

Governmental Affairs Bureau and submitted through the Commission's online informal complaint filing system, U.S. Mail, overnight delivery, or facsimile. 47 CFR 79.4(e)(2) sets forth certain information that a complaint should include. 47 CFR 79.4(e)(3) states that, if a complaint is filed first with the Commission, the Commission will forward complaints satisfying the above requirements to the named VPD and/or VPO, as well as to any other VPD and/or VPO that Commission staff determines may be involved. The VPD and/or VPO must respond in writing to the Commission and the complainant within 30 days after receipt of the complaint from the Commission. 47 CFR 79.4(e)(4) states that, if a complaint is filed first with the VPD, the VPD must respond in writing to the complainant within thirty (30) days after receipt of a closed captioning complaint. If a VPD fails to respond to the complainant within thirty (30) days, or the response does not satisfy the consumer, the complainant may file the complaint with the Commission within thirty (30) days after the time allotted for the VPD to respond. If a consumer re-files the complaint with the Commission and the complaint satisfies the above requirements, the Commission will forward the complaint to the named VPD, as well as to any other VPD and/or VPO that Commission staff determines may be involved. The VPD and/or VPO must then respond in writing to the Commission and the complainant within 30 days after receipt of the complaint from the Commission. 47 CFR 79.4(e)(5) requires VPDs and/or VPOs, in response to a complaint, to file with the Commission sufficient records and documentation to prove that the responding entity was (and remains) in compliance with the Commission's rules. If the responding entity admits that it was not or is not in compliance with the Commission's rules, it shall file with the Commission sufficient records and documentation to explain the reasons for its noncompliance, show what remedial steps it has taken or will take, and show why such steps have been or will be sufficient to remediate the problem. 47 CFR 79.4(d)(6) permits the Commission to request additional information from any relevant entities when, in the estimation of Commission staff, such information is needed to investigate the complaint or adjudicate potential violation(s) of Commission rules. When the Commission requests additional information, parties to which such requests are addressed must provide the requested information in the manner and within the time period the

Commission specifies. Overall, while the complaint procedures impose an information collection burden, the requirement for VPDs to publish contact information, described above, and to respond to consumer complaints provides an opportunity for VPDs to resolve complaints without Commission involvement.

(e) Under the CVAA, the requirements of Section 203 only apply to the extent they are "technically feasible." Parties may raise technical infeasibility as a defense to a complaint or, alternatively, may file a request for a ruling under Section 1.41 of the Commission's rules before manufacturing or importing the product.

(f) 47 CFR 79.103(b)(3)(i) permits manufacturers of apparatus that use a picture screen of less than 13 inches in size to petition the Commission for a full or partial exemption from the closed captioning requirements pursuant to Section 1.41 of the Commission's rules, which the Commission may grant upon a finding that the requirements are not achievable. Such manufacturers may also assert that such apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements are not achievable. 47 CFR 79.103(b)(3)(ii) requires the petitioner or respondent to support a petition for exemption or a response to a complaint with sufficient evidence to demonstrate that compliance with the requirements is not "achievable" where "achievable" means with reasonable effort or expense. The rule further sets forth certain factors that the Commission will consider when determining whether the requirements are not "achievable."

(g) 47 CFR 79.103(b)(4) permits manufacturers of apparatus to petition the Commission for a full or partial waiver of the closed captioning requirements, which the Commission may grant upon a finding that the apparatus meets one of the following provisions: (i) The apparatus is primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound; or (ii) the apparatus is designed for multiple purposes, capable of receiving or playing back video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.

(h) The Report and Order also established procedures for the filing of written complaints alleging violations of the Commission's rules requiring apparatus designed to receive, play back, or record video programming to be equipped with built-in closed caption

decoder circuitry or capability designed to display closed captions. The Commission set forth information that such complaints should include. A written complaint filed with the Commission must be transmitted to the Consumer and Governmental Affairs Bureau through the Commission's online informal complaint filing system, U.S. Mail, overnight delivery, or facsimile. The Commission may forward such complaints to the named manufacturer or provider, as well as to any other entity that Commission staff determines may be involved, and may request additional information from any relevant parties when, in the estimation of Commission staff, such information is needed to investigate the complaint or adjudicate potential violations of Commission rules.

Federal Communications Commission.

**Bulah P. Wheeler,**

*Deputy Manager, Office of the Secretary,  
Office of Managing Director.*

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## FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 12-25; DA 12-641 and DA 12-721]

### Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Wireless Telecommunications Bureau (WTB) and the Wireline Competition Bureau (WCB) (collectively, the Bureaus) announce the procedures and filing requirements for a reverse auction to award \$300 million in one-time Mobility Fund Phase I support scheduled to commence on September 27, 2012. The Bureaus also announce the availability of eligible area data in various formats.

**DATES:** Short-form applications are due prior to 6 p.m. on July 11, 2012.

**FOR FURTHER INFORMATION CONTACT:** *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* for Mobility Fund Phase I questions: Sayuri Rajapakse or Stephen Johnson at (202) 418-0660; for auction process questions: Lisa Stover at (717) 338-2868. *Wireline Competition Bureau, Telecommunications Access Policy Division:* for general universal service

questions: Alex Minard at (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of two public notices related to the auction for Mobility Fund Phase I support (Auction 901): (1) The *Auction 901 Procedures Public Notice* released on May 2, 2012, and (2) a public notice released on May 8, 2012, announcing the availability of additional formats for data regarding the areas eligible for support in Auction 901. Both public notices and other related Commission documents may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 12–641 or DA 12–721. Both public notices and other related documents also are available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/901/> or by using the search function for AU Docket No. 12–25 on the Commission's Electronic Comment Filing System (ECFS) Web page at <http://www.fcc.gov/cgb/ecfs/>.

## I. General Information

### A. Introduction and Summary

1. 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. This auction, designated as Auction 901, is scheduled to be held on September 27, 2012. The *Auction 901 Procedures 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 third-generation (3G) or better mobile voice and broadband services in census blocks where such services are unavailable. Mobility Fund Phase I 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 fourth-generation (4G) service within three years of the award of support. The term 3G refers to mobile wireless services that provide voice telephony service on networks that also provide services such as Internet access and

email. 4G services are those capable of meeting or exceeding certain data rates, as discussed below.

3. Auction 901 will be the first auction to award high-cost universal service support through competitive bidding. The *USF/ICC Transformation Order*, 76 FR 73830, November 29, 2011 and 76 FR 81562, December 28, 2011, 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. 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. On February 2, 2012, the Bureaus released the *Auction 901 Comment Public Notice*, 77 FR 7152, February 10, 2012, 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. The Bureaus considered 69 separate filings in response to the *Auction 901 Comment Public Notice*.

4. In the *Auction 901 Procedures Public Notice*, The Bureaus, among other things: (1) Provide the final list of census blocks eligible for Mobility Fund Phase I support in Auction 901; (2) conclude that, to establish the number of qualifying road miles associated with each eligible census block, three additional Census road categories will be added to the three categories of roads proposed in the *Auction 901 Comment Public Notice*; (3) conclude that Auction 901 will be conducted as a single round, sealed bid auction; (4) 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; (5) 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 (6) permit winning bidders to demonstrate that they offer supported services at rates comparable to those in urban areas by offering one stand-alone voice and one 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. Moreover, the *Auction 901 Procedures 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

#### i. 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, and 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. 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. The Commission sought comment on the details for Mobility Fund Phase II in the Further Notice of Proposed Rulemaking adopted in the *USF/ICC Transformation Order*.

8. The goal for Mobility Fund Phase I is to extend the availability of mobile voice and broadband service on networks that provide 3G or better performance and to accelerate the deployment of 4G wireless networks in areas where it is cost effective to do so with one-time support. 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. 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. Successful bidders will be awarded support for an area at the price they bid.

ii. 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 is the best available data source for determining where such service is unavailable. (The *Auction 901 Procedures Public Notice* continues to refer to the data as American Roamer data, even though the company has since changed its name to Mosaik Solutions.) In the *USF/ICC Transformation Order*, 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.

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. 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. 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*, 77 FR 9655, February 17, 2012, the Bureaus identified potentially eligible unserved blocks based on their

analysis of 2010 Census data and January 2012 American Roamer data. 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*, the Bureaus will also make ineligible for support census blocks for which, notwithstanding the absence of 3G service, 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 wireless service. 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).

12. The Commission established certain bidder-specific restrictions. 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. In determining whether an applicant has made such a public commitment, the Bureaus anticipated that they 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. 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, the Bureaus asked commenters to indicate which blocks not included in the revised list should be eligible for support and provide supporting evidence.

14. The Bureaus received numerous comments, reply comments, *ex parte* and other submissions relating to census block eligibility. Three states requested that the Bureaus add census blocks to the revised list based on State Broadband Initiative data. Five BIP and/or BTOP awardees submitted comments requesting that the Bureaus remove census blocks. Twenty-two other providers also requested that the Bureaus either add or remove census blocks from their updated list of potentially eligible blocks.

15. Three state agencies requested that the Bureaus include census blocks that the states identify as unserved based on the State Broadband Initiative data gathered by the individual states for the National Broadband Map. 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. While the Bureaus appreciate that data submitted for and displayed in the National Broadband Map may have improved, the Bureaus conclude that the states did not provide 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. The Bureaus therefore decline to add as eligible census blocks those listed by the three state agencies in their filings.

16. 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), the Bureaus requested information on awards proposing mobile wireless projects using 3G or better technology. In response, the U.S. Department of Agriculture's Rural Utilities Service (USDA RUS) and the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) submitted information on the location of their BIP and BTOP awards. Five carriers also submitted comments listing census blocks to be removed from the Bureaus' list of potentially eligible blocks based

on their receipt of BIP and/or BTOP awards to provide 3G or better service.

17. USDA RUS provided the Bureaus with a list of Census 2000 census blocks associated with BIP awards for mobile wireless projects. After converting the data to 2010 census blocks and comparing the results to the 2010 census blocks submitted by the three carriers claiming BIP awards, the Bureaus find that the blocks submitted by the carriers were also reported on the list. This consistency leads the Bureaus to conclude that the full list of census blocks receiving BIP awards should be removed from the list of eligible census blocks to comply with the *USF/ICC Transformation Order*. As a result, the Census 2000 census blocks 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 the Bureaus with a list of Census 2000 census tracts associated with BTOP awards potentially for mobile wireless projects. The BTOP list may be over inclusive because the 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. The Bureaus 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 on the list. Based on that correspondence, the Bureaus remove the census blocks submitted by the two commenters from the list of eligible census blocks. However, because the likely over inclusiveness of the submitted data reduces the Bureaus' ability to ensure that they would be targeting areas with planned expansion of 3G or better coverage, the Bureaus did not remove all of the areas on the list from consideration for Mobility Fund Phase I support. Further, the Bureaus 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 list.

19. The Bureaus also received comments from 22 carriers requesting changes to their list of potentially eligible blocks—either removals based on assertions that census blocks listed as potentially 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, the Bureaus note that three parties 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. The Bureaus conclude that they will not make census blocks ineligible based on these assertions. Pursuant to the *USF/ICC Transformation Order*, the Bureaus provided parties with an opportunity to demonstrate that specific areas identified as unserved are actually served or that parties had made a regulatory commitment to serve particular areas. The Bureaus finds 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 the Bureaus final list of eligible census blocks. Although two carriers also claimed that they currently provide service with respect to some of their listed census blocks, the Bureaus reject their requested exclusions because they do not differentiate between current and future coverage in their submissions.

20. The Bureaus received comments from 15 carriers identifying census blocks for removal and/or addition to the 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. The Bureaus find these demonstrations to be sufficiently credible and convincing to meet the requirements of the *USF/ICC Transformation Order* and incorporate the requested changes in the final list of eligible census blocks, to the extent that they contain road miles in any of the six categories identified by the Bureaus in the *Auction 901 Procedures Public Notice*.

21. Finally, the Bureaus 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 the Bureaus potentially eligible list. In contrast to the submissions of the 15 carriers, these five did not provide any information regarding the basis for their assertions. Reply commenters challenged several such submissions as inadequate. The Bureaus 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 the Bureaus to depart from their determination of potentially eligible census blocks.

22. The list of census blocks released with the *Auction 901 Procedures Public Notice* is the Bureaus' 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 the Bureaus have removed and added blocks based on the comments of the 15 carriers that provided sufficiently credible and convincing demonstrations, the Bureaus removed blocks based on BTOP and BIP awards, and the Bureaus removed blocks that did not have road miles in any of the six road categories. Accordingly, the list of census blocks the Bureaus released in the *Auction 901 Procedures Public Notice* contains the final determinations with respect to the areas eligible for Mobility Fund Phase I support. These census blocks will, in most cases, be aggregated into their associated census tracts for bidding purposes. Concurrent with the release of the *Auction 901 Procedures Public Notice*, the Bureaus released an interactive map of the eligible census blocks. The map is a visual representation of data from the Attachment A files, which contain more information and generally more detail than is displayed on the map. The map is available at <http://wireless.fcc.gov/auctions/901/> and at <http://www.fcc.gov/maps/>. The Bureaus have also announced the availability of a spreadsheet of biddable geographic areas for Auction 901 and geographic information system (GIS) data for the census blocks eligible for Mobility Fund Phase I support to be offered in Auction 901. These data in additional formats are available at <http://wireless.fcc.gov/auctions/901/>.

23. The Bureaus 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.

iii. Establishing Unserved Road Mile Units

24. In the *Auction 901 Comment Public Notice*, the Bureaus proposed to establish road mile units based on three road categories defined and reported by the U.S. Census Bureau: S1100, primary roads; S1200, secondary roads; and

S1400, local and rural roads and city streets. The Bureaus 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. Specifically, parties requested the addition of road categories S1500, 4WD vehicular trails; S1640, service drives; and S1740, private roads for service vehicles. Based on these comments and an analysis of 2010 census blocks and TIGER road mile data, the Bureaus decide 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, the Bureaus 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 the *Auction 901 Procedures Public Notice* includes, for each block, the number of road miles in each of the six selected road categories.

#### iv. 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. 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. Furthermore, receipt of Mobility Fund Phase I 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.

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. 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. 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).

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. Those parties committing to provide service over a 3G network must do so for at least 75 percent or more of the designated road miles within the relevant area within two (2) years of being authorized to receive support. Winning bidders committing to provide service over a 4G network must do so for at least 75 percent or more of the designated road miles within the relevant area within three (3) years of being authorized to receive support. 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.

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. This requirement extends for a period ending five years after the date of award of support.

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. 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 47 CFR 20.12 as those rules were in effect on the date the Commission adopted the *USF/ICC Transformation Order*. 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.

#### v. 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. In addition, an applicant must certify that it is financially and technically capable of providing 3G or better service.

33. One commenter advocates restricting eligibility to participate in the auction based on additional factors, primarily related to the size of the applicant. The Commission previously considered and rejected similar proposals in the *USF/ICC Transformation Order*. 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 participate. The Bureaus cannot modify the eligibility requirements because the changes the commenter 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*.

34. On a related note, 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, as

implemented by the Bureaus in the *Auction 901 Procedures Public Notice*.

vi. Annual Reporting and Record Retention Requirements

35. 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 47 CFR 54.1009. In addition, authorized winning bidders are required to submit certain reports before receiving disbursements of support. 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. 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 47 CFR 54.1006. A recipient will be eligible to receive the final disbursement when it submits a report demonstrating coverage meeting the applicable requirements of 47 CFR 54.1006.

36. 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.

C. Auction Specifics

i. Auction Start Date

37. Bidding in Auction 901 will be held on Thursday, September 27, 2012. Two commenters 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 pending petitions for reconsideration of various aspects of the *USF/ICC Transformation Order*. Neither pending litigation nor 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, and no action taken in the *Auction 901 Procedures Public Notice* would prejudice the Commission's review of the petitions seeking reconsideration of the *USF/ICC Transformation Order*.

38. The start and finish time of bidding in Auction 901 will be

announced by public notice approximately one week before the start of the auction. Unless otherwise announced, bidding for all census blocks will be offered at the same time.

ii. Bidding Methodology

39. The bidding methodology for Auction 901 will be single-round reverse format. 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.

iii. Pre-Auction Dates and Deadlines

40. The following dates and deadlines apply to Auction 901: (1) An auction tutorial will be available (via Internet) by June 27, 2012; (2) short-form application (FCC Form 180) filing window opens on June 27, 2012, at 12 noon ET; (3) short-form application (FCC Form 180) filing window closes on July 11, 2012, at 6:00 p.m. ET; (4) a mock auction will be held on September 25, 2012; and (5) Auction 901 will be held on September 27, 2012.

iv. Requirements for Participation

41. Those wishing to participate in this auction must: (1) submit a short-form application (FCC Form 180) electronically prior to 6 p.m. ET on July 11, 2012, following the electronic filing procedures that will be provided in a future public notice; and (2) comply with all provisions outlined in the *Auction 901 Procedures Public Notice* and applicable Commission rules.

D. Rules and Disclaimers

i. Relevant Authority

42. Prospective applicants in Auction 901 must familiarize themselves with the Commission's general universal service rules, contained in 47 CFR part 54, and the Mobility Fund specifically, 47 CFR 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. Prospective bidders in Auction 901 must be familiar with the specific competitive bidding rules for universal service support contained in 47 CFR 1.21000—1.21004, as well as the procedures, terms and conditions contained in the *Auction 901 Procedures Public Notice*, the *Auction 901 Comment Public Notice*, and all other public notices related to Auction 901 (AU Docket No. 12–25). 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.

43. 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.

ii. Prohibited Communications and Compliance With Antitrust Laws

44. To ensure the competitiveness of the auction process, 47 CFR 1.21002 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 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 47 CFR 1.21001(b)(3)–(4).

45. 47 CFR 1.21002 is based on a similar rule used by the Commission in competitive bidding for spectrum licenses, 47 CFR 1.2105(c). Potential bidders should familiarize themselves with 47 CFR 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 of the *Auctions 901 Procedures Public Notice*. The Bureaus encourage applicants to review information regarding the Commission's interpretation of 47 CFR 1.2105(c) to gain insight into its views on prohibited communications during competitive bidding for Mobility Fund support.

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

46. The prohibition on certain communications contained in 47 CFR 1.21002 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 47 CFR 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. 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.

47. 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.

48. For purposes of the prohibition on certain communications, 47 CFR 1.21002 defines *applicant* broadly to include the applicant, each party capable of controlling the applicant, including all officers and directors, and each party that may be controlled by the applicant or by a party capable of controlling the applicant.

49. Individuals and entities subject to 47 CFR 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.

50. Moreover, Auction 901 applicants are encouraged not to use the same individual as an authorized bidder. A violation of 47 CFR 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. 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 47 CFR 1.21002.

b. Prohibition Applies Until Long Form Application Deadline

51. 47 CFR 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.

c. Prohibited Communications

52. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants. 47 CFR 1.21002 prohibits not only communication about an applicant's own bids or bidding strategy, it also prohibits communication of another applicant's bids or bidding strategy. While the rule 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.

53. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place outside of the auction itself. 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. 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, 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. 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 47 CFR 1.21002 violation. 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 47 CFR 1.21002.

d. Disclosure of Bidding Agreements and Arrangements

54. 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. 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.

55. 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 47 CFR 1.21001(b)(3), even if the agreement has not been reduced to writing. 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.

56. 47 CFR 1.21002 does not prohibit non-auction-related business negotiations among auction applicants. 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.

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

57. By electronically submitting a short-form application, each applicant in Auction 901 certifies its compliance with 47 CFR 1.21001(b)(3) and 1.21002. 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. Also, the applicant must certify that it and all applicable parties have complied with and will continue to comply with 47 CFR 1.21002.

58. The Bureau cautions, 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. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated 47 CFR 1.21001(b)(4) and (5) may be subject to sanctions.

#### f. Duty To Report Prohibited Communications

59. 47 CFR 1.21002(c) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 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. An applicant's obligation to make such a report continues until the report has been made.

60. In addition, 47 CFR 1.65 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. Thus, the rule 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 47 CFR 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 47 CFR 1.21001(b)(4).

61. 47 CFR 1.65(a) and 1.21002 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. 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.

#### g. Procedure for Reporting Prohibited Communications

62. A party reporting any prohibited communication pursuant to 47 CFR 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 47 CFR 1.21002. 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.

63. 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. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by 47 CFR 1.21002(c) must be filed consistent with the instructions set forth in the *Auction 901 Procedures Public Notice*. 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 email to the following email address: [auction901@fcc.gov](mailto: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.

64. 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 47 CFR 0.459. The Bureaus encourage such parties to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.

#### h. Winning Bidders May Need To Disclose Terms of Agreements

65. Each applicant that is a winning bidder may be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement it has entered into. 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. Antitrust Laws

66. The Bureaus 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. Compliance with the disclosure requirements of 47 CFR 1.21002 will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application. Similarly, the Wireless Bureau previously reminded potential applicants and others that even 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.

67. 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. 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.

#### iii. Due Diligence

68. 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.

69. 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.

70. 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*. 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.

71. 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 the *Auction 901 Procedures 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.

72. 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.

73. 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.

74. 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.

#### iv. Use of FCC Auction System

75. 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 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.

#### v. Environmental Review Requirements

76. 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. 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. The Commission's environmental rules require, among other things, that the 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. 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. Facilities that require antenna registration will also be required to complete an environmental notification process.

## II. Short-Form Application Requirements

### A. General Information Regarding Short-Form Applications

77. 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. 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. 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. In the second phase of the process, each winning bidder must file a more comprehensive long-form application (FCC Form 680).

78. Every entity seeking support available in Auction 901 must file a short-form application electronically via the FCC Auction System prior to 6 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 date of award of support. If an applicant claims eligibility for a Tribal land bidding credit as a Tribally-owned or controlled entity, the information provided in its FCC Form 180 will be used in determining whether the applicant is eligible for the claimed bidding credit. Each applicant filing a short-form application is subject to the Commission's rule prohibiting certain communications beginning on the deadline for filing.

79. 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. Each applicant should consult the Commission's rules to ensure that all the information required is included in its short-form application.

80. 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.

81. 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. 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*

82. 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*

83. 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.

84. 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. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

85. 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 47 CFR 1.21002. While 47 CFR 1.21002 does not prohibit non-auction-related business negotiations among auction applicants, the Bureaus remind applicants that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Compliance with the disclosure requirements of 47 CFR 1.21002 will not insulate a party from enforcement of the antitrust laws.

#### *D. Ownership Disclosure Requirements*

86. Each applicant must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 54.1005(a)(1) and 1.2112(a). 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 47 CFR 1.2112(a). Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

87. 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*

##### *i. ETC Designation Certification*

88. 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. An applicant must be the 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. 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.

89. 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. 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.

90. *Pending ETC Designations.* The Commission further decided to permit participation by a Tribally-owned or controlled entity 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. 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. 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.

ii. Access to Spectrum Description and Certification

91. 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. In an application to 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. 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. 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. 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.

iii. Financial and Technical Capability Certification

92. 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. 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.

iv. 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

93. 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. In determining whether an applicant has made such a public commitment, the Bureaus 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 they intend to cover with 3G or better service no later than December 31, 2012. 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, the Bureaus 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.

F. *Tribally-Owned or Controlled Providers—25 Percent Reverse Bidding Credit*

94. 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. 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.

95. 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*

96. 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. Pursuant to these 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 Rules. 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 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/](http://transition.fcc.gov/debt_collection/).

#### H. USF Debarment

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

#### I. Minor Modifications to Short-Form Applications

98. 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. 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.

99. 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.

100. 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.

101. Any letter describing changes to an applicant's short-form application must be submitted by email to [auction901@fcc.gov](mailto:auction901@fcc.gov). The email 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." Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

102. 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.

103. 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. 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 47 CFR 1.21002 or the limited information procedures adopted for Auction 901. 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 47 CFR 1.21002.

#### J. Maintaining Current Information in Short-Form Applications

104. 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application. If an amendment reporting changes is a major amendment, as defined by 47 CFR 1.21001(d)(4), the major amendment will not be accepted and may result in the dismissal of the application. 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 47 CFR 1.65 after these windows close, a letter briefly summarizing the changes must be submitted by email to [auction901@fcc.gov](mailto:auction901@fcc.gov). This email must include a subject or caption referring to Auction 901 and the name of the applicant. 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 47 CFR 1.21002.

### III. Pre-Auction Procedures

#### A. Online Auction Tutorial—Available June 27, 2012

105. 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.

106. 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, email 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. As always, Commission staff will be available to promptly answer questions posed by telephone and email throughout the

auction process. 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.

*B. Short-Form Applications—Due Prior to 6 p.m. ET on July 11, 2012*

107. 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 p.m. ET on July 11, 2012. Late applications will not be accepted. No application fee is required.

108. Applications may generally be filed at any time beginning at noon ET on June 27, 2012, until the filing window closes at 6 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.

109. 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 future 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*

110. 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.

111. After the application filing deadline on July 11, 2012, applicants can make only minor corrections to their applications. They will not be permitted to make major modifications (e.g., change control of the applicant or change of the certifying official).

112. 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. Authorizations may be sent by email to [auction901@fcc.gov](mailto:auction901@fcc.gov).

*D. Auction Registration*

113. 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.

114. 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.

115. 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.

116. 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*

117. 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.

118. 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.

*F. Mock Auction—September 25, 2012*

119. 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. The Bureaus strongly recommend that all qualified bidders participate to gain experience with the bidding procedures. Details will be announced in a future public notice.

**IV. Auction Event**

*A. Auction Structure—Reverse Auction Mechanism*

120. 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. The Bureau's choice of auction design for Auction 901 is specific to the particular context of the Mobility Fund Phase I auction. The choices made in the *Auction 901 Procedures Public Notice* do not prejudice future auction design choices for other phases of the Mobility Fund or other competitive bidding mechanisms related to the USF.

*i. Single Round Sealed Bid Reverse Auction Format*

121. The Bureaus will conduct Auction 901 using a single round of bidding. The Bureaus concluded in the *Auction 901 Procedures Public Notice* 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. The Bureaus recognized 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, the Bureaus

did 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 concerns about the complexity it would add to the auction. As a result, the Bureaus will conduct Auction 901 using a single round of bidding.

ii. Aggregation Method—Predefined Aggregations

a. Census Blocks Aggregated to Census Tracts

122. Consistent with the framework laid out by the Commission in the *USF/ICC Transformation Order*, the Bureaus discussed in the *Auction 901 Comment Public Notice* 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. 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. The record the Bureaus received in response to the *Auction 901 Comment Public Notice* was mixed.

123. Given the schedule for the Mobility Fund Phase I auction, the record received, and the amount of support being provided here, the Bureaus 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. 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. The Bureaus also modify their tract aggregation approach for some tracts that include census blocks covering Tribal lands.

124. 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 the Bureaus want to proceed in distributing this one-time support. As noted in the *Auction 901 Updated Blocks Public Notice*, the Bureaus' list of potentially eligible census blocks includes over 460,000 blocks; bundled into tracts for bidding, there are approximately 6,100 tracts.

125. The predefined aggregation option that the Bureaus 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.

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

126. The Bureaus 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.

127. In the *Auction 901 Comment Public Notice*, the Bureaus sought comment on this alternative approach for areas in Alaska under the suggested predefined aggregation option, which the Bureaus adopt here. 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*, the Bureaus 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. 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, the Bureaus believe it will be helpful to give bidders the flexibility to bid on individual census blocks in Alaska.

128. The Bureaus do not make a more general size-based exception to the decision to conduct bidding on a census tract basis. Specifically, the *Auction 901 Comment Public Notice* asked whether, outside of Alaska, the Commission should use a geographic area other than tracts in areas where tracts exceed a certain size. The Bureaus received only limited response. 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. Based on the record (including the absence of any input on an appropriate size cutoff point at which the Bureaus would switch from bidding on a tract basis to bidding on a block basis), the Bureaus decline to extend their provisions for block-by-block bidding beyond Alaska.

c. Census Block Aggregation for Tracts With Tribal Lands

129. 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

130. A winning bidder will be required to provide coverage to a minimum of 75 percent 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. If a winning bidder covers more than the minimum 75 percent of

qualifying road miles within the required timeframe, it may collect support for up to 100 percent of the qualifying road miles in each tract. This requirement is consistent with the coverage requirement associated with the predefined approach described in the *Auction 901 Comment Public Notice*.

### iii. Winner Selection Process

131. Under the auction format that the Bureaus 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 the Mobility Fund 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.

132. 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. 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. 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. 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.

133. 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.

134. The Bureaus recognize that this approach may result in some unused funds when support awardees do not fully build out, but the Bureaus wish to encourage the extension of services as completely as possible within the tracts that are awarded support, and therefore the Bureaus must reserve funds sufficient to fully cover the supported tracts. The Bureaus 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.

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

135. The Bureaus will conduct Auction 901 using procedures for limited information disclosure. 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 the Bureaus will conduct Auction 901 using a single round of bidding, the Bureaus do not anticipate a need to release bidding-related actions during the auction as they would in a multiple round auction. If such circumstances arise prior to the release of non-public information and auction results, however, the Bureaus 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.

### v. Auction Delay, Suspension, or Cancellation

136. 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. The Bureaus received no comments on this issue.

137. 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, the Bureaus 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. 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. The Bureaus emphasize that they will exercise this authority solely at their discretion.

## B. Bidding Procedures

### i. Bidding

138. All bidding in Auction 901 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.

139. 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.

## ii. Reserve Prices

140. 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. As proposed, the Bureaus choose not to establish any maximum acceptable per-unit bid amounts or reserve prices. Although two commenters suggest that the Bureaus may want to consider some sort of reserve price, the Bureaus 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.

## iii. Bid Removal

141. 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.

142. 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.

## iv. Auction Announcements

143. 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.

## v. Auction Results

144. The Bureaus will determine the winning bids based on the lowest per-road mile bids. After the Bureaus announce the auction results, the Bureaus will provide downloadable files of the bidding and results data.

## V. Post-Auction Procedures

### A. General Information Regarding Long-Form Applications

145. For the Mobility Fund Phase I auction, the Commission adopted a two-phased auction application process. Pursuant to 47 CFR 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 the public notice issued after the close of the auction.

146. In addition to the long-form application process, 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. 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

147. Unless otherwise provided by public notice, within ten business days after release of the public notice announcing the close of Auction 901, 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.

#### i. Ownership Disclosure

148. 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. 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. To minimize the reporting burden on winning bidders, the Bureaus will allow them to use ownership information stored in existing

Commission databases and update that information as necessary.

#### ii. Documentation of ETC Designation

149. 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. 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.

#### iii. Financial and Technical Capability Certification

150. 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.

#### iv. Project Construction Schedule/ Specifications

151. 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. 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 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.

152. Applicants will indicate for each winning bid whether the supported network will provide 3G mobile service within the period prescribed by 47 CFR 54.1006(a) or 4G mobile service within the period prescribed by 47 CFR 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.

#### v. Spectrum Access

153. 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 description should include the licensee name and the relationship between the applicant and the licensee that provides the applicant with the required access. 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.

154. 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.

#### vi. Letter of Credit Commitment Letter

155. 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*. The commitment letter must be from an

acceptable bank, as defined in 47 CFR 54.1007(a)(1).

#### vii. Letter of Credit and Bankruptcy Code Opinion Letter

156. 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* by a bank that is acceptable to the Commission. An LOC must be submitted for each winning bid in an amount equal to one-third of the 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 47 CFR 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.

157. 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.

#### viii. Certification as to Program Requirements

158. 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. The requirements include the public interest obligations contained in the Commission's rules. 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 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.

#### ix. Reasonably Comparable Rate Certification

159. 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. 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. The approach adopted for Phase I of the Mobility Fund in no way prejudices 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*.

160. The Bureaus proposed in the *Auction 901 Comment Public Notice* 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. 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.

161. 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. Consequently, even the highest rate might be considered as being within a reasonable range of rates for similar service in urban areas, because the rates for the matching urban services reflect the effects of competition in the urban area. For purposes of this requirement, the Bureaus proposed defining urban area as one of the 100 most populated CMAs in the United States. 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. Finally, the Bureaus further proposed that they would retain discretion to consider whether and how variable rate structures should be taken into account.

162. 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.

163. There was support among some commenters for the framework of the Bureaus' proposal. 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. Some parties advocated allowing supported parties to satisfy the requirement based on their offering the same rate, either nationwide, statewide, or in non-supported areas. The Bureaus 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. 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.

164. The Bureaus 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, the Bureaus 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, the Bureaus 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.

165. 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. On further review, the Bureaus 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. The Bureaus 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. In addition, this will simplify the supported parties' compliance with the rule.

#### x. Tribal Engagement Requirements: Certification and Summary of Engagement Results

166. 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. 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.

167. 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. The Bureaus 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). The Bureaus 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

168. 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. 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. 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.

#### i. Auction Default Payment

169. 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. Agreeing to such payment in event of a default is a

condition for participating in bidding. In the event of an auction default, the Bureaus will assess a default payment of five percent of the total defaulted bid.

170. 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. Accordingly, in the *Auction 901 Comment Public Notice*, the Bureaus proposed an auction default payment of five percent of the total defaulted bid. 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.

171. Commenters supported the Bureaus' proposal for a rate of five percent of the total defaulted bid. A commenter 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. 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. The Bureaus received no comments on any alternative methodologies for determining an appropriate auction default penalty.

172. The Bureaus are not persuaded that they should modify the 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 unduly punitive. Liability for the auction default payment will be imposed without regard to the intentions or fault of any specific defaulting bidder. The Bureaus therefore adopt its proposal.

173. 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. The Bureaus think their adoption of an auction default payment will provide adequate protection against costs to the Commission and the USF, and therefore the Bureaus find that establishing a bond or deposit requirement is unnecessary.

#### ii. Performance Default Payment

174. 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. The Bureaus will assess a performance default penalty of ten percent on the total level of support for which a winning bidder is eligible.

175. 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. 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. In the *Auction 901 Comment Public Notice*, the Bureaus proposed to establish the performance default payment percentage at ten percent of the total level of support for which a winning bidder is eligible. 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. The Bureaus received support for this proposal. 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. The Bureaus therefore proposed that the performance default payment be set at a higher percentage than the auction default payment percentage. The Bureaus did not receive specific comments on their

proposal to establish the performance default payment percentage at ten percent. The Bureaus 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. The Bureaus therefore adopt this proposal.

Federal Communications Commission.

**Gary Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division, WTB.*

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**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Privacy Act System of Records

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; one new Privacy Act system of records.

**SUMMARY:** Pursuant to subsection (e)(4) of the Privacy Act of 1974, as amended ("Privacy Act"), 5 U.S.C. 552a, the FCC's Media Bureau (MB) proposes to add a new system of records, FCC/MB-2, "Broadcast Station Public Inspection Files." The enactment of the Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations and Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398), *Second Report and Order*, MM Docket 00-168, FCC 12-44, on April 27, 2012, adopted rules that require television broadcasters to submit their public filing information to the FCC to be posted in an on-line Broadcast Station Public Inspection File. The Commission's purpose for establishing this system of records, FCC/MB-2, "Broadcast Station Public Inspection Files," is to cover the personally identifiable information (PII) that may be contained in the Broadcast Station Public Inspection Files.

**DATES:** In accordance with subsections (e)(4) and (e)(11) of the Privacy Act, any interested person may submit written comments concerning this new system of records on or before July 2, 2012. The Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review the system of records, and Congress may submit comments on or before July 10, 2012. The proposed new

system of records will become effective on July 10, 2012 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act, the FCC is submitting reports on this proposed new system to OMB and Congress.

**ADDRESSES:** Address comments to Leslie F. Smith, Privacy Analyst, Performance Evaluation and Records Management (PERM), Room 1-C216, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554, or via the Internet at *Leslie.Smith@fcc.gov* <<mailto:Leslie.Smith@fcc.gov>>.

**FOR FURTHER INFORMATION CONTACT:** Leslie F. Smith, Performance Evaluation and Records Management (PERM), Room 1-C216, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554, (202) 418-0217, or via the Internet at *Leslie.Smith@fcc.gov* <<mailto:Leslie.Smith@fcc.gov>>.

**SUPPLEMENTARY INFORMATION:** As required by the *Privacy Act of 1974*, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed new system of records to be maintained by the FCC. This notice is a summary of the more detailed information about the proposed new system of records, which may be obtained or viewed pursuant to the contact and location information given above in the **ADDRESSES** section. The Commission's purpose for establishing this new system of records, FCC/MB-2, "Broadcast Station Public Inspection Files," is to cover the personally identifiable information (PII) that may be contained in the Broadcast Station Public Inspection Files, which broadcasters are required to submit to the FCC to be posted in an on-line Broadcast Station Public Inspection File, as required by 47 CFR 73.3526 and 73.3527.

This notice meets the requirement documenting the proposed new system of records that is to be added to the systems of records that the FCC maintains, and provides the public, OMB, and Congress with an opportunity to comment.

### FCC/MB-2

#### SYSTEM NAME:

Broadcast Station Public Inspection Files.

#### SECURITY CLASSIFICATION:

The FCC's Security Operations Center (SOC) has not assigned a security classification to this system of records.

#### SYSTEM LOCATION:

Media Bureau (MB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals in this system include, but are not limited to:

1. Individuals who are required to file personal information pertaining to their political campaigns and other requirements; and
2. Individuals who are associated with a television broadcast station license and are required to submit information under 47 CFR 73.3526 and 73.3527.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system may include, but are not limited to an individual's name, home address, home telephone number, personal cell phone number, personal email address(es), personal fax number, bank check routing number, credit card number, and other personal information (*i.e.*, personally identifiable information (PII)) that stations may include in their public files, and which may be included in the PII contained in the documents, files, and records that television broadcast stations and certain individuals are required to submit to the FCC to be posted in the FCC's on-line Broadcast Station Public Inspection Files. FCC Rules do not require submission of bank check routing numbers and credit card numbers, but the broadcast stations may choose to include such information in their public files as a means of indicating fulfillment of contracts.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. 151, 152, 154(i), 303, 307, and 315.

#### PURPOSES:

The Commission will be hosting all Broadcast Station Public Inspection Files in an online database. Stations have been required to maintain their public files at their main studios for decades, pursuant to 47 CFR 73.3526 and 73.3527. The Commission will now begin hosting such files online in order to make the files more accessible to the public. Records in this system are available for public inspection.