *Id.* at 538-43 paras. 28-50.

[195] RTG Comments at 5; RTG Reply at 4-5; US Cellular Comments at 8-9; Mid-Rivers Reply at 6-7.

[196] Blooston Comments at ii-iii, 7-8; NTCH Comments at 2-3.

[197] Blooston Comments at 7.

133. The larger carriers that favor the bidder-defined approach also indicate a general interest in tailoring their bids more specifically to targeted areas, and suggest that the bidder-defined option will encourage participation.[198] US Cellular, while supporting the bidder-defined option, requests that bidders be able to upload bids on a tract basis to help avoid errors, and notes a general interest in simplicity.[199] AT&T, on the other hand, supports the predefined tract option, basing its preference on an interest in transparency, manageability, and strategic and computational simplicity.[200]

134. Several academic auction experts – in Economics, Decision Sciences, and Operations Research – weighed in on the auction design issues discussed in the *Auction 901 Comment Public Notice* and propose alternatives to the options we suggested.[201] Some of the experts additionally discuss the strategic and computational complexity associated with the combinatorial optimization required for the bidder-defined option.[202] Others note more generally the importance of a strategically simple auction format.[203]

135. Given the schedule for the Mobility Fund Phase I auction, the record received, and the amount of support being provided here, we adopt a predefined aggregation approach, largely on considerations of speed and simplicity of implementation. Under that approach, all eligible census blocks will be grouped by the census tract in which they are located, and bidders will be able to bid for support for the eligible census blocks in a census tract, not on individual blocks. For each tract a bidder bids on, the bidder will indicate a per-unit price to cover the road miles in the eligible census blocks within that tract. The auction will assign support to awardees equal to the per-road mile rate of their bid multiplied by the number of road miles associated with the eligible census blocks within the tract as shown in the files provided by the Bureaus. Bidders may bid on multiple tracts and win support for any or all of them.[204] Awardees will be required to cover a given percentage of the total eligible units in the tract – that is, a percentage of the total road miles that are in the eligible census blocks in the tract. Blocks in Alaska will not be aggregated for bidding, however, and bidders can place bids for support on individual census blocks in Alaska.[205] We also modify our tract aggregation approach for some tracts that include census blocks covering Tribal lands.

136. The Bureaus conclude that aggregating census blocks into tracts for bidding, except in Alaska, will provide a manageable bidding process, both for participants and the Commission, particularly in light of the speed with which we want to proceed in distributing this one-time support. As noted in the *Auction 901 Updated Blocks Public Notice*, our list of potentially eligible census blocks includes over 460,000 blocks; bundled into tracts for bidding, there are approximately 6,100 tracts.

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[198] US Cellular Reply at 7-10; Verizon Comments at 2. Verizon supported this approach so that bidders could have "input into what they can do, where they can deploy, and how much subsidy is required." *Id*.

[199] US Cellular Comments at 8.

[200] AT&T Comments at 3-17; AT&T Reply at 1-10.

[201] Belloni et al. Comments and Belloni et al Reply; Pekeč Comments and Pekeč Reply; Power Auctions Reply; McAdams Reply.

[202] Pekeč Comments at 2-3; Pekeč Reply at 2; Belloni et al. Comments at 2; Belloni et al. Reply at 2.

[203] McAdams Reply at 5-6; Power Auctions at 2.

[204] As discussed below in para. 137, this approach requires separate bids on individual census tracts.

[205] This exception for Alaska is discussed further below, in Section IV.A.2.b.

137. The predefined aggregation option that we adopt does not permit package bidding – that is, it does not permit bidders to create their own groupings of census tracts on which to submit all-or-nothing bids. It does allow bidders to bid on as many individual tracts as they wish, and to win support for any or all of those tracts. The absence of explicit package bidding simplifies the process of determining which bids will be awarded support, relative to the proposed bidder-defined option (that allows bidders to create packages of census blocks), and consequently, may simplify the bidding process.[206]

b. Exception, for Alaska, to Aggregation by Census Tract

138. As mentioned above, we will not aggregate eligible census blocks in Alaska into tracts for bidding, but will permit bidders to bid for support for individual census blocks. Bidders seeking support for eligible blocks in Alaska will indicate a per-unit price to cover the road miles in the eligible census block. The auction will assign support to awardees equal to the per-road mile rate of their bid multiplied by the number of road miles associated with the eligible census block, as shown in the files provided by the Bureaus. Bidders may bid on multiple blocks – including, if they wish, all the eligible census blocks in a tract, but they will have to bid on the blocks individually – and may win support for any or all of them.

139. In the *Auction 901 Comment Public Notice*, we sought comment on this alternative approach for areas in Alaska under the suggested predefined aggregation option, which we adopt here.[207] In the *USF/ICC Transformation Order*, the Commission noted the large size of census blocks in Alaska, and in the *Auction 901 Comment Public Notice*, we further pointed out that the average area of the Alaska census blocks on the preliminary list of eligible areas is approximately 40 square miles compared to an average area of approximately 1.1 square miles for blocks in the rest of the country.[208] Commenters do not address this particular question specifically, but given the extreme difference in average size of census areas in Alaska relative to those in the rest of the country, and because census blocks in Alaska may be closer in size to a minimum scale of buildout than are most blocks elsewhere, we believe it will be helpful to give bidders the flexibility to bid on individual census blocks in Alaska.

140. We do not, however, make a more general size-based exception to our decision to conduct bidding on a census tract basis. In the *Auction 901 Comment Public Notice*, we also asked whether outside of Alaska, in areas where tracts exceed a certain size, we should use a geographic area other than tracts, but we received only limited response. Mid-Rivers notes the Commission's recognition that the large size of census blocks in Alaska may require bidding on individual census blocks, and argues that large census blocks are "also a concern in very rural areas of the Continental U.S. including Montana."[209] Mid-Rivers states that census tracts in its service areas are often very large but they do not specifically advocate bidding by blocks in those areas; in a related context, they support allowing bidders to bid on areas corresponding to their licensed areas, which in Mid-Rivers' case include fill-in spectrum

[206] Because of the simple auction design we are adopting, we will not need to use a combinatorial optimization algorithm to determine winning bids. This obviates the need to publish such an algorithm prior to the auction, as several commenters request. *See, e.g.*, AT&T Comments at 6; USA Coalition Reply at 3; Verizon Comments at 4; US Cellular Reply at 10.

[207] *Auction 901 Comment Public Notice*, 27 FCC Rcd at 541 para. 41.

[208] *USF/ICC Transformation Order*, 26 FCC Rcd at 17788 para. 347. *See also Auction 901 Comment Public Notice*, 27 FCC Rcd at 541 para. 41.

[209] Mid-Rivers Reply at 5-7

areas.[210] An analysis of the census blocks in the list from the *Auction 901 Updated Blocks Public Notice* demonstrates that the average size of the blocks in Alaska are much larger than the average size of the blocks in other states, including Montana. The average size of the Montana areas are much closer to the average size of the areas in the other 48 states than they are to the average size of the areas in Alaska.[211] We also note that other states have larger average block and tract sizes than Montana. Thus, based on this record (including the absence of any input on an appropriate size cutoff point at which we would switch from bidding on a tract basis to bidding on a block basis), we decline to extend our provisions for block-by-block bidding beyond Alaska.

c. Census Block Aggregation for Tracts with Tribal Lands

141. Another exception to aggregation by census tract will exist for some tracts that include census blocks covering Tribal lands. For tracts that contain some eligible blocks that are in a Tribal land and other eligible blocks that are not in a Tribal land, there will be separate aggregations of the Tribal blocks and the non-Tribal blocks. If the Tribal blocks in a tract are located in more than one Tribal area, there will be separate aggregations for each Tribal area.

d. Coverage Requirement

142. A winning bidder will be required to provide coverage to a minimum of 75% of the road miles associated with the eligible blocks in each tract for which it is awarded support within two years after its award of support is authorized for 3G deployments or three years for 4G deployments.[212] If a winning bidder covers more than the minimum 75% of qualifying road miles within the required timeframe, it may collect support for up to 100% of the qualifying road miles in each tract.[213] This requirement is consistent with the coverage requirement associated with the predefined approach described in the *Auction 901 Comment Public Notice*.[214] In contrast, in the *Auction 901 Comment Public Notice* we proposed that a higher minimum coverage requirement – of 95% to 100% of the qualifying road miles in each block – apply under the bidder- defined approach, which we do not adopt.[215] A number of commenters indicate support for a coverage requirement of 75%, although many of them do so in the context of the bidder-defined approach.[216]

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[210] *Id.* Mid-Rivers also indicates that they agree with RTG that bidders should be able to adjust bids "to areas that make the most sense to serve." *Id*. at 6.

[211] The average size of the blocks in Alaska that were included in the *Auction 901 Updated Blocks Public Notice* is 42.4 square miles, and the average size per tract is 5,286 square miles. The average size of the blocks in Montana that were included is 2.2 square miles, and the average size per tract is 430 square miles. The average size of the blocks in the other 48 states is 1.1 square miles per block and 82 square miles per tract.

[212] *USF/ICC Transformation Order*, 26 FCC Rcd at 17792, para. 365; *see* 47 C.F.R. § 54.1006(a) and (b).

[213] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17792-93 paras. 365, 367.

[214] *Auction 901 Comment Public Notice*, 27 FCC Rcd at 542 para. 45.

[215] *Id.* at 540 para. 36.

[216] ACS Comments at 4-5; RTG Comments at 5; Blooston Comments at 7 (for Tier III carriers); RTG Reply at 7-8 (for Tier III carriers); US Cellular Comments at 7-8; US Cellular Reply at 6-8; USA Coalition Reply at 6; AT&T Comments at 16-17. In addition, Blooston proposes, and RTG supports, different percentage coverage requirements for carriers of different sizes, effectively permitting smaller carriers to cover less of areas in which they receive support than the area that larger carriers would have to cover. Blooston Comments at 7; RTG Reply at 7-8. Such differential treatment would conflict with the goal of extending coverage to the greatest extent possible. Moreover, the Commission's rule establishes a uniform minimum coverage requirement without regard to the size of the carrier. 47 C.F.R. § 54.1006(a) and (b). In the *USF/ICC Transformation Order*, the Commission expressly (continued….)

3. Winner Selection Process

143. Under the auction format that we adopt, during the single bidding round, bidders will be able to submit bids that indicate a per-road mile support price at which they are willing to meet our requirements to cover the qualifying road miles in a given tract. The qualifying road miles in a tract are the road miles in the selected road categories in the eligible census blocks in the tract.[217]

144. After the single bidding round closes, in order to select winning bidders, the FCC Auction System will rank bids from lowest to highest per-road mile bid amount and assign support first to the bidder making the lowest per-road mile bid. For bidders claiming eligibility for a Tribal land bidding credit, the auction system will reduce the Tribal entity's bid amount by 25 percent for the purpose of comparing it to other bids, thus increasing the likelihood that Tribally-owned and controlled entities will receive funding.[218] For all selected bids, an amount equal to the per-mile bid times the number of qualifying road miles in the area will be deducted from the total available funds. The auction system will continue to assign support to the next lowest per-unit bids in turn, as long as support has not already been assigned for that geographic area, deducting assigned support funds from the remaining available funds, and will continue until the sum of support funds of the winning bids is such that no further winning bids can be supported given the funds available.[219] If there are any identical bids – in the same per-unit amounts to cover the same tract, submitted by different bidders – only one such bid, chosen randomly, will be considered in the ranking.[220] A bidder will be eligible to receive support for each of its winning bids equal to the per-unit rate of a winning bid multiplied by the number of road miles in the eligible census blocks covered by the bid, subject to meeting the obligations associated with receiving support.

145. This method of identifying winning bidders will likely result in monies remaining in the fund after identifying the last lowest per-unit bid that does not exceed the funds available. When the auction reaches this point, the FCC Auction System will continue to consider bids in order of per-unit bid amount while skipping bids that would require more support than is available. In the unlikely event that the winner selection procedure arrives at a situation where there are two or more bids for the same per-unit amount but for different areas and remaining funds are insufficient to satisfy all of the tied bids, the auction system will award support to that combination of tied bids that will most nearly exhaust the available funds.

146. Commenters generally do not address the winner determination process for the predefined approach specifically. AT&T agrees that the predefined approach is consistent with this

(Continued from previous page)

delegated to the Bureaus the question of whether to require a coverage percentage higher than the minimum in the event that applicants would be permitted to bid on individual census blocks, as applicants then would be able to target areas where they could cover a higher percentage, without any consideration of the size of the applicants. *USF/ICC Transformation Order*, 26 FCC Rcd at 17792 para. 365. Both the rule and the delegation appear to presume that the same percentage of coverage would be required of all bidders. In light of the goal of extending coverage as much as possible and the presumption of uniform coverage requirements, we decline to adopt Blooston's proposal.

[217] As discussed elsewhere, qualifying road miles refers to road miles in the road categories we have selected: S1100, S1200, S1400, S1500, S1640, and S1740.

[218] *See* Section II.F. "Tribally-Owned or Controlled Providers – 25% Reverse Bidding Credit," above.

[219] When calculating how much of the budget remains, for each winning bid the auction system will multiply the per-unit rate bid by the total number of road miles in the uncovered blocks. This is because an awardee may receive support for up to 100 percent of the road miles in the blocks for which it receives support.

[220] The auction system will use a random number generator to assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker and will be considered in the ranking.

simple means of selecting winning bids, but suggests (supported by Belloni et al.) a modification to only set aside support funds adequate to meet the minimum coverage requirement, rather than deducting support that would cover all the qualifying road miles in the assigned tract, when calculating the impact on the remaining support funds of an assigned bid. They argue that our proposal will result in some funds going unused, since many winning bidders may ultimately not cover more than the minimum required number of miles.[221] We recognize that our approach may result in some unused funds when support awardees do not fully build out, but we wish to encourage the extension of services as completely as possible within the tracts that are awarded support, and therefore we must reserve funds sufficient to fully cover the supported tracts. We anticipate that funds unused under Mobility Fund Phase I will be put to productive use under later stages of the Mobility Fund program or other USF reform efforts.[222]

4. Limited Information Disclosure Procedures: Information Available to Bidders Before and During the Auction

147. We will conduct Auction 901 using procedures for limited information disclosure, as we proposed, and as we have discretion to do under the rules adopted in the *USF/ICC Transformation Order*.[223] That is, for Auction 901, the Bureaus will withhold, until after the close of bidding and announcement of auction results, the public release of (1) information from applicants' short-form applications regarding their interests in eligible census tracts and/or blocks in particular states and/or Tribal lands and (2) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. Because we will conduct Auction 901 using a single round of bidding, we do not anticipate a need to release bidding-related actions during the auction as we would in a multiple round auction. If such circumstances arise prior to the release of non-public information and auction results, however, we will not indicate the identity of any bidders taking such actions. After the close of bidding, information regarding applicants' interests in eligible geographic areas in particular state and/or Tribal lands, their bids, and any other bidding-related actions and information will be made publicly available.

5. Auction Delay, Suspension, or Cancellation

148. In the *Auction 901 Comment Public Notice*, the Bureaus proposed that, by public notice or by announcement during the auction, they may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.[224] We received no comments on this issue.

149. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureaus adopt these proposals regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, we may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an

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[221] AT&T Comments at 16; Belloni et al. Reply at 2.

[222] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17815 para. 462.

[223] *Auction 901 Comment Public Notice*, 27 FCC Rcd at 543 para. 51; *USF/ICC Transformation Order*, 26 FCC Rcd at 17807 para. 431, *see* 47 C.F.R. § 1.21003(b)(1). *See also, e.g.*, "Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76," *Public Notice,* DA 07-4171, 22 FCC Rcd 18141, 18181-85 paras. 145-56 (2007); "Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66," *Public Notice,* FCC 06-47, 21 FCC Rcd 4562, 4600-05 paras. 140-57 (2006).

[224] *Auction 901 Comment Public Notice*, 27 FCC Rcd at 537 para. 22.

auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the point at which the auction was suspended, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that we will exercise this authority solely at our discretion.

B. Bidding Procedures

1. Bidding

150. All bidding will take place through the web-based FCC Auction System. To place bids a bidder will upload a text file that includes, for each tract in the bid file, the tract number and the bid for the tract, expressed in dollars per road mile. For areas in Alaska, bids will include block numbers instead of tract numbers. When a bidder uploads a bid file, the FCC Auction System will provide a verification that includes the tract and/or block numbers, the dollars per road mile bid for each tract and/or block, the number of road miles in each tract and/or block, the total bid amount for each tract and/or block, and the county and state for each tract and/or block. The bidder then submits the bids, or the bidder can cancel the bids if it wishes to make changes.

151. Bidders must submit their bids before the finish time of the bidding round, which will be announced in a public notice listing the qualified bidders, which will be released approximately 10 days before the start of the auction.

2. Reserve Prices

152. Under the Commission's rules on competitive bidding for high-cost universal service support adopted in the *USF/ICC Transformation Order,* the Bureaus have discretion to establish maximum acceptable per-unit bid amounts and reserve amounts, separate and apart from any maximum opening bids.[225] As proposed, we choose not to establish any maximum acceptable per-unit bid amounts or reserve prices.[226] Although two commenters suggest that we may want to consider some sort of reserve price, we continue to believe that cross-area competition for support from a budget that is not likely to cover support for all of the areas receiving bids will constrain the bid amounts, and that a reserve price is not needed to guard against any unreasonably high winning bids.[227]

3. Bid Removal

153. For Auction 901, before the end of the single round of bidding, a bidder will have the option of removing any bid it has placed. By removing a selected bid(s), a bidder may effectively "undo" any of its bids placed within the single round of bidding. Once the single round of bidding ends, a bidder may no longer remove any of its bids.

154. To remove bids a bidder will upload a text file that includes the tract or block number for each bid it wants to remove. When a bidder uploads such a file, the FCC Auction System will provide a verification that includes the tract and/or block numbers, and the county and state for each tract and/or block.

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[225] *USF/ICC Transformation Order*, 26 FCC Rcd at 17806 para. 423-24; 47 C.F.R. § 1.21003(b)(4).

[226] *Auction 901 Comment Public Notice*, 27 FCC Rcd at 544 para. 57.

[227] Belloni et al. Comments at 2 (in the context of the bidder-defined approach, which we do not adopt); Verizon Comments at 4 (in case competition is less than expected).

155. This decision on bid removal is consistent with our proposal. One commenter addressed bid removal, agreeing with our proposal.[228]

4. Auction Announcements

156. The Bureaus will use auction announcements to report necessary information. All auction announcements will be available by clicking a link in the FCC Auction System.

5. Auction Results

157. The Bureaus will determine the winning bids based on the lowest per-road mile bids, as described elsewhere in this Public Notice.[229] After the Bureaus announce the auction results, we will provide downloadable files of the bidding and results data.

V. POST-AUCTION PROCEDURES

A. General Information Regarding Long-Form Applications

158. For the Mobility Fund Phase I auction, the Commission adopted a two-phased auction application process. Pursuant to section 54.1005(b), winning bidders for Mobility Fund Phase I support are required to file an application for support, referred to as a long-form application, no later than 10 business days after the public notice identifying them as winning bidders. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadline for the long-form application. Winning bidders will use the new FCC Form 680 and the FCC Auction System to submit the long-form application. Details regarding the submission and processing of the long-form application will be provided in a public notice after the close of the auction.

159. In addition to the long-form application process described below, any bidder winning support for areas within Tribal lands must notify the relevant Tribal government no later than five business days after being identified by Public Notice as such a winning bidder.[230] Information identifying the appropriate point of contact for the Tribal governments will be available through the Commission's Office of Native Affairs and Policy ("ONAP"), in coordination with the Wireless Bureau.

B. Long-Form Application: Disclosures and Certifications

160. Unless otherwise provided by public notice, within ten business days after release of the auction closing public notice, a winning bidder must electronically submit a properly completed long-form application (FCC Form 680) for the areas for which it submitted winning bids. A Tribally-owned or controlled provider claiming eligibility for a Tribal land bidding credit must certify as to its eligibility for the bidding credit. Further filing instructions will be provided to winning bidders in the auction closing public notice.

1. Ownership Disclosure

161. In the *USF/ICC Transformation Order*, the Commission adopted for the Mobility Fund the existing Part 1 ownership disclosure requirements that already apply to short-form applicants to participate in spectrum license auctions and long-form applicants for licenses in wireless services.[231]

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[228] RTG Comments at 7.

[229] *See* Section IV.A.3. "Winner Selection Process," above.

[230] *USF/ICC Transformation Order*, 26 FCC Rcd at 17822-23 para. 489.

[231] *Id.* at 17808-09 para. 438.

Under these requirements, an applicant for Mobility Fund support must fully disclose its ownership structure as well as information regarding the real party- or parties-in-interest of the applicant or application.

162. US Cellular contends that it is unclear why requiring auction winners to comply with these ownership disclosure requirements is necessary and suggests that doing so would be redundant and burdensome.[232] First, we note that the Commission has already adopted the ownership requirements and that the Bureaus have no authority to revisit this decision. Furthermore, it would be inappropriate for the Commission to award Mobility Fund support to entities without having first conducted a detailed review of their ownership. As the Commission has previously noted, wireless providers that have participated in spectrum license auctions, such as US Cellular, will already be familiar with the disclosure requirements.[233] They already will have ownership disclosure reports (in the short-form application) on file with the Commission, which may simply need to be updated. To minimize the reporting burden on winning bidders, we will allow them to use ownership information stored in existing Commission databases and update that information as necessary.[234]

2. Documentation of ETC Designation

163. A winning bidder is required to submit with its long-form application appropriate documentation of its ETC designation in all of the areas for which it will receive support and certify that its proof is accurate.[235] Appropriate documentation should include the original designation order, any relevant modifications, *e.g.*, expansion of service area or inclusion of wireless, along with any name-change orders. Any relevant information provided as an attachment to the long-form application must be designated as an "Eligible Telecommunications Carrier" attachment.

3. Financial and Technical Capability Certification

164. As in the pre-auction short-form application stage, a long-form applicant must certify that it is financially and technically capable of providing 3G or better service within the specified timeframe in the geographic areas in which it seeks support. This certification indicates that an applicant for Mobility Fund Phase I funds can provide the requisite service without any assurance of ongoing support for the areas in question after Mobility Fund Phase I support has been exhausted. An applicant should be aware that in making a certification to the Commission it exposes itself to liability for a false certification. An applicant should take care to review its resources and its plans before making the required certification and be prepared to document its review, if necessary.

4. Project Construction Schedule/Specifications

165. Applicants are required to provide in their long-form application an attachment for each winning bid with a detailed project description which describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the complete project budget and describes each specific phase of the project, e.g., network design, construction, deployment, and maintenance.[236] A complete project schedule, including timelines, milestones and costs must be provided. Milestones should include the start and end date for network design; start and end date for drafting and

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[232] US Cellular Comments at 4-5.

[233] *USF/ICC Transformation Order*, 26 FCC Rcd at 17808-09 para. 438.

[234] *Id.*

[235] 47 C.F.R. § 54.1005(b)(2)(iii).

[236] *See* 47 C.F.R. § 54.1005(b)(2)(iv).

posting requests for proposal ("RFPs"); start and end date for selecting vendors and negotiating contracts; start date for commencing construction and end date for completing construction; and the dates by which it will meet applicable requirements to receive the installments of Mobility Fund support.[237]

166. Applicants will indicate for each winning bid whether the supported network will provide third generation (3G) mobile service within the period prescribed by section 54.1006(a) or fourth generation (4G) mobile service within the period prescribed by section 54.1006(b). The description of the proposed technology should include information on whether the network will qualify as either a 3G or 4G network.

5. Spectrum Access

167. Applicants are required to provide a description of the spectrum access that the applicant will use to meet its obligations in areas for which it is the winning bidder, including whether the applicant currently holds a license for or leases the spectrum. The description should identify the license applicable to the spectrum to be accessed. The description of the license must include the type of service, e.g., AWS, 700 MHz, BRS, PCS, the particular frequency bands and the call sign. If the licensee is a different party than the applicant, the licensee name and the relationship between the applicant and the licensee that provides the applicant with the required access should be described. If the applicant is leasing spectrum the lease number should be provided along with the license information. An applicant must provide this required information relating to spectrum access in an attachment to the long-form application that is designated as a "Spectrum Access" attachment.

168. Applicants must also certify that the description of the spectrum access is accurate and that the applicant will retain such access for at least five (5) years after the date on which it is authorized to receive support. Applications will be reviewed to assess the reasonableness of the certification.

6. Letter of Credit Commitment Letter

169. Within ten business days after release of the auction closing public notice, a winning bidder must submit with its long-form application either a Letter of Credit ("LOC") for each winning bid, or a written commitment letter from an acceptable bank to issue such an LOC. If the applicant submits a commitment letter, the letter will at a minimum provide the dollar amount of the LOC and the issuing bank's agreement to follow the terms and conditions of the Commission's model LOC, found in Appendix N of the *USF/ICC Transformation Order*.[238] The commitment letter must be from an acceptable bank, as defined in section 54.1007(a)(1).

7. Letter of Credit and Bankruptcy Code Opinion Letter

170. After receipt and review of the long-form applications, the Commission will issue a public notice identifying each winning bidder that may be authorized to receive Mobility Fund Phase I support. Upon notice from the Commission, a winning bidder for Mobility Fund Phase I support must submit an irrevocable stand-by LOC, issued in substantially the same form as set forth in the model LOC provided in Appendix N of the *USF/ICC Transformation Order*[239] by a bank that is acceptable to the Commission.[240] An LOC must be submitted for each winning bid in an amount equal to one-third of the

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[237] Universal Service Reform: Mobility Fund, WT Docket No. 10-208, *Notice of Proposed Rulemaking*, FCC 10-182, 25 FCC Rcd 14716, 14740 para. 84 (2010).

[238] *USF/ICC Transformation Order*, 26 FCC Rcd at 18319 Appendix N.

[239] *Id*.

[240] *See* 47 C.F.R. § 54.1007(a)(1).

winning bid amount, plus an additional 10 percent of the winning bid amount which shall serve as a performance default payment. The Commission's rules provide specific requirements, as defined in section 54.1007(a)(1), for a bank to be acceptable to the Commission to issue the LOC. Those requirements vary for United States banks and non-U.S. banks.

171. In addition, a winning bidder will be required to provide with the LOC an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations and qualifications, that, in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the LOC or proceeds of the LOC as property of winning bidder's bankruptcy estate, or the bankruptcy estate of any other bidder-related entity requesting issuance of the LOC, under section 541 of the Bankruptcy Code.[241]

172. We received comments and reply comments from several parties regarding the requirement that winning bidders for Mobility Fund Phase I support provide an irrevocable stand-by LOC. [242] Some commenters assert that they are unlikely to be able to obtain an irrevocable stand-by LOC or that there are certain cost constraints associated with meeting the requirement.[243] We note that in the *USF/ICC Transformation Order*,[244] the Commission adopted this requirement after considering comments raising similar concerns, and the LOC requirement is not one on which the Bureaus sought comment in the *Auction 901 Comment Public Notice*. All applicants for Mobility Fund Phase I support are able to factor the cost of meeting this requirement into their bid amounts, and we find that the best course of action is to apply the requirement consistently so that all applicants are subject to the same requirements and calculate their bids accordingly. In addition, we are not convinced that the commenters have explored all avenues and financial arrangements by which they might fulfill the requirement. Finally, we note that the Bureaus cannot modify the requirement for winning bidders to provide an irrevocable stand-by LOC, because the changes that the commenters advocate are beyond the scope of the Bureaus' delegated authority and the scope of this proceeding and would require action by the Commission to reconsider its determination in the *USF/ICC Transformation Order*.

8. Certification as to Program Requirements

173. The long-form application contains certifications that the applicant has available funds for all project costs that exceed the amount of support to be received and will comply with all program requirements.[245] The requirements include the public interest obligations contained in the Commission's rules and set forth above in Section I.B.4.[246] Applicants must certify that they will meet the applicable deadline for construction of a network meeting the coverage and performance requirements set forth in the rules, that they will comply with the Mobility Fund Phase I collocation obligations specified in the rules, and that they will comply with the voice and data roaming obligations the Commission has

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[241] 11 U.S.C. § 541.

[242] ACS Comments at 5-6; ARC Comments at 4; Blooston Comments at 11-12; RTG Comments at 7-9; US Cellular Comments at 3-4; NTCA Reply at 3-4; Pennsylvania Commission Reply at 6-7; RTG Reply at 8; USA Coalition Reply at 4-5; US Cellular Reply at 2-3.

[243] *See, e.g.,* Blooston Comments at 11.

[244] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17810-13 paras. 443-451.

[245] 47 C.F.R. § 54.1005(b)(2)(vi).

[246] 47 C.F.R. § 54.1006.

established with respect to Phase I of the Mobility Fund. With respect to demonstrating compliance with the coverage requirements, the Commission rules set forth the standards for applicable drive test data.[247]

9. Reasonably Comparable Rate Certification

174. To satisfy one of the public interest obligations that an applicant will have if it receives support, the long-form application also must contain a certification that the applicant will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas for a period extending until five (5) years after the date on which it is authorized to receive support.[248] As noted in the *Auction 901 Comment Public Notice*, the Commission delegated authority to the Bureaus to specify how support recipients could demonstrate compliance with this rate certification, in light of the fact that the voice and broadband rates survey data the Commission will collect pursuant to the *USF/ICC Transformation Order* will not be available prior to the Mobility Fund Phase I auction.[249] The approach adopted for Phase I of the Mobility Fund in no way prejudges the approach to be taken with respect to Phase II of the Mobility Fund or the CAF generally. The appropriate approach for purposes of later phases of the Mobility Fund or other components of the CAF will be determined after review of the record developed in response to the Further Notice of Proposed Rulemaking portion of the *USF/ICC Transformation Order*.

175. The Bureaus proposed that a Mobility Fund Phase I support recipient could demonstrate compliance with the required certification that its rates are reasonably comparable if each of its service plans in supported areas is substantially similar to a service plan offered by at least one mobile wireless service provider in an urban area and is offered for the same or a lower rate than the matching urban service plan.[250] The Bureaus expressly noted that any provider that itself offers the same service plan for the same rate in a supported area and in an urban area would meet this requirement.[251]

176. The Bureaus crafted this proposal in order to provide recipients with flexibility to tailor their offerings to consumer demand while complying with the rule. Solely for purposes of Phase I of the Mobility Fund, the proposal would treat any rate equal to or less than the highest rate for a matching service charged in an urban area as reasonably comparable to, i.e., within a reasonable range of rates for similar service in urban areas. Urban areas are generally served by multiple and diverse providers offering a range of rates and service offerings in competition with one another.[252] Consequently, even the highest rate might be considered as "being within a reasonable range of rates for similar service in urban areas,"[253] because the rates for the matching urban services reflect the effects of competition in the urban

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[247] *See* 47 C.F.R. § 54.1006(c). Recipients of Mobility Fund Phase I support must provide coverage of road miles and scattered site testing is not acceptable as an alternative to drive tests to demonstrate such coverage. *See id.*

[248] 47 C.F.R. § 54.1005(b)(2)(viii).

[249] *See Auction 901 Comment Public Notice*, 27 FCC Rcd at 547 para. 65, citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17797 para. 385.

[250] See below for a discussion of how "urban areas" should be defined for this purpose. We note that any provider that itself offers the same service plan for the same rate in a supported area and in an urban area would be able to meet this requirement.

[251] *Auction 901 Comment Public Notice*, 27 FCC Rcd at 547 n.74.

[252] Most consumers in the 100 most populated CMAs in the country are covered by between four to six mobile wireless providers. Commission analysis of October 2011 American Roamer coverage maps and Census 2010 block data.

[253] Under this approach, the supported party must offer services at rates within the range but that do not exceed one particular rate that is presumed to be a part of that range. Previously, rates for supported services in high-cost, (continued….)

area. For purposes of this requirement, the Bureaus proposed defining "urban area" as one of the 100 most populated CMAs in the United States.[254] Multiple providers currently serve these areas – 99.2 percent of the population in these markets is covered by between four to six operators – offering a range of different service plans at prices generally constrained by the numerous providers.[255] Finally, the Bureaus further proposed that they would retain discretion to consider whether and how variable rate structures should be taken into account.

177. The Bureaus sought comment on all aspects of the proposal, and specifically sought comment on whether a support recipient should be required to make this comparison for all of its service plans, or just its required stand-alone voice plan and one other plan offering broadband, or a set of its plans adopted by a specified percentage of its customers. With respect to the rates for services to which supported services are to be compared, the Bureaus asked whether additional information was required to validate the assumption that an urban service rate reflects the effects of competition in the urban area — for example, whether an urban service used for matching should be required to have a certain number of subscribers or percentage of the relevant market in order to demonstrate its market acceptance. The Bureaus noted that detailed information about the number of subscribers at a particular rate might be difficult to obtain. The Bureaus further sought comment on whether parties should be required to make comparisons only to a subset of the most populated CMAs that are geographically closest to the supported area, such as the 30 or 50 of the top 100 CMAs that are closest to the supported service area. This might protect against regional economic variations distorting the range of prices useable for comparison. For example, such a restriction might cause providers to compare supported rates in Oklahoma to rates in Houston or Chicago rather than in New York City.

178. There was support among some commenters for the framework of the Bureaus' proposal.[256] Most commenters that addressed this issue generally favored employing as simple a standard as possible for determining whether a supported provider offered rates reasonably comparable to those in urban areas.[257] Some parties advocated allowing supported parties to satisfy the requirement based on

(Continued from previous page)

insular and rural areas served by non-rural carriers were presumed to be reasonably comparable to urban rates nationwide if they fell below the national rate benchmark, which was set at two standard deviations above the average urban rate as reported in an annual rate survey published by the Wireline Competition Bureau. *See* Federal-State Joint Board on Universal Service, High-Cost Universal Service Support, WC Docket No. 05-337, CC Docket No. 96-45, *Order on Remand and Memorandum Opinion and Order*, FCC 10-56, 25 FCC Rcd 4072, 4088, para. 8 (2010), *pet. for review den'd, Vermont Public Service Bd.v. F.C.C.*, 661 F.3d 54 (D.C. Cir. 2011). Thus, while the approaches differ, both serve to assure that rates for supported services are reasonably comparable to rates in urban areas.

[254] A list of the top 100 CMAs is included in Attachment C.

[255] Commission analysis of October 2011 American Roamer coverage maps and Census 2010 block data.

[256] NASUCA et al. Comments at 11 ("in the absence of rate survey data, this is a reasonable approach"); RTG Comments at 9 ("RTG agrees with the FCC's proposed reasonably comparable rates requirement"). Commenters made related observations that are not directly on point with how to satisfy this requirement that we need not address here. *See*, *e.g.*, NASUCA et al. Comments at 9 (regarding a minimum number of minutes per month). Finally, we note that US Cellular challenged the Commission's authority to consider whether rates for broadband service are comparable given that broadband service is not within the definition of supported service. US Cellular Comments at 6 (arguing that broadband should be defined as a supported service). The Commission decided in the *USF/ICC Transformation Order* that the comparable rate requirement applied to broadband services offered with universal service support and we will not revisit that decision here. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17708-09 paras. 113-14.

[257] AT&T Comments at 21; US Cellular Comments at 6-7; US Cellular Reply at 5; *see* Verizon Comments at 5.

their offering the same rate, either nationwide, statewide, or in non-supported areas.[258] We note that, to the extent a provider offers the same service at the same rate in an urban area, as the Bureaus define it for these purposes, these proposals are all consistent with the Bureaus' proposal. The commenters' proposals diverge from the Bureaus' in so far as a provider offers the same rate for the same service in an unsupported area but that unsupported area does not qualify as urban for purpose of this requirement. Two parties specifically object to the use of out-of-Alaska areas as points of comparison for service within Alaska.[259] They both argue that, given the unique challenges of offering service anywhere in Alaska, parties offering service in supported areas in Alaska only should have to demonstrate that their rates are reasonably comparable with more urban areas of Alaska, even though those areas do not qualify as urban under the Bureaus' proposal.

179. We decline generally to alter the proposal to permit comparisons with rates for services in areas that are not within the definition of urban that the Bureaus proposed for this purpose in the *Auction 901 Comment Public Notice*. As the Bureaus explained in the *Auction 901 Comment Public Notice*, the areas proposed both meet a population-based definition of urban *and* have a degree of competition among wireless service providers that should help to assure that the rates offered are reasonable. None of the parties advocating intrastate comparisons, or reliance on comparisons between the rates a supported carrier offers in supported areas and other areas, provides a basis for concluding that the other areas proposed have a comparable level of competition. Nevertheless, in light of the distinct character of Alaska and the related costs of providing service, we will make an exception for supported parties in Alaska and allow them to demonstrate comparability by comparison with rates offered in the CMA for Anchorage, Alaska. In this regard, we note that the Anchorage CMA has a population of over 250,000 and four wireless providers, which indicates that, while reflecting the particular challenges of offering service in Alaska, competition for customers there could act to keep rates for offered services reasonable.

180. One commenter expressly supported the proposed requirement that supported providers demonstrate that all of their service plans are offered at comparable rates while another argued that providing one such plan should be sufficient.[260] On further review, we conclude that it will be sufficient for a supported provider to demonstrate that its required stand-alone voice plan and one service plan that offers data services, presuming it offers such plans, satisfies the reasonably comparable rate requirement. We conclude that customers should have available to them other rate plans should they so choose, so long as the provider satisfies the reasonably comparable rate requirement with respect to a stand-alone voice plan and one of any plans that offer data services.[261] In addition, this will simplify the supported parties' compliance with the rule.

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[258] AT&T Comments at 21 (nationwide or statewide); US Cellular Reply at 5 (same, citing AT&T Comments); NASUCA et al. Comments at 10 ("If the winning bidder does not offer service in urban territory, the supported rate should be the same rate that applies to the service offered by the bidder in its other territory.")

[259] ACS Comments at 7; GCI Comments at 3.

[260] NASUCA et al. Comments at 12 ("preliminary view . . . required to offer all of their service plans at comparable rates"); US Cellular Reply at 5 ("one basic service rate plan that is reasonably comparable").

[261] In addition, we note that the Commission expects "that ETCs that offer standalone broadband service in any portion of their service territory will also offer such service in all areas that receive CAF support." *USF/ICC Transformation Order*, 26 FCC Rcd at 17695 para.86 n.127.

10. Tribal Engagement Requirements: Certification and Summary of Engagement Results

181. Beginning at the long-form application stage, and continuing throughout the term of support, Mobility Fund Phase I winning bidders are required to comply with the Tribal engagement obligations applicable to all ETCs.[262] As the Commission discussed in the *USF/ICC Transformation Order*, these obligations are designed to ensure that Tribal governments have been formally and effectively engaged in the planning process and that the services to be provided will advance the goals established by the Tribal government. At a minimum, such discussions must include: (1) a needs assessment and deployment planning with a focus on Tribal community anchor institutions; (2) feasibility and sustainability planning; (3) marketing services in a culturally sensitive manner; (4) rights of way processes, land use permitting, facilities siting, environmental and cultural review processes; and (5) compliance with Tribal business and licensing requirements.

182. Specific procedures and further guidance regarding the Tribal engagement process are being developed by ONAP, in coordination with the Bureaus. Winning bidders are encouraged to initiate the engagement process as soon as possible. We contemplate that, at a minimum, a long-form applicant would be required to include a certification and detailed description of its efforts to contact the relevant Tribal government(s) and initiate substantive discussions regarding the topics noted above. Any information provided as an attachment to the long-form application must be designated as a "Tribal Information" attachment. Such certification and description must also be submitted to the appropriate Tribal government official concurrent with the filing of the long-form application. Thereafter, support recipients will be obligated to demonstrate their compliance with Tribal engagement requirements on an annual basis, and prior to any disbursement of support from the Universal Service Administrative Company (USAC). We remind carriers that failure to satisfy the Tribal government engagement obligation could subject them to financial consequences, including potential reduction in support should they fail to fulfill their obligations.

C. Default Payment Requirements

183. In the *USF/ICC Transformation Order*, the Commission determined that it would impose two types of default payment obligations on winning bidders: a default payment owed by Mobility Fund winning bidders that default on their winning bids prior to approval for receiving support and a default payment owed by Mobility Fund winning bidders that apply for and are approved to receive support but subsequently fail to meet their public interest obligations or other terms and conditions of Mobility Fund support.[263] Under the competitive bidding rules adopted in the *USF/ICC Transformation Order*, bidders selected by the auction process to receive USF support have a binding obligation to file a post-auction long-form application – by the applicable deadline and consistent with other requirements of the long-form application process – and failure to do so constitutes an auction default.[264] In addition, a performance default occurs when a winning bidder that the Commission has authorized to receive support fails to meet its minimum coverage requirement or adequately comply with quality of service or any other requirements upon which support was granted.[265]

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[262] *USF/ICC Transformation Order*, 26 FCC Rcd at 17822-23 para. 489; *see also id.* at 17868-69 paras. 636-637.

[263] *USF/ICC Transformation Order*, 26 FCC Rcd at 17814 paras. 460-61; 47 C.F.R. § 1.21004(b), 47 C.F.R. § 54.1006(f).

[264] *USF/ICC Transformation Order*, 26 FCC Rcd at 17808 para. 436; 47 C.F.R. § 1.21004(a).

[265] 47 C.F.R. § 54.1007(c).

1. Auction Default Payment

184. Any winning bidder that fails to timely file a long-form application, is found ineligible or unqualified to receive Mobility Fund support, has its long-form application dismissed, or otherwise defaults on its bid or is disqualified for any reason after the close of the auction and prior to the authorization of support for each winning bid will be subject to an auction default payment.[266] Agreeing to such payment in event of a default is a condition for participating in bidding.[267] In the event of an auction default, we will assess a default payment of five percent of the total defaulted bid.

185. In the *USF/ICC Transformation Order*, the Commission determined that a default payment is appropriate to ensure the integrity of the auction process and safeguard against costs to the Commission and the USF. The Commission left it to the Bureaus to consider methodologies for determining such a payment, but specified that if the Bureaus established a default payment to be calculated as a percentage of the defaulted bid, that percentage was not to exceed 20 percent of the total amount of the defaulted bid.[268] Accordingly, in the *Auction 901 Comment Public Notice*, the Bureaus proposed an auction default payment of five percent of the total defaulted bid.[269] The Bureaus also sought comment on alternative methodologies, such as basing the auction default payment on the difference between the defaulted bid and the next best bid to cover the same number of road miles as without the default. The Bureaus further sought comment on whether, prior to bidding, all applicants for Auction 901 should be required to furnish a bond or place funds on deposit with the Commission in the amount of the maximum anticipated auction default payment.[270]

186. Commenters supported the Bureaus' proposal for a rate of five percent of the total defaulted bid.[271] AT&T urges the Bureaus to consider adopting a higher figure, such as ten percent, saying that if the penalty percentage is too low it will not serve as a sufficient deterrent.[272] Other commenters suggest a less "punitive" approach or ask the Bureaus to refrain from enforcing default payments except in cases of "egregious" failure, such as the failure to submit any long-form application.[273] The Bureaus received no comments on any alternative methodologies for determining an appropriate auction default penalty.

187. We are not persuaded that we should modify our proposal to establish an auction default payment at the rate of five percent of the total defaulted bid. Such a requirement should serve to deter failures to fulfill auction obligations that might undermine the stability and predictability of the auction process and impose costs on the Commission as well as higher support costs for USF, and is yet not

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[266] 47 C.F.R. § 1.21004.

[267] *USF/ICC Transformation Order*, 26 FCC Rcd at 17813-14 paras. 458-460.

[268] *Id*. at 17814 para. 460.

[269] *Auction 901 Comment Public Notice*, 27 FCC Rcd at 545-46 para. 61.

[270] *Id*. at 546 para. 62.

[271] ACS Comments at 6; RTG Comments at 7 (suggests that it should be added to bid amount and included in LOC).

[272] AT&T Comments at 18-19. *See also* Verizon Comments at 4-5 (apparently conflating auction default and performance default payments, but suggesting a penalty in the 25 percent range, because a five percent penalty is too low and "unlikely to deter gamesmanship in the bidding process.")

[273] ARC Comments at 5; Blooston Comments at 10. *See also* USA Coalition Reply at 5.

unduly punitive. Liability for the auction default payment will be imposed without regard to the intentions or fault of any specific defaulting bidder.[274] We therefore adopt our proposal.

188. The Bureaus received a single comment addressing whether auction applicants should be required to furnish a bond or place funds on deposit prior to bidding. AT&T supports such a requirement, but prefers that the Bureaus require posting a bond, as it is issued "quickly and easily" and is used in the normal course of business.[275] We think our adoption of an auction default payment will provide adequate protection against costs to the Commission and the USF, and therefore we find that establishing a bond or deposit requirement is unnecessary.

2. Performance Default Payment

189. A winning bidder that has received notice from the Commission that it is authorized to receive Mobility Fund support will be subject to a performance default payment if it fails or is unable to meet its minimum coverage requirement, other service requirements, or fails to fulfill any other term or condition of Mobility Fund Phase I support.[276] We will assess a performance default penalty of ten percent on the total level of support for which a winning bidder is eligible.[277]

190. The Commission recognized in the *USF/ICC Transformation Order* that a Mobility Fund recipient's failure to fulfill its obligations may impose significant costs on the Commission and higher support costs for the USF and concluded that it was necessary to adopt a default payment obligation for performance defaults.[278] In addition to being liable for a performance default payment, the recipient will be required to repay the Mobility Fund all of the support it has received, and depending on circumstances, could be disqualified from receiving any additional Mobility Fund or other USF support.[279] In the *Auction 901 Comment Public Notice*, we proposed to establish the performance default payment percentage at ten percent of the total level of support for which a winning bidder is eligible.[280] Under this proposal, the irrevocable stand-by LOC that winning bidders will be required to provide would include an additional ten percent based on the total level of support for which a winning bidder is eligible.

191. We received support for our proposal.[281] Some commenters, however, urge the Bureaus to assess a lesser default payment for failure to meet performance requirements.[282] AT&T argues that it would be more reasonable to assess a winning bidder failing to meet one or more of the performance requirements a payment equal to some percentage of the award associated with the portion of the total build-out and coverage obligation that the provider failed to fulfill.[283] RTG supports a ten percent default

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[274] *Auction 901 Comment Public Notice*, 27 FCC Rcd at 546 para. 62.

[275] AT&T Comments at 19.

[276] *USF/ICC Transformation Order*, 26 FCC Rcd at 17814 para. 460.

[277] *See* 47 C.F.R. § 54.1006(f).

[278] *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-11 para. 446.

[279] *Id*. at 17814 para. 461.

[280] *Auction 901 Comment Public Notice*, 27 FCC Rcd at 546 para. 64.

[281] ACS Comments at 6.

[282] *See, e.g.,* USA Coalition Reply at 5.

[283] AT&T Comments at 18-19.

payment only if an awardee fails to meet an 80 percent coverage requirement.[284] Blooston urges the Bureaus to not apply the performance default payment obligation to rural carriers.[285] As discussed above, the Commission has already defined the conditions that constitute a performance default. Changing the terms of the performance default requirement in any way is beyond the scope of the Bureaus' delegated authority and beyond the scope of this proceeding and would require action by the Commission to reconsider its determination in the *USF/ICC Transformation Order*.

192. While both auction defaults and performance defaults may threaten the integrity of the auction process and impose costs on the Commission and the USF, an auction default occurs earlier in the process and may facilitate an earlier use of the funds that were assigned to the defaulted bid consistent with the purposes of the universal service program.[286] We therefore proposed that the performance default payment be set at a higher percentage than the auction default payment percentage.[287] We did not receive specific comments on our proposal to establish the performance default payment percentage at ten percent. We anticipate that a performance default payment of ten percent of the defaulted support level will be effective in encouraging those seeking support to make every effort to assure that they are capable of meeting their obligations and protecting against costs to the Commission and the USF without unduly discouraging auction participation. We therefore adopt our proposal.

VI. CONTACT INFORMATION

193. Contact Information Table:

General Auction 901 Information General Auction Questions Auction Process and Procedures	**FCC Auctions Hotline** (888) 225-5322, option two; or (717) 338-2868 Hours of service: 8:00 a.m. – 5:30 p.m. ET, Monday through Friday
Auction 901 Legal Information Auction Rules, Policies, Regulations, including Reports of Section 1.21002 Violations and Application Major Modifications	**Wireless Telecommunications Bureau** **Auctions and Spectrum Access Division** Sayuri Rajapakse Stephen Johnson (202) 418-0660
General Universal Service Questions	**Wireline Competition Bureau** **Telecommunications Access Policy Division** Alex Minard (202) 418-7400

[284] RTG Comments at 8-9, RTG Reply at 9 (also suggesting that an awardee should only have to pay back "overage" for areas not covered).

[285] Blooston Comments at 11-12.

[286] *Auction 901 Comment Public Notice*, 27 FCC Rcd at 547 para. 64.

[287] *Id.*

Technical Support Electronic Filing FCC Auction System (Hardware/Software Issues)	**FCC Auctions Technical Support Hotline** (877) 480-3201, option nine; or (202) 414-1250 (202) 414-1255 (TTY) Hours of service: 8:00 a.m. – 6:00 p.m. ET, Monday through Friday
Auction Bidder Line	Will be furnished only to qualified bidders
FCC Copy Contractor Additional Copies of Commission Documents	**Best Copy and Printing, Inc** 445 12th Street, SW, Room CY-B402 Washington, DC 20554 (800) 378-3160 http://www.bcpiweb.com
Press Information	Cecila Sulhoff (202) 418-0587
FCC Forms	(800) 418-3676 (outside Washington, DC) (202) 418-3676 (in the Washington area) http://www.fcc.gov/formpage.html
Accessible Formats Braille, large print, electronic files, or audio format for people with disabilities	**Consumer and Governmental Affairs Bureau** (202) 418-0530 or (202) 418-0432 (TTY) fcc504@fcc.gov
Small Businesses Additional information for small and disadvantaged businesses	**Office of Communications Business Opportunities** (202) 418-0990 http://www.fcc.gov/ocbo/
Tribal Issues Additional information for entities seeking to provide service to Tribal lands and Tribal governments	**Office of Native Affairs and Policy** (202) 418-2930 native@fcc.gov
FCC Internet Sites	http://www.fcc.gov http://wireless.fcc.gov/auctions http://wireless.fcc.gov/uls

– FCC –

ATTACHMENT A

Auction 901 – Mobility Fund Phase I Auction
Summary of Eligible Census Blocks

This page was intentionally inserted as a placeholder for Attachment A, which is available as a separate file.

ATTACHMENT B

Road Categories, Descriptions, and Total Miles in Eligible Census Blocks

MTFCC	Feature Class	Feature Class Description	Total Miles
S1100	Primary Road	Primary roads are generally divided, limited-access highways within the interstate highway system or under state management, and are distinguished by the presence of interchanges. These highways are accessible by ramps and may include some toll highways.	420
S1200	Secondary Road	Secondary roads are main arteries, usually in the U.S. Highway, State Highway or County Highway system. These roads have one or more lanes of traffic in each direction, may or may not be divided, and usually have at-grade intersections with many other roads and driveways. They often have both a local name and a route number.	31,937
S1400	Local Neighborhood Road, Rural Road, City Street	Generally a paved non-arterial street, road, or byway that usually has a single lane of traffic in each direction. Roads in this feature class may be privately or publicly maintained. Scenic park roads would be included in this feature class, as would (depending on the region of the country) some unpaved roads.	590,357
S1500	Vehicular Trail (4WD)	An unpaved dirt trail where a four-wheel drive vehicle is required. These vehicular trails are found almost exclusively in very rural areas. Minor, unpaved roads usable by ordinary cars and trucks belong in the S1400 category.	75,018
S1640	Service Drive usually along a limited access highway	A road, usually paralleling a limited access highway, that provides access to structures along the highway. These roads can be named and may intersect with other roads.	12,100
S1740	Private Road for service vehicles (logging, oil fields, ranches, etc.)	A road within private property that is privately maintained for service, extractive, or other purposes. These roads are often unnamed.	33,810
			743,643

Source: Appendix F – MAF/TIGER Feature Class Code (MTFCC) Definitions, pages F-186 and F-187, at http://www.census.gov/geo/www/tiger/tgrshp2010/documentation.html (last visited Feb. 2, 2012), and FCC analysis.

ATTACHMENT C

Top 100 CMAs by Population

This page was intentionally inserted as a placeholder for Attachment C, which is available as a separate file.

ATTACHMENT D

Auction 901 – Mobility Fund Phase I
List of Parties Filing in AU Docket No. 12-25

The following is a listing of parties that filed in response to the *Auction 901 Comment Public Notice*. The party name is followed by the abbreviated name of the filing as used in this Public Notice.

Initial Commenters

1. Alaska Communications Systems Group, Inc. (ACS Comments)
2. Alaska Rural Coalition (ARC Comments)
3. AT&T Inc. (AT&T Comments)
4. Belloni, Alexandre, Sandro Brusco, Giuseppe Lopomo and Leslie M. Marx (Belloni et al. Comments)
5. Blooston Rural Carriers (Blooston Comments)
6. Clearwire Corporation (Clearwire Comments)
7. General Communication, Inc. (GCI Comments)
8. Kentucky, Commonwealth of, Office of Broadband Outreach and Development (Kentucky Comments)
9. National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, the New Jersey Division of Rate Counsel and the Utility Reform Network (NASUCA et al. Comments)
10. NTCH, Inc. (NTCH Comments)
11. Pekeč, Aleksandar Saša (Pekeč Comments)
12. Rural Telecommunications Group, Inc. (RTG Comments)
13. United States Cellular Corporation (US Cellular Comments)
14. Verizon and Verizon Wireless (Verizon Comments)

Reply Commenters

1. Alaska Communications Systems Group Inc. (ACS Reply)
2. AT&T Inc. (AT&T Reply)
3. Belloni, Alexandre, Sandro Brusco, Giuseppe Lopomo and Leslie M. Marx (Belloni et al. Reply)
4. Kentucky, Commonwealth of, Office of Broadband Outreach and Development (Kentucky Reply)
5. McAdams, David (McAdams Reply)
6. Mid-Rivers Telephone Cooperative, Inc., and Cable & Communications Corporation, d/b/a/ Mid-Rivers Communications (Mid-Rivers Reply)
7. National Telecommunications Cooperative Association (NTCA Reply)
8. Pekeč, Aleksandar Saša (Pekeč Reply)
9. Pennsylvania Public Utility Commission (Pennsylvania Commission Reply)
10. Power Auctions LLC (Power Auctions Reply)
11. Rural Telecommunications Group, Inc. (RTG Reply)
12. United States Cellular Corporation (US Cellular Reply)
13. Universal Service for America Coalition (USA Coalition Reply)

***Ex Parte* and Other Filings**

1. Pangasa, Maneesh[288]
2. Pine Telephone Company, Inc. (Pine Telephone ex parte)
3. Rural Telecommunications Group, Inc. (RTG ex parte)

Initial Commenters – Eligible Census Blocks

1. AT&T (AT&T ECB Comments)
2. Bluegrass Cellular, Inc. (Bluegrass ECB Comments)
3. Carolina West Wireless, Inc. (Carolina West ECB Comments)
4. Cellular Network Partnership, LP (Cellular Network ECB Comments)
5. Commnet Wireless, LLC, NTUA Wireless, LLC, and SAL Spectrum, LLC (Commnet et al. ECB Comments)
6. Cross Valliant Cellular Partnership (Cross Valliant ECB Comments)
7. Cross Wireless, LLC (Cross Wireless ECB Comments)
8. C T Cube, LP d/b/a/ West Central Wireless (CT Cube ECB Comments)
9. Eagle Telephone System, Inc. (Eagle Telephone ECB Comments)
10. Indiana Utility Regulatory Commission, Larry S. Landis, Commissioner (Indiana Commission ECB Comments)
11. Kentucky, Commonwealth of, Office of Broadband Outreach and Development (Kentucky ECB Comments)
12. Keystone Wireless, LLC d/b/a Immix Wireless (Keystone ECB Comments)
13. Leaco Rural Telephone Cooperative, Inc. (Leaco ECB Comments)
14. Matanuska Telephone Association (Matanuska ECB Comments)
15. Mid-Rivers Telephone Cooperative, Inc., and Cable & Communications Corporation, d/b/a/ Mid-Rivers Communications (Mid-Rivers ECB Comments)
16. Minnesota Department of Commerce, Dennis Ahlers, Assistant Commissioner (Minnesota ECB Comments)
17. Nemont Communications (Nemont ECB Comments) (2 filings)
18. NNTC Wireless, LLC, subsidiary of Nucla-Naturita Telephone Company (NNTC ECB Comments)
19. Panhandle Telephone Cooperative, Inc. (Panhandle ECB Comments)
20. Pine Telephone Company, Inc. (Pine Telephone ECB Comments)
21. PTI Pacifica Inc. d/b/a IT&E (PTI Pacifica ECB Comments)
22. Public Service Wireless Services, Inc. (PSW ECB Comments)
23. Sprint Nextel Corp. (Sprint ECB Comments)
24. Texas RSA 7B3, LP d/b/a Peoples Wireless (Texas RSA ECB Comments)
25. T-Mobile USA, Inc. (T-Mobile ECB Comments)
26. VTel Wireless, Inc. (VTel ECB Comments)
27. WUE, Inc. (WUE ECB Comments)

[288] Pangasa expresses views on a number of issues in 16 separate submissions in this docket, none of which are responsive or relevant to the proposals and questions raised in the *Auction 901 Comment Public Notice*. Pangasa has made similar filings in many other open dockets involving a range of issues under consideration by the Commission.

Reply Commenters – Eligible Census Blocks

1. Indiana Utility Regulatory Commission, Larry S. Landis, Commissioner (Indiana Commission ECB Reply)
2. Smith Bagley, Inc. (Smith Bagley ECB Reply) (2 reply filings)
3. United States Cellular Corporation (U.S. Cellular ECB Reply)
4. Verizon and Verizon Wireless (Verizon ECB Reply)
5. WUE, Inc. (WUE ECB Reply)

***Ex Parte* and Other Filings – Eligible Census Blocks**

1. Commnet Wireless, LLC, NTUA Wireless, LLC, and SAL Spectrum, LLC (Commnet et al. ECB ex parte)
2. Horry Telephone Cooperative, Inc. (Horry Telephone ECB ex parte)
3. National Telecommunications and Information Administration/Wireless Telecommunications Bureau (NTIA ex parte)
4. Pangasa, Maneesh[289]
5. Union Cellular Telephone Company d/b/a Union Wireless (Union Cellular ECB ex parte)
6. United States Department of Agriculture Rural Utilities Service (USDA RUS ex parte)
7. Smith Bagley (Smith Bagley ECB ex parte)

[289] *See* note 1, above.

ATTACHMENT E

Summary Listing of Judicial, Commission and Bureau Documents Addressing Application of Section 1.2105(c)'s Prohibition on Certain Communications Between Auction Applicants

A. Judicial Decisions

Star Wireless, LLC v. FCC, 522 F.3d 469 (D.C. Cir. 2008).

High Plains Wireless, L.P. v. FCC, 276 F.3d 599 (D.C. Cir. 2002).

B. Commission Decisions

Procedural Amendments to Commission Part 1 Competitive Bidding Rules, *Order*, FCC 10-4, 25 FCC Rcd 521 (2010).

Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, FCC 07-132, 22 FCC Rcd 15289, 15395 ¶¶ 285-86, 15489 (2007).

Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., *Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17546 (2001).

Notice of Apparent Liability for Forfeiture of Western PCS BTA 1 Corp., *Memorandum Opinion and Orde*r, FCC 99-385, 14 FCC Rcd 21571 (1999); Application of Western PCS BTA I Corp., *Notice of Apparent Liability for Forfeiture,* FCC 98-42, 13 FCC Rcd 8305 (1998).

Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, FCC 99-90, 14 FCC Rcd 8816 (1999); Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture,* FCC 98-41, 13 FCC Rcd 8286 (1998).

Application of Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23755 (1998); Applications of: Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture,* FCC 97-388, 12 FCC Rcd 17970 (1997).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making,* FCC 97-413, 13 FCC Rcd 374, 463-469 ¶¶ 155-166 (1997).

Commercial Realty St. Pete, Inc., *Memorandum Opinion and Order,* FCC 96-400, 11 FCC Rcd 15374 (1996); Commercial Realty St. Pete, Inc., *Notice of Apparent Liability for Forfeiture,* FCC 95-58, 10 FCC Rcd 4277 (1995).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, FCC 94-295, 9 FCC Rcd 7684, 7687-7689 ¶¶ 8-12 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion and Order*, FCC 94-264, 9 FCC Rcd 6858, 6866-6869 ¶¶ 47-60 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Memorandum Opinion and Order*, FCC 94-215, 9 FCC Rcd 7245, 7253-7254 ¶¶ 48-53 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order,* FCC 94-178, 9 FCC Rcd 5532, 5570-5571 ¶¶ 91-92 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, FCC 94-61, 9 FCC Rcd 2348, 2386-2388 ¶¶ 221-226 (1994).

C. Wireless Telecommunications Bureau Decisions

Lotus Communications Corp., *Order*, DA 08-1364, 23 FCC Rcd 9107 (Wireless Telecom. Bur. 2008).

Application of Nevada Wireless, *Memorandum Opinion and Order,* DA 98-1137, 13 FCC Rcd 11973 (Wireless Telecom. Bur. 1998).

Applications of High Plains Wireless, L.P., *Memorandum Opinion and Order,* DA 97-2451, 12 FCC Rcd 19627 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order on Reconsideration,* DA 97-2324, 12 FCC Rcd 18093 (Wireless Telecom. Bur. 1997); Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order,* DA 97-1782, 13 FCC Rcd 5756 (Wireless Telecom. Bur. 1997).

Applications of GWI PCS, Inc., *Memorandum Opinion and Order,* DA 97-674, 12 FCC Rcd 6441 (Wireless Telecom. Bur. 1997).

Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-131, *Order,* DA 95-2292, 11 FCC Rcd 9655 (Wireless Telecom. Bur. 1995).

1. Public Notices

Wireless Telecommunications Bureau Reminder of Anti-Collusion Rule Obligations, *Public Notice*, DA 04-3677, 19 FCC Rcd 22880 (Wireless Telecom. Bur. 2004).

Wireless Telecommunications Bureau Staff Provides Guidance on Completing the Short-Form Application (FCC Form 175) for Auction No. 40, Auction of Licenses for Lower and Upper Paging Bands, *Public Notice*, DA 01-2122, 16 FCC Rcd 16391 (Wireless Telecom. Bur. 2001).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37, 13 FCC Rcd 341 (Wireless Telecom. Bur. 1998).

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice,* DA 96-1460, 11 FCC Rcd 10134 (Wireless Telecom. Bur. 1996).

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS "C" Block Reauction, *Public Notice,* DA 96-929, 11 FCC Rcd 7031 (Auc. Div. 1996).

Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice,* DA 95-2244, 11 FCC Rcd 9645 (Wireless Telecom. Bur. 1995).

2. Letters from the Office of General Counsel, the Wireless Telecommunications Bureau and the Media Bureau

Letter to John Cooper, Aurora Communications, Inc., from Margaret W. Wiener, DA 06-157, 21 FCC Rcd 523 (Auc. Div. 2006).

Letter to Howard A. Kalmenson, Lotus Communications Corp., from Margaret W. Wiener, DA 06-156, 21 FCC Rcd 520 (Auc. Div. 2006).

Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, DA 05-2445, 20 FCC Rcd 14648 (Video and Auc. Divs. 2005).

Letter to Robert Pettit from Margaret W. Wiener, DA 00-2905, 16 FCC Rcd 10080 (Auc. Div. 2000).

Letter to John Reardon, Mobex Communications, Inc., from Amy J. Zoslov, DA 98-1861, 13 FCC Rcd 17877 (Auc. Div. 1998).

Letter to Elliott J. Greenwald from Christopher J. Wright, DA 98-644, 13 FCC Rcd 7132 (Gen. Counsel 1998).

Letter to David L. Nace from Kathleen O'Brien Ham, DA 96-1566, 11 FCC Rcd 11363 (Auc. Div. 1996).

Letter to Mark Grady from Kathleen O'Brien Ham, DA 96-587, 11 FCC Rcd 10895 (Auc. Div. 1996).

Letter to Jonathan D. Blake from Kathleen O'Brien Ham, DA 95-2404, 10 FCC Rcd 13783 (Auc. Div. 1995).

Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 14, 1994).

Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 1, 1994).

Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

Letter to Alan F. Ciamporcero from William E Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

D. Enforcement Bureau Decisions

Cascade Access, L.L.C., *Notice of Apparent Liability for Forfeiture*, DA 09-207, 24 FCC Rcd 1350 (Enf. Bur. 2009).

Application of Star Wireless, LLC, *Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18626 (Enf. Bur. 2004); Application of Star Wireless, LLC, *Notice of Apparent Liability for Forfeiture*, DA 03-2722, 18 FCC Rcd 17648 (Enf. Bur. 2003).

Application of Northeast Communications of Wisconsin, Inc., *Forfeiture Order*, DA 04-3027, 19 FCC Rcd 18635 (Enf. Bur. 2004); Application of Northeast Communications of Wisconsin, Inc., *Notice of Apparent Liability for Forfeiture*, DA 03-2723, 18 FCC Rcd 17672 (Enf. Bur. 2003).

E. Civil Actions Initiated by U.S. Department of Justice

USA v. Northeast Communications of Wisconsin, Inc., No. 07-C-715, 608 F.Supp.2d 1049 (E.D.Wis. June 25, 2008).

U.S. v. Omnipoint Corp., Proposed Final Judgments and Competitive Impact Statements, Department of Justice, 63 Fed. Reg. 65,228 (Nov. 25, 1998).

"Justice Department Sues Three Firms Over FCC Auction Practices," *Press Release*, U.S. Department of Justice (Nov. 10, 1998).

Complaint, *U.S. v. Omnipoint Corp*., No. 1:98CV02750 (D.D.C. Nov. 10, 1998).

Complaint, *U.S. v. Mercury PCS II, L.L.C*., No. 1:98CV02751 (D.D.C. Nov. 10, 1998).

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. Nov. 10, 1998).

How to Obtain Copies of Listed Decisions

Many of the documents listed in this attachment can be retrieved from the following Commission web site: http://wireless.fcc.gov/auctions/prohibited_communications.

Additionally, all of the documents can be ordered in hard copy for a fee from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (800) 378-3160, or at http://www.bcpiweb.com.