



PUBLIC NOTICE

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FURTHER INQUIRY INTO TRIBAL ISSUES RELATING TO ESTABLISHMENT OF A MOBILITY FUND

WT Docket No. 10-208

Comment Date: May 4, 2011

1. The Commission recently received comments on a *Notice of Proposed Rulemaking* to use reserves accumulated in the Universal Service Fund (USF) to create a Mobility Fund, which would employ a market-based, reverse auction mechanism to award one-time support to providers to extend mobile voice coverage over current-generation 3G or 4G networks in areas where such networks are lacking.¹

2. In proposing the Mobility Fund, the Commission acknowledged the relatively low level of telecommunications deployment on and the distinct challenges in bringing connectivity to Tribal lands.² The Commission further noted that, in light of the United States' unique government-to-government trust relationship with American Indian Tribes and Alaska Native Villages,³ and to address the particular challenges in advancing deployment on Tribal lands, a more tailored approach that provides at least some Mobility Fund support for Tribal lands on a separate track may be beneficial.⁴ The Commission sought broad comment on whether to reserve funds for developing a Mobility Fund program to target USF support separately to Tribal lands that trail national 3G coverage rates. Commenters to the proceeding generally support the adoption of a mechanism or program within the Mobility Fund focused on Tribal areas and provided input on a number of elements important to establishing a separate fund.⁵ There are particular issues related to the establishment of such a mechanism, however, for which additional comment may benefit the Commission as it considers how to proceed.

¹ Universal Service Reform – Mobility Fund, *Notice of Proposed Rulemaking*, 25 FCC Rcd 14,716 (2010) (*Mobility Fund NPRM*).

² *Mobility Fund NPRM*, 25 FCC Rcd at 14,727 ¶ 33.

³ For the purposes of this Public Notice, the terms “Tribes,” “Tribal,” and “Tribal Governments” refer to any federally recognized American Indian Tribe or Alaska Native Village, Nation, Band, Pueblo, or Community that is acknowledged by the federal government to have a government-to-government relationship with the United States and is eligible for the programs and services established by the United States for Indians. See *The Federally Recognized Indian Tribe List Act of 1994*, Pub. L. 103-454, 108 Stat. 4791 (1994).

⁴ *Mobility Fund NPRM*, 25 FCC Rcd at 14,727 ¶ 33.

⁵ See, e.g., Comments of Alaska Communications Systems at 2-4; Reply Comments of Regulatory Commission of Alaska at 12-13; Comments of Gila River Telecommunications, Inc. at 7-9; Joint Comments of Native Public Media and National Congress of American Indians (NPM and NCAI Comments) at 4-11; Reply Comments of Navajo Nation Telecommunications Regulatory Commission (Navajo Commission Reply Comments) at 3-4; Comments of National Cable & Telecommunications Association at 6; Comments of National Tribal Telecommunications Association (NTTA Comments) at 5-7.

I. ISSUES RELATING TO TRIBAL PRIORITIES ON TRIBAL LANDS

A. POSSIBLE MECHANISM TO REFLECT TRIBAL PRIORITIES FOR COMPETITIVE BIDDING

3. The Commission acknowledges and respects the sovereignty and self-determination of Tribal governments, and recognizes their rights to establish their own communications priorities and goals.⁶ Commenters have suggested that Tribal governments are best positioned to identify what the needs of their members and communities are and to target resources to best achieve those goals.⁷ At the same time, the Commission has proposed that scarce USF resources may best be awarded through a competitive, market-based mechanism to maximize their impact. In considering whether to establish a program within the Mobility Fund focused on Tribal areas, we seek comment on how we might tailor our competitive bidding and other procedures to best meet Tribal needs. Accordingly, we seek comment on ways to afford Tribal governments an opportunity to identify their own priorities within the context of a reverse auction mechanism for Mobility Fund support.

4. By way of background, the reverse auction as proposed in the *Mobility Fund NPRM* would determine winning bidders based on the lowest per-unit bids to cover designated unserved census blocks, using the population or some other metric such as road miles in the unserved areas as units and taking into account a requirement that there be no more than one Mobility Fund recipient in any particular unserved area.⁸ The auction mechanism would compare all per-unit bids across all areas (that is, compare all bids against all other bids throughout the eligible areas of the country, rather than compare all bids for a single area against each other), and rank all the submitted bids from lowest per-unit amount to highest. The bidder making the lowest per-unit bid would first be assigned support in an amount equal to the amount needed to cover the units deemed unserved in the specific area at the per-unit amount that was bid. Support would continue to be assigned to the bidders with the next lowest per-unit bids in turn, as long as support had not already been assigned for that area, until the sum of funds requested by the winning bidders was such that no further winning bids could be funded by the money available in the Mobility Fund. Support amounts would be based on the per-unit bids of the winning bidders times the number of unserved units associated with a particular geographic area.

5. We seek comment here on the possibility of providing to Tribal governments an additional specified number of “priority units” to ensure that Mobility Fund support for Tribal areas best serves Tribal needs. The priority units could be based upon the total number of units, however defined, in unserved blocks located within their Tribal lands boundaries. Tribes would have the flexibility to allocate these units in whatever manner they choose. Under this mechanism, Tribes could elect to allocate all of their priority units to one census block that is particularly important to them (for instance, because of the presence of an anchor institution, large numbers of unserved residents, etc.), or to divide the total number of priority units among multiple census blocks according to their relative priority. By giving Tribes an opportunity to allocate additional units to particular unserved census blocks within the boundaries of their Tribal land, a bidder could increase the number of units covered by its bid to cover those unserved census

⁶ See, e.g., Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, 16 FCC Rcd 4078, 4080 (2000).

⁷ See, e.g., NPM and NCAI Comments at 10-11; NPM and NCAI Reply Comments at 5; NTTA Comments at 12-13; Navajo Commission Reply Comments at 1, 4.

⁸ *Mobility Fund NPRM*, 25 FCC Rcd at 14,723-27 ¶¶ 15-32.

blocks and therefore reduce its per-unit bid amount. This would increase the likelihood that the unserved census blocks assigned priority units would receive funding through the proposed competitive bidding process. If such bids were to be among those selected to receive support, support amounts would be based on the per-unit bid amount times the total of regular units and priority units for the area. We invite comment on this proposal. In particular, we invite comment on whether this mechanism would help to ensure that Tribal priorities are met in providing USF support for the extension of mobile voice service. To the extent other options may be preferable, commenters are requested to discuss alternatives in detail and explain how these options would work in the context of the proposed competitive bidding mechanism. Commenters are also invited to provide information about what factors are most important in targeting limited support for mobile wireless service within Tribal lands.

B. POSSIBLE REQUIREMENT FOR ENGAGEMENT WITH TRIBAL GOVERNMENTS PRIOR TO AUCTION

6. Several commenters suggest that parties participating in a Mobility Fund auction seeking support to serve Tribal lands be required to demonstrate that Tribal governments have been formally and effectively engaged in the planning process and that the service to be provided will advance the goals established by the Tribal government.⁹ We seek comment on those proposals. What issues should receive priority in a flow of information and exchange of ideas with Tribal governments? What subjects of discussion will increase the potential for sustainability and adoption of the contemplated service? Among other things, we believe the topics of engagement with Tribal governments could include: (1) needs assessment, deployment planning, and inclusion of Tribal anchor institutions and communities; (2) feasibility and sustainability planning; (3) marketing supported services in a culturally sensitive manner; (4) rights-of-way processes, land use permitting, facilities siting, and cultural preservation review processes; and, (5) compliance with Tribal business and licensing requirements. At what point in time should any such engagement requirement apply (*e.g.*, at the short-form or long-form application stage)? Commenters are invited to address the appropriate scope and timing of a potential consultation requirement.

II. POSSIBLE PREFERENCE FOR TRIBALLY-OWNED AND CONTROLLED PROVIDERS

7. NPM and NCAI have suggested a preference for Tribally-owned and -controlled providers.¹⁰ Specifically, we seek comment on a proposal that would provide a form of bidding credit to qualified Tribally-owned and -controlled providers. If a provider qualified for this bidding credit, its per-unit bid amount would be reduced by a designated percentage for purposes of comparing it to other bids made – although if the bid were to win, support would be calculated at the full, undiscounted bid amount. That is, the “reduced” bid would fall lower in the ranking of bids from lowest to highest, making it more likely that a Tribally-owned and -controlled entity would be among the winning bidders eligible to receive funding, but the bidding credit would not reduce the amount of funding that the entity would receive if it were to be awarded support. We seek comment on this approach. We also invite comment on whether a Tribal preference is appropriate in the context of awarding universal service funds. To the extent the Commission wishes to adopt such a bidding credit for Tribally-owned and -controlled providers, what percentage would be appropriate? Are there other methods the Commission should consider to provide a preference to Tribally-owned and -controlled providers? We note that the establishment of an absolute Tribal priority, as proposed in the mobile spectrum context and adopted in

⁹ See, *e.g.*, NPM and NCAI Comments at 8-9; Navajo Commission Reply Comments at 4.

¹⁰ NPM and NCAI Comments at 11.

the context of the Tribal Priority for radio broadcast licensing, may not be appropriate here. This is because in the reverse auction mechanism proposed for the Mobility Fund, an award would not be made for each area, but instead support would be granted only for those areas where the per-unit bids are lowest.

8. We also seek comment on whether we should employ both a priority unit mechanism and a bidding preference for Tribal entities at the same time. And, if not, which of these mechanisms may work more effectively in a Mobility Fund auction to target support consistent with Tribal needs?

III. TIMING OF A TRIBAL MOBILITY FUND AUCTION

9. In the *Mobility Fund NPRM*, we noted that addressing Mobility Fund support for Tribal lands on a separate track could be beneficial in providing adequate time to consult with Tribal governments and seek their input. While commenters generally supported creation of a separate Tribal Mobility Fund, they cautioned that addressing Tribal issues on a “separate track” should not put them on a “slow track.”¹¹ We agree that Tribal issues are a priority and should be resolved expeditiously in order to speed the provision of services on Tribal lands. We observe, however, that there are pending proposals regarding utilization of spectrum over Tribal lands that could benefit from the support that may be available through a Tribal Mobility Fund auction. In particular, the *Tribal Spectrum NPRM* proposes a variety of options for Tribal entities to access spectrum over Tribal lands.¹² We seek comment on the extent to which these open issues should influence the timing of a possible separate Tribal Mobility Fund auction.

10. The *Mobility Fund NPRM* included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. § 603, exploring the potential impact on small entities of the Commission’s proposal.¹³ We invite parties to file comments on the IRFA in light of this additional notice.

11. Interested parties may file comments on or before May 4, 2011. When filing comments, please reference **WT Docket No. 10-208**.

12. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by filing paper copies.¹⁴ Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking numbers. Parties may also submit an

¹¹ See, e.g., NPM and NCAI Comments at 11-12.

¹² Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands, *Notice of Proposed Rulemaking*, FCC 11-29 (rel. Mar. 3, 2011) (*Tribal Spectrum NPRM*).

¹³ *Mobility Fund NPRM*, 25 FCC Rcd at 14,755-67, App. C.

¹⁴ See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, 13 FCC Rcd 11,322 (1998).

electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, “get form.” A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

13. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission’s ECFS. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

14. Parties shall also serve one copy with the Commission’s copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

15. Documents in WT Docket No. 10-208 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. S.W., Room CY-A257, Washington, DC 20554. The documents may also be purchased from BCPI, (202) 488-5300, (202) 488-5563 (fax), (202) 488-5562 (tty), e-mail fcc@bcpiweb.com.

16. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

17. This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the *ex parte* rules.¹⁵ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.¹⁶ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules.¹⁷

¹⁵ 47 C.F.R. § 1.1200 *et seq.*

¹⁶ *See* 47 C.F.R. § 1.1206(b)(2).

¹⁷ 47 C.F.R. § 1.1206(b).

18. For further information, contact Scott A. Mackoul, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau at (202) 418-0660.

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