



PUBLIC NOTICE

Federal Communications Commission
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Eligible Telecommunications Carrier Designation for Participation in Mobility Fund Phase I

WC Docket No. 09-197; WT Docket No. 10-208; AU Docket No. 12-25

1. Prior to filing an application, any party that wishes to participate in Auction 901 for Connect America Fund (CAF) Mobility Fund Phase I support must be designated as an eligible telecommunications carrier (ETC) in any geographic area for which it seeks such support, with one exception for Tribal entities.¹ Interested parties should ascertain whether they have the necessary ETC designation or need to seek such designation. Common carriers subject to the jurisdiction of a state in which they seek designation should petition that state's commission for designation as an ETC to provide voice service.² Common carriers not subject to the jurisdiction of the relevant state commission should petition the Federal Communications Commission (Commission) for designation as an ETC.³ By this Public Notice, the Wireless Telecommunications and Wireline Competition Bureaus (the Bureaus) describe the process for parties not already having the necessary ETC designation to petition the Commission for designation in order to participate in Auction 901.⁴

2. Auction 901 is scheduled to begin on September 27, 2012.⁵ Any party that wishes to participate in Auction 901 with respect to an area for which it is not already designated an ETC should initiate the designation process as soon as possible to increase the likelihood that the process will be completed prior to the deadline for submitting an application for Auction 901. The deadline for applications to participate in Auction 901 will be set when the Bureaus release a public notice announcing

¹ 47 C.F.R. § 54.1005(a)(3). Under the exception, a Tribally-owned or controlled entity may participate with respect to its Tribal lands if, prior to filing an application, it has a pending petition but has not yet been designated as an ETC for the relevant Tribal lands. 47 C.F.R. § 54.1004(a). An entity covered by this exception must be designated as an ETC before it may receive Mobility Fund Phase I support. *Id.* See also *Mobility Fund Phase I Auction Scheduled for September 27, 2012, Comment Sought on Competitive Bidding Procedures for Auction 901 and Certain Program Requirements, AU Docket No. 12-25, Public Notice, DA 12-121, para. 7 (rel. Feb. 2, 2012) (Auction 901 Comment PN)*. A summary of the *Auction 901 Comment Public Notice* was published in the Federal Register at 77 Fed. Reg. 7152 (Feb. 10, 2012).

² 47 U.S.C. § 214(e)(2). See also 47 C.F.R. § 54.101 (establishing voice telephony service as the supported service and requiring that an ETC must offer such service to receive universal service support).

³ 47 U.S.C. § 214(e)(6).

⁴ See 47 C.F.R. § 54.202. See also *Auction 901 Comment PN*, para. 7 n.7 (describing the anticipated release of this Public Notice).

⁵ *Auction 901 Comment PN*.

procedures for the auction. Auction applications in spectrum license auctions typically must be filed two to three months prior to the start of an auction.

3. This Public Notice describes the Commission's ETC designation process, including the requirements for seeking ETC designation from the Commission.⁶ We note, however, that parties should refer to the relevant Commission rules and orders to ensure that they meet all the requirements for ETC designation.⁷ We provide this information now to facilitate petitions by any party wishing to seek designation as an ETC prior to applying for Auction 901. A party's designation as an ETC may be conditioned upon the party winning support from the Mobility Fund in Auction 901.⁸ As stated above, a current ETC that meets all other applicable requirements may participate in Auction 901 with respect to areas within its current ETC service area without petitioning for any change to its ETC status.

4. Auction 901 will offer up to \$300 million in one-time Mobility Fund Phase I support to carriers that commit to provide 3G or better mobile voice and broadband services in areas where such services are unavailable. A winning bidder will be required either to deploy services meeting the Commission's requirements for 3G service within two years or 4G service within three years after the date on which it is authorized to receive support, and will be subject to other obligations, including coverage and voice and data roaming requirements. These obligations will apply to the areas eligible for Mobility Fund Phase I support covered by any specific winning bid. In addition, to be eligible to receive Mobility Fund Phase I support for any geographic area, a party must be an ETC and have access to spectrum in that area. For more specific information, please refer to the *USF/ICC Transformation Order* and the *Auction 901 Comment PN*.⁹

5. The Communications Act provides that only designated ETCs are eligible to receive universal service support.¹⁰ A party that seeks an ETC designation from the Commission must certify compliance with certain threshold conditions in order for its petition to be considered. More specifically, an ETC petition to the Commission must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission;¹¹

⁶ Section 54.202(c) of the Commission's rules requires a common carrier seeking designation by the Commission for any part of Tribal lands to "provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Commission." 47 C.F.R. § 54.202(c).

⁷ To the extent that any part of the descriptive overview in this Public Notice may be construed to be inconsistent with the terms of the Commission's orders or rules, the orders and rules govern.

⁸ 47 C.F.R. § 54.1003(a).

⁹ *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*), *pets. for review pending, Connect America Fund et al.*, 77 Fed. Reg. 3635 (Jan. 25, 2012) (*providing public notice of the petitions for reconsideration*). The Commission will address pending petitions for reconsideration of certain aspects of the *USF/ICC Transformation Order* in due course. Nothing in this Public Notice is intended to prejudge Commission action with respect to the petitions for reconsideration.

¹⁰ 47 U.S.C. § 254(e).

¹¹ 47 U.S.C. § 214(e)(6).

(2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c);¹² (3) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier's services;”¹³ (4) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefore using media of general distribution;”¹⁴ and (5) a detailed description of the geographic service area for which the petitioner requests an ETC designation from the Commission.¹⁵ Petitioners also must certify that neither the petitioner nor any party to the application is subject to a denial of federal benefits, including Commission benefits, pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, as implemented in section 1.2002 of the Commission’s rules.¹⁶

6. ETCs must satisfy various service obligations, consistent with the public interest.¹⁷ A party petitioning for designation as an ETC therefore must also: (1) certify that it will comply with the service

¹² 47 U.S.C. § 214(e)(1)(A). In particular, revised section 54.101 currently states: “Services designated for support. Voice Telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems; and toll limitation services for qualifying low-income consumers (as described in subpart E of this part.)” *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Order on Reconsideration, FCC 11-189, para. 3 (rel. Dec. 23, 2011). We note that in the recent *Lifeline Reform Order*, the Commission further amended section 54.101 to specify that toll limitation services for low-income services shall be provided as set forth in newly revised § 54.401(a)(1) and subject to the limitations set forth in newly revised § 54.403(c). In particular, ETCs are not required to offer toll limitation service to low-income consumers if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls. *Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 12-23, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Lifeline and Link Up*, WC Docket No. 03-109, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, paras. 49, 230 (rel. Feb. 6, 2012) (*Lifeline Reform Order*). Those new requirements will become effective 30 days after Federal Register publication of the *Lifeline Reform Order*.

¹³ 47 U.S.C. § 214(e)(1)(A).

¹⁴ 47 U.S.C. § 214(e)(1)(B). 47 C.F.R. §§ 54.401 *et seq.* In addition, an ETC must advertise the availability of Lifeline service and, if eligible for such support, Link Up, in a manner reasonably designed to reach those likely to qualify for those services. We note that in the recent *Lifeline Reform Order*, the Commission eliminated Link Up except for carriers that receive high-cost support on Tribal lands. *Lifeline Reform Order* at para. 254.

¹⁵ Section 54.207(d) of the Commission’s rules specifies the procedures for the Commission, on its own motion, to initiate a proceeding to define a service area that is different from that of the incumbent telephone company, where the incumbent provider is a rural telephone company as that term is defined in 47 U.S.C. §153(37). *See* 47 C.F.R. § 54.207(d).

¹⁶ 47 C.F.R. § 1.2002.

¹⁷ *See USF/ICC Transformation Order*, para. 390 (retaining existing ETC requirements and obligations for parties seeking Mobility Fund support).

requirements applicable to the support that it receives;¹⁸ (2) submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area, with an estimate of the area and population that will be served as a result of the improvements;¹⁹ (3) demonstrate how it will remain functional in emergency situations;²⁰ and (4) demonstrate that it will satisfy consumer protection and service quality standards.²¹

7. Certain additional requirements apply for parties seeking ETC designation for a service area that includes an area served by a rural telephone company. The Communications Act provides in such cases that “service area” means the rural telephone company’s “study area” “unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.”²² The Commission has interpreted this statutory provision as requiring approval of the proposed redefinition by both the relevant State and the Commission. Accordingly, a petitioner seeking designation for a “service area” that includes, but is not the same as, a rural telephone company’s service area must request redefinition from this Commission, which, under our rules, would then seek agreement from the state commission with jurisdiction over the rural telephone company, even if the petitioner itself is not subject to that state commission’s jurisdiction.²³

8. *Pleading Cycle.* Consistent with existing Commission procedures regarding designation of eligible telecommunications carriers, upon receipt of a petition for designation pursuant to section 214(e)(6) in connection with Phase I of the Mobility Fund, the Commission will issue a public notice establishing a pleading cycle.²⁴

9. *Filings.* All petitions to be designated an ETC must reference **WC Docket No. 09-197**. In addition, petitions to be designated for purposes of participation in Auction 901 must reference **WT Docket No. 10-208 and AU Docket No. 12-25**. Petitions may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by filing paper copies.²⁵

¹⁸ 47 C.F.R. § 54.202(a)(1)(i).

¹⁹ 47 C.F.R. § 54.202(a)(1)(ii).

²⁰ In particular, the petition must include a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. See 47 C.F.R. § 54.202(a)(2).

²¹ In particular, “[a] commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association’s Consumer Code for Wireless Service will satisfy this requirement.” 47 C.F.R. §54.202(a)(3).

²² 47 U.S.C. § 214(e)(5).

²³ 47 C.F.R. § 54.207. We note that in other contexts the Commission has forbore from the service area redefinition process for some Lifeline-only ETCs. *NTCH, Inc. Petition for Forbearance; Cricket Communications, Inc. Petition for Forbearance*, WC Docket No. 09-197, Order, 26 FCC Rcd 13723 (2011).

²⁴ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, CC Docket No. 96-45, 12 FCC Rcd 22947, 22948 (1997).

²⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

- Electronic Filers: Petitions may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- 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, D.C. 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 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, S.W., Washington D.C. 20554.
- People with Disabilities: To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

10. *Additional Filings.* In addition:

- One copy of each petition must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- The Bureaus also request that a copy of any petition submitted electronically also be sent to the following email address: auction901@fcc.gov.

11. Filings are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com.

12. For further information concerning the Auction 901, please contact Erik Salovaara, Wireless Telecommunications Bureau, at (202) 418-0660.

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