



PUBLIC NOTICE

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TRIBAL MOBILITY FUND PHASE I AUCTION RESCHEDULED FOR DECEMBER 19, 2013

NOTICE AND FILING REQUIREMENTS AND OTHER PROCEDURES FOR AUCTION 902

AU Docket No. 13-53

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I. INTRODUCTION AND SUMMARY

1. By this Public Notice, the Wireless Telecommunications Bureau (Wireless Bureau) and the Wireline Competition Bureau (Wireline Bureau) (collectively, the Bureaus) establish the procedures that will apply to the reverse auction that will award up to \$50 million in one-time Tribal Mobility Fund Phase I support.¹ This auction, which is designated as Auction 902, is rescheduled to be held on December 19, 2013. This Public Notice establishes the procedures, terms, and conditions governing Auction 902, including the pre- and post-auction application processes, and provides other important information for parties that wish to seek Tribal Mobility Fund Phase I support.

2. Auction 902 will award one-time support to carriers that commit to provide 3G or better mobile voice and broadband services to Tribal lands that lack such services.² Support will be allocated to maximize the population covered by new mobile services without exceeding the budget of \$50 million. Winning bidders will be obligated to choose whether to deploy 3G service within two years or 4G service within three years after the award of support.

3. Auction 902 will award high-cost universal service support through reverse competitive bidding.³ The *USF/ICC Transformation Order* established the Mobility Fund as a universal service support mechanism dedicated expressly to mobile services and adopted rules for distribution of the \$50 million budget for Tribal Mobility Fund Phase I.⁴ In the *USF/ICC Transformation Order*, the Commission delegated authority to the Bureaus to implement Tribal Mobility Fund Phase I, including the authority to prepare for and conduct an auction and administer program details.⁵ On March 29, 2013, the

¹ Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, 26 FCC Rcd 17663, 17819-20, para. 481 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011). The *USF/ICC Transformation Order* contains a definition of “Tribal lands.” *Id.* at 17711, para. 126 n.197. That definition, as applied to the eligible areas for Auction 902, is discussed below. *See* section II.A.2 below.

² We use the terms “3G” to refer to third generation wireless networks, and “4G” to refer to fourth generation wireless networks. We use the terms “3G,” “3G or better,” “current generation,” and “advanced” interchangeably to refer to mobile wireless services that provide voice telephony service on networks that also provide services such as Internet access and e-mail. We refer throughout this Public Notice to “awarding” or “selecting awardees” by auction for simplicity of expression. As provided by the Commission’s rules, *see* 47 C.F.R. §§ 54.1005(b) and 54.1008(a), and discussed further below, each party that becomes a winning bidder in the auction must file an application for support. Only after review of the application to confirm compliance with all of the applicable requirements will a winning bidder become authorized to receive support.

³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17818-23, paras. 479-91.

⁴ *Id.* at 17822, para. 488 (concluding that a population-based metric is appropriate for the Tribal Mobility Fund Phase I auction).

⁵ *Id.* at 17783, 17785, 17803, 17819-20, paras. 329, 337, 411, 481.

Bureaus released the *Auction 902 Comment Public Notice*, which provided a summary of census blocks potentially eligible for Tribal Mobility Fund Phase I support, announced the availability on the web of the complete list of potentially eligible census blocks, and sought comment on whether census blocks should be added to or removed from the list of potentially eligible blocks on Tribal lands, on the details of auction procedures, and on certain related program requirements for Auction 902.⁶

4. After considering the record encompassing 44 separate filings in response to the *Auction 902 Comment Public Notice*,⁷ in this Public Notice the Bureaus, among other things:

- Provide an updated summary of census blocks eligible for Tribal Mobility Fund Phase I support in Auction 902, with the complete list available on the web;
- Conclude that we will conduct Auction 902 as a single-round, sealed bid auction;
- Provide for bidding on predefined bidding areas consisting of eligible census blocks aggregated by Tribal lands and census tracts, and in some cases consisting of individual census blocks in Alaska;
- Establish bidding procedures, including stopping procedures to help assure that winning bids make cost-effective use of limited available funds and implement the Commission's commitment to fiscal responsibility;
- 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 areas that match plans in urban areas and cost no more than the matching plans; and
- Require that each winning bidder provide coverage, consistent with the performance requirements of the rules adopted in the *USF/ICC Transformation Order*, to 75 percent or more of the population associated with the eligible blocks in each bidding area for which it receives support and describe acceptable methods for demonstrating such coverage.

5. In addition, this Public Notice reviews important Tribal Mobility Fund Phase I program requirements, including eligibility requirements for participation in Auction 902 and the public interest obligations of winning bidders; describes in detail pre-auction procedures and auction application requirements; explains requirements and details related to the structure and procedures for bidding; and provides an overview of the post-auction procedures, requirements, and deadlines, including information on the post-auction application and on default payment requirements that will be used to enforce carriers' obligations.

6. Further, with this Public Notice we announce a new auction date. The auction was originally scheduled to be held on October 24, 2013.⁸ In order to provide interested parties ample time to analyze the updated lists of eligible census blocks released concurrently with this Public Notice and to

⁶ Tribal Mobility Fund Phase I Auction Scheduled for October 24, 2013; Comment Sought on Competitive Bidding Procedures for Auction 902 and Certain Program Requirements, *Public Notice*, AU Docket No. 13-53, DA 13-323, 28 FCC Rcd 2764 (2013) (*Auction 902 Comment Public Notice*). A listing of parties that filed comments, reply comments, and *ex parte* notices or other filings may be found in Attachment C. Filings and commenters are identified in this Public Notice by the abbreviated names shown in Attachment C.

⁷ We have exercised our discretion to fully consider all filings, including late-filed comments and reply comments. See, e.g., Bad River Tribe Supplement to Comments (asking the Commission to accept its supplemental comments filed after the May 10 comment deadline).

⁸ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2765, para. 1.

take any further steps required to establish eligibility for participation in Auction 902, we delay the auction date until December 19, 2013. We provide below additional information regarding other dates related to Auction 902, including the short-form application deadline.

II. GENERAL INFORMATION

A. Overview of Tribal Mobility Fund Phase I

1. Background

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

8. Pursuant to the *USF/ICC Transformation Order*, the Commission conducted the first Mobility Fund Phase I auction, Auction 901, on September 27, 2012. Auction 901 offered \$300 million in one-time high-cost universal service support to carriers that committed to provide 3G or better mobile voice and broadband services in areas nationwide where such services were unavailable.⁹ There were 33 winning bidders that submitted winning bids for a total of \$299,998,632 in one-time Mobility Fund Phase I universal service support to provide 3G or better mobile voice and broadband services covering up to 83,494 road miles located in 31 states and one territory.¹⁰

9. Tribal Mobility Fund Phase I will provide up to \$50 million in one-time support to address gaps in mobile services availability by supporting the buildout of current- and next-generation mobile networks on Tribal lands where these networks are unavailable.¹¹ The support offered under Tribal Mobility Fund Phase I is in addition to any ongoing support provided under existing high-cost universal service program mechanisms. Phase II of the Mobility Fund will provide up to \$500 million annually for ongoing support of mobile services, including up to \$100 million annually for a separate Tribal Mobility Fund Phase II.¹² The Commission sought comment on the details for Mobility Fund Phase II, including Tribal Mobility Fund Phase II, in the Further Notice of Proposed Rulemaking adopted in the *USF/ICC Transformation Order*, and the Bureaus sought further comment in a subsequent Public Notice.¹³

10. The goal for Tribal 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.¹⁴

⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17773, para. 299.

¹⁰ Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901, *Public Notice*, AU Docket No. 12-25, DA 12-1566, 27 FCC Rcd 12031 (2012) (*Auction 901 Closing Public Notice*).

¹¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17819-22, paras. 481-88.

¹² *Id.* at 17824, para. 494.

¹³ *Id.* at 18069-85, paras. 1121-88; Further Inquiry Into Issues Related to Mobility Fund Phase II, *Public Notice*, WC Docket No. 10-90, WT Docket No. 10-208, DA 12-1853, 27 FCC Rcd 14798 (2012).

¹⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17781, para. 322; *see also id.* at 17821-22, paras. 486-87.

To maximize the population covered in eligible areas on Tribal lands within the established budget of \$50 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.¹⁵ 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 eligible areas. Because the auction generally will award support based on the lowest per-pop 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.¹⁶ Support will be awarded based on the lowest per-pop bid amounts submitted, but will not be awarded to more than one provider per area.¹⁷

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

11. In the *Auction 902 Comment Public Notice*, the Bureaus sought comment on a list of census blocks identified as potentially eligible for Tribal Mobility Fund Phase I support.¹⁸ We received numerous comments addressing census block eligibility. Here we discuss the procedures used to identify potentially eligible census blocks, the comments received on this topic, and the conclusions we reach in response, resulting in the updated list of unserved census blocks eligible for Tribal Mobility Fund Phase I support.

12. In the *USF/ICC Transformation Order*, the Commission decided to target Mobility Fund Phase I support, including Tribal 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,¹⁹ and concluded that Mosaik Solutions (Mosaik) data is the best available data source for determining the availability of such service.²⁰ More specifically, the Commission concluded that it would consider any census block in the 2010 Census

¹⁵ *Id.* at 17781-83, 17821-22, paras. 322-28, 486-87. We refer to areas without 3G or better services and the population within them as “unserved,” even though there may be existing service at a lower level. The unserved areas eligible for Tribal Mobility Fund Phase I are determined as described in sections II.A.2 and II.A.3 below.

¹⁶ Throughout this Public Notice, the term “per-pop” means per population (or per person) within a given geographic area.

¹⁷ The Commission also provides for a 25 percent bidding credit for Tribally-owned or -controlled providers that participate in Auction 902. *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 490; 47 C.F.R. § 54.1004(c).

¹⁸ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2772, para. 21. We note that contrary to ARC’s suggestion in its comments, the Bureaus released both a list and a map of potentially eligible areas along with the *Auction 902 Comment Public Notice*. See ARC Comments at 9-10. These materials are available on the Auction 902 web page at <http://wireless.fcc.gov/auctions/902>. See also *Auction 902 Comment Public Notice*, 28 FCC Rcd 2764, 2785-97 (Attachments A-1 and A-2).

¹⁹ We use the term “centroid” to refer to the internal point latitude/longitude of a census block polygon. For more information, see the definition of “internal point” in the Census Geographic Terms and Concepts at http://www.census.gov/geo/reference/gtc/gtc_area_attr.html#ip (visited Aug. 6, 2013).

²⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17783-84, 17787, paras. 332, 334, 344; see also Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901, *Public Notice*, AU Docket No. 12-25, DA 12-641, 27 FCC Rcd 4725, 4729-30, para. 9 (2012) (*Auction 901 Procedures Public Notice*). The Order identified American Roamer data as the best available source. In February 2012, subsequent to the release of the *USF/ICC Transformation Order*, American Roamer changed its company name to Mosaik Solutions. See <http://www.mosaik.com> (visited Aug. 6, 2013). Accordingly, we refer to Mosaik data here.

as unserved, and thus eligible for support, if an analysis of the Mosaik data indicated that the centroid is not covered by networks using EV-DO, EV-DO Rev A, or UMTS/HSPA or better.²¹ In the *Auction 902 Comment Public Notice*, the Bureaus concluded that January 2013 Mosaik data was the most recently available for the purpose of doing an analysis to identify eligible census blocks within Tribal lands²² and described the methodology for identifying potentially eligible blocks.²³

13. The *USF/ICC Transformation Order* also concluded that population should be the basis for calculating the number of units in each eligible census block for purposes of comparing bids and measuring the performance of Tribal Mobility Fund Phase I support recipients.²⁴ In particular, the Commission concluded, based on concerns raised by Tribes, that using a population-based metric would provide greater assurance that mobile deployment supported by Tribal Mobility Fund Phase I would focus more directly on population centers.²⁵

14. The Bureaus first identified census blocks within Tribal lands using 2010 Census data. The Bureaus proposed to identify Tribal lands in Alaska using Census data boundaries for the Annette Island Reserve and Alaska Native village statistical areas.²⁶ Alaska Native village statistical areas represent the more densely settled portions of Alaska Native villages, which are the associations, bands, clans, communities, groups, Tribes, or villages recognized pursuant to the Alaska Native Claims Settlement Act.²⁷

15. The Bureaus used geographic information system (GIS) software to determine whether the Mosaik data showed 3G or better wireless coverage at the centroid of each block.²⁸ If the Mosaik data did not show such coverage, the Bureaus determined the block to be potentially eligible. Because Tribal Mobility Fund Phase I support will be awarded based on the bid amounts that will maximize the population covered by new mobile services, the Bureaus excluded any of these census blocks without population. The Bureaus then excluded any blocks that, during the Auction 901 challenge process, we determined to be served or to be ineligible for Mobility Fund Phase I support because a provider had made a regulatory commitment to provide 3G or better wireless service or had received a funding commitment from a federal executive department or agency in response to the provider's commitment to

²¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17786-87, paras. 343-44.

²² “Tribal lands” include any federally recognized Indian Tribe’s reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian Allotments, *see* 47 C.F.R. § 54.400(e), as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, Act July 9, 1921, 42 Stat. 108, *et seq.*, as amended. *USF/ICC Transformation Order*, 26 FCC Rcd at 17711, para. 126 n.197.

²³ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2770-72, paras. 17-20.

²⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17822, para. 488.

²⁵ *Id.*

²⁶ *See Auction 902 Comment Public Notice*, 28 FCC Rcd at 2771, para. 18 n.38.

²⁷ For more information regarding Alaska Native village statistical areas, *see* http://www.census.gov/geo/reference/gtc/gtc_aiannha.html#anvsa (visited Aug. 6, 2013).

²⁸ Specifically, the Bureaus used ArcGIS software from Esri to determine whether the Mosaik data showed 3G or better coverage at each block’s centroid. The following technologies were considered 3G or better: EV-DO, EV-DO Rev A, UMTS/HSPA, HSPA+, WiMAX, and LTE.

provide 3G or better wireless service in that area.²⁹ In addition, the Bureaus identified those census blocks that were the subject of winning bids in Auction 901.³⁰ The Bureaus noted that any census block that was the subject of a winning bid in Auction 901 and for which support is authorized at the conclusion of the Auction 901 long-form application review will not be eligible for Tribal Mobility Fund Phase I support. If prior to Auction 902 the Bureaus determine that any of the identified winning bids from Auction 901 cannot be authorized, but would otherwise be eligible for Auction 902, then such eligible blocks will be included in Auction 902.

16. In the *USF/ICC Transformation Order*, the Commission, responding to concerns about potential errors in determining coverage of a particular area, stated 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.”³¹ In the *Auction 902 Comment Public Notice*, the Bureaus therefore asked commenters identifying census blocks for removal and/or addition to our list of potentially eligible census blocks to provide detailed information in support of their views.³² The Bureaus noted that in making such determinations for Auction 901, we found demonstrations of coverage to be more credible and convincing where they were supported by maps, discussions of drive tests, explanation of methodologies for determining coverage, and certifications by one or more individuals as to the veracity of the material provided.³³ For Auction 901, the Bureaus did not make changes to potentially eligible areas based on submissions making assertions of coverage without any supporting evidence.³⁴

17. Comments challenging our list of potentially eligible census blocks raise two general points. First, eight commenters, both wireless service providers and Tribal entities, challenge our use of

²⁹ *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4731-35, paras. 13-22. See American Recovery and Reinvestment Act of 2009 (ARRA), P.L. 111-5, 123 Stat. 115 (2009) (authorizing the Broadband Technology Opportunities Program (BTOP) and Broadband Initiatives Program (BIP)). The Bureaus sought comment on whether there were any additional census blocks not identified during the Auction 901 challenge process for which, notwithstanding the absence of 3G service, any provider had made a regulatory commitment to provide 3G or better wireless service, or had received a funding commitment from a federal executive department or agency in response to the provider’s commitment to provide 3G or better wireless service. *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2771, para. 19; see *USF/ICC Transformation Order*, 26 FCC Rcd at 17786, paras. 341-42. We did not receive any comments addressing this issue.

³⁰ See *Auction 901 Closing Public Notice*, 27 FCC Rcd 12031.

³¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17785, para. 337.

³² *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2772, para. 21.

³³ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2772-73, para. 21; see also *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4734-35, para. 20. The Bureaus noted that in light of the population-based metric used to determine the number of unserved units for Tribal Mobility Fund Phase I, “drive tests” used to demonstrate coverage may be conducted by means other than automobiles on roads. Providers may demonstrate coverage of an area with a statistically significant number of tests in the vicinity of residences being covered. *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2773, para. 21 n.50; see *USF/ICC Transformation Order*, 26 FCC Rcd at 17822, para. 488 n.806.

³⁴ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2773, para. 21; see also *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4735, para. 21.

Census data to establish the boundaries of Tribal lands in certain areas.³⁵ Second, fourteen commenters, both wireless service providers and Tribal entities, challenge our initial determination based on Mosaik data that certain areas are either served or unserved.³⁶

18. In response to the comments we received regarding our list of potentially eligible census blocks, we add certain eligible census blocks, for purposes of Auction 902, based on the Commission's definition of "Tribal lands." Specifically, we add populated, unserved census blocks in Alaska and in the Navajo Eastern Agency. We conclude, however, that other areas that were ceded to the United States by treaty are not eligible for Tribal Mobility Fund Phase I support because they do not fall within the applicable definition of "Tribal lands." We remove all state designated Tribal statistical areas (SDTSAs) from the list of eligible census blocks for purposes of Auction 902 because they do not qualify as "Tribal lands" under the Commission's definition. Separately, we also remove certain Tribal designated statistical areas (TDSAs), as defined by the 2010 Census data, that do not qualify as "Tribal lands" under the Commission's definition. In addition, we add and remove census blocks based on credible and convincing demonstrations by commenters regarding service coverage, or the lack thereof.

19. We add populated, unserved census blocks in the Alaska Native regions to the attached updated list of bidding areas and the corresponding list of eligible census blocks that is available on the Auction 902 website (<http://wireless.fcc.gov/auctions/902/>). We agree with GCI and ARC that limiting eligible Tribal lands to the Annette Island Reserve and Alaska Native village statistical areas would be too narrow and would not comport with the Commission's definition of "Tribal lands,"³⁷ which includes "Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act."³⁸ We instead identify the eligible Tribal lands in Alaska using the boundaries of the twelve geographic Alaska Native regional corporations and the Annette Island Reserve, which together cover the entire state of Alaska.³⁹

20. Given that all of Alaska is Tribal land that is potentially eligible for inclusion in Auction 902, not just the Alaska Native village statistical areas originally proposed, we clarify how certain Mobility Fund Phase I provisions apply to the federally-recognized Alaska Native villages. The Commission adopted a 25 percent bidding credit and special ETC provisions for Tribally-owned or -controlled providers to promote Tribal self-provisioning of mobile services with Tribal Mobility Fund Phase I support.⁴⁰ These provisions were adopted to reflect the Commission's unique government-to-

³⁵ See ARC Reply Comments at 5; ARC Legal Advisors *Ex Parte* at 2; ARC WTB *Ex Parte* at 1-2; ATA *Ex Parte* at 1-2; Bad River Tribe Comments at 6-9; GCI Comments at 1-3; Lac du Flambeau Reply Comments; NNTRC Comments at 4-5; Windy City *Ex Parte* at 2-3; see also SBI Comments at 2.

³⁶ See ASTAC Comments at 2-3; AT&T Comments at 1-2; Bad River Tribe Comments at Exhibit B; Bad River Tribe Supplement to Comments; Commnet Reply Comments at 1-4; Copper Valley Comments at 1-3; Lac du Flambeau Reply Comments; LLBO Comments at 3-5; NNTRC Comments at 6; NTTA Comments at 6-7; Oglala Sioux Tribe Comments at 2-3; Rosebud Sioux Tribe Comments at 2-4; SBI Comments at 2-5; SIW Comments at 6-7; WST Comments at 3-5.

³⁷ ARC Reply Comments at 5; ARC Legal Advisors *Ex Parte* at 2; ARC WTB *Ex Parte* at 1-2; GCI Comments at 1-3; see also Windy City *Ex Parte* at 2; ATA *Ex Parte* at 1-2.

³⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17711, para. 126 n.197.

³⁹ See http://www.census.gov/geo/reference/gtc/gtc_aiannha.html#anrc (visited Aug. 6, 2013) (describing the geographic area covered by the Alaska Native regional corporations and the Annette Island Reserve); see also Letter from Deputy Commissioner of Indian Affairs, U.S. Department of the Interior, Bureau of Indian Affairs, to Juneau Area Director, Mar. 31 1999, at 1 ("[R]ealities in Alaska require the BIA to expand the scope of its activities to include all [of] Alaska and to treat all of Alaska as a 'reservation.'").

⁴⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, paras. 490-91; 47 C.F.R. §§ 54.1004(a), (c).

government relationship with Tribes.⁴¹ The Commission also stated that “these measures should provide meaningful support to expand service to unserved areas in a way that acknowledges the unique characteristics of Tribal lands and reflects and respects Tribal sovereignty.”⁴² The Tribal bidding credit and special ETC provisions are available to entities that are owned or controlled by federally-recognized Alaska Native villages.⁴³ Specifically, a Tribal entity that is owned or controlled by an Alaska Native village may receive these benefits in eligible areas that are within the boundaries of the Alaska Native village statistical area associated with that village, as well as in eligible areas that are not within any Alaska Native village statistical area but are within the same Alaska Native region as that village. In addition, we note that the Office of Native Affairs and Policy, in coordination with the Bureaus, has provided guidance on the Tribal engagement requirements that apply to providers serving Tribal lands, including Alaska.⁴⁴ In order to facilitate engagement with appropriate Tribal government officials in Alaska, our list of eligible areas identifies the Alaska Native village statistical areas, which indicate where the Alaska Native villages are more densely settled.⁴⁵

21. We also add populated, unserved census blocks in the Navajo Eastern Agency. As NNTRC points out, Census data identifies a scattered “checkerboard” of census blocks within the Eastern Agency as Tribal land.⁴⁶ However, the Navajo Nation recognizes everything within the external borders of the reservation, including the Eastern Agency, to be part of its sovereign territory and subject to its territorial jurisdiction.⁴⁷ Further, the Commission has previously determined that special circumstances warrant provision of universal service support throughout the entirety of the Eastern Agency.⁴⁸ Thus, we conclude that all of the populated, unserved census blocks in the Navajo Eastern Agency should be included in the Tribal Mobility Fund Phase I auction.

⁴¹ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17818-19, paras. 479, 484; see also Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, 16 FCC Rcd 4078, 4080-81 (2000) (recognizing the Commission’s general trust relationship with, and responsibility to, federally recognized Tribes).

⁴² See *USF/ICC Transformation Order*, 26 FCC Rcd at 17819, para. 484.

⁴³ See 47 C.F.R. §§ 54.1004(a), (c).

⁴⁴ Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund, *Public Notice*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, GN Docket No. 09-51, DA 12-1165, 27 FCC Rcd 8176 (2012), *pets. for recon. pending (Tribal Engagement Further Guidance)*.

⁴⁵ See http://www.census.gov/geo/reference/gtc/gtc_aiannha.html#anvsa (visited Aug. 6, 2013). Appropriate Tribal government officials are elected or duly authorized government officials of federally recognized American Indian Tribes and Alaska Native Villages. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17869, para. 637 n.1053.

⁴⁶ NNTRC Comments at 4.

⁴⁷ *Id.* at 5.

⁴⁸ Federal-State Joint Board on Universal Service; Smith Bagley, Inc. Petition for Waiver of Section 54.400(e) of the Commission’s Rules, *Memorandum Opinion and Order*, WC Docket No. 03-109, FCC 05-77, 20 FCC Rcd 7701 (2005) (granting a waiver of the Commission’s Lifeline and Link Up eligibility rules to enable eligible residents of the Navajo Eastern Agency to receive enhanced Lifeline and Link Up support); see also SBI Comments at 2 (commending the FCC for defining Tribal lands in New Mexico broadly to include the Navajo Eastern Agency).

22. We decline to include certain areas that Tribes previously ceded to the United States by treaty.⁴⁹ As the Bad River Tribe explains, treaties ceding Chippewa land to the United States granted the Bad River Tribe and other Chippewa groups hunting, fishing, and harvesting rights throughout ceded territories that now span portions of Michigan, Wisconsin, and Minnesota.⁵⁰ Bad River Tribe considers certain ceded territory in Wisconsin to be an important economic resource for the Tribe that is critical to maintaining Tribal practices and culture, including hunting, trapping, fishing, wild rice harvesting, maple sugaring, harvesting birch bark and balsam, and canoe building.⁵¹ Bad River Tribe and Lac du Flambeau both indicate that a substantial number of Tribal members live in rural ceded lands outside reservation boundaries.⁵² Although Tribal organizations regulate hunting, fishing, and harvesting activities conducted throughout the ceded territories, these areas do not fall within the Commission's definition of "Tribal lands."⁵³ Thus, these areas are not eligible for Tribal Mobility Fund Phase I support.

23. The lists of potentially eligible blocks and proposed bidding areas released with the *Auction 902 Comment Public Notice* included certain SDTSAs and TDSAs.⁵⁴ We remove all SDTSAs from the updated list of eligible census blocks because they do not qualify as "Tribal lands" under the Commission's definition. Separately, we also remove certain TDSAs, as defined by the 2010 Census data, that do not qualify as "Tribal lands" under the Commission's definition.⁵⁵

24. We also received several challenges to our initial determination based on Mosaik data that certain census blocks are either served or unserved. We received comments from four carriers identifying census blocks for addition and/or removal from our list of potentially eligible census blocks based on sufficiently verifiable demonstrations of current coverage at the centroid, or lack thereof. These commenters provide maps, explanations of methodologies for determining coverage, and in numerous cases, certifications by one or more qualified individuals as to the veracity of the material provided.⁵⁶ We find these demonstrations to be sufficiently credible and convincing to meet the requirements of the *USF/ICC Transformation Order* and incorporate the requested changes into the updated list of eligible census blocks.⁵⁷

25. Ten commenters, including Tribal entities and a wireless carrier, request additions to our list of potentially eligible blocks based on assertions that certain areas not listed as potentially eligible

⁴⁹ See Bad River Tribe Comments at 6-9; Lac du Flambeau Reply Comments.

⁵⁰ Bad River Tribe Comments at 6.

⁵¹ *Id.*

⁵² *Id.* at 1-2; Lac du Flambeau Reply Comments.

⁵³ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17711, para. 126 n.197.

⁵⁴ See http://www.census.gov/geo/reference/gtc/gtc_aiannha.html (visited Aug. 6, 2013).

⁵⁵ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17711, para. 126 n.197.

⁵⁶ ASTAC Comments at 2-3; AT&T Comments at 1-2; Commnet Reply Comments at 1-4; Copper Valley Comments at 1-3.

⁵⁷ See *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4734-35, para. 20 (finding demonstrations of current coverage at the centroid, or the lack thereof, to be sufficiently credible and convincing where they provided maps, discussions of drive tests, explanations of methodologies for determining coverage, and in numerous cases, certifications by one or more individuals as to the veracity of the material provided). Based on staff analysis of the coverage data provided by Copper Valley overlaid on census block centroids, we remove two of the six census blocks requested by Copper Valley.

actually lack 3G or better service.⁵⁸ In contrast to the submissions of the commenters discussed immediately above, we find that these commenters either fail to provide sufficient information or fail to provide information that is sufficiently verifiable regarding the basis for their assertions. We conclude that these commenters do not demonstrate actual lack of service, as envisioned by the *USF/ICC Transformation Order*, and therefore do not provide a basis for us to depart from our initial determination of potentially eligible census blocks.

26. In particular, we conclude that the drive test data submitted by SBI is not sufficiently verifiable to justify the addition of the census blocks requested.⁵⁹ SBI does not sufficiently explain the methodology or the baseline used to conduct its drive tests,⁶⁰ and it does not identify the census blocks in which it conducted the tests.⁶¹ AT&T and Commnet have provided credible and convincing evidence, supported by maps, certifications, and explanations of methodologies for determining coverage, that many of the census blocks identified by SBI as unserved are actually served.⁶² Further, we note that although Bad River Tribe, Lac du Flambeau, LLBO, and the Rosebud Sioux Tribe make a good faith effort to demonstrate the absence of 3G or better service in certain areas, the information that they provide is not sufficient to allow the Commission or third parties to verify the accuracy of the asserted lack of coverage.⁶³ Finally, five commenters do not provide evidence to support their assertions regarding the absence of 3G or better service in certain areas.⁶⁴

27. In addition, several commenters generally question the reliability of Mosaik data without providing specific evidence to contradict the Mosaik data.⁶⁵ These assertions, without supporting evidence and without any reference to particular census blocks, do not provide a basis for us to depart from our initial determination of potentially eligible census blocks.⁶⁶

⁵⁸ Bad River Tribe Comments at Exhibit B; Bad River Tribe Supplement to Comments; Lac du Flambeau Reply Comments; LLBO Comments at 3-5; NNTRC Comments at 6; NNTA Comments at 6-7; Oglala Sioux Tribe Comments at 2-3; Rosebud Sioux Tribe Comments at 2-4; SBI Comments at 2-5; SIW Comments at 6-7; WST Comments at 3-5.

⁵⁹ SBI Comments at 2-5; *see also* SBI June *Ex Parte*; NNTRC Comments at 6.

⁶⁰ We note that SBI does not provide sufficient details on test setup (e.g., descriptions, diagrams, and/or photos of the test equipment used), or sufficient descriptions of the test methodology and post-processing procedures. We also note that SBI does not provide evidence that the test equipment produced expected results in a known environment, or other verification that the test equipment was functioning properly.

⁶¹ *See* SBI Comments, Declaration of Ali Kuzehkanani (indicating that SBI's list of proposed census blocks includes the census blocks where the drive test was conducted as well as the neighboring census blocks).

⁶² AT&T Reply Comments; Commnet Reply Comments.

⁶³ Bad River Tribe Comments at Exhibit B; Bad River Tribe Supplement to Comments; Lac du Flambeau Reply Comments; LLBO Comments at 3-5; Rosebud Sioux Tribe Comments at 2-4, Attachment A.

⁶⁴ NNTRC Comments at 6; NNTA Comments at 6-7; Oglala Sioux Tribe Comments at 2-3; SIW Comments at 6-7; WST Comments at 3-5.

⁶⁵ *See* ARC Comments at 8; GRIC/GRTI Comments at 8; MATI Reply Comments at 2, 4; NPM/NCAI Reply Comments at 2-3.

⁶⁶ *See Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4735, para. 21 (concluding that assertions without supporting evidence did not provide a basis for the Bureaus to depart from their determination of potentially eligible census blocks).

28. The list of census blocks on Tribal lands released concurrently with this Public Notice now includes all of the eligible census blocks that were identified by analyzing 2010 Census data, January 2013 Mosaik data, and information submitted by third parties. The differences between this list and the list provided with the *Auction 902 Comment Public Notice* are as follows: (1) we have added blocks based on comments received regarding our application of the definition of “Tribal lands” to Alaska and the Navajo Eastern Agency,⁶⁷ (2) we have removed all SDTSAs and certain TDSAs, (3) we have added blocks based on the comments of one carrier that provided a sufficiently credible and convincing demonstration regarding the absence of 3G or better coverage,⁶⁸ (4) we have removed blocks based on the comments of three carriers that provided sufficiently credible and convincing demonstrations regarding the presence of 3G or better coverage,⁶⁹ and (5) we have removed blocks for which Auction 901 support has been authorized, and have added blocks (i.e., removed the asterisks next to blocks) for which Auction 901 defaults have been determined. In this list, we continue to identify census blocks that were covered by winning bids in Auction 901 for which the relevant long-form applications remain pending. If we determine prior to Auction 902 that any winning bids from Auction 901 cannot be authorized, and any of those bids cover census blocks that would otherwise be eligible for Auction 902, then such eligible blocks will be available in the auction. Similarly, if support is authorized prior to Auction 902 for any of the census blocks covered by Auction 901 winning bids, those census blocks will be excluded from Auction 902. We will announce by public notice the removal of any census blocks for which support is authorized for Auction 901 winning bids.

29. We are mindful of the Commission’s goal of moving quickly to expand the availability of advanced mobile services by providing one-time support with the limited funds budgeted for this purpose. We also heed the Commission’s warning that more extended dialog and pre-auction review of these issues might risk undue delay in the award of this support.⁷⁰ Accordingly, the list of census blocks on Tribal lands that we release today contains our determinations with respect to the areas eligible for Tribal Mobility Fund Phase I support, with the exception of census blocks covered by Auction 901 winning bids, which may be removed from this list by public notice at the conclusion of the Auction 901 long-form application review. As discussed below, the eligible census blocks will, in most cases, be aggregated into predefined bidding areas by Tribal lands and census tracts.⁷¹

30. We remind those interested in seeking Tribal Mobility Fund Phase I support that applicants for Auction 902 are required to certify that they will not seek support for any areas in which they made a public commitment to deploy 3G or better service by December 31, 2012.⁷² We discuss this requirement in greater detail in section III.E, where we describe the disclosures and certifications required in the short-form application for Auction 902.

⁶⁷ See ARC Reply Comments at 5; ARC Legal Advisors *Ex Parte* at 2; ARC WTB *Ex Parte* at 1-2; ATA *Ex Parte* at 1-2; GCI Comments at 1-3; Windy City *Ex Parte* at 2-3; see also NNTRC Comments at 4-5; SBI Comments at 2.

⁶⁸ ASTAC Comments at 2-3.

⁶⁹ AT&T Comments at 1-2; Commnet Reply Comments at 1-4; Copper Valley Comments at 1-3.

⁷⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17785, para 337. As was true for the list of eligible areas for Auction 901, we recognize that no such list will be perfect or perfectly up-to-date. *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4735, para. 22.

⁷¹ Eligible census blocks in Alaska will be aggregated by Alaska Native village statistical areas and census tracts, and where there are not Alaska Native village statistical areas, bidding will be conducted on a census block basis. See section V.A.2 below.

⁷² *USF/ICC Transformation Order*, 26 FCC Rcd at 17802-03, para 410; 47 C.F.R. § 54.1005(a)(5).

31. Attachment A-1 released with this Public Notice provides a summary of the list of eligible census blocks. For each state and territory, Attachment A-1 provides the total number of eligible census blocks and the total number of tracts, counties, Tribal lands, and bidding areas. For each state and territory, Attachment A-1 also provides the total population, area, and road miles of the eligible blocks. Attachment A-2 released with this Public Notice provides a list of the bidding areas. For each area, Attachment A-2 provides the state, county, and Tribal land; the number of eligible blocks; and the total population, area, and road miles of those blocks. Due to the large number of eligible blocks, the complete list of the individual blocks will be provided in electronic format only, available as a separate “Attachment A” file at <http://wireless.fcc.gov/auctions/902/>.⁷³ For each eligible block, the “Attachment A” file provides the population, area, and road miles of the block; and the associated state, county, tract, Tribe, Tribal land, and bidding area. In addition to these attachments and files, the Bureaus will provide an interactive map for this information on the Commission website.⁷⁴ We note that the names assigned to the bidding areas listed in the Attachment A files have been changed since the release of the *Auction 902 Comment Public Notice* in order to conform to the requirements of the FCC Auction System. A crosswalk between the names used in the Attachment A files released with this Public Notice and the names used in the *Auction 902 Comment Public Notice* will be provided on the Commission website.⁷⁵

3. Establishing Eligible Units

32. As discussed above, pursuant to the *USF/ICC Transformation Order*, the updated list of eligible areas released concurrently with this Public Notice excludes unserved census blocks that lack population. In this section, we address comments suggesting that we should use road miles as the bidding units for Auction 902, or that we should include unserved census blocks without population in the list of eligible areas.

33. We conclude, based on the *USF/ICC Transformation Order*, that we must use population to determine units in Auction 902, as supported by Commnet and RTG,⁷⁶ and that we cannot deviate from our proposal to use Census data to determine which census blocks are populated.

34. The Commission decided that population is a better unit than road miles for comparing bids and assessing coverage in Tribal areas.⁷⁷ Therefore, we lack delegated authority to revise this rule to use road miles as SRTI and the Rosebud Sioux Tribe suggest, or any other metric other than population.⁷⁸

⁷³ A copy of Attachment A and any other documents relating to Auction 902 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, 800-378-3160 or at <http://www.bcpweb.com>. When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 13-1672 for this Public Notice).

⁷⁴ The interactive map will be similar to the potentially eligible areas map that was made available on the Auction 902 website (<http://wireless.fcc.gov/auctions/902/>) concurrent with the release of the *Auction 902 Comment Public Notice*.

⁷⁵ See <http://wireless.fcc.gov/auctions/902/>.

⁷⁶ Commnet Comments at 4-5 (noting that especially where population on Tribal lands is “widely dispersed,” covering a road mile would not necessarily result in service to unserved populations); RTG Comments at 2.

⁷⁷ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17822, para. 488; 47 C.F.R. § 54.1004(b).

⁷⁸ SRTI Comments at 6-7 (arguing that the inclusion of road miles in the Mobility Fund Phase I auction allocation methodology “properly recognized that much of Indian country is sparsely populated and that unserved Indian lands need telecommunications services where distances are great”); Rosebud Sioux Tribe Comments at 3 (claiming it is not only arbitrary and unreasonable, but dangerous, to assume that service is not needed on roads across unpopulated areas); see also ARC Comments at 9 (arguing that a population-based metric will undervalue the need for terrestrial (continued....))

35. We conclude that the population-based metric that the Commission established in the *USF/ICC Transformation Order* for comparing bids and assessing coverage for Tribal Mobility Fund Phase I requires that we must exclude census blocks without population from Auction 902 eligibility.⁷⁹ We recognize that winning bidders may need to extend their networks to or through unpopulated blocks that are not eligible for Tribal Mobility Fund Phase I support in order to meet their Tribal Mobility Fund Phase I performance requirements.⁸⁰ Our rules with respect to how winning bidders can use Tribal Mobility Fund Phase I funds to meet their performance requirements do not preclude this. Therefore, we decline to accept the suggestion of NPM/NCAI that all census blocks should be scored with a minimum population of one.⁸¹

36. We further conclude that we should not deviate from our proposal to use Census data as the basis for limiting eligible blocks to those where there is a population greater than zero. Given the Commission's decision to use population as the bidding comparison unit,⁸² we must use reliable data on population in order to conduct the Tribal Mobility Fund Phase I auction. While we received comments generally objecting to the accuracy of the population figures for certain blocks, none of the comments received offer persuasive evidence that blocks deemed unpopulated by the Census Bureau are, in fact, populated, or otherwise provide evidence that would dissuade us from using available Census data to determine whether or not a block is populated.⁸³

4. Public Interest Obligations

37. *Voice and Broadband Service.* All Tribal 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 support. Specifically, all Connect America Fund recipients, including Tribal Mobility Fund Phase I recipients, must offer stand-alone voice service to the public.⁸⁴ Tribal Mobility Fund Phase I recipients must offer voice service with coverage of at least 75 percent or more of the population within the area for which support is provided.⁸⁵ As we describe in more detail below,⁸⁶ if an

(Continued from previous page) _____

telecommunications infrastructure in large remote areas); Lac du Flambeau Reply Comments (arguing that a population-based metric will result in many Tribal communities being underserved).

⁷⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17822, para. 488.

⁸⁰ See ARC Comments at 9 (requesting that the Commission account for how Alaska's populated remote areas will connect to the grid without at least some buildout in areas lacking population).

⁸¹ NPM/NCAI Comments at 6-7.

⁸² *USF/ICC Transformation Order*, 26 FCC Rcd at 17822, para. 488.

⁸³ See LLBO Comments at 3-4, 6 (arguing that certain census blocks listed in Exhibits B, C, and D are used for cultural activities including hunting, fishing, and gathering, but not arguing that those blocks are populated; and arguing that a housing development has been built that may affect some census blocks listed in Exhibit E, but not specifying which census blocks or to what extent the population numbers should be amended); see also LLBO Reply Comments at 2; Coeur d'Alene Tribe Reply Comments at 1 (asserting that the data does not consider areas where communications are necessary for public safety and economic development); NPM/NCAI Comments at 6-7 (suggesting that the Bureaus add a minimum population of one to unpopulated Census blocks, but not asserting or providing evidence that blocks listed as having zero population in the 2010 Census are in fact populated).

⁸⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17693, 17791, paras. 80, 359; see 47 C.F.R. § 54.101(b).

⁸⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17792, para. 365; see 47 C.F.R. §§ 54.1006(a), (b). As discussed below, support will be available to any recipient that covers a larger percentage of the eligible population by the applicable construction deadline, up to 100 percent.

⁸⁶ See section VI.C.1 below (addressing comments received on this issue).

awardee can prove coverage of at least 75 percent of the actual population associated with the eligible census blocks within a winning bid area, it may provide and prove coverage in any combination across eligible census blocks within that single bidding area, including providing coverage to more than 75 percent of the population in one eligible census block and less than 75 percent of the population in another eligible census block in the same bidding area. In the alternative, we will also permit proof of coverage by relying on a geographic area safe harbor, by which an awardee may show that it is providing coverage to at least 75 percent of the geographic area in a census block as a proxy for providing service to at least 75 percent of the population within that census block. If a winning bidder relies on the geographic area safe harbor for a particular winning bid area, it must provide and prove coverage to at least 75 percent of the geographic area of each eligible census block within that winning bid area. Furthermore, receipt of Tribal 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 3G networks or better.⁸⁷

38. *Data Rates.* For purposes of Tribal 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 areas covered.⁸⁸ Also for purposes of Tribal Mobility Fund Phase I, the Commission refers to a network as a 4G network if it achieves outdoor minimum data transmissions rates of 200 kbps uplink and 768 kbps downlink at vehicle speeds appropriate for the area covered.⁸⁹ 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).⁹⁰

39. *Performance Deadlines.* Winning bidders in Auction 902 will commit to provide service over either a 3G or a 4G network, as those terms are used with respect to Tribal Mobility Fund Phase I, in their post-auction long-form applications for support.⁹¹ Those parties committing to provide service over a 3G network must do so for at least 75 percent or more of the population within the winning bidding area within two years of being authorized to receive support.⁹² Winning bidders committing to provide service over a 4G network must do so for at least 75 percent or more of the population within the winning bidding area within three years of being authorized to receive support.⁹³ To the extent that a recipient covers population in excess of the minimum, support will be available for up to 100 percent of the eligible

⁸⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17791, para. 360; *see* 47 C.F.R. §§ 54.1006(a), (b). In addition, the Commission expects “that ETCs that offer standalone broadband service in any portion of their service territory will also offer such service in all areas that receive Connect American Fund support.” *USF/ICC Transformation Order*, 26 FCC Rcd at 17695, para. 86 n.127.

⁸⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17791-92, para. 361; 47 C.F.R. § 54.1006(a)(1).

⁸⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17792, para. 362; 47 C.F.R. § 54.1006(b)(1).

⁹⁰ 47 C.F.R. §§ 54.1006(a)(2), (b)(2).

⁹¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17791, para. 360; *see* 47 C.F.R. § 54.1005(b)(2)(v).

⁹² 47 C.F.R. § 54.1006(a).

⁹³ 47 C.F.R. § 54.1006(b). We note that GRIC/GRTI and NTTA suggest that we consider extending the coverage timeframe to four years for 3G and five years for 4G networks. *See* GRIC/GRTI Comments at 9; NTTA Comments at 5. However, we cannot amend the Commission’s rules regarding the performance deadlines in the context of establishing auction procedures in this proceeding.

population for which the recipient demonstrates coverage within the timeframe required for the technology deployed.⁹⁴

40. *Reasonably Comparable Rates.* Recipients of Tribal Mobility Fund Phase I support must certify annually that they 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.⁹⁵ This requirement extends for a period ending five years after the date of award of support.⁹⁶ We describe this requirement in more detail below in our explanation of post-auction application requirements.⁹⁷

41. *Collocation.* In exchange for the support provided, Tribal Mobility Fund Phase I support recipients shall allow for reasonable collocation by other providers of services that would meet the voice and data requirements of Tribal Mobility Fund Phase I on newly-constructed towers that the recipient owns or manages in the area for which it receives support.⁹⁸ 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.

42. *Voice and Data Roaming.* Recipients of Tribal Mobility Fund Phase I support must provide voice and data roaming on networks built with the support, consistent with the requirements of section 20.12 of the Commission's rules, as those rules were in effect on the date the Commission adopted the *USF/ICC Transformation Order*.⁹⁹ This condition of support is independent of subsequent changes to the Commission's rules on voice and data roaming. In other words, even if section 20.12 is amended, support recipients must continue to meet the requirements of section 20.12 as that rule existed as of October 27, 2011.¹⁰⁰ To the extent the Commission adopts any new rules regarding voice and data roaming that are generally applicable, recipients of Tribal Mobility Fund Phase I support may be subject to those new rules as well. As these requirements, and all of the other public interest obligations, are a condition of Tribal Mobility Fund Phase I support, violations may result in the withholding or clawing back, i.e., return, of universal service support in addition to any other applicable sanctions.¹⁰¹

5. Tribal Mobility Fund Phase I Eligibility Requirements

43. In order to participate in Auction 902 and receive Tribal Mobility Fund Phase I support, an applicant must be designated as an eligible telecommunications carrier (ETC) for the areas on which it wishes to bid or, if it is a Tribally-owned or -controlled entity, have a pending application for ETC designation for the relevant areas within the boundaries of the Tribal land associated with the Tribe that

⁹⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17792-93, paras. 365, 367; see 47 C.F.R. §§ 54.1006(a), (b).

⁹⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17797, para. 385; 47 C.F.R. §§ 54.1005(b)(2)(viii), § 54.1009(a)(4).

⁹⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17797, para. 385; see 47 C.F.R. § 54.1009. In the *Auction 902 Comment Public Notice*, the Bureaus proposed and sought comment on a standard for assessing compliance with this requirement. *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2781-83, paras. 54-60. Below we discuss the comments received in response to the proposal, and we set forth the standard that will apply to recipients of Tribal Mobility Fund Phase I support.

⁹⁷ See section VI.B.9 (addressing comments received on this issue).

⁹⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17794-95, para. 376; 47 C.F.R. § 54.1006(d).

⁹⁹ 47 C.F.R. § 54.1006(e).

¹⁰⁰ *Id.*

¹⁰¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17796, para. 380. See section VI.D.2 below.

owns or controls the entity.¹⁰² The ETC designation must cover a sufficient portion of the bidding area to allow the applicant to satisfy the applicable performance requirements.¹⁰³ A Tribal entity that wins support in Auction 902 while its ETC petition is pending must receive an ETC designation prior to support being authorized.¹⁰⁴ Because of the lead time necessary to receive designation as an ETC, prospective applicants that need to do so are strongly encouraged to initiate the process as soon as possible in order to increase the likelihood that they will be eligible to participate in Auction 902. 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. Carriers not subject to the jurisdiction of the relevant state commission should petition the Commission for designation as an ETC.¹⁰⁵ The Bureaus have provided guidance on existing requirements for filing an ETC application with the Commission in a separate public notice.¹⁰⁶

44. An applicant for Auction 902 must also demonstrate that it has access to the spectrum necessary to satisfy the applicable performance requirements.¹⁰⁷ In addition, an applicant must certify that it is financially and technically capable of providing 3G or better service.¹⁰⁸ Below, in our discussion of the short- and long-form application requirements, we describe in detail how applicants must demonstrate that they meet all of these eligibility requirements.

¹⁰² *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 491; 47 C.F.R. §§ 54.1004(a), 54.1005(a)(3). A Tribally-owned or -controlled entity must have its application for ETC designation pending at the relevant short-form application deadline. *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 491.

¹⁰³ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17798-99, paras. 388-92; 47 C.F.R. §§ 54.1003(a), 54.1004(a), 54.1006.

¹⁰⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 491 (noting that allowing a Tribally-owned or -controlled entity to participate at auction while its ETC petition is pending in no way prejudices the ultimate decision on its pending ETC petition and that support will be disbursed only after it receives ETC designation); see also 47 C.F.R. § 54.1004(a).

¹⁰⁵ The Commission has established a framework for determining whether a state commission or the Commission itself has jurisdiction to designate ETCs on Tribal lands. First, a carrier serving Tribal lands must petition the Commission for a determination on whether the state has jurisdiction over the carrier. The Commission then determines whether the carrier is subject to the jurisdiction of a state commission or whether it is subject to a Tribal authority given the Tribal interests involved. In the latter case, the Commission has jurisdiction to designate the carrier as an ETC and will proceed to consider the merits of the carrier's petition for designation. See *Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order on Reconsideration*, WC Docket No. 09-197, FCC 11-102, 26 FCC Rcd 9160, 9161, para. 4 (2011).

¹⁰⁶ See *Eligible Telecommunications Carrier Designation for Participation in Mobility Fund Phase I, Public Notice*, WC Docket No. 09-197, WT Docket No. 10-208, AU Docket No. 12-25, DA 12-271, 27 FCC Rcd 2054 (2012). Petitions for designation as an ETC should be filed in WC Docket No. 09-197 and WT Docket No. 10-208, and should not be filed in the docket for Auction 902, AU Docket No. 13-53. The Bureaus adopted a protective order limiting access to proprietary and confidential information that may be filed in WC Docket No. 09-197 and WT Docket No. 10-208 in connection with petitions filed for designation as an ETC for purposes of participation in any Mobility Fund auction. See *Petitions For Designation As An Eligible Telecommunications Carrier For Purposes of Participation in Mobility Fund Auctions, Protective Order*, WC Docket No. 09-197, WT Docket No. 10-208, DA 13-81, 28 FCC Rcd 318 (2013).

¹⁰⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17799-801, paras. 393-99; 47 C.F.R. § 54.1003(b). The requirement that parties have access to spectrum applies equally to all parties, including Tribal entities.

¹⁰⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17801-02, paras. 400-05; 47 C.F.R. § 54.1003(c).

6. Annual Reporting and Record Retention Requirements

45. Winning bidders that are authorized to receive Tribal 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. In addition, authorized winning bidders are required to submit certain reports before receiving disbursements of support.¹⁰⁹ As described further below, Tribal 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.¹¹⁰ A winning bidder authorized to receive Tribal 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 Tribal 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 Tribal Mobility Fund Phase I support.¹¹¹

B. Auction Specifics

1. Auction Start Date

46. Bidding in Auction 902 will be held on **Thursday, December 19, 2013**. Unless otherwise announced, bidding for all eligible census blocks will be offered at the same time.

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

2. Auction Title

48. Auction 902 – Tribal Mobility Fund Phase I

3. Bidding Methodology

49. As discussed in more detail below, the bidding methodology for Auction 902 will be a single-round reverse auction format.¹¹² The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders must bid electronically via the Internet. Telephonic bidding will not be available for Auction 902 because it will not be feasible given the number of eligible geographic areas and the manner in which bids will be uploaded.¹¹³

4. Pre-Auction Dates and Deadlines

50. The following dates and deadlines apply:

Auction Tutorial Available (via Internet)	September 25, 2013
Short-Form Application (FCC Form 180)	
Filing Window Opens	September 25, 2013; 12:00 noon ET
Short-Form Application (FCC Form 180)	
Filing Window Deadline	October 9, 2013; 6:00 p.m. ET

¹⁰⁹ 47 C.F.R. § 54.1008. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17815-16, paras. 464-69.

¹¹⁰ 47 C.F.R. § 54.1008(b)(1).

¹¹¹ 47 C.F.R. § 54.1010.

¹¹² *See* section V.A.1 below.

¹¹³ *See* section V.B.1 below. The Bureaus sought comment on whether telephonic bidding should be available in Auction 902. *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2777, para. 42. We did not receive any comments addressing this issue.

Mock Auction	December 16, 2013
Auction Begins.....	December 19, 2013

5. Requirements for Participation

51. Those wishing to participate in this auction must:

- Submit a short-form application (FCC Form 180) electronically prior to 6:00 p.m. ET, October 9, 2013, following the electronic filing procedures described in Attachment D; and
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

C. Rules and Disclaimers

1. Relevant Authority

52. Prospective applicants in Auction 902 must familiarize themselves with the Commission's general universal service rules, contained in 47 C.F.R. Part 54, and the Mobility Fund specifically, 47 C.F.R. §§ 54.1001 - 54.1010. They should also familiarize themselves with the Commission's decision in the *USF/ICC Transformation Order* to implement the Mobility Fund Phase I, including Tribal Mobility Fund Phase I.¹¹⁴

53. Prospective bidders in Auction 902 must be familiar with the specific competitive bidding rules for universal service support contained in 47 C.F.R. §§ 1.21000 - 1.21004, as well as the procedures, terms, and conditions contained in this Public Notice and all other public notices related to Auction 902 (AU Docket No. 13-53). Additionally, prospective Auction 902 bidders will find it helpful to familiarize themselves with the processes established for the Commission's first auction of Mobility Fund Phase I support (Auction 901)¹¹⁵ and with the Commission's general competitive bidding rules, including recent amendments and clarifications; and Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.¹¹⁶

54. 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.

55. Copies of most auction-related Commission documents, including public notices, can be retrieved from the FCC Auctions website at <http://wireless.fcc.gov/auctions>. Additionally, documents are

¹¹⁴ See generally, *USF/ICC Transformation Order*, 26 FCC Rcd 17663.

¹¹⁵ See *Auction 901 Procedures Public Notice*, 27 FCC Rcd 4725; see also AU Docket No. 12-25. Information on Auction 901, including copies of all Auction 901 Public Notices and auction results, may be found on the Commission's Auction 901 web page at <http://wireless.fcc.gov/auctions/901>.

¹¹⁶ See, e.g., Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, FCC 00-274, 15 FCC Rcd 15293 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)); *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17546 (2001) (*Part 1 Seventh Report and Order*); *Eighth Report and Order*, FCC 02-34, 17 FCC Rcd 2962 (2002); *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, FCC 03-98, 18 FCC Rcd 10180 (2003); *Second Order on Reconsideration of the Fifth Report and Order*, FCC 04-295, 20 FCC Rcd 1942 (2005).

available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160, or at <http://www.bcpiweb.com>.¹¹⁷

2. Prohibited Communications and Compliance with Antitrust Laws

56. To ensure the competitiveness of the auction process, section 1.21002 of the Commission's rules prohibits an applicant in a Mobility Fund auction from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and from communicating with any other applicant in any manner the substance of 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 sections 1.21001(b)(3) and (b)(4).¹¹⁸

57. Section 1.21002 is based on a similar rule used in competitive bidding for spectrum licenses, section 1.2105(c) of the Commission's rules.¹¹⁹ Potential bidders should familiarize themselves with sections 1.2105(c) and 1.21002, and with the judicial, Commission, and Wireless Bureau decisions addressing application of the rule prohibiting certain communications listed in Attachment E.¹²⁰

a. Entities Subject to Section 1.21002, the Rule Prohibiting Certain Communications

58. Section 1.21002's prohibition of certain communications will apply to any applicant that submits a short-form application to participate in Auction 902. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under section 1.21001(b)(3), applicants in Auction 902 must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy.¹²¹ 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.**¹²²

¹¹⁷ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 12-641 for the *Auction 901 Procedures Public Notice*).

¹¹⁸ See 47 C.F.R. §§ 1.21001(b)(3)-(4), 1.21002; see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17807, para. 431.

¹¹⁹ 47 C.F.R. § 1.2105(c).

¹²⁰ Because section 1.21002 was adopted for Mobility Fund competitive bidding relatively recently, the Commission's prior experience in this area is in the context of section 1.2105(c). Applicants should review information regarding the interpretation of section 1.2105(c) to gain insight into the Commission's views on prohibited communications during competitive bidding for Mobility Fund support.

¹²¹ Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, DA 96-1460, 11 FCC Rcd 10134 (1996).

¹²² See, e.g., *Star Wireless, LLC, Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18626, 18628, para. 4 & n.19 (2004) (emphasizing that section 1.2105(c) applies to applicants regardless of whether they are qualified to bid), *order granted in part sub nom*, *Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007), *petition for review denied*, *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. (continued....))

59. All bidders will compete for support with all other bidders in Auction 902, regardless of the geographic areas they seek to serve with Tribal Mobility Fund Phase I support. Therefore, applicants will be prohibited from making certain communications with all other applicants in Auction 902 regardless of the eligible areas for which they seek support, unless the parties disclose agreements reached between them on their short-form applications.

60. For purposes of the prohibition of certain communications, section 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.¹²³

61. Individuals and entities subject to section 1.21002 should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any competing applicant’s bids or bidding strategies. For example, the Wireless Bureau has found that when an individual serves as an officer for two or more applicants, the bids and bidding strategies of one applicant are conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of the rule prohibiting certain communications occurs.¹²⁴ The Wireless Bureau has not addressed a situation where non-principals (i.e., those who are not officers or directors, and thus not considered to be the applicant) receive information regarding a competing applicant’s bids or bidding strategies and whether that information should be presumed to be communicated to the applicant.

62. Moreover, we encourage Auction 902 applicants not to use the same individual authorized bidder as is used by another applicant. A violation of section 1.21002 could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., a law firm, engineering firm, or consulting firm), a violation similarly could occur.¹²⁵ In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and its bidders will comply with section 1.21002.¹²⁶

(Continued from previous page) _____

Cir. 2008); Letter to Robert Pettit, [Esq.], from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, DA 00-2905, 16 FCC Rcd 10080 (2000) (declining to exempt an applicant’s controlling interest from coverage by the communication prohibitions of section 1.2105(c), even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

¹²³ 47 C.F.R. § 1.21002(a).

¹²⁴ See, e.g., Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 05-2445, 20 FCC Rcd 14648 (2005) (finding apparent violation of communication prohibitions of section 1.2105(c) where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

¹²⁵ See Application of Nevada Wireless, *Memorandum Opinion and Order*, DA 98-1137, 13 FCC Rcd 11973, 11977-78, paras. 11-12 (1998) (*Nevada Wireless Order*).

¹²⁶ *Id.*

b. Prohibition Applies Until Long-Form Application Deadline

63. The section 1.21002 prohibition of 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.¹²⁷

c. Prohibited Communications

64. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction (as described above).¹²⁸ Section 1.21002 prohibits not only communication about an applicant's own bids or bidding strategy, but also communications about another applicant's bids or bidding strategy.¹²⁹ While section 1.21002 does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids or bidding strategies.

65. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place outside of the auction itself. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly."¹³⁰ 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,"¹³¹ 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."¹³² Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, an applicant's statement to the press that it intends to stop bidding in the auction could give rise to a finding of a section 1.21002 violation.¹³³ Similarly, an applicant's public

¹²⁷ 47 C.F.R. § 1.21002(b). Unless otherwise provided by public notice, winning bidders for Tribal Mobility Fund Phase I support must file an application for support (also known as the long-form application) no later than 10 business days after the public notice identifying them as winning bidders. 47 C.F.R. § 54.1005(b)(1). See section VI.A below for additional information regarding the timing of the long-form application deadline.

¹²⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17807, para. 431. See also *Part I Seventh Report and Order*, 16 FCC Rcd at 17553-54, para. 12. For a discussion of the term "applicant" within the meaning of section 1.21002, see section II.C.2.a above.

¹²⁹ See 47 C.F.R. § 1.21002(b). See also *Notice of Apparent [L]iability for Forfeiture of Western PCS BTA 1 Corp.*, *Memorandum Opinion and Order*, FCC 99-385, 14 FCC Rcd 21571, 21574, para. 8 (1999).

¹³⁰ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, *Memorandum Opinion and Order*, FCC 94-295, 9 FCC Rcd 7684, 7689, para. 12 (1994) (*Competitive Bidding Memorandum Opinion and Order*).

¹³¹ *Mercury PCS II, LLC, Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17970, 17974, 17976, paras. 12, 17 (1997).

¹³² *Mercury PCS II, LLC, Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23755, 23760, para. 11 (1998).

statement of intent not to participate in Auction 902 bidding could also violate the rule. Applicants are hereby placed on notice that public disclosure of information relating to bids, bidding strategies, or post-auction market structures may violate section 1.21002.

d. Disclosure of Bidding Agreements and Arrangements

66. 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 agreements in their short-form applications.¹³⁴ 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 Tribal Mobility Fund Phase I support they seek, including any agreements relating to post-auction market structure.¹³⁵

67. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under section 1.21001(b)(3), even if the agreement has not been reduced to writing.¹³⁶ 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.¹³⁷

68. Section 1.21002 of the Commission's rules does not prohibit non-auction-related business negotiations among auction applicants.¹³⁸ 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.¹³⁹

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

69. By electronically submitting a short-form application, each applicant in Auction 902 certifies its compliance with sections 1.21001(b)(3) and 1.21002.¹⁴⁰ 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 Tribal Mobility Fund support.¹⁴¹ (Continued from previous page) _____

¹³³ Compare Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37, 13 FCC Rcd 341, 347-48 (1998) ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

¹³⁴ 47 C.F.R. §§ 1.21001(b)(3)-(4).

¹³⁵ 47 C.F.R. §§ 1.21001(b)(3)-(4), 1.21002.

¹³⁶ 47 C.F.R. § 1.21001(b)(3).

¹³⁷ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, DA 95-2244, 11 FCC Rcd 9645, 9646 (1995) (*Anti-Collusion Public Notice*).

¹³⁸ See, e.g., Todd Stuart Noordyk, *Memorandum Opinion and Order*, FCC 01-275, 16 FCC Rcd 18113, 18116-17, para. 12 (2001).

¹³⁹ See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 374, 467-68, para. 163 (1997).

¹⁴⁰ 47 C.F.R. §§ 1.21001(b)(3), 1.21002.

¹⁴¹ 47 C.F.R. § 1.21001(b)(4).

Also, the applicant must certify that it and all applicable parties have complied with and will continue to comply with 47 C.F.R. § 1.21002.¹⁴²

70. The Bureaus caution, however, that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.¹⁴³ The Commission has stated that it “intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring.”¹⁴⁴ Any applicant found to have violated section 1.21001(b)(4) or (b)(5) may be subject to sanctions.¹⁴⁵

f. Duty to Report Prohibited Communications

71. Section 1.21002(c) provides that any applicant that makes or receives a communication that appears to violate section 1.21002 must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.¹⁴⁶ An applicant’s obligation to make such a report continues until the report has been made.¹⁴⁷

72. In addition, section 1.65 of the Commission’s rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application.¹⁴⁸ Thus, section 1.65 requires an Auction 902 applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. An applicant is therefore required by section 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under sections 1.21001(b)(3) and (b)(4).¹⁴⁹

73. Sections 1.65(a) and 1.21002 of the Commission’s rules require each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment.¹⁵⁰ 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.¹⁵¹

¹⁴² 47 C.F.R. §§ 1.21001(b)(5), 1.21002.

¹⁴³ *Nevada Wireless Order*, 13 FCC Rcd at 11978, para. 13.

¹⁴⁴ *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12.

¹⁴⁵ *See, e.g.*, 47 C.F.R. § 1.2109(d).

¹⁴⁶ 47 C.F.R. § 1.21002(c); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17552-55, paras. 12-18. This reporting requirement applies even if the communication of bids or bidding strategies does not result in a bidding arrangement, agreement, or understanding. *Id.* at 17552, para. 12.

¹⁴⁷ 47 C.F.R. § 1.21002(c).

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

¹⁴⁹ *See Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51, para. 9.

¹⁵⁰ Procedural Amendments to Commission Part 1 Competitive Bidding Rules, WT Docket No. 10-18, *Order*, FCC 10-4, 25 FCC Rcd 521, 523, para. 8 (2010) (*Part 1 Procedural Amendments Order*).

¹⁵¹ *Id.*

g. Procedure for Reporting Prohibited Communications

74. A party reporting any prohibited communication pursuant to sections 1.65, 1.21001(b), or 1.21002(c) must take care to ensure that any report of the prohibited communication does not itself give rise to a violation of section 1.21002.¹⁵² 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.

75. 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.¹⁵³ This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by section 1.21002(c) must be filed consistent with the instructions set forth in this Public Notice. For Auction 902, such reports must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by e-mail to the following e-mail address: auction902@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.

76. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in section 0.459 of the Commission's rules.¹⁵⁴ We encourage such parties to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.¹⁵⁵ This Public Notice provides additional guidance on procedures for submitting application-related information below.¹⁵⁶

h. Winning Bidders May Need to Disclose Terms of Agreements

77. 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.¹⁵⁷ This may apply to any bidding consortium, joint venture, partnership, or agreement, understanding, or

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

¹⁵³ *Part I Procedural Amendments Order*, 25 FCC Rcd at 522, para. 4. This process differs from filing procedures used in connection with other Commission rules and processes which may call for submission of filings to the Commission's Office of the Secretary or via the Commission's Electronic Comment Filing System (ECFS). Filing through the Office of the Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants.

¹⁵⁴ See 47 C.F.R. § 0.459 (specifying the procedures for requests that materials or information submitted to the Commission be withheld from public inspection). Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with "Request for Confidential Treatment Attached" or "Not for Public Inspection." Any such request must cover all of the material to which the request applies. See 47 C.F.R. § 0.459(a).

¹⁵⁵ See section VII below.

¹⁵⁶ See sections III.I and III. J below.

¹⁵⁷ See 47 C.F.R. § 54.1005(b)(2)(xi) (indicating that applicants for Mobility Fund Phase I support will need to provide such additional information as the Commission may require).

other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

i. Additional Information Concerning Rule Prohibiting Certain Communications

78. A summary listing of documents issued by the Commission and the Wireless Bureau addressing the application of the rule prohibiting certain communications may be found in Attachment E.¹⁵⁸ These documents are available on the Commission's auction web page at http://wireless.fcc.gov/auctions/prohibited_communications.

j. Antitrust Laws

79. We also remind applicants that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.¹⁵⁹ Compliance with the disclosure requirements of section 1.21002 will not insulate a party from enforcement of the antitrust laws.¹⁶⁰ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application.¹⁶¹ Similarly, the Wireless Bureau previously reminded potential applicants and others that "[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws."¹⁶²

80. 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.¹⁶³ If an applicant is found to have violated the

¹⁵⁸ As noted above, these documents discuss the rule prohibiting certain communications in the context of competitive bidding for spectrum licenses or broadcast permits, section 1.2105(c). Applicants will find this information helpful to understanding the similar prohibition in the context of competitive bidding for Tribal Mobility Fund support.

¹⁵⁹ See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rulemaking*, FCC 99-384, 14 FCC Rcd 21558, 21560-61, para. 4 & n.17 (1999) quoting *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12 ("[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws."); Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion and Order*, FCC 94-264, 9 FCC Rcd 6858, 6869 n.134 (1994) (*Fourth Memorandum Opinion and Order*) ("[A]pplicants will also be subject to existing antitrust laws.").

¹⁶⁰ See *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12. See also Justice Department Sues Three Firms Over FCC Auction Practices, *Press Release* 98-536 (DOJ Nov. 10, 1998).

¹⁶¹ See, e.g., *Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6869 n.134. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other. *Id.*

¹⁶² *Anti-Collusion Public Notice*, 11 FCC Rcd at 9646.

¹⁶³ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, FCC 94-61, 9 FCC Rcd 2348, 2388, para. 226 (1994) (*Competitive Bidding Second Report and Order*).

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.¹⁶⁴

3. Due Diligence

81. 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 Tribal Mobility Fund Phase I support it submits as a bid in Auction 902. 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.

82. Applicants should be aware that Auction 902 represents an opportunity to apply for Mobility Fund support, subject to certain conditions and regulations. Auction 902 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.

83. 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*.¹⁶⁵ Each potential bidder should perform technical analyses or refresh its previous analyses to assure itself that, should it become a winning bidder for Tribal 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.¹⁶⁶

84. The Bureaus strongly encourage each applicant to conduct its own research prior to Auction 902 in order to determine the existence of pending administrative or judicial proceedings that might affect its decision to participate in the auction. The due diligence considerations mentioned in this Public Notice do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

85. 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 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 902. Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on Tribal Mobility Fund Phase I support available through this auction.

86. 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 Tribal Mobility Fund Phase I support. Each potential bidder is responsible for

¹⁶⁴ See, e.g., 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388, para. 226.

¹⁶⁵ See generally, *USF/ICC Transformation Order*, 26 FCC Rcd 17663.

¹⁶⁶ 47 C.F.R. Part 1, Subpart I.

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.

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

4. Use of FCC Auction System

88. Bidders will be able to participate in Auction 902 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.

5. Fraud Alert

89. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 902 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

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

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

- the FCC's Consumer Call Center at (888) 225-5322 or by visiting <http://wireless.fcc.gov/csinfo#fraud>
- the FTC at (877) FTC-HELP ((877) 382-4357) or by visiting <http://ftc.gov/bcp/edu/pubs/consumer/invest/inv03.shtm>
- the SEC at (202) 942-7040 or by visiting <http://www.sec.gov/complaint/select.shtml>.

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

6. Environmental Review Requirements

91. 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.¹⁶⁷ 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.¹⁶⁸ 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). If the facility will not be located on Tribal lands as defined in the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (NPA),¹⁶⁹ the entity constructing the facility must follow the provisions of the NPA in assessing the effect of facilities construction on historic properties. However, if the facility will be located on Tribal lands as defined in the NPA, the entity must follow the procedures set forth in the rules of the Advisory Council on Historic Preservation.¹⁷⁰ 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.¹⁷¹ Facilities that require antenna registration will also be required to complete an environmental notification process.¹⁷²

III. SHORT-FORM APPLICATION REQUIREMENTS

A. General Information Regarding Short-Form Applications

92. An application to participate in Auction 902, 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.¹⁷³ 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.¹⁷⁴ Each applicant must

¹⁶⁷ 47 C.F.R. Part 1, Subpart I.

¹⁶⁸ 47 C.F.R. §§ 1.1301-1.1319.

¹⁶⁹ 47 C.F.R. Part 1, Appendix C.

¹⁷⁰ See NPA § I.D (providing that the NPA does not apply on Tribal lands unless a Tribe adopts its provisions). The NPA defines Tribal lands as "all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities," and does not include Native Hawaiian Home Lands. *Id.* The rules of the Advisory Council on Historic Preservation are set forth at 36 C.F.R. Part 800.

¹⁷¹ 47 C.F.R. §§ 1.1307(a), (b), (d) Note.

¹⁷² See 47 C.F.R. § 17.4(c).

¹⁷³ 47 C.F.R. § 1.21001.

¹⁷⁴ *Id.*

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 to meet the public interest obligations associated with Tribal Mobility Fund Phase I support. Eligibility to participate in bidding is based on the applicant's short-form application and certifications, as explained below. In the second phase of the process, each winning bidder must file a more comprehensive long-form application (FCC Form 680).

93. Every entity seeking support available in Auction 902 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on October 9, 2013, following the procedures prescribed in Attachment D to this Public Notice. The short-form application requires each applicant to establish its eligibility for bidding for Tribal 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 Codes (SACs) associated with its ETC designation and/or provide the names of its corresponding Tribal lands in lieu of SACs. 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 areas 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 bidding credit as a Tribally-owned or -controlled entity,¹⁷⁵ the information provided in its FCC Form 180 will be used in determining whether the applicant is eligible for the claimed bidding credit. Below we describe more fully the information disclosures and certifications required in the short-form application. Each applicant filing a short-form application is subject to the Commission's rule prohibiting certain communications beginning on the deadline for filing, as described above.¹⁷⁶

94. 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.¹⁷⁷ Each applicant should read carefully the instructions set forth in Attachment D to this Public Notice and should consult the Commission's rules to ensure that, in addition to the materials described below, all of the information required is included in its short-form application.

95. A party may not submit more than one short-form application for Auction 902. If a party submits multiple short-form applications, only one application may be accepted for filing.

96. 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.¹⁷⁸ 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.

¹⁷⁵ See section III.F below.

¹⁷⁶ See section II.C.2 above.

¹⁷⁷ 47 C.F.R. § 1.21001(b)(6).

¹⁷⁸ 47 C.F.R. § 1.21001(d)(4).

B. SAC Identification

97. 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 SACs or Tribal lands information entered by an applicant, the FCC Auction System will identify during the application process bidding areas for which the applicant may be eligible.¹⁷⁹ Additional information regarding the short-form application process is available in Attachment D.

C. Disclosure of Bidding Arrangements

98. 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 Tribal Mobility Fund support.¹⁸⁰

99. 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 Tribal Mobility Fund support.¹⁸¹ 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 other applicant after the deadline.¹⁸²

100. Moreover, each applicant will also be required to certify under penalty of perjury in its short-form application that it and all applicable parties have complied with and will continue to comply with section 1.21002 of the Commission's rules, the rule prohibiting certain communications.¹⁸³ While section 1.21002 does not prohibit non-auction-related business negotiations among auction applicants, we remind applicants that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.¹⁸⁴ Further, as discussed above, compliance with the disclosure requirements of section 1.21002 of the Commission's rules will not insulate a party from enforcement of the antitrust laws.¹⁸⁵

¹⁷⁹ The FCC Auction System will identify the bidding areas on which the applicant is potentially eligible to bid based on information provided in the applicant's FCC Form 180. Applicants are reminded that this is not a determination of eligibility under the Commission's rules. The identification of an area as one in which the applicant is *potentially* eligible to bid does not mean that the applicant is *actually* eligible to bid for support in that area. Some of the areas may be outside the areas for which a bidder is actually eligible to bid pursuant to the Commission's rules—i.e., the areas in which it is designated as an ETC or, in the case of a Tribally-owned or -controlled entity, areas in its Tribal lands for which it has a pending petition for designation as an ETC.

¹⁸⁰ 47 C.F.R. § 1.21001(b)(3).

¹⁸¹ 47 C.F.R. § 1.21001(b)(4).

¹⁸² See section II.C.2 above.

¹⁸³ 47 C.F.R. §§ 1.21001(b)(5), 1.21002.

¹⁸⁴ See section II.C.2 above.

¹⁸⁵ *Id.*

D. Ownership Disclosure Requirements

101. Each applicant must comply with the uniform Part 1 ownership disclosure standards and provide information required by sections 54.1005(a)(1) and 1.2112(a) of the Commission's rules.¹⁸⁶ Specifically, in completing the short-form application, an applicant will be required to fully disclose information on the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more, as prescribed in section 1.2112(a) of the Commission's rules.¹⁸⁷ Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

102. 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 (such as information submitted in an FCC Form 602 or in an FCC Form 175 filed for a previous Commission spectrum license auction, or FCC Form 180 for a previous Mobility Fund auction using the FCC Auction System), will automatically be entered into the applicant's short-form application (FCC Form 180). 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 for Auction 902. Any information that needs to be corrected or updated must be changed directly in the short-form application.

E. Specific Tribal Mobility Fund Phase I Eligibility Requirements and Certifications

1. ETC Designation Certification

103. 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.¹⁸⁸ 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.¹⁸⁹ 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.

¹⁸⁶ See 47 C.F.R. §§ 1.2112(a), 1.21001(b)(1), 54.1005(a)(1). See also *USF/ICC Transformation Order*, 26 FCC Rcd at 17804, para. 418. Section 54.1005(a)(1) requires the disclosure on the short-form application of the applicant's ownership information as set forth in 47 C.F.R. § 1.2112(a).

¹⁸⁷ 47 C.F.R. §§ 1.2112(a), 54.1005(a)(1).

¹⁸⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17769, para. 289; see also 47 U.S.C. § 214.

¹⁸⁹ Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, *Fourth Order on Reconsideration*, FCC 12-82, 27 FCC Rcd 8814, 8821, para. 20 (2012) (*Fourth Order on Reconsideration*) (denying petition filed by NTCH seeking clarification or reconsideration regarding whether Lifeline only ETCs could participate in the Mobility Fund).

104. 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.¹⁹⁰ We note that prior to Auction 901, where the Commission granted a conditional designation, it did so contingent only on the applicant winning Mobility Fund Phase I support, thus requiring no additional substantive determinations post-auction.¹⁹¹ We anticipate that the Commission will grant any request for conditional designation in the same manner for Auction 902, and we suggest that an applicant be mindful of this approach when requesting a similar determination from its state's designating authority. 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.

105. The Commission further decided to permit participation by a Tribally-owned or -controlled entity¹⁹² 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.¹⁹³ 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.¹⁹⁴ A Tribally-owned or -controlled entity whose application for ETC designation remains pending at the short-form application deadline should 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.

106. GRIC/GRTI supports the Commission's rule requiring an applicant to state on its short-form application 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 to certify that the disclosure is accurate.¹⁹⁵ Bad River Tribe, however, argues that the Commission should only impose this requirement as a post-auction condition of funding.¹⁹⁶ NTUA notes with concern that the lengthy timeframe that can be associated with resolving ETC applications may create a chilling effect on Tribal participation in the auction.¹⁹⁷

¹⁹⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17809, para. 439; *see* 47 C.F.R. § 54.1003(a).

¹⁹¹ Petition of T-Mobile for FCC Designation as an Eligible Telecommunications Carrier for Mobility Fund Phase I (Auction 901), *Order*, 27 FCC Rcd 7247, 7247-48, para. 1 (2012).

¹⁹² The following entities may be designated as qualifying Tribal entities: (1) Tribes, which are federally-recognized American Indian Tribes and Alaska Native Villages; (2) Tribal consortia; and (3) entities that are more than 50 percent owned and controlled by a Tribe or Tribes. *See Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4754, para. 95 n.158

¹⁹³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 491; 47 C.F.R. § 54.1004(a).

¹⁹⁴ However, allowing such participation at auction in no way prejudices the ultimate decision on a Tribally-owned or -controlled entity's petition for ETC designation. Moreover, support will be disbursed only after an applicant receives such designation. A Tribally-owned or -controlled entity that does not obtain and provide the required ETC designation will not be entitled to any support payments and may ultimately be in default in accordance with the rules. *See* 47 C.F.R. § 54.1005(b)(3)(v); 47 C.F.R. § 1.21004.

¹⁹⁵ GRIC/GRTI Comments at 8.

¹⁹⁶ Bad River Tribe Comments at 11.

¹⁹⁷ NTUA Comments at 5-6.

107. The Commission adopted the requirement that, at the time of the short-form filing deadline, an Auction 902 applicant must be designated as an ETC for the areas on which it wishes to bid or, if it is a Tribally-owned or -controlled entity, have a pending application for ETC designation for the relevant areas within the boundaries of the Tribal land associated with the Tribe that owns or controls the entity.¹⁹⁸ These ETC designation rules cannot be amended in the context of establishing procedures for Auction 902.

108. Pursuant to the rules, an applicant's ETC designation must cover a sufficient portion of the bidding area to allow it to satisfy the applicable performance requirements.¹⁹⁹ Additionally, as explained in the *USF/ICC Transformation Order*, a Tribal entity that wins support in Auction 902 while its ETC petition is pending must receive an ETC designation prior to support being authorized.²⁰⁰ Although we realize that in some limited situations the ETC designation process can be arduous, the Commission takes significant efforts to resolve pending filings before it in an expeditious manner.

2. Access to Spectrum Description and Certification

109. Pursuant to the rules adopted in the *USF/ICC Transformation Order*, and as explained in the *Auction 902 Comment Public Notice*, any applicant for Auction 902 must have access to the necessary spectrum to fulfill any obligations related to support.²⁰¹ In an application to participate in Auction 902, each applicant must describe its required spectrum access and certify that the description is accurate and that the applicant will retain such access for at least five years from the date on which it is authorized to receive support.²⁰² Specifically, an applicant will be required to disclose whether it currently holds, leases, or has otherwise contracted for access to spectrum consistent with Commission rules and whether such spectrum access is contingent on obtaining support in Auction 902. 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.²⁰³ 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.²⁰⁴

¹⁹⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 491; 47 C.F.R. §§ 54.1004(a), 54.1005(a)(3). A Tribally-owned or -controlled entity must have its application for ETC designation pending at the relevant short-form application deadline. *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 491.

¹⁹⁹ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17798-99, paras. 388-92; 47 C.F.R. §§ 54.1003(a), 54.1004(a), 54.1006.

²⁰⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 491 (noting that allowing a Tribally-owned or -controlled entity to participate at auction while its ETC petition is pending in no way prejudices the ultimate decision on its pending ETC petition and that support will be disbursed only after it receives ETC designation); see also *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2767, para. 8; 47 C.F.R. § 54.1004(a).

²⁰¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17799, para. 394. The requirement that parties have access to spectrum applies equally to all parties, including Tribally-owned or -controlled entities.

²⁰² 47 C.F.R. § 54.1005(a)(4).

²⁰³ 47 C.F.R. § 54.1003(b) (as amended by Connect America Fund et al., WC Docket No. 10-90 et al., *Order*, DA 12-147, 27 FCC Rcd 605 (2012) (*USF/ICC Clarification Order*)).

²⁰⁴ *Fourth Order on Reconsideration*, 27 FCC Rcd at 8822-23, para. 23 (denying Townes Telecommunications' petition for reconsideration seeking a determination that access to unlicensed spectrum would be sufficient to meet the requirement for access to spectrum).

110. Tribal entities responding to the *Auction 902 Comment Public Notice* reiterated policy concerns that have been raised in another rulemaking proceeding concerning the use of spectrum over Tribal lands and the difficulties Tribes face in acquiring spectrum in the secondary market.²⁰⁵ Several Tribal entities contend that requiring auction participants to have spectrum access as of the date they file their short-form applications for Auction 902 may preclude many Tribes from participating.²⁰⁶ Other Tribal entities urge the Commission to delay an applicant's certification regarding access to spectrum in the pre-auction phase of Auction 902, and to instead impose the rule on winning bidders as a condition of funding.²⁰⁷

111. In the *USF/ICC Transformation Order*, the Commission rejected the suggestion of some commenters to apply a more relaxed standard that might allow entities to seek to acquire access to spectrum only after becoming a winning bidder.²⁰⁸ The Commission instead concluded that "failing to ensure spectrum access, on at least a conditional basis, prior to entering a Mobility Fund Auction would be inconsistent with the serious undertaking implicit in bidding for support."²⁰⁹

112. The requirement for an applicant to obtain access to spectrum as of the date of the short-form application was adopted by the Commission as a rule and cannot be amended in the context of establishing procedures for Auction 902. We recognize the challenges all applicants may face in negotiating access to spectrum over Tribal lands. The Mobility Fund rules afford entities the flexibility to consider whatever spectrum arrangements might meet their individual needs, as long as those arrangements comply with all Mobility Fund Phase I and other regulatory requirements. Accordingly, an applicant for Auction 902 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 sufficient to fulfill its obligations related to the support. With the exception of the certification, the terms of which are set forth in FCC Form 180, an applicant must provide all required information relating to spectrum access in an attachment to FCC Form 180, designated as a "Spectrum Access" attachment.

3. Financial and Technical Capability Certification

113. 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.²¹⁰ This certification indicates that

²⁰⁵ See generally, *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, WT Docket No. 11-40, *Notice of Proposed Rulemaking*, FCC 11-29, 26 FCC Rcd 2623 (2011). See, e.g., GRIC/GRTI Comments at 6; NTTA Comments at 3 (asserting that the proceeding regarding spectrum over Tribal lands has "for all intents and purposes stalled"); NPM/NCAI Comments at 4; LLBO Reply Comments at 2; Oglala Sioux Tribe Comments at 4.

²⁰⁶ GRIC/GRTI Comments at 5; GRTI/MATI *Ex Parte* at 2; MATI Reply Comments at 2-3; NNTRC Comments at 8; NPM/NCAI Comments at 3 (noting that it is unclear how many Tribally-owned and operated carriers will be able to participate in Auction 902, given their lack of access to spectrum licenses).

²⁰⁷ Bad River Tribe Comments at 11 (noting that pre-auction spectrum access requirements are an unnecessary roadblock to Tribal entities seeking to provide telecommunication services to unserved Tribal lands); see also Lac du Flambeau Reply Comments; GRIC/GRTI Comments at 6; NTTA Comments at 3 & n.8.

²⁰⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17799-800, para. 396.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 17801, para. 401; 47 C.F.R. § 54.1005(a)(2).

an applicant for Tribal Mobility Fund Phase I funds can provide the requisite service without any assurance of ongoing support for the areas in question after Tribal Mobility Fund Phase I support has been exhausted. An applicant should be aware that in making a certification to the Commission it exposes itself to liability for a false certification. An applicant should take care to review its resources and its plans before making the required certification and be prepared to document its review, if necessary.

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

114. The Commission requires each applicant for Tribal Mobility Fund Phase I support to certify that the applicant will not seek support for any areas for which it made a public commitment to deploy 3G or better wireless service by December 31, 2012.²¹¹ In determining whether an applicant made such a public commitment, we would consider any public statement made with some specificity as to geographic area, time period, and level of service. This requirement helps to assure that Tribal 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 Tribal Mobility Fund Phase I support with respect to the relevant geographic area. Because circumstances are more likely to change over a longer term, we do not hold providers to any statements for any time period beyond December 31, 2012. Applicants should note that this restriction does not prevent a party from seeking and receiving support for an eligible geographic area where another provider has announced such a commitment to deploy 3G or better wireless service.²¹²

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

115. 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.²¹³ 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.²¹⁴

116. 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.

117. In response to the *Auction 902 Comment Public Notice*, ARC and NNTRC ask us to interpret broadly the types of entities that may qualify for the bidding credit.²¹⁵ NTUA asserts that either

²¹¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17802-03, para. 410; 47 C.F.R. § 54.1005(a)(5).

²¹² *USF/ICC Transformation Order*, 26 FCC Rcd at 17802-03, para. 410.

²¹³ *See id.* at 17823, para. 490; 47 C.F.R. § 54.1004(c); *see also* Further Inquiry into Tribal Issues Relating to Establishment of a Mobility Fund, WT Docket No. 10-208, *Public Notice*, DA 11-702, 26 FCC Rcd 5997 (2011).

²¹⁴ 47 C.F.R. § 54.1004(c).

²¹⁵ ARC Comments at 13 & n.35 (suggesting adoption of a broad view of what constitutes a Tribally-owned or -controlled entity and recommending that the 25 percent bidding credit should be available to companies that are locally owned and serving Native Lands in Alaska); NNTRC Comments at 8-9 (urging consideration of innovative (continued....))

Tribal ownership or Tribal control is sufficient for an entity to be eligible to receive the 25 percent bidding credit.²¹⁶ SRTI suggests that a Tribe that does not own an ETC should be able to designate a Tribally-owned ETC from another Tribe to bid to serve its lands on a preferential basis.²¹⁷ Commenters also suggest that we create additional types of bidding credits for Auction 902.²¹⁸

118. As described above, the bidding credit adopted by the Commission applies only to Tribally-owned or -controlled entities with respect to bids for support within the boundaries of associated Tribal lands.²¹⁹ In the *USF/ICC Transformation Order*, the Commission declined to adopt other types of bidding credits or prioritization mechanisms.²²⁰ The rule cannot be amended in the context of establishing procedures for Auction 902, and thus cannot be extended to apply to any entities that are not in fact owned or controlled by the Tribe or to areas outside of the Tribe's own Tribal lands.

119. We note that although the bidding credit applies to Tribally-owned or -controlled entities, it was adopted in recognition of Tribes' interest in self-government and self-provisioning on their own lands, and with the Commission's unique government-to-government relationship with Tribes in mind.²²¹ As such, we retain discretion to look behind assertions of Tribal ownership and assertions of Tribal control to ensure that the Tribe is the true beneficiary of the bidding credit. This standard would be satisfied by the following entities: (1) Tribes (federally-recognized American Indian Tribes and Alaska Native Villages); (2) Tribal consortia; and (3) entities that are more than 50 percent owned and controlled by a Tribe or Tribes.²²²

G. Commission Red Light Rules

120. Applications to participate in Auction 902 are subject to the Commission's rules regarding an applicant with delinquent debts, often referred to as the Commission's Red Light Rules.²²³ Pursuant to the Red Light Rules, unless otherwise expressly provided for, the Commission will withhold
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arrangements whereby carriers that are not Tribally-owned, but have rights to spectrum over Tribal lands, might have access to the Tribal bidding credit).

²¹⁶ NTUA Comments at 4.

²¹⁷ SRTI Comments at 8 (claiming that this approach would enhance competition and more broadly distribute the benefits of the Tribal Mobility Fund by enabling Tribes to participate that would otherwise be left out).

²¹⁸ ARC Comments at 7 (suggesting creation of a bidding credit for Alaska carriers, or some other mechanism designed to level the playing field between Alaska and the contiguous United States, in order to ensure that at least some Tribal Mobility support is awarded to carriers in Alaska); *see also* ARC Reply Comments at 5-6; NPM/NCAI Comments at 7-8 (proposing a bidding credit of 5 percent for any bidder that proposes to serve all eligible Tribal lands, rather than the portion regarded as the most economically desirable for the bidder).

²¹⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 490; 47 C.F.R. § 54.1004(c).

²²⁰ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17789-90, paras. 355-57.

²²¹ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17818-23, paras. 479, 484, 490-91; *see also* Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, 16 FCC Rcd 4078, 4080-81 (2000) (recognizing the Commission's general trust relationship with, and responsibility to, federally recognized Tribes).

²²² *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4754, para. 95 n.158; *see also* section III.E.1 above.

²²³ Parties familiar with spectrum license auctions should note that the stricter spectrum license application rules supersede the Commission's Red Light Rules in the context of a spectrum license auction. *See* 47 C.F.R. § 1.1902(f). No corresponding provision applies with respect to Auction 902, however. Accordingly, the Commission's standard Red Light Rules will apply.

action on an application by any entity found to be delinquent in its debt to the Commission for purposes of the Red Light Rule.²²⁴ Accordingly, parties interested in filing applications to participate in Auction 902 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/.

H. USF Debarment

121. The Commission's rules provide for the debarment of those convicted of or found civilly liable for defrauding the high-cost support program.²²⁵ Applicants are reminded that those rules apply with equal force to the Tribal Mobility Fund Phase I.

I. Minor Modifications to Short-Form Applications

122. After the deadline for filing short-form applications, an Auction 902 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.²²⁶ 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.²²⁷ 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.²²⁸

123. 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.²²⁹

124. 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 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

²²⁴ 47 C.F.R. § 1.1910(b)(2).

²²⁵ 47 C.F.R. § 54.8.

²²⁶ 47 C.F.R. § 1.21001(d)(5).

²²⁷ 47 C.F.R. § 1.21001(d)(4).

²²⁸ We reiterate that even if an applicant's short-form application is dismissed, the applicant would remain subject to the communication prohibitions of 47 C.F.R. § 1.21002 until the long-form application deadline after the auction closes.

²²⁹ The Bureaus advise applicants to print and retain a copy of this confirmation page.

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.

125. Any letter describing changes to an applicant's short-form application must be submitted by e-mail to auction902@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 902 and the name of the applicant, for example, "RE: Changes to Auction 902 Short-Form Application of ABC Corp." The Bureaus request that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

126. Any application amendment and related statements of fact must be certified by an appropriate party. Appropriate parties include one of the partners if the applicant is a partnership; 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.²³⁰

127. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS), which was used for submitting comments regarding Auction 902. Further, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate section 1.21002 or the limited information procedures adopted for Auction 902.²³¹ A party seeking to submit information that might reflect non-public information should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to section 1.21002.²³²

J. Maintaining Current Information in Short-Form Applications

128. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application.²³³ If an amendment reporting changes is a "major amendment," as defined by section 1.21001(d)(4), the major amendment will not be accepted and may result in the dismissal of the application.²³⁴ As noted above, after the application filing deadline, applicants may make only minor changes to their applications. Such changes must be made in the manner described in section III.I above.

IV. PRE-AUCTION PROCEDURES

A. Online Auction Tutorial – Available September 25, 2013

129. No later than Wednesday, September 25, 2013, the Commission will post an educational auction tutorial on the Auction 902 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.

²³⁰ See 47 C.F.R. § 1.917.

²³¹ See section II.C.2 above; *see also* section V.A.4 below.

²³² See 47 C.F.R. § 0.459.

²³³ 47 C.F.R. § 1.65.

²³⁴ 47 C.F.R. § 1.21001(d)(4).

130. This interactive, online tutorial should provide an efficient and effective way for interested parties to further their understanding of the auction process. The Auction 902 online tutorial will allow viewers to navigate the presentation outline, review written notes, listen to audio of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, e-mail links for contacting Commission staff, and a timeline with deadlines for auction preparation. The online tutorial will be accessible through a web browser with Adobe Flash Player.²³⁵ As always, Commission staff will be available to promptly answer questions posed by telephone and e-mail throughout the auction process.²³⁶

131. The auction tutorial will be accessible from the FCC's Auction 902 web page at <http://wireless.fcc.gov/auctions/902/> through an "Auction Tutorial" link. Once posted, this tutorial will remain available for reference in connection with the procedures outlined in this Public Notice and accessible anytime.

B. Short-Form Applications – Due Prior to 6:00 p.m. ET on October 9, 2013

132. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment D to this Public Notice to submit a short-form application (FCC Form 180) electronically via the FCC Auction System. This short-form application must be submitted prior to 6:00 p.m. ET on October 9, 2013. **Late applications will not be accepted.** No application fee is required.

133. Applications may generally be filed at any time beginning at noon ET on September 25, 2013, until the filing window closes at 6:00 p.m. ET on October 9, 2013. We strongly encourage applicants to file early and allow for adequate time for the filing process. Applications can be updated or amended multiple times until the filing deadline on October 9, 2013.

134. 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 is included in Attachment D. 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

135. 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.

136. As described above, after the application filing deadline on October 9, 2013, applicants can make only minor corrections to their applications.²³⁷ They will not be permitted to make major modifications (e.g., change control of the applicant or change of the certifying official).²³⁸

²³⁵ Most users will already have the Flash Player browser plug-in, which can be downloaded from <http://get.adobe.com/flashplayer/>.

²³⁶ Contact information for subject matter experts may be found in section VII of this Public Notice, below.

²³⁷ See section III.I above.

137. 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.²³⁹ Authorizations may be sent by e-mail to auction902@fcc.gov.

D. Auction Registration

138. 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.

139. 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 telephone number for bidding questions.

140. 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 Wednesday, December 11, 2013, 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.

141. 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

142. 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. Bidders 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 902.

143. 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.

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

²³⁹ In no event, however, will the Commission send auction registration materials to anyone other than the contact person listed on the applicant's FCC Form 180 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 180. *See* section IV.D below.

F. Mock Auction – December 16, 2013

144. All qualified bidders will be eligible to participate in a mock auction on Monday, December 16, 2013. The mock auction will enable qualified bidders to become familiar with the FCC Auction System and to practice submitting bids prior to the auction. We strongly recommend that all qualified bidders participate to gain experience with the bidding procedures. Details will be announced by public notice.

V. AUCTION EVENT**A. Auction Structure – Reverse Auction Mechanism**

145. Auction 902 will be held on Thursday, December 19, 2013.²⁴⁰ The start and finish time of the bidding round will be announced in a public notice listing the qualified bidders, which will be released approximately 10 days before the start of the auction. Our choice of auction design for Auction 902—a single-round format with other design characteristics described below—is specific to the particular context of the Tribal Mobility Fund Phase I auction.²⁴¹ The choices we make here do not prejudice our future auction design choices for other phases of the Mobility Fund or other competitive bidding mechanisms related to the USF.

1. Single-Round Sealed-Bid Reverse Auction Format

146. We will conduct Auction 902 using a single round of bidding.²⁴² All commenters addressing auction format issues support a single-round auction. Numerous commenters believe this format will keep the auction streamlined and efficient.²⁴³ Several commenters note that a multiple-round bidding format would complicate the auction process and may not allow for full participation.²⁴⁴

147. We conclude that a multiple-round auction would not be appropriate in the context of the Tribal Mobility Fund Phase I auction. We recognize that multiple-round auctions can have important advantages, and in fact, the Commission generally uses a multiple-round format for its spectrum license auctions. However, we do not believe that the circumstances favoring a multiple-round auction—i.e., when there are strong interactions among items and when bidders are unsure as to the market value of the item—are significant enough here to outweigh our concerns about the complexity it would add to the auction.²⁴⁵ We also give particular weight on this issue to comments on behalf of a Tribe and a Tribal

²⁴⁰ See para. 6 above.

²⁴¹ Two commenters question whether a reverse auction represents the best method of distributing support to Tribal lands. ARC Comments at 10; SRTI Comments at 2. The Commission decided to use a reverse auction for Tribal Mobility Fund Phase I in the *USF/ICC Transformation Order*, and that decision is not subject to review here by the Bureaus. *USF/ICC Transformation Order*, 26 FCC Rcd at 17821-22, paras. 486-87; see also *Fourth Order on Reconsideration*, 27 FCC Rcd at 8817, para. 6 (denying Blooston Rural Carriers' claim that the Commission's adoption of the reverse auction format was arbitrary or capricious, and affirming the Commission's conclusion that the auction mechanism adopted in the *USF/ICC Transformation Order*, coupled with eligibility and performance requirements, best ensures that mobile broadband is deployed quickly to unserved areas by well-qualified carriers).

²⁴² See *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2774-75, paras. 27-29 (seeking comment on which reverse auction design would be the most appropriate for the Tribal Mobility Fund Phase I auction).

²⁴³ CCA Comments at 6; Commnet Comments at 3, 5; RTG Comments at 4; SIW Comments at 7.

²⁴⁴ Bad River Tribe Comments at 12; Commnet Comments at 6, 11; RTG Comments at 4.

²⁴⁵ See CCA Comments at 6; Commnet Comments at 5-6; see also *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4761, para. 129 (deciding to implement a single-round auction format for Auction 901 because the (continued....))

entity, which argue, respectively, that a single-round process would place less of a burden on Tribal entities and would facilitate the process of gaining Tribal leadership approval, where required.²⁴⁶ As a result, we will conduct Auction 902 using a single round of bidding.

2. Aggregation Method – Predefined Aggregation

148. The Commission determined that the census block should be the minimum geographic building block for which support is provided, but left to the Bureaus the task of deciding how to facilitate bidding on aggregations of eligible census blocks.²⁴⁷ The Commission recognized that some aggregation of census blocks may be necessary because census blocks are numerous and can be quite small, but encouraged the Bureaus to consider permitting bidding on individual census blocks in Alaska because they are so much larger on average than census blocks elsewhere.²⁴⁸

149. *Aggregation of census blocks by Tribal lands and census tracts.* In the *Auction 902 Comment Public Notice*, the Bureaus proposed aggregating eligible census blocks by Tribal land, and subdividing the aggregation by census tract where applicable. That is, for any Tribal land covering more than one census tract, the eligible census blocks would be aggregated into one bidding area for each tract.²⁴⁹ A bidder would bid on these bidding areas, not on individual census blocks.²⁵⁰ The Bureaus proposed that while census blocks in Alaska are larger than those in other parts of the country, aggregations by Tribal land and census tract—due to many instances of census tracts in Alaska covering multiple Tribal lands—would result in Alaska aggregations being closer in size to the aggregations in other parts of the country. The Bureaus therefore sought comment on using the same aggregation process in Alaska as elsewhere.²⁵¹ The commenters generally support the Bureaus’ proposal to aggregate census blocks,²⁵² with certain caveats for Alaska, as noted below.

150. In all eligible areas other than in Alaska, we adopt our original proposal to establish bidding areas consisting of predefined aggregations of eligible census blocks. Under this approach, eligible census blocks will be grouped by the Tribal land in which they are located, and bidders will be able to bid for support for these bidding areas. Bidders will not bid on individual blocks, except for some blocks in Alaska as described below. If a single Tribal land includes more than one census tract, then the Tribal land will be subdivided by tract for bidding area purposes; there will be one bidding area for each tract in the Tribal land. For each bidding area on which a bidder bids, the bidder will indicate a per-pop
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circumstances favoring a multiple-round auction were not significant enough to outweigh concerns about added complexity).

²⁴⁶ Bad River Tribe Comments at 12; SIW Comments at 7.

²⁴⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17787-88, para. 346; 47 C.F.R. § 54.1002(a).

²⁴⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17787-88, paras. 346-47.

²⁴⁹ Aggregating by Tribal lands may also create—for any census tract with more than one Tribal land—more than one bidding area for the tract.

²⁵⁰ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2775, para. 31.

²⁵¹ *Id.* at 2775, para. 34.

²⁵² GRIC/GRTI Comments at 8-9 (supporting the Bureaus’ proposal to aggregate census blocks by Tribal lands and census tracts, and arguing that if aggregation of census blocks were to result in aggregated areas covering multiple Tribal lands, Tribal bidders should retain the important benefits of the Tribal bidding credit and remaining eligible to participate in Auction 902 with a pending ETC petition); RTG Comments at 3-4 (supporting the proposed aggregation approach as “administratively efficient” and noting that it would facilitate the Tribal engagement process); LLBO Comments at 6; *see also* Bad River Tribe Comments at 9 n.6.

price to cover the population in the bidding area. The auction will assign support to an awardee equal to the per-pop rate of its bid multiplied by the population associated with the eligible census blocks within the bidding area as shown in the files provided by the Bureaus. A bidder may bid on multiple bidding areas and win support for any or all of them.²⁵³ An awardee will be required to cover a given percentage of the total population of the eligible census blocks in the bidding area.

151. As discussed above, for Alaska the eligible Tribal lands will be identified using not only the Alaska Native village statistical areas (ANVSAs) that were originally proposed for inclusion in Auction 902, but also the boundaries of the twelve geographic Alaska Native regional corporations and the Annette Island Reserve, which together cover the entire state of Alaska. This requires that we establish bidding areas that are different from those originally proposed for Alaska. The eligible census blocks in ANVSAs will be aggregated as proposed. That is, eligible census blocks will be aggregated by Alaska Native village statistical areas, and if an ANVSA covers more than one tract, there will be a bidding area for each tract in that ANVSA.

152. For areas outside of ANVSAs, aggregation of all eligible blocks within a tract within an Alaskan Native regional corporation could result in bidding areas so vast that it could dampen participation in Auction 902 and thwart expansion of services to currently unserved populations. GCI suggests that the Bureaus allow bidders in Alaska to aggregate one or more contiguous census blocks within a census tract to create a smaller geographic bidding area.²⁵⁴

153. We conclude that for eligible census blocks in Alaska outside of ANVSAs, each block will be a single bidding area, and we will not aggregate census blocks. As with other bidding areas, bidders will indicate a per-pop price to cover the population in the block. The auction will assign support to an awardee equal to the per-pop rate of its bid multiplied by the population associated with the eligible census block, as shown in the files provided by the Bureaus. A bidder may bid on multiple bidding areas—be they individual blocks and/or predefined aggregations of blocks—and may win support for any or all of them.

154. The Bureaus conclude that aggregating census blocks into ANVSAs and tracts for bidding, except for blocks outside of ANVSAs, will provide a manageable bidding process, both for participants and the Commission, particularly in light of the speed with which we want to proceed in distributing this one-time support.²⁵⁵

155. The aggregation option that we adopt does not permit package bidding—that is, it does not permit bidders to create their own groupings of census blocks on which to submit all-or-nothing bids. We therefore reject the suggestions of GCI and WST for bidder-customized bidding areas.²⁵⁶ The

²⁵³ As discussed below in section V.B.1, this approach requires separate bids on individual bidding areas.

²⁵⁴ GCI Comments at 3-4 (arguing that this would facilitate bidders' "natural incentive to bid on a grouping of census blocks that corresponds to a typical built-out area").

²⁵⁵ In addition to providing a manageable bidding process, aggregating by ANVSAs and census tracts will facilitate application of the special ETC designation provisions and bidding credits available to Tribally-owned and -controlled entities, and will also help bidders identify the appropriate Tribal government officials for Tribal engagement in Alaska. *See* section II.A.2 above.

²⁵⁶ GCI Comments at 3-4 & n.8 (recognizing, however, "that such a mechanism would lack the benefits of speed and simplicity achieved by the Bureaus' proposed procedures"); WST Comments at 5; *see also* Bad River Tribe Comments at 9 n.6 (requesting that its proposed Tribal Service Area be regarded as a single eligible area for purposes of bidding).

aggregation option we adopt allows a bidder to bid on as many bidding areas, including blocks in Alaska outside of the ANVSAs, as they wish, and to win support for any or all of those bidding areas.

156. *Coverage requirement.* Under the aggregation approach we adopt as described above, each awardee will be required to provide voice and broadband service meeting the established minimum standards over at least 75 percent of the population associated with each bidding area for which it receives support—that is, at least 75 percent of the total population of the eligible blocks that comprise the bidding area.²⁵⁷ If a winning bidder covers more than 75 percent of the population within the required timeframe, it may collect support for up to 100 percent of the population in the bidding area.²⁵⁸

3. Winner Selection Process

157. Under the auction format that we adopt, during the single bidding round, bidders will be able to submit bids that indicate a per-pop support price at which they are willing to meet our requirements to cover the population in the eligible census blocks of the bidding areas covered by the bids. The population of each bidding area can be found in Attachment A.

158. In the *Auction 902 Comment Public Notice*, the Bureaus proposed that, in general, the auction system would rank all bids from lowest to highest based on the per-pop bid amount, and assign support first to the lowest per-pop bid.²⁵⁹ We sought comment on various issues relating to implementing this proposal.²⁶⁰ Commenters generally do not address this issue.²⁶¹

159. After the single bidding round closes, the FCC Auction System will rank bids from lowest to highest per-pop bid amount and assign support first to the lowest per-pop bid.²⁶² An amount equal to the per-pop bid times the population in the bidding area will be deducted from the total available funds. The auction system will continue to assign support to the next lowest per-pop bid in turn, as long as support has not already been assigned for that geographic area, deducting assigned support funds from the remaining available funds. The auction system will stop assigning support when the next ranked per-pop bid implies a support amount exceeding the remaining funds available.²⁶³ This procedure will help to

²⁵⁷ See section VI.C.1 below (addressing comments received on this issue). The required minimum standards for service will depend on whether a winning bidder elects to deploy 3G or 4G service. *USF/ICC Transformation Order*, 26 FCC Rcd at 17792-93, paras. 365, 367; 47 C.F.R. §§ 54.1006(a)-(b). Pursuant to the *USF/ICC Transformation Order*, awardees meeting the minimum coverage requirement could receive their winning bid amount for that population and for any additional population covered in excess of the 75 percent minimum, up to 100 percent of the population associated with the eligible blocks, subject to the rules on disbursement of support. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17793, para. 367; 47 U.S.C. § 54.1008.

²⁵⁸ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17792-93, paras. 365, 367.

²⁵⁹ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2776, para. 37; see also 47 U.S.C. § 1.21003(b)(9) (specifying that a public notice detailing competitive bidding procedures may establish the process for reviewing bids and determining the winning bidders).

²⁶⁰ See *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2776-77, para. 38 (seeking comment on details with respect to determining awardees in a single-round auction).

²⁶¹ We address elsewhere comments on issues that will affect the relative position of particular bids in the rank order, e.g., the bidding credits available to some bidders. See section III.F above.

²⁶² For bidders claiming eligibility for a Tribal entity bidding credit, the auction system will reduce those bid amounts by 25 percent for the purpose of comparing them to other bids, thus increasing the likelihood that Tribally-owned and -controlled entities will receive funding. See section III.F above.

²⁶³ This method of identifying winning bidders will likely result in monies remaining in the fund after identifying the last lowest per-pop bid that does not exceed the funds available. In Auction 901, bids that would have required (continued....)

avoid assigning funds only to very small components of larger areas that bidders may have tried to aggregate. A bidder will be eligible to receive support for each of its winning bids equal to the per-pop rate of the bid multiplied by the population in the eligible census blocks covered by the bid, subject to meeting the obligations associated with receiving support.

160. We implement this procedure here, which is different from the procedure used in Auction 901, consistent with the Commission's commitment to fiscal responsibility,²⁶⁴ to help address the possibility that this auction may elicit less robust competition than Auction 901, because there are fewer eligible areas available for support. Though we decline to set a reserve price for this auction,²⁶⁵ we establish an alternative safeguard against unreasonably high bids, because we seek to ensure that the finite resource of universal service support is used to extend mobile voice and broadband services to as many people on Tribal lands as possible. Specifically, the Bureaus may, in their sole discretion, stop assigning support in the rank order of per-pop bids immediately prior to a bid even though funds remain available. In determining when to exercise this authority, the Bureaus will carefully consider the costs and benefits given the unique challenges associated with deploying mobile broadband on Tribal lands,²⁶⁶ as well as whether dedication of the funds to other programs for eligible Tribal lands could help bring broadband to a greater number of people in those lands. We conclude that these steps will reduce incentives to submit extremely high per-pop bids in an attempt to take advantage of the potential for reduced competition relative to Auction 901 and help assure that winning bids will make cost-effective use of our limited funds.²⁶⁷

161. Bids will be assigned a random selection number that will be used to determine the ranking of tied bids. If there are any identical bids—in the same per-pop amounts to cover the same block, submitted by different bidders—only the bid with the highest random selection number will be considered in the ranking. Tied bids for different areas, submitted by the same or different bidders, will be considered for support in the order of the random number.²⁶⁸

162. Commenters generally do not address the winner determination process. While some commenters are concerned that the proposed auction format favors areas with higher population densities and companies with more efficient cost structures,²⁶⁹ the Commission has determined that these efficiency implications of the auction format will facilitate an allocation of funds that achieves the goal of

(Continued from previous page) _____

more support than what was available were skipped until the ranking reached a bid that implied a support amount that did not exceed the support available. *See Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4766, para. 145.

²⁶⁴ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17670, para. 11 (describing the Commission's goal of reducing waste and inefficiency and recognizing that American consumers and businesses ultimately pay for USF); *see also id.* at 17821, para. 485 (establishing a \$50 million budget for Tribal Mobility Fund Phase I consistent with the Commission's commitment to fiscal responsibility).

²⁶⁵ *See* para. 169 below.

²⁶⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17820, para. 482.

²⁶⁷ *See id.* at 17772-73, para. 298.

²⁶⁸ Bidders that submit multiple bids for the same per-pop amount for different areas, but that have a preference for the order in which we consider such bids, may wish to vary the per-pop bid by some small amount in order to indicate a preferential ranking of the tied bids that otherwise will be ranked randomly.

²⁶⁹ *See* ARC Comments at 7; NPRM/NCAI Comments at 7; SRTI Comments at 2-3, 6.

maximizing the population covered by new mobile services to Tribal lands without exceeding the budget of \$50 million.²⁷⁰

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

163. We will conduct Auction 902 using procedures for limited information disclosure, as we proposed, and as we have discretion to do under the rules adopted in the *USF/ICC Transformation Order*.²⁷¹ That is, for Auction 902, 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 bidding areas in particular Tribal lands and (2) information that may reveal the identities of bidders placing bids and taking other bidding-related actions.²⁷² Because we will conduct Auction 902 using a single round of bidding, we do not anticipate a need to release bidding-related actions during the auction as we would in a multiple-round auction. If such circumstances arise prior to the release of non-public information and auction results, however, we will not indicate the identity of any bidders taking such actions. After the close of bidding, information regarding applicants' interests in eligible areas in particular Tribal lands, their bids, and any other bidding-related actions and information will be made publicly available.

5. Auction Delay, Suspension, or Cancellation

164. In the *Auction 902 Comment Public Notice*, the Bureaus proposed that, by public notice or by announcement during the auction, we may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.²⁷³ We received no comments on this issue.

165. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureaus adopt these proposals regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, we may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the point at which the auction was suspended, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that we will exercise this authority solely at our discretion.

²⁷⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17821-22, paras. 486-88.

²⁷¹ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2777, para. 41; *USF/ICC Transformation Order*, 26 FCC Rcd at 17807, para. 431; see 47 C.F.R. § 1.21003(b)(1); see also, e.g., *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4766-67, para. 147; Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76, *Public Notice*, DA 07-4171, 22 FCC Rcd 18141, 18181-85, paras. 145-56 (2007); Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66, *Public Notice*, FCC 06-47, 21 FCC Rcd 4562, 4600-05, paras. 140-57 (2006).

²⁷² We did not receive any comments addressing this proposal. See *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2777, para. 41.

²⁷³ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2778, para. 44.

B. Bidding Procedures

1. Bidding

166. All bidding will take place through the web-based FCC Auction System. To place bids a bidder will upload a text file that includes, for each bid, the bidding area name and the bid amount, expressed in a dollars per-pop price to cover the population in the eligible census blocks of that bidding area. When a bidder uploads a bid file, the FCC Auction System will provide a verification that includes the bidding area names, the dollars per-pop bid for each bidding area, the population in each bidding area, the total bid amount for each bidding area, and the county, state, and Tribal land for each bidding area. The bidder then submits the bids, or the bidder can cancel the bids if it wishes to make changes.

167. 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, and which will be released approximately 10 days before the start of the auction.²⁷⁴

2. Reserve Prices

168. In the *Auction 902 Comment Public Notice*, we sought comment on whether any maximum acceptable per-pop bid amounts, reserve amounts, or maximum opening bid amounts would be appropriate for Auction 902.²⁷⁵ One commenter suggests that we may want to consider some sort of reserve price or maximum acceptable bid amount.²⁷⁶ Bad River Tribe and CCA oppose adoption of maximum acceptable bid amounts or reserve prices.²⁷⁷ CCA argues that an adequate amount of competition exists to constrain bid amounts, especially in light of the finite amount of funding allocated for Tribal Mobility Fund Phase I.²⁷⁸

169. We conclude that a reserve price is not needed to ensure the commitment to fiscal responsibility made in the *USF/ICC Transformation Order*.²⁷⁹ We agree with CCA 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.²⁸⁰ We note that the stopping procedures we adopt will also help to guard against the possibility that funds will be assigned at very high per-pop bid amounts. As discussed above, we will stop assigning support at the point at which remaining funds are insufficient to satisfy the next ranked

²⁷⁴ We did not receive any comments addressing our proposal to announce the start time for bidding in a public notice to be released at least one week before the start of the auction. See *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2778, para. 43.

²⁷⁵ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2778, para. 46. See also *USF/ICC Transformation Order*, 26 FCC Rcd at 17806, para. 423-24; 47 C.F.R. § 1.21003(b)(4).

²⁷⁶ LLBO Comments at 6.

²⁷⁷ Bad River Tribe Comments at 12; CCA Comments at 7.

²⁷⁸ CCA Comments at 7.

²⁷⁹ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17670, para. 11 (describing the Commission's goal of reducing waste and inefficiency and recognizing that American consumers and businesses ultimately pay for USF); see also *id.* at 17821, para. 485 (establishing a \$50 million budget for Tribal Mobility Fund Phase I consistent with the Commission's commitment to fiscal responsibility).

²⁸⁰ CCA Comments at 7; see also *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4767-68, para. 152.

per-pop bid.²⁸¹ In addition, as also discussed above, we retain the authority to stop the assignment of support to unreasonably high per-pop bids.²⁸²

3. Bid Removal

170. For Auction 902, 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, a bidder may effectively “undo” a bid placed within the single round of bidding. Once the single round of bidding ends, a bidder may no longer remove any of its bids.

171. To remove bids a bidder will upload a text file that includes the bidding area name 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 bidding area names, and the county, state, and Tribal land for each bidding area. This decision on bid removal is consistent with our proposal.²⁸³ We received no comments on this issue. We thus find this approach reasonable to use here.

4. Auction Announcements

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

5. Auction Results

173. The Bureaus will determine the winning bids based on the lowest per-pop bids, as described elsewhere in this Public Notice.²⁸⁴ After the Bureaus announce the auction results, we will provide downloadable files of the bidding and results data.

VI. POST-AUCTION PROCEDURES

A. General Information Regarding Long-Form Applications

174. After the conclusion of Auction 902, each winning bidder will be required to file a long-form application to demonstrate that it qualifies for Tribal Mobility Fund Phase I support.²⁸⁵ 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 FCC Form 680 and the FCC Auction System to submit the long-form application. The public notice announcing the close of the auction will provide details regarding the submission and processing of the long-form application. Unless otherwise provided by public notice, as was the case for Auction 901, a winning bidder must file its long-form application no later than 10 business days after being identified by public notice as such a winning bidder.²⁸⁶ We note that in Auction 901, winning bidders initially had 21 business days to file long-form applications,²⁸⁷ and this deadline was later extended to 23 business

²⁸¹ Thus, in Auction 902, we will not award support at higher per-pop bid amounts but for lower total support amounts in order to use as much of the budget as possible.

²⁸² See section V.A.3 above.

²⁸³ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2778, para. 47.

²⁸⁴ See section V.A.3 above.

²⁸⁵ See *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2769, para. 15.

²⁸⁶ 47 C.F.R. § 54.1005(b).

²⁸⁷ The public notice released on October 3, 2012, announced the long-form application deadline as November 1, 2012. See *Auction 901 Closing Public Notice*, 27 FCC Rcd at 12033, para. 6.

days.²⁸⁸ We anticipate that we will provide at least a similar time period before the long-form application deadline for Auction 902.

175. We received comments from Commnet regarding the time allotted for a winning bidder to file its long-form application. Commnet urges the Bureaus to allow a winning bidder more time to prepare long-form applications, noting that certain requirements of the long-form application, such as letters of credit or commitment letters, require carriers to conduct due diligence, negotiate, and engage in financial transactions that require substantial time and resources.²⁸⁹ In establishing the long-form application deadline for Auction 902, we will give due consideration to Commnet's comments regarding this issue.

176. In addition to the long-form application process described below, any bidder winning support in Auction 902 must notify the relevant Tribal government(s) no later than five business days after being identified by public notice as such a winning bidder.²⁹⁰ The Office of Native Affairs and Policy (ONAP), in coordination with the Bureaus, has provided guidance regarding the appropriate points of contact for Tribal governments.²⁹¹

B. Long-Form Application: Disclosures and Certifications

177. By the due date specified in the auction closing public notice, a winning bidder must electronically submit a properly-completed long-form application (FCC Form 680) for the bidding areas of its winning bids. A Tribally-owned or -controlled provider claiming eligibility for a Tribal entity bidding credit must certify as to its eligibility for the bidding credit. Further filing instructions will be provided to winning bidders in the auction closing public notice.

1. Ownership Disclosure

178. In the *USF/ICC Transformation Order*, the Commission adopted for Mobility Fund Phase I auctions 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.²⁹² 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.

179. As the Commission has previously noted, wireless providers that have participated in spectrum license auctions will already have ownership disclosure reports (in the short-form application) on file with the Commission, which may simply need to be updated. To minimize the reporting burden on winning bidders, we will allow them to use ownership information stored in existing Commission databases and update that information as necessary.²⁹³

²⁸⁸ The long-form application deadline was extended from November 1, 2012, to November 5, 2012, in the aftermath of Hurricane Sandy. See *Mobility Fund Phase I Auction Long-Form Application Deadline Extended*, *Public Notice*, AU Docket No. 12-25, DA 12-1736, 27 FCC Rcd 13424, 13424, para. 1 (2012).

²⁸⁹ Commnet Comments at 7-8.

²⁹⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17822-23, para. 489; 47 C.F.R. § 54.1004(d)(2).

²⁹¹ See *Tribal Engagement Further Guidance*, 27 FCC Rcd at 8180, para. 14.

²⁹² *USF/ICC Transformation Order*, 26 FCC Rcd at 17808-09, para. 438.

²⁹³ *Id.*

2. Documentation of ETC Designation

180. A winning bidder must 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.²⁹⁴ Appropriate documentation should include the original designation orders, any relevant modifications, e.g., expansion of service area or inclusion of wireless services, and any relevant name-change orders. Any ETC designation documentation provided as an attachment to the long-form application must be designated as an “Eligible Telecommunications Carrier” attachment.

181. Each winning bidder should connect the designated areas (e.g., wire centers, exchanges, and study areas) to its winning bid areas so that it is clear that the applicant has ETC status in each winning bid area. This obligation may be satisfied by providing maps of the recipient’s ETC designation area, map overlays of the winning bid areas, charts listing designated areas and associated winning bid areas, and narrative descriptions explaining the connections between the ETC designations and the winning bid areas. An applicant must demonstrate that it has been designated as an ETC throughout a sufficient portion of each winning bid area to satisfy the applicable performance requirements.²⁹⁵

3. Financial and Technical Capability Certification

182. 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.²⁹⁶ This certification indicates that an applicant for Tribal Mobility Fund Phase I funds can provide the requisite service without any assurance of ongoing support for the areas in question after Tribal Mobility Fund Phase I support has been exhausted. An applicant should be aware that in making a certification to the Commission it exposes itself to liability for a false certification. An applicant should take care to review its resources and its plans before making the required certification and be prepared to document its review, if necessary.

4. Project Construction Schedule/Specifications

183. Applicants are required to provide in their long-form application a “Project Description” attachment for each winning bid with a detailed project description that 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, as those details pertain to each winning bid.²⁹⁷ Applicants are urged to include an initial summary paragraph in layman’s terms that describes the project for each winning bid. A complete project schedule, including timelines, milestones, and costs, also must be provided in detail for each winning bid. 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 the applicant will meet applicable requirements to receive the

²⁹⁴ 47 C.F.R. § 54.1005(b)(2)(iii). Although, as discussed above, a Tribally-owned or -controlled entity may participate in Auction 902 so long as it has an application to be designated as an ETC pending at the relevant short-form application deadline, a Tribally-owned or -controlled entity may receive Tribal Mobility Fund support only after it has become an ETC and has provided the appropriate documentation. *See* 47 C.F.R. § 54.1004(a).

²⁹⁵ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17798-99, paras. 388-92; 47 C.F.R. §§ 54.1003(a), 54.1004(a), 54.1006.

²⁹⁶ *See* 47 C.F.R. § 54.1005(b)(2)(ii).

²⁹⁷ *See* 47 C.F.R. § 54.1005(b)(2)(v).

installments of Mobility Fund support.²⁹⁸ To the extent an applicant has one project description for multiple winning bids, it still must provide all of the specific details described herein as those details correspond to each winning bid. Additionally, applicants need to ensure that each winning bid's project description corresponds with the applicant's access to spectrum certification for each winning bid, and that all prior Commission approvals have been obtained.²⁹⁹

184. Applicants will indicate for each winning bid whether the supported network will provide 3G mobile service within the period prescribed by section 54.1006(a) or 4G mobile service within the period prescribed by section 54.1006(b).³⁰⁰ The description of the proposed technology should include information on whether the network will qualify as either a 3G or 4G network.

5. Spectrum Access

185. 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, leases, or otherwise has contracted for access to the spectrum consistent with Commission rules.³⁰¹ The description should identify the license applicable to the spectrum to be accessed. The description of the license must include the type of service (e.g., AWS, 700 MHz, BRS, PCS), the particular frequency bands, and the call sign. If the licensee is a different party than the applicant, the licensee name and the relationship and type of agreement between the applicant and the licensee that provides the applicant with the required access should be described. If the applicant is leasing spectrum, the lease number should be provided along with the license information. An applicant must provide this required information relating to spectrum access in an attachment to the long-form application that is designated as a "Spectrum Access" attachment.

186. 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 years after the date on which it is authorized to receive support.³⁰² Applications will be reviewed to assess the reasonableness of the certification.

6. Letter of Credit Commitment Letter

187. 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.³⁰³ If the applicant submits a commitment letter, the letter must at a minimum provide the dollar amount of the LOC and the issuing bank's agreement to follow the terms and conditions of the

²⁹⁸ See Universal Service Reform: Mobility Fund, WT Docket No. 10-208, *Notice of Proposed Rulemaking*, FCC 10-182, 25 FCC Rcd 14716, 14740, para. 84 (2010).

²⁹⁹ In order to demonstrate eligibility for Auction 902, applicants relying on Cellular Geographic Service Area (CGSA) expansion to demonstrate spectrum access must have prior approvals in place or alternative access to spectrum until such approvals are obtained.

³⁰⁰ 47 C.F.R. §§ 54.1006(a)-(b).

³⁰¹ 47 C.F.R. § 54.1005(b)(2)(iv).

³⁰² *Id.*

³⁰³ 47 C.F.R. §§ 54.1005(b)(2)(vii), 54.1007.

Commission's model LOC, set forth in Appendix N of the *USF/ICC Transformation Order*.³⁰⁴ The commitment letter must be from an acceptable bank, as defined in section 54.1007(a)(1).³⁰⁵

7. Letter of Credit and Bankruptcy Code Opinion Letter

188. After receipt and review of the long-form applications, the Commission will issue a public notice identifying each winning bidder and bid that may be authorized to receive Tribal Mobility Fund Phase I support. Upon notice from the Commission, a winning bidder for Tribal 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*,³⁰⁶ by a bank that is acceptable to the Commission.³⁰⁷ 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.³⁰⁸ The Commission's rules provide specific requirements, as defined in section 54.1007(a)(1), for a bank to be acceptable to the Commission to issue the LOC. Those requirements vary for U.S. banks and non-U.S. banks.

189. 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 the 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.³⁰⁹

190. We received comments and reply comments from Tribal entities objecting to the requirement that winning bidders for Tribal Mobility Fund Phase I support provide an irrevocable stand-by LOC because they argue an LOC is difficult and costly to obtain.³¹⁰ Some commenters assert that the LOC requirement should be eliminated entirely for Tribally-owned entities because Tribally-owned assets are generally held in trust by the federal government for federally-recognized Tribes and often cannot be used as collateral with private banking institutions to obtain an irrevocable LOC for participation in the

³⁰⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 18319-23, Appendix N.

³⁰⁵ 47 C.F.R. § 54.1007(a)(1). The Bureaus waived section 54.1007(a)(1) on our own motion to allow Auction 901 winning bidders seeking authorization for Mobility Fund Phase I support to use CoBank, ACB as an issuing bank for the required LOC, in addition to the acceptable banks described in section 54.1007(a)(1). Mobility Fund Phase I; Waiver of Section 54.1007(a)(1) of the Commission's Rules, WC Docket No. 10-90, WT Docket No. 10-208, AU Docket No. 12-25, *Order*, DA 12-1747, 27 FCC Rcd 13457, 13457, para. 1 (2012).

³⁰⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 18319-23, Appendix N.

³⁰⁷ See 47 C.F.R. § 54.1007(a)(1).

³⁰⁸ See 47 C.F.R. §§ 54.1007(a), 54.1006(f).

³⁰⁹ 11 U.S.C. § 541; see 47 C.F.R. § 54.1007(b).

³¹⁰ ARC Comments at 11; see also ARC Reply Comments at 7-8; Bad River Tribe Comments at 11; GRIC/GRTI Comments at 4; GRTI/MATI *Ex Parte* at 1; LLBO Comments at 5; MATI Reply Comments at 2; NNTRC Comments at 6-7; NPM/NAI Comments at 5; NTTA Comments at 4; Oglala Sioux Tribe Comments at 4; SIW Comments at 3-4.

auction.³¹¹ Wireless carriers argue that if the Commission requires LOCs for Auction 902, it should allow for a single LOC to cover multiple winning bids.³¹²

191. In the *USF/ICC Transformation Order*, the Commission, after considering comments raising similar concerns, adopted the rule requiring an applicant to secure an LOC.³¹³ The requirement for winning bidders to provide an irrevocable stand-by LOC is a Commission rule, which cannot be amended in the context of establishing procedures for Auction 902. Generally the best course of action is to apply the LOC requirement consistently so that all applicants are subject to the same requirements and calculate their bids accordingly. In addition, Commenters have not provided sufficient support in the record for us to conclude that the requirement to provide an LOC for each winning bid would be cost prohibitive or that we should depart from the approach implemented in Auction 901.³¹⁴ Because, however, the underlying legal nature of Tribal lands and other trust assets varies greatly from one Tribal Nation to another, and from one region to another, we conclude that the specific concerns of Tribal entities that apply to participate in Auction 902 would be best addressed on a case-by-case basis through the Commission's waiver process.

8. Certification as to Program Requirements

192. 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.³¹⁵ The program requirements include the public interest obligations contained in the Commission's rules and set forth above in section II.A.4.³¹⁶ Also, an applicant must certify that it will meet the applicable deadline for construction of a network meeting the coverage and performance requirements set forth in the rules, that it will comply with the Mobility Fund collocation obligations specified in the rules, and that it will comply with the voice and data roaming obligations that the Commission has established with respect to Phase I of the Mobility Fund.

9. Reasonably Comparable Rate Certification

193. The Commission's rules require a recipient of Mobility Fund Phase I support—including Tribal Mobility Fund Phase I support—to certify on its long-form application that it will offer service in supported areas at consumer rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas.³¹⁷ As noted in the *Auction 902 Comment Public Notice*, the Commission delegated authority to the Bureaus to specify how support recipients could

³¹¹ Oglala Sioux Tribe Comments at 4; GRIC/GRTI Comments at 4; NNTRC Comments at 7; ARC Reply Comments at 8; GRTI/MATI *Ex Parte* at 1.

³¹² See, e.g., CCA Comments at 7; Commnet Comments at 8-9; GCI Comments at 4 n.9.

³¹³ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-13, paras. 443-51; 47 C.F.R. § 54.1007(a)(1).

³¹⁴ See *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4771, para. 170 (specifying that an LOC must be submitted for each winning bid).

³¹⁵ 47 C.F.R. § 54.1005(b)(2)(vi).

³¹⁶ 47 C.F.R. § 54.1006.

³¹⁷ 47 C.F.R. § 54.1005(b)(2)(viii). Recipients will be subject to this requirement for five years after the date of the award of support. *Id.*; see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17797, para. 385. Recipients must offer service plans in supported areas that meet the public interest obligations specified in the Commission's Mobility Fund rules and that include a stand-alone voice service plan. See 47 C.F.R. § 54.1006.

demonstrate compliance with this rate certification.³¹⁸ The Commission directed the Bureaus to develop surveys of voice and broadband rates generally that should be completed before the later phases of the Connect America Fund and the Mobility Fund.³¹⁹ In order to offer Mobility Fund Phase I support at the earliest time feasible, however, the Commission recognized that the Bureaus might have to implement an approach to the reasonably comparable rates requirement without being able to rely upon the information that will be collected through the surveys.³²⁰ We adopt this approach in implementing Tribal Mobility Fund Phase I. We note that the Bureaus' use of this approach for Tribal Mobility Fund Phase I in no way prejudices the approach to be taken with respect to Phase II of the Mobility Fund (including Tribal Mobility Fund Phase II) or the Connect America Fund generally. The appropriate approach for purposes of later phases of the Mobility Fund or other components of the Connect America Fund 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*.

194. In the *Auction 902 Comment Public Notice*, the Bureaus proposed to permit a recipient of Tribal Mobility Fund Phase I support to demonstrate compliance with the reasonably comparable rates requirement in the same manner as recipients of general Mobility Fund Phase I support.³²¹ For purposes of Tribal Mobility Fund Phase I, the Bureaus proposed to 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.³²² As noted in the *Auction 902 Comment Public Notice*, urban areas are generally served by multiple and diverse providers offering a range of rates and service offerings in competition with one another.³²³ Consequently, even the highest rate might be considered as

³¹⁸ See *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2781, para. 54, citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17797, para. 385.

³¹⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17694, 17708-09, paras. 85, 114.

³²⁰ See *id.* at 17797, para. 385.

³²¹ This would require a supported provider to demonstrate that its required stand-alone voice plan, and one service plan that offers data services, if it offers such plans, are (1) substantially similar to a service plan offered by at least one mobile wireless service provider in an urban area, and (2) offered for the same or a lower rate than the matching urban service plan. See *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2781, para. 55 n.91, citing *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4774-75, para. 180. We note that any provider that itself offers the same service plan for the same rate in a supported area and in an urban area would be able to meet this requirement. See *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2781, para. 55 n.91.

³²² As noted in the *Auction 902 Comment Public Notice*, adopting this approach for purposes of Tribal Mobility Fund Phase I does not prejudice the approach to be taken with respect to Phase II of the Mobility Fund (including Tribal Mobility Fund Phase II) or the Connect America Fund generally. We note that in line with the approach taken in Auction 901, we did not propose to adopt an urban rate floor for recipients of Tribal Mobility Fund Phase I support. See *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2781-82, para. 56 n.92; *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Comment Sought on Competitive Bidding Procedures for Auction 901 and Certain Program Requirements, Public Notice*, AU Docket No. 12-25, DA 12-121, 27 FCC Rcd 530, 547-48, para. 67 n.75 (2012); cf. *USF/ICC Transformation Order*, 26 FCC Rcd at 17749-51, paras. 235-38 (limiting high-cost support where local end-user rates plus state regulated fees do not meet an urban rate floor representing the national average of local rates plus such state regulated fees).

³²³ See *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2781-82, para. 56. Most consumers in the 100 most populated CMAs in the country are covered by between four to six mobile wireless providers. Commission analysis of October 2011 Mosaik (then American Roamer) coverage maps and Census 2010 block data.

“being within a reasonable range of rates for similar service in urban areas,”³²⁴ because the rates for the matching urban services reflect the effects of competition in the urban area. Therefore, for purposes of this requirement, the Bureaus proposed to define “urban area” as one of the 100 most populated cellular market areas (CMAs) in the United States.³²⁵ The Bureaus also proposed to retain discretion to consider whether and how variable rate structures should be taken into account, and further proposed to address such issues on a case-by-case basis.³²⁶ To provide recipients with flexibility to tailor their offerings to consumer demand while complying with the rule, the Bureaus proposed to deem a Tribal Mobility Fund Phase I support recipient compliant with the terms of the required certification if it can demonstrate that its rates for services satisfy the requirements, and if it provides supporting documentation.³²⁷

195. The Bureaus proposed to make a limited exception for supported parties serving Alaska in light of the distinct character of Alaska and the related costs of providing service, and in line with the approach adopted for Auction 901.³²⁸ Specifically, the Bureaus proposed that supported parties in Alaska may demonstrate comparability by comparison with rates offered in the CMA for Anchorage, Alaska.³²⁹

196. The Bureaus sought comment on all aspects of the proposal, in particular whether it meets the goal of assuring that supported services are provided at rates reasonably comparable to those in urban areas, while providing recipients the appropriate flexibility in structuring their service offerings.³³⁰ 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.³³¹ The Bureaus also sought comment on whether there are other definitions of the term “urban areas” that we should consider.³³² In addition, the Bureaus sought comment on any potential alternatives including, for example, whether there is a readily available set of

³²⁴ Under this approach, the supported party must offer services at rates within the range but that do not exceed one particular rate that is presumed to be a part of that range. Previously, rates for supported services in high-cost, insular and rural areas served by non-rural carriers were presumed to be reasonably comparable to urban rates nationwide if they fell below the national rate benchmark, which was set at two standard deviations above the average urban rate as reported in an annual rate survey published by the Wireline Competition Bureau. *See High-Cost Universal Service Support*, WC Docket No. 05-337, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Order on Remand and Memorandum Opinion and Order*, FCC 10-56, 25 FCC Rcd 4072, 4088, para. 8 (2010), *pet. for review den’d*, *Vermont Public Service Bd. v. F.C.C.*, 661 F.3d 54 (D.C. Cir. 2011). Thus, while the approaches differ, both serve to assure that rates for supported services are reasonably comparable to rates in urban areas.

³²⁵ A list of the top 100 CMAs is included in Attachment B.

³²⁶ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2782, para. 57.

³²⁷ *Id.* at 2782, para. 58.

³²⁸ *Id.* at 2783, para. 60; *see also Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4774, para. 179.

³²⁹ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2783, para. 60.

³³⁰ *Id.* at 2782, para. 58.

³³¹ *Id.* at 2782, para. 56.

³³² *Id.* at 2783, para. 59.

benchmark urban rates for mobile voice and broadband service that could be used with respect to Tribal Mobility Fund Phase I.³³³

197. The limited comment we received on this topic generally supports our proposal to use the same requirements and standards for Tribal Mobility Fund Phase I as used for recipients of general Mobility Fund Phase I support and in Auction 901.³³⁴ ARC generally supports the Bureaus' proposal to allow an Alaska-specific standard to be used by providers serving Alaska, but advocates allowing a more flexible standard to be used to determine reasonably comparable rates.³³⁵

198. We adopt the proposals in the *Auction 902 Comment Public Notice* for Tribal Mobility Fund Phase I, including the proposed limited exception for supported providers serving Alaska. We decline to expand the proposed exception for determining reasonably comparable rates for providers serving Alaska. While we continue to agree that a limited exception for supported parties in Alaska is warranted, we conclude the exception we adopt herein—which is the same as that adopted for Mobility Fund Phase I—sufficiently addresses the distinct character of Alaska and the related costs of providing service there. We note that the Anchorage CMA has a population of 291,826 and multiple providers of mobile voice and/or mobile broadband services,³³⁶ which indicates that competition for customers there could act to keep rates for offered services reasonable. Thus, we conclude that rates in Anchorage serve as an appropriate benchmark for determining whether rates for services in supported areas in Alaska are within a reasonable range of rates for similar services offered by mobile wireless providers in an urban area.

10. Tribal Engagement Requirements: Certification and Summary of Engagement

199. Beginning at the long-form application stage, and continuing throughout the term of support, Tribal Mobility Fund Phase I winning bidders are required to comply with the Tribal engagement obligations applicable to all ETCs.³³⁷ 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

³³³ *Id.* at 2782, para. 58.

³³⁴ See LLBO Comments at 6 (agreeing with the proposed standard); see also Bad River Tribe Comments at 12 (expressing no objection to the Bureaus' proposals, but requesting consideration of any reasonable showing); ARC Comments at 14 (supporting the proposal to allow use of a different standard for demonstrating reasonably comparable rates for providers serving Alaska, but advocating a more flexible standard).

³³⁵ See ARC Comments at 14. ARC proposes that rate comparability to Anchorage's rates be adopted as a guideline, rather than a requirement, or, in the alternative, that the rates in Anchorage be averaged with rates in several other well-populated but less urban areas of Alaska to establish a more reasonable rate of comparison for Alaska. *Id.*

³³⁶ See Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. for Consent to Assign Licenses to the Alaska Wireless Network, LLC, WT Docket No. 12-187, WC Docket No. 09-197, *Memorandum Opinion and Order and Declaratory Ruling*, FCC 13-96, paras. 57-58 & n.180 (rel. July 16, 2013).

³³⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17822-23, para. 489; see also *id.* at 17868-69, paras. 636-37; 47 C.F.R. §§ 54.1004(d), 54.1009(a)(5).

established by the Tribal government. Thus, we encourage applicants seeking to serve Tribal lands to begin engaging with the appropriate Tribal governments as soon as possible.³³⁸

200. Any bidder winning support in Auction 902 must notify the appropriate Tribal government(s) of its winning bid no later than five business days after being identified by public notice as such a winning bidder.³³⁹ A winning bidder's engagement with the appropriate Tribal government(s) must consist, at a minimum, of discussion regarding: (i) a needs assessment and deployment planning with a focus on Tribal community anchor institutions; (ii) feasibility and sustainability planning; (iii) marketing services in a culturally sensitive manner; (iv) rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (v) compliance with Tribal business and licensing requirements.³⁴⁰ Thereafter, at the long-form application stage and in annual reports, a bidder winning support in Auction 902 will be required to certify that it has substantively engaged appropriate Tribal government officials regarding the minimum discussion topics described above, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement.³⁴¹ A copy of the certification and summary must be sent to the appropriate Tribal officials when it is sent to the Commission.³⁴² We remind carriers that failure to satisfy the Tribal government engagement obligations could subject them to financial consequences, including potential reduction in support should they fail to fulfill their obligations.³⁴³

201. We received comments and reply comments from several parties regarding the Commission's Tribal engagement obligations. Many Tribal entities generally support the Tribal engagement obligations.³⁴⁴ Some Tribes and Tribal organizations advocate for pre-auction Tribal engagement requirements, including Tribal consultation and approval.³⁴⁵ NPM/NCAI and WST advocate for an auction process that includes a Tribal determination.³⁴⁶ SIW proposes that Tribal governments

³³⁸ We note that any such engagement must be done consistent with our auction rules prohibiting certain communications during the competitive bidding process. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17822, para. 489 n.810.

³³⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17822-23, para. 489; 47 C.F.R. § 54.1004(d)(2).

³⁴⁰ 47 C.F.R. § 54.1004(d)(1); *see also Tribal Engagement Further Guidance*, 27 FCC Rcd 8176.

³⁴¹ 47 C.F.R. §§ 54.1004(d)(3)-(4). Appropriate Tribal government officials are elected or duly authorized government officials of federally recognized American Indian Tribes and Alaska Native Villages. In the instance of the Hawaiian Home Lands, this engagement must occur with the State of Hawaii Department of Hawaiian Home Lands and Office of Hawaiian Affairs. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17868-69, para. 637 n.1053.

³⁴² 47 C.F.R. §§ 54.1004(d)(3)-(4).

³⁴³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17868-69, para. 637.

³⁴⁴ GRIC/GRTI Comments at 7; GRTI/MATI *Ex Parte* at 2; LLBO Comments at 6; Oglala Sioux Tribe Comments at 4.

³⁴⁵ Two commenters propose that the Bureaus require prospective bidders, as an eligibility criterion, to certify that they are authorized by the relevant Tribes to do business on the Tribal lands they propose to serve. *See NPM/NCAI Comments* at 8; LLBO Reply Comments at 3. SIW suggests that prospective bidders obtain Tribal approval to participate in Auction 902. *See SIW Comments* at 2-3. NTTA recommends that a prospective bidder be required to notify the relevant Tribal government if it intends to bid on serving the Tribal government's land. *See NTTA Comments* at 6.

³⁴⁶ NPM/NCAI argue that a Tribe should be able to object to any application for support if the application specifies an entity not qualified to conduct business on Tribal lands, or if the Tribe believes that the application would be (continued....)

meet with prospective bidders and a professional engineer to design a wireless system specific to the communication needs of the Tribe.³⁴⁷ ARC argues that the difficulty associated with Tribal engagement obligations in Alaska would deter small and Tribal carriers from participating in Auction 902.³⁴⁸

202. CCA encourages the Bureaus to clarify that the *Tribal Engagement Further Guidance* is a set of recommendations rather than mandates.³⁴⁹ CCA further suggests that the Bureaus confirm that Tribal engagement obligations apply only to carriers who provide service to Tribal lands contingent upon either Mobility Fund or Tribal Mobility Fund support, and specifically do not apply to competitive ETCs whose support is being phased-down under the *USF/ICC Transformation Order*.³⁵⁰

203. The Tribal engagement obligations established by the Commission will apply to Auction 902.³⁵¹ Although we recognize that the Tribal engagement obligations will require a substantial commitment of time and resources on the part of both service providers and Tribal governments,³⁵² the Commission, in adopting these requirements, determined that Tribal consultation and engagement plays an essential role in the successful deployment of mobile broadband service.³⁵³ Further, we note that the Bureaus lack authority to revise the Commission's rule requiring that winning bidders participate in Tribal engagement and similarly cannot amend the Commission's rule regarding the timing of such engagement. Finally, CCA's request for clarification of the application of the Tribal engagement obligation to services other than those that are contingent upon Tribal Mobility Fund support is outside of the scope of this pre-auction proceeding, as is its request for clarification regarding the binding nature of the *Tribal Engagement Further Guidance* generally.³⁵⁴

(Continued from previous page) _____

inconsistent with the needs of the Tribe. See NPM/NCAI Comments at 8. WST argues that Tribes should have the right to choose who can provide service on Tribal lands. See WST Comments at 6-7.

³⁴⁷ SIW suggests that this network design plan could be submitted by the bidder as part of its bid documentation, and could be used as an eligibility criterion. See SIW Comments at 3. We note that project construction details are currently required to be submitted with the long-form applications filed by winning bidders after Auction 902. See section VI.B.4 above.

³⁴⁸ ARC Comments at 11.

³⁴⁹ CCA Comments at 9-10.

³⁵⁰ *Id.* at 8-9.

³⁵¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17822-23, para. 489; see also *id.* at 17868-69, paras. 636-37.

³⁵² ARC Comments at 13.

³⁵³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17822-23, para. 489; see also GRIC/GRTI Comments at 7; GRTI/MATI *Ex Parte* at 2; LLBO Comments at 6.

³⁵⁴ There are three pending petitions for reconsideration of certain aspects of section 54.313(a)(9), 47 C.F.R. § 54.313(a)(9), which mandates that annual reports on the Tribal government engagement requirements be filed by carriers receiving high-cost universal service support other than or in addition to any mobility fund support. See Petition for Reconsideration of the United States Telecom Association, CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90; WT Docket No. 10-208 (filed Dec. 29, 2011); Petition for Reconsideration of the Rural Incumbent Local Exchange Carriers Serving Tribal Lands, CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90; WT Docket No. 10-208 (filed Dec. 29, 2011); Petition for Reconsideration of the Alaska Rural Coalition, CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90; WT Docket No. 10-208 (filed Dec. 29, 2011). See also Petition for Reconsideration and Clarification of the United States Telecom Association, CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90; WT Docket No. 10-208 (filed Aug. 20, 2012) (petition for reconsideration and clarification of the *Tribal Engagement Further Guidance*).

C. Coverage Requirements, Reporting Obligations, and Payment Disbursements

1. Coverage Requirements

204. Support recipients will be required to provide voice and broadband service meeting the established minimum standards over at least 75 percent of the population associated with the eligible blocks in each bidding area for which they receive support.³⁵⁵ Because Census data does not specify how population is distributed within a census block, the Bureaus sought comment on how to determine whether this coverage requirement is met.³⁵⁶ If a provider demonstrates new coverage over the entirety of an eligible census block, we can assume coverage of the entire population of that census block. However, the Bureaus sought input on how to evaluate the population served by new coverage where a provider demonstrates new coverage over part of an eligible census block. In particular, we asked whether we should assume that census block population is evenly distributed and assess coverage on the proportion of the geographic area covered, and we also sought comment on alternatives.³⁵⁷

205. We received a number of comments on this issue with several commenters supporting the notion that coverage should be assessed based on the proportion of the geographic area covered,³⁵⁸ and others suggesting that we provide flexibility in how winning bidders may demonstrate coverage.³⁵⁹

206. Having considered the comments, we conclude that support recipients will be able to prove coverage as follows. If an awardee can prove coverage of at least 75 percent of the actual population associated with the eligible census blocks within a winning bid area, it may provide and prove coverage in any combination across eligible census blocks within that single bidding area, including providing coverage to more than 75 percent of the population in one eligible census block and less than 75 percent of the population in another eligible census block in the same bidding area. In response to comments, in the alternative we will also permit proof of coverage by relying on a geographic area safe harbor, by which an awardee may show that it is providing coverage to at least 75 percent of the geographic area in a census block as a proxy for providing service to at least 75 percent of the population within that census block. Because using a geographic proxy is a safe harbor, geographic coverage must be shown on a census-block by census-block basis, rather than within the winning bid area as a whole. In other words, if a winning bidder relies on the geographic area safe harbor for a particular winning bid area, it must provide and prove coverage to at least 75 percent of the geographic area of each eligible census block within that winning bid area. We find that this approach will afford flexibility to winning

³⁵⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17792-93, paras. 365, 367; 47 C.F.R. §§ 54.1006(a)-(b), 54.1008.

³⁵⁶ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2776, para. 36.

³⁵⁷ *Id.*

³⁵⁸ CCA Comments at 6 (advocating for proof of coverage by proof of the percentage of geographic area covered, and arguing that requiring winning carriers to make a more granular showing would be “unduly burdensome”); RTG Comments at 5-6 (suggesting a “geographic safe harbor” that assumes evenly distributed population).

³⁵⁹ *See* Bad River Tribe Comments at 12-13 (urging reasonableness and flexibility in coverage requirements, noting if the applicant chooses to actually count residences and inhabitants of each partially covered census block, it should not be faulted for its precision, but if an applicant consistently applies an average population per area model to uncovered census blocks, that should also be deemed reasonable); *see also* GRIC/GRTI Comments at 9 (suggesting that a winning bidder demonstrate coverage to 75 percent of the census block and obtain a certification from the appropriate Tribal government that the 75 percent coverage requirement has been met); RTG Comments at 6-7 (suggesting a “site-based safe harbor” where a winning bidder is able to serve 75 percent or more of the population of a census block with a site that covers less than 75 percent of the geographic area).

bidders while also ensuring sufficient deployment of 3G or better mobile voice and broadband services to populated areas within Tribal lands that are currently lacking such services. As RTG points out, the Commission has adopted similar geographic area-based safe harbors for the purposes of other population-based performance requirements for certain wireless services, including Broadband Radio Service (BRS) and Educational Broadband Service (EBS).³⁶⁰

207. With respect to demonstrating compliance with the coverage requirements, the Commission's rules set forth the standards for applicable drive test data and scattered site testing.³⁶¹ Drive testing or scattered site testing are required for Tribal Mobility Fund Phase I by rule, and the Bureaus lack authority to revise this rule to allow other types of testing such as propagation models, as suggested by CCA.³⁶²

208. The Commission recognized the unique challenges of Tribal lands, which may have sparse roads and isolated populations for which a winning bidder would be required to prove coverage. In particular, given that the Commission adopted a population-based coverage metric for Tribal Mobility Fund Phase I, the Commission explained that providers may demonstrate coverage of an area with scattered site tests—i.e., a statistically significant number of tests in the vicinity of residences being covered.³⁶³ The Commission also noted that equipment to conduct such testing could be transported by off-road vehicles, such as snow-mobles or other vehicles appropriate to local conditions.³⁶⁴ As RTG acknowledges, allowing providers to conduct drive tests by means other than automobiles on roads will allow Tribal Mobility Fund recipients to more easily collect coverage data in rural and remote areas where the roads are generally not traveled by automobile or where basic infrastructure may be lacking.³⁶⁵

2. Annual Reporting and Record Retention Requirements

209. Winning bidders that are authorized to receive Tribal 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.³⁶⁶ Each annual report covers the preceding calendar year. As a result, any Auction 902 winning bidder that is first authorized to receive Tribal Mobility Fund Phase I support in 2014 will not be required to file an annual report regarding such support until the applicable deadline in 2015. The information and certifications required to be included in the annual report are described in section 54.1009 of the Commission's rules.³⁶⁷ As explained in the *USF/ICC Transformation Order*, if a recipient of Mobility Fund support is a carrier subject to other existing or new annual reporting requirements under section 54.313 of the rules based on their receipt of universal service support under another high cost mechanism, it will be permitted to satisfy its Mobility Fund Phase I reporting requirements by filing a

³⁶⁰ RTG Comments at 5-6; *see* 47 C.F.R. § 27.14(o)(1)(iii)(A); Guidance to Broadband Radio Service and Educational Broadband Service Licensees on Complying with Requirement to Demonstrate Substantial Service by May 1, 2011, *Public Notice*, DA 11-370, 26 FCC Rcd 2152, 2153 (2011) (describing geographic area safe harbor).

³⁶¹ *See* 47 C.F.R. § 54.1006(c); *see also* *USF/ICC Transformation Order*, 26 FCC Rcd at 17822, para. 488 n.806.

³⁶² CCA Comments at 2, 6-7; *see also* Commnet Comments at 10 (seeking an alternative method of coverage testing other than drive testing).

³⁶³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17822, para. 488 n.806.

³⁶⁴ *Id.*

³⁶⁵ RTG Comments at 3.

³⁶⁶ 47 C.F.R. § 54.1009.

³⁶⁷ *Id.*; *see USF/ICC Transformation Order*, 26 FCC Rcd at 17817, paras. 470-74.

separate Mobility Fund annual report or by including this additional information in a separate section of its other annual report filed with the Commission.³⁶⁸ Mobility Fund recipients choosing to fulfill their Mobility Fund reporting requirements in an annual report filed under section 54.313 must, at a minimum, file a separate Mobility Fund annual report notifying the Commission that the required information is included in the other annual report.³⁶⁹ In addition, as discussed below, authorized winning bidders are required to submit certain reports before receiving disbursements of support.³⁷⁰ A winning bidder authorized to receive Tribal 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 Tribal 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 Tribal Mobility Fund Phase I support.³⁷¹

3. Disbursement of Payments

210. Tribal 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.³⁷² A recipient will be eligible to receive the second disbursement when it submits a report demonstrating coverage of 50 percent of the applicable coverage requirements of section 54.1006 of the Commission's rules.³⁷³ The report a recipient files for this purpose will be subject to review and verification before support is disbursed.³⁷⁴ A recipient will be eligible to receive the final disbursement when it submits a report demonstrating coverage meeting the applicable requirements of section 54.1006 of the Commission's rules.³⁷⁵ A party's final payment will be the difference between the total amount of support based on the population covered—i.e., a figure between the required 75 percent and 100 percent of the population—and any support previously received.³⁷⁶

D. Default Payment Requirements

211. 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.³⁷⁷ 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-

³⁶⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17817, para. 471.

³⁶⁹ *Id.*

³⁷⁰ 47 C.F.R. § 54.1008; *see USF/ICC Transformation Order*, 26 FCC Rcd at 17815-16, paras. 464-69.

³⁷¹ 47 C.F.R. § 54.1010.

³⁷² 47 C.F.R. § 54.1008(b)(1).

³⁷³ 47 C.F.R. § 54.1008(b)(2); *see also* 47 C.F.R. § 54.1006.

³⁷⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17816, para. 466.

³⁷⁵ 47 C.F.R. § 54.1008(b)(3); *see also* 47 C.F.R. § 54.1006.

³⁷⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17816, para. 467.

³⁷⁷ *Id.* at 17814, paras. 460-61; 47 C.F.R. § 1.21004(b), 47 C.F.R. § 54.1006(f).

form application process—and failure to do so constitutes an auction default.³⁷⁸ 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.³⁷⁹

1. Auction Default Payment

212. 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.³⁸⁰ Agreeing to such payment in event of a default is a condition for participating in bidding.³⁸¹ As discussed below, we conclude that in the event of an auction default, we will assess a default payment of five percent of the total defaulted bid. Liability for the auction default payment will be imposed without regard to the intentions or fault of any specific defaulting bidder.³⁸²

213. 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.³⁸³ Accordingly, in the *Auction 902 Comment Public Notice*, the Bureaus proposed an auction default payment of five percent of the total defaulted bid.³⁸⁴ 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 population as without the default.³⁸⁵ The Bureaus further sought comment on whether, prior to bidding, all applicants for Auction 902 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.³⁸⁶

214. ARC objects to the imposition of an auction default payment, arguing that even the “possibility” of such payments could deter participation in Auction 902.³⁸⁷ Bad River Tribe maintains that the imposition of such a payment is counter-productive.³⁸⁸ Neither commenter, however, offers specific circumstances that are unique to bids to serve Tribal lands to support their arguments that we should refrain from imposing an auction default payment. We cannot amend the Commission’s rule that

³⁷⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17808, para. 436; 47 C.F.R. § 1.21004(a).

³⁷⁹ 47 C.F.R. § 54.1007(c).

³⁸⁰ 47 C.F.R. § 1.21004.

³⁸¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17813-14, paras. 458-60.

³⁸² *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2780, para. 51.

³⁸³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17814, para. 460.

³⁸⁴ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2779, para. 50.

³⁸⁵ *Id.* at 2780, para. 51.

³⁸⁶ *Id.*

³⁸⁷ ARC Comments at 11.

³⁸⁸ Bad River Tribe Comments at 11.

an auction default payment should be imposed on a 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. Moreover, we are not persuaded that we should modify our proposal to establish an auction default payment at the rate of five percent of the total defaulted bid for Auction 902. Our experience in Auction 901 has demonstrated that this amount, which is well below our maximum allowable percentage, provides bidders sufficient incentive to fully inform themselves of the obligations associated with participation in the Tribal Mobility Fund Phase I auction and to commit to fulfilling those obligations, and yet is not unduly punitive. We anticipate that such a requirement here 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. We therefore adopt our proposal.

215. The Bureaus did not receive any comments on whether there should be an alternative methodology for calculation of an auction default payment, or whether an applicant should be required to furnish a bond or place funds on deposit prior to bidding. We conclude that our adoption of an auction default payment calculated as five percent of the total defaulted bid will provide adequate protection against costs to the Commission and the USF, and therefore we find that establishing a bond or deposit requirement is unnecessary.

2. Performance Default Payment

216. 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 Tribal Mobility Fund Phase I support.³⁸⁹ As discussed below, we conclude that in the event of a performance default, we will assess a default payment of ten percent of the total defaulted bid.³⁹⁰

217. 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.³⁹¹ 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.³⁹² In the *Auction 902 Comment Public Notice*, we proposed to establish the performance default payment percentage at ten percent of the total level of support for which a winning bidder is eligible.³⁹³ 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.

218. Commenters generally do not favor the imposition of a performance default payment, arguing a variety of reasons why an applicant may face difficulty in complying with the Commission's

³⁸⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17814, para. 461.

³⁹⁰ See 47 C.F.R. § 54.1006(f).

³⁹¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-11, para. 446.

³⁹² *Id.* at 17814, para. 461.

³⁹³ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2780, para. 53.

performance obligations and offering alternative suggestions for those requirements.³⁹⁴ ARC also argues that adding an additional ten percent to an applicant's LOC to cover a performance default payment will further complicate an applicant's ability to secure one and will effectively prohibit small carriers from participating in the auction.³⁹⁵ NPM/NCAI, however, favors the Commission's proposal and advocates that an applicant that fails to meet its performance obligations should, in addition to a performance default payment, also forfeit the license it used as the basis for its auction bid.³⁹⁶ The Commission has already defined the conditions that constitute a performance default, as well as an applicant's performance obligations.³⁹⁷ We cannot revise the Commission's rule requiring a performance default payment in the context of setting the procedures for Auction 902.³⁹⁸

219. 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.³⁹⁹ We therefore proposed that the performance default payment be set at a higher percentage than the auction default payment percentage.⁴⁰⁰ As noted above, the LOC required to be submitted for each winning bid must include the default payment amount. We anticipate that establishing a performance default payment of ten percent of the defaulted support level will encourage those seeking support to make every effort to assure that they are capable of meeting their performance obligations and will protect against costs to the Commission and the USF without unduly discouraging auction participation. We therefore adopt our proposal.

VII. CONTACT INFORMATION

220. Contact Information Table:

General Auction 902 Information

General Auction Questions
Auction Process and Procedures

FCC Auctions Hotline

(888) 225-5322, option two; or
(717) 338-2868
Hours of service: 8:00 a.m. – 5:30 p.m. ET,
Monday through Friday

Auction 902 Legal Information

Auction Rules, Policies, Regulations, including
Reports of Section 1.21002 Violations and
Application Major Modifications

Wireless Telecommunications Bureau Auctions and Spectrum Access Division

Patricia Robbins
(202) 418-0660

³⁹⁴ ARC Comments at 11-12; Bad River Tribe Comments at 9-11; GRIC/GRTI Comments at 9-10; NTTA Comments at 4.

³⁹⁵ ARC Comments at 12.

³⁹⁶ NPM/NCAI Comments at 4; *see also* LLBO Reply Comments at 3 (recommending that the Commission adopt a performance standard that requires bidders receiving support from the Tribal Mobility Fund to repay the Mobility Fund support if the bidder fails to deliver 3G or better service).

³⁹⁷ *See* section VI.C.1 above.

³⁹⁸ *See* 47 C.F.R. § 54.1006(f).

³⁹⁹ *Auction 902 Comment Public Notice*, 28 FCC Rcd at 2780-81, para. 53.

⁴⁰⁰ *Id.*

General Universal Service Questions	Wireline Competition Bureau Telecommunications Access Policy Division Alex Minard (202) 418-7400
Technical Support Electronic Filing FCC Auction System (Hardware/Software Issues)	FCC Auctions Technical Support Hotline (877) 480-3201, option nine; or (202) 414-1250 (202) 414-1255 (TTY) Hours of service: 8:00 a.m. – 6:00 p.m. ET, Monday through Friday
Auction Bidder Line	Will be furnished only to qualified bidders
FCC Copy Contractor Additional Copies of Commission Documents	Best Copy and Printing, Inc. 445 12th Street, SW, Room CY-B402 Washington, DC 20554 (800) 378-3160 http://www.bcpiweb.com
Press Information	Cecila Sulhoff (202) 418-0587
FCC Forms	(800) 418-3676 (outside Washington, DC) (202) 418-3676 (in the Washington area) http://www.fcc.gov/formpage.html
Accessible Formats Braille, large print, electronic files, or audio format for people with disabilities	Consumer and Governmental Affairs Bureau (202) 418-0530 or (202) 418-0432 (TTY) fcc504@fcc.gov
Small Businesses Additional information for small and disadvantaged businesses	Office of Communications Business Opportunities (202) 418-0990 http://www.fcc.gov/ocbo/
Tribal Issues Additional information regarding Tribal lands and Tribal governments	Office of Native Affairs and Policy (202) 418-2930 native@fcc.gov
FCC Internet Sites	http://www.fcc.gov http://wireless.fcc.gov/auctions http://wireless.fcc.gov/uls

ATTACHMENT A-1

**Auction 902 – Tribal Mobility Fund Phase I Auction
Summary of Eligible Census Blocks by State**

State	Number of Eligible Blocks	Number of Tracts with Eligible Blocks	Number of Tribal Lands with Eligible Blocks	Number of Counties with Eligible Blocks	Number of Bidding Areas	Total Population of Eligible Blocks	Total Area (square miles) of Eligible Blocks	Total Road Miles of Eligible Blocks
Alaska	2,821	59	189	29	830	82,626	133,002.52	4,257.88
Arizona	661	23	7	8	24	15,078	1,800.21	1,334.95
California	75	9	8	7	10	989	32.05	95.10
Colorado	15	1	1	1	1	75	3.10	13.18
Hawaii	23	3	3	3	3	95	5.73	8.40
Idaho	334	9	4	8	9	3,416	320.40	700.64
Michigan	6	3	3	2	4	32	1.39	4.71
Minnesota	97	12	5	9	12	2,220	411.01	323.83
Montana	213	15	7	12	15	4,293	367.66	440.54
Nevada	19	5	5	4	5	149	36.42	45.71
New Mexico	363	21	7	10	23	4,384	400.18	627.93
New York	1	1	1	1	1	2	0.06	0.45
North Carolina	56	3	1	3	3	1,380	15.66	47.62
North Dakota	36	2	1	1	2	170	146.31	174.10
Oklahoma	199	35	12	24	35	2,015	348.23	441.32
Oregon	26	2	2	2	2	203	28.46	52.66
South Dakota	244	7	5	6	7	3,439	1,792.12	761.34
Utah	19	4	3	4	4	266	121.99	89.13
Washington	228	9	5	8	9	3,117	682.95	1,518.67
Wisconsin	82	5	5	5	5	1,893	66.38	90.21
Wyoming	63	3	1	2	3	645	108.19	108.30
Total	5,581	231	275	149	1,007	126,487	139,691.04	11,136.67

Corrected as of 08/08/2013

ATTACHMENT A-2
Bidding Areas

This page was intentionally inserted as a placeholder for Attachment A-2, which is available as a separate file.

ATTACHMENT B

Top 100 CMAs by Population

Rank	CMA Number	CMA Name	Population*
1	CMA002	Los Angeles-Long Beach/Anaheim-Santa Ana-Garden Grove/Riverside-San Bernardino-Ontario, CA	17,054,000
2	CMA001	New York, NY-NJ/Nassau-Suffolk, NY/Newark, Jersey City and Paterson-Clifton-Passaic, NJ	16,545,000
3	CMA003	Chicago, IL	8,317,000
4	CMA009	Dallas-Fort Worth, TX	6,332,000
5	CMA010	Houston, TX	5,566,000
6	CMA004	Philadelphia, PA	5,260,000
7	CMA008	Washington, DC-MD-VA	4,814,000
8	CMA005	Detroit/Ann Arbor, MI	4,641,000
9	CMA017	Atlanta, GA	4,633,000
10	CMA006	Boston-Lowell-Brockton-Lawrence-Haverhill, MA-NH	4,429,000
11	CMA007	San Francisco-Oakland, CA	4,335,000
12	CMA012	Miami-Fort Lauderdale-Hollywood, FL	4,245,000
13	CMA026	Phoenix, AZ	3,817,000
14	CMA015	Minneapolis-St. Paul, MN-WI	3,112,000
15	CMA018	San Diego, CA	3,095,000
16	CMA019	Denver-Boulder, CO	2,790,000
17	CMA014	Baltimore, MD	2,663,000
18	CMA020	Seattle-Everett, WA	2,645,000
19	CMA022	Tampa-St. Petersburg, FL	2,610,000
20	CMA011	St. Louis, MO-IL	2,609,000
21	CMA091	San Juan-Caguas, PR	2,139,000
22	CMA030	Portland, OR-WA	2,066,000
23	CMA035	Sacramento, CA	1,968,000
24	CMA013	Pittsburgh, PA	1,967,000
25	CMA033	San Antonio, TX	1,955,000
26	CMA093	Las Vegas, NV	1,951,000
27	CMA060	Orlando, FL	1,837,000
28	CMA024	Kansas City, MO-KS	1,810,000
29	CMA027	San Jose, CA	1,782,000
30	CMA016	Cleveland, OH	1,776,000
31	CMA028	Indianapolis, IN	1,703,000
32	CMA023	Cincinnati, OH-KY-IN	1,631,000
33	CMA039	Salt Lake City-Ogden, UT	1,626,000
34	CMA075	Austin, TX	1,604,000
35	CMA031	Columbus, OH	1,583,000
36	CMA021	Milwaukee, WI	1,556,000
37	CMA046	Nashville-Davidson, TN	1,502,000

Rank	CMA Number	CMA Name	Population*
38	CMA051	Jacksonville, FL	1,346,000
39	CMA061	Charlotte-Gastonia, NC	1,327,000
40	CMA072	West Palm Beach-Boca Raton, FL	1,320,000
41	CMA071	Raleigh-Durham, NC	1,302,000
42	CMA047	Greensboro-Winston-Salem-High Point, NC	1,230,000
43	CMA032	Hartford-New Britain-Bristol, CT	1,212,000
44	CMA036	Memphis, TN-AR-MS	1,201,000
45	CMA045	Oklahoma City, OK	1,194,000
46	CMA025	Buffalo, NY	1,136,000
47	CMA043	Norfolk-Virginia Beach-Portsmouth, VA/NC	1,107,000
48	CMA037	Louisville, KY-IN	1,061,000
49	CMA034	Rochester, NY	1,054,000
50	CMA029	New Orleans, LA	1,046,000
51	CMA041	Birmingham, AL	1,004,000
52	CMA059	Richmond, VA	1,003,000
53	CMA077	Tucson, AZ	980,000
54	CMA038	Providence-Warwick-Pawtucket, RI	970,000
55	CMA050	Honolulu, HI	953,000
56	CMA074	Fresno, CA	930,000
57	CMA057	Tulsa, OK	922,000
58	CMA042	Bridgeport-Stamford-Norwalk-Danbury, CT	917,000
59	CMA044	Albany-Schenectady-Troy, NY	888,000
60	CMA064	Grand Rapids, MI	866,000
61	CMA049	New Haven-West Haven-Waterbury-Meriden, CT	862,000
62	CMA067	Greenville-Spartanburg, SC	855,000
63	CMA040	Dayton, OH	842,000
64	CMA097	Bakersfield, CA	840,000
65	CMA073	Oxnard-Simi Valley-Ventura, CA	823,000
66	CMA058	Allentown-Bethlehem-Easton, PA-NJ	821,000
67	CMA062	New Brunswick-Perth Amboy-Sayreville, NJ	810,000
68	CMA048	Toledo, OH-MI	803,000
69	CMA081	El Paso, TX	801,000
70	CMA055	Worcester-Fitchburg-Leominster, MA	799,000
71	CMA082	Tacoma, WA	795,000
72	CMA086	Albuquerque, NM	794,000
73	CMA128	McAllen-Edinburg-Mission, TX	775,000
74	CMA065	Omaha, NE-IA	769,000
75	CMA069	Wilmington, DE-NJ-MD	706,000
76	CMA056	Northeast Pennsylvania, PA	705,000
77	CMA363	Florida 4 - Citrus	704,000
78	CMA052	Akron, OH	703,000
79	CMA080	Baton Rouge, LA	699,000
80	CMA107	Stockton, CA	685,000

Rank	CMA Number	CMA Name	Population*
81	CMA092	Little Rock-North Little Rock, AR	671,000
82	CMA090	Charleston-North Charleston, SC	665,000
83	CMA053	Syracuse, NY	663,000
84	CMA054	Gary-Hammond-East Chicago, IN	660,000
85	CMA079	Knoxville, TN	649,000
86	CMA095	Columbia, SC	647,000
87	CMA117	Colorado Springs, CO	646,000
88	CMA070	Long Branch-Asbury Park, NJ	630,000
89	CMA063	Springfield-Chicopee-Holyoke, MA	622,000
90	CMA164	Fort Myers, FL Counties - Lee	619,000
91	CMA114	Lakeland-Winter Haven, FL	602,000
92	CMA083	Mobile, AL	595,000
93	CMA579	North Carolina 15 - Cabarrus	578,000
94	CMA551	New Jersey 2 - Ocean	577,000
95	CMA089	Wichita, KS	564,000
96	CMA111	Vallejo-Fairfield-Napa, CA	550,000
97	CMA084	Harrisburg, PA	549,000
98	CMA076	New Bedford-Fall River, MA	548,000
99	CMA137	Melbourne-Titusville-Palm Bay, FL	543,000
100	CMA102	Des Moines, IA	543,000

* Population numbers are based on 2010 Census data and rounded to the nearest thousand.

ATTACHMENT C

**Auction 902 – Tribal Mobility Fund Phase I
List of Parties Filing in AU Docket No. 13-53**

The following is a listing of parties that filed in response to the *Auction 902 Comment Public Notice*. The party name is followed by the abbreviated name of the filing as used in this Public Notice.

Initial Commenters

1. Affiliated Tribes of Northwest Indians (ATNI Comments)
2. Alaska Rural Coalition (ARC Comments)
3. Arctic Slope Telephone Association Cooperative (ASTAC Comments)
4. AT&T Inc. (AT&T Comments)
5. Bad River Band of the Lake Superior Tribe of the Chippewa Indians (Bad River Tribe Comments)
6. Central Louisiana Cellular, LLC d/b/a Cellular One (CLC Comments)
7. Commnet Wireless, LLC (Commnet Comments)
8. Competitive Carriers Association (CCA Comments)
9. Copper Valley Wireless, LLC (Copper Valley Comments)
10. General Communication, Inc. (GCI Comments)
11. Gila River Indian Community and River Telecommunications, Inc. (GRIC/GRTI Comments)
12. Leech Lake Band of Ojibwe (LLBO Comments)
13. National Tribal Telecommunications Association (NTTA Comments)
14. Native Public Media and National Congress of American Indians (NPM/NCAI Comments)
15. Navajo Nation Telecommunications Regulatory Commission (NNTRC Comments)
16. Navajo Tribal Utility Authority (NTUA Comments)
17. Oglala Sioux Tribe (Oglala Sioux Tribe Comments)
18. Pa Makani LLC dba Sandwich Isles Wireless (SIW Comments)
19. Rosebud Sioux Tribe (Rosebud Sioux Tribe Comments)
20. Rural Telecommunications Group, Inc. (RTG Comments)
21. Smith Bagley, Inc. (SBI Comments)
22. Standing Rock Telecommunications, Inc. (SRTI Comments)
23. Warm Springs Telecom (WST Comments)

Reply Commenters

1. Alaska Rural Coalition (ARC Reply Comments)
2. AT&T Inc. (AT&T Reply Comments)
3. Coeur d'Alene Tribe (Coeur d'Alene Tribe Reply Comments)
4. Commnet Wireless, LLC (Commnet Reply Comments)
5. Lac du Flambeau Band of Lake Superior Chippewa Indians (Lac du Flambeau Reply Comments)
6. Leech Lake Band of Ojibwe (LLBO Reply Comments)
7. Mescalero Apache Telecom, Inc. (MATI Reply Comments)
8. Native Public Media and National Congress of American Indians (NPM/NCAI Reply Comments)

Ex Parte and Other Filings

1. Alaska Rural Coalition Meeting with Legal Advisors (ARC Legal Advisors *Ex Parte*)
2. Alaska Rural Coalition Meeting with WTB Staff (ARC WTB *Ex Parte*)
3. Alaska Telephone Association (ATA *Ex Parte*)
4. Bad River Band of the Lake Superior Tribe of the Chippewa Indians Motion to Accept Supplement and Supplement (Bad River Tribe Supplement to Comments)
5. Central Louisiana Cellular, LLC d/b/a Cellular One (CLC Letter)
6. General Communication, Inc. (GCI *Ex Parte*)
7. Gila River Telecommunications, Inc., the Gila River Indian Community, and Mescalero Apache

- Telecom, Inc. (GRTI/MATI *Ex Parte*)
8. Navajo Nation Telecommunications Regulatory Commission (NNTRC *Ex Parte*)
 9. NTUA Wireless, LLC, June 28, 2013 (NTUA Wireless June *Ex Parte*)
 10. NTUA Wireless, LLC, May 31, 2013 (NTUA Wireless May *Ex Parte*)
 11. Smith Bagley, Inc. (SBI June *Ex Parte*)
 12. Smith Bagley, Inc. d/b/a CellularOne (SBI April *Ex Parte*)
 13. Windy City Cellular, LLC (Windy City *Ex Parte*)

ATTACHMENT D

Short-Form Application Filing Instructions

This attachment provides instructions on submitting a short-form application to participate in Auction 902. It also includes instructions for interested parties wishing to view the short-form applications that have been filed.

I. Application Preparation and Submission

Among other requirements, in order to participate in this auction, each applicant must submit its short-form application (FCC Form 180) electronically, via the FCC Auction System. All **short-form applications for Auction 902 must be submitted and confirmed prior to 6:00 p.m. EST on Wednesday, October 9, 2013.** Late applications or unconfirmed submissions of electronic data will not be accepted.

We remind applicants that all of the required information for applicants to participate in the Tribal Mobility Fund Phase I auction is necessary to determine each applicant's qualifications, and as such will be available for public inspection. Accordingly, unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, should not be included in the short-form application. Applicants may request that submitted information not be made routinely available for public inspection following the procedures set forth in section 0.459 of the Commission's rules.¹ Such requests must be included as attachments to the applicant's FCC Form 180 and identify the specific information to which the request applies. Because the required information bears on each applicant's qualifications, confidentiality requests will not be routinely granted.²

Applicants may make multiple changes to their short-form applications until the close of the filing window. However, they must press the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission.

- **Minimum Software Requirements**

The following software, at a minimum, is required to use the FCC Auction System:

- Web Browser, either of the following is recommended:
 - Microsoft[®] Internet Explorer 8.0 or higher, with Microsoft VM or Java Plug-In
 - Mozilla[®] Firefox[®] 3.5 or higher, with Java Plug-In

To obtain the Java Plug-In, navigate your web browser to <http://www.oracle.com/technetwork/java/javase/downloads/index.html>, and click the Download button in the JRE column under *Java Platform, Standard Edition*.

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)
- Minimum Screen Resolution: 1024 x 768

¹ 47 C.F.R. § 0.459.

² 47 C.F.R. § 0.459(a).

Currently, the Apple® Mac OS® is not supported.

- **Logging On**

To submit, edit, or withdraw a short-form application (FCC Form 180) online, an applicant should open its web browser and navigate to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Once on the *FCC Auction System* page, the applicant may log in using its FCC Registration Number (FRN)³ and password. On the *My Auctions* page, select the **Click here to file FCC Form 180** link under the Connect America Fund Section. This produces the *Auction Manager* page which allows an applicant to create a new application or review or modify an existing application.

- **Application Filing Instructions**

The short-form application (FCC Form 180) requests information needed to determine whether an applicant qualifies to participate in Auction 902 for Tribal Mobility Fund Phase I support.⁴ Applicants must submit required information as entries in the data fields of the FCC Form 180 whenever a data field is available for that information. Attachments should not be used to provide information that can be supplied within the data fields of the FCC Form 180.

The screens comprising FCC Form 180 consist of five series, each requesting five separate types of information: 1) *Applicant Information*; 2) Applicant's *Potentially Eligible Areas*; 3) *Agreements*; 4) *Ownership*; and 5) *Certify and Submit*. In addition, *Summary* screens, a sixth series, appear prior to the *Certify and Submit* screens. The *Summary* screens provide an overview of an applicant's FCC Form 180 that facilitates reviewing and revising specific information, as well as an automated check for certain inconsistencies and omissions in submitted information.

To simplify filling out FCC Form 180, certain initial information an applicant provides is used to determine what additional information is needed, and what subsequent screens will appear to collect that information. For example, a corporate applicant, unlike a general partnership applicant, must identify a corporate officer or director responsible for the application (sometimes called a responsible party). If an applicant identifies itself as a general partnership, no additional information is needed regarding an additional responsible party, and screens requesting responsible party information will not appear. However, if the applicant identifies itself as a corporation, subsequent screens in the FCC Form 180 will ask for responsible party information.

Applicants must fill out FCC Form 180 by following the instructions below. Additional help in filling out FCC Form 180 can be accessed in two ways: 1) by clicking on the **Help** link in the upper right of any screen, which will open Auction Application Online Filing Help; or 2) by clicking on the text of any **Common Question** link appearing on the right side of the screen. The common questions displayed relate to the current screen and vary from screen to screen. In the event the assistance provided by these

³ An FRN is a ten-digit number that is assigned to a business or individual that has registered with the FCC. It is used to uniquely identify an individual or business in all transactions with the FCC. If you do not have an FRN, you must register through the FCC's Commission Registration System (CORES) before filing your application. A CORES link is provided on the Log On page.

⁴ See generally, 47 C.F.R. §§ 1.21001, 54.1005.

sources is insufficient, applicants should use the contact information provided in this Public Notice to obtain additional assistance.⁵

▪ **Applicant Information**

The *Applicant Information* screens are the first series of screens in FCC Form 180, in which the applicant will provide basic information including:

- Applicant's legal classification (e.g., corporation, general partnership, limited liability company, etc.)
- Applicant's name, which will be used as the bidder name during the auction⁶
- Applicant's jurisdiction of formation for legal entities
- Applicants that are classified as legal entities (e.g., corporations) must provide the name of and information regarding the entity's responsible individual⁷
- Name, street address, telephone number, and fax number of a contact person who will communicate with the Commission regarding the applicant's FCC Form 180⁸
- Names of up to three persons authorized to bid for the applicant in the auction⁹

Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- An applicant must indicate its legal classification before continuing to subsequent screens, because the legal classification will determine which subsequent screens will appear.
- P.O. Boxes may **not** be used for an applicant's address.
- To simplify filling out the FCC Form 180, an applicant that has the same address as its contact person can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the contact person's address. P.O. Boxes may **not** be used for a contact person's address.
- Applicants must identify at least one authorized bidder. While applicants may change their authorized bidders at a later date, only those bidders listed on the FCC Form 180 will be authorized to place bids for the applicant during the auction.

⁵ See section VII.

⁶ See 47 C.F.R. § 1.21001(b)(1); *see also* section V.A.4 regarding limited information procedures before and during the auction.

⁷ See 47 C.F.R. § 1.21001(b)(1).

⁸ FCC personnel will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 180, 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 e-mail to auction902@fcc.gov.

⁹ See 47 C.F.R. § 1.21001(b)(2).

- Any qualified bidder may bid online through its authorized bidder(s) during the auction.

- **Applicant's Potentially Eligible Areas**

The Applicant's *Potentially Eligible Areas* screens make up the second series of screens in FCC Form 180. This series of screens uses information provided by the applicant to limit for that applicant the set of areas eligible for Tribal Mobility Fund Phase I support to those in which the applicant is potentially eligible to bid. The identification of an area as one in which the applicant is *potentially* eligible to bid does not mean that the applicant is *actually* eligible to bid for support in that area. As a first step in identifying the set of potentially eligible areas with respect to an application, the applicant provides the Eligible Telecommunications Carrier (ETC) Study Area Code(s) (SAC(s)) and any Tribal lands identified by a Tribally-owned or -controlled applicant as the subject of a pending petition by it for ETC designation. Then, to identify an applicant's potentially eligible areas, the Auction System will only be able to identify all areas eligible for Tribal Mobility Fund Phase I support that are within the same state as the study area(s) associated with SAC(s) provided by an applicant, as well as all areas eligible for Tribal Mobility Fund Phase I support that are within Tribal lands identified by an applicant as the subject of a pending petition for ETC designation. Some of those areas may be outside the areas for which an applicant is actually eligible to bid pursuant to the Commission's rules—i.e., the areas in which it is designated as an ETC or, in the case of a Tribally-owned or -controlled entity, areas in its Tribal lands for which it has a pending petition for designation as an ETC. Thus, the listing of any area in these screens as a potentially eligible area is not a determination of eligibility under the Commission's rules.

In these screens, the applicant will identify the SAC(s) associated with its ETC designation(s). In the alternative or in addition, a Tribally-owned or -controlled applicant will provide the name(s) of the Tribal land(s) corresponding to any pending petition by it for ETC designation for those Tribal land(s) covering the area in which the applicant may wish to bid during the auction. Finally, the applicant will specify in this series of screens whether it is a Tribally-owned or -controlled entity eligible to claim a bidding credit available for Tribal entities with respect to their Tribal land(s).

To submit the FCC Form 180 to participate in the Tribal Mobility Fund Phase I auction, applicants must identify at least one SAC or Tribal land name. Until a SAC or Tribal land name is identified, the applicant cannot submit the FCC Form 180. An applicant cannot add additional, or change previously identified, SAC(s) and/or Tribal land(s) after the initial filing window has closed. Therefore, during the initial filing window, it is important to carefully review the information provided to make sure all SAC and Tribal land names that cover areas on which the applicant is eligible and may wish to bid have been selected.

The FCC Auction System will not allow applicants to change the list of SACs and Tribal lands or to claim a bidding credit for Tribal entities after the short-form application filing deadline. If a bidder places a bid in a bidding area not covered by the SACs or Tribal lands submitted in its application, it will be in default.

On the first screen in this series, the *Potentially Eligible Areas* Study Area Code (SAC) screen, an applicant must state whether it has a SAC and, if so, must enter the SAC(s) associated with its designation as an ETC. If not, an applicant will select "No," and will be directed to the next screen. Multiple SACs can be entered in this area, but must be separated with commas. To remove or modify SAC(s), highlight the specific SAC(s) in the "Add SAC" text box and delete or correct as needed.

Continuing to the second screen in this series, the *Potentially Eligible Areas* Tribal Land Information screen, an applicant must state if it is a Tribally-owned or -controlled entity with a pending application to become an ETC in its Tribal lands covering the area for which it is seeking support and, if so, must select

the Tribal land(s) associated with the pending ETC designation application in which the applicant will want to be able to place bids during the auction.

- To select the Tribal Land(s), select the state covering the applicant's pending ETC application from the "State covering Tribal Land(s)" dropdown. The system will display a list of Tribal land(s) located within that state. An applicant can select the applicable Tribal land(s) by (1) clicking on an individual name; (2) clicking on the "Select All" button, if all are applicable; or (3) to make multiple selections, pressing the CTRL key while simultaneously clicking each applicable Tribal land. Once an applicant has selected all of the Tribal lands where it has a pending ETC application, it should click the "**ADD**" button.
- An applicant with multiple pending ETC applications, or an applicant with a pending FCC ETC application covering multiple states, must repeat the above process for each applicable state.
- Tribal land(s) can be removed from the "Selected Tribal Land(s)" box in the same manner described above by using the "**REMOVE**" button.

NOTE: A Tribally-owned or -controlled entity could have both SAC(s) and pending ETC application(s). On this screen, only those applicants with pending ETC application(s) select Tribal land(s) covered by their pending application(s). Subsequent screens will list Tribal lands in the state related to any SAC(s) entered on the previous screen and any specific Tribal lands selected on this screen.

The third screen in this series is the *Potentially Eligible Areas* Tribal Land Bidding Credit designation screen. In Auction 902 for Tribal Mobility Fund Phase I support, the Commission makes available a bidding credit for a Tribally-owned or -controlled entity seeking support to serve areas within its associated Tribal land(s).¹⁰ For purposes of the Tribal Mobility Fund Phase I bidding credit for Tribal entities, a Tribally-owned or -controlled applicant must indicate in Form 180 if it is eligible to receive and is seeking a bidding credit for serving its Tribal land(s) eligible for Tribal Mobility Fund Phase I support and, if so, specify which Tribal land(s) it wants to apply the credit towards. This screen will list Tribal lands in the state(s) related to any SAC(s) entered on previous screens and any specific Tribal lands selected on previous screens. The 25 percent "reverse" bidding credit is available for Tribally-owned or -controlled providers and is only available with respect to the eligible census blocks located within the boundaries of the Tribal land associated with the Tribe that owns or controls the entity seeking support.¹¹ The bidding credit reduces the Tribal entity's bid amount for purposes of comparing it to other bids.

- Select the Tribal land(s) where you want the credit to apply from the list by (1) clicking on an individual "Tribal land" name; (2) clicking on the "Select All" button, if all are applicable; or (3) to make multiple selections, the applicant can press the CTRL key while simultaneously clicking each applicable "Tribal land" name. Once an applicant has selected all of the Tribal lands it wants the credit applied to, it should click the "**ADD**" button.
- Tribal land(s) selections can be removed from the "Selected Tribal Land(s)" box in the same manner described above by using the "**REMOVE**" button.

¹⁰ In Form 180 for Auction 902, this is sometimes referred to in an abbreviated form as a Tribal land bidding credit, though it differs in its purpose and requirements from a similarly named bidding credit in spectrum license auctions that is available for serving Tribal lands.

¹¹ See sections II.A.2 and III.F.

Continuing takes you to the final screen in this series, the *Potentially Eligible Areas* summary screen. This screen provides a summary listing for all of the SAC(s) and/or Tribal land(s) successfully saved by the applicant. Clicking on each link produces a listing of the bidding areas for which support is offered in the Tribal land or all of the bidding areas in the state associated with the SAC. The list will include the state, county, Tribal area, population, and, where applicable, Tribe name and bidding credit for the areas listed. Two additional links are provided at the bottom of the page, “All Tribal Lands Pertaining to Applicant’s Selection” and “Potentially Eligible Areas Map Pertaining to Applicant’s Selection.” Both the list of all areas and the map will include all areas for which support is offered in states that include SAC(s) entered and Tribal lands identified in the application.

If a Tribal land is not shown or is incorrect, applicants should review their SAC(s) and/or Tribal land(s) to make sure all selections were made and/or entered accurately. An applicant can click the “**EDIT**” button at the bottom of the page to return to the Study Area Code (SAC) screen, as described above.

When all potentially eligible areas have been identified, click the **CONTINUE** button.

NOTE: A warning message to upload a “Spectrum Access” attachment will display if the applicant has not already done so. The system will allow an applicant to continue but will not permit the application to be submitted without the required attachment. For further details refer to section III.E.2 of this Public Notice.

▪ **Agreements**

The *Agreements* screens are the third series of screens in FCC Form 180. In these screens, applicants will provide information regarding auction-related agreements subject to disclosure under the Commission’s rules.¹²

On the first screen, applicants must state whether they have any agreements that are subject to disclosure under the Commission’s rules by responding “Yes” or “No” to a question asking whether the applicant has entered into any agreements relating to the participation of the applicant in the competitive bidding. When two applicants in this auction share an officer, director, or an individual with specified ownership interests,¹³ it is at this point in each application that the two applicants can indicate that there is a sharing of this one individual (officer, director, or owner) by responding to this “agreement” question with a “Yes.”¹⁴

¹² 47 C.F.R. § 1.21001(b)(3).

¹³ We remind applicants that, for purposes of the communication prohibitions of 47 C.F.R. § 1.21002, section 1.21002(a) defines “applicant” as including any applicant, each party capable of controlling the applicant, and each party that may be controlled by the applicant or by a party capable of controlling the applicant.

¹⁴ As explained in this Public Notice, a failure to report an agreement in both short-form applications when a specified individual is involved with two applicants in the same auction can result in a violation of section 1.21002. See section II.C.2.a. Where an individual serves as an officer for two or more applicants, the Bureaus have found that the bids and bidding strategies of one applicant are necessarily conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of the rule prohibiting certain communications occurs. See, e.g., Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 05-2445, 20 FCC Rcd 14648 (2005) (finding apparent violation of communication prohibitions of section 1.2105(c) where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

If an applicant answers “No,” the applicant will continue to the *Ownership* series of screens, described below. If the applicant answers “Yes,” the applicant will continue with additional *Agreements* screens.

In the additional *Agreements* screens, applicants must provide an identifying name for the agreement and must identify all real parties in interest to any agreements relating to the participation of the applicant in competitive bidding. The agreement identifier can be a brief description of the agreement or a simple reference name; however, each agreement identifier must be unique. Neither the name of the agreement nor its description should indicate potentially eligible area designations such as bidding areas, census blocks, or study area codes for this auction.

Applicants may provide FRNs for the other parties to the agreement, if available. While providing the FRN is optional, it helps prevent identification errors resulting from parties having similar names or a single party using multiple names.

Up to three parties to the agreement (not including the applicant) can be identified on a single screen. Additional parties can be added by clicking the **ADD MORE PARTIES** button. In the event of an error, the name of a party and its associated FRN can be deleted from the form by clicking on the **RESET** button. After identifying all parties to a particular agreement, click the **FINISH THIS AGREEMENT** button.

The next screen, the *View/Edit Agreements* screen, lists the agreements and parties to each agreement that already have been entered. From this screen, the following options are available:

- Clicking the **Edit** icon or the **Agreements** link to return to the initial *Agreements* screen regarding whether or not the applicant has any agreements.
- Modifying agreement identifiers by clicking on them.
- Clicking the **Delete This Agreement** link to delete an agreement and associated parties.
- Modifying information regarding a particular party to an agreement by clicking on the party’s name.
- Clicking the **Remove** icon next to information about a particular party to remove that corresponding party.
- Clicking the **Add Party to This Agreement** link to add a new party to an agreement.
- Clicking the **CREATE NEW AGREEMENT** button to add additional agreements.

When all agreements and the parties to each agreement have been identified, the applicant should click the **CONTINUE** button.

▪ **Ownership**

The *Ownership* screens are the fourth series of screens in the FCC Form 180. In the *Ownership* screens, applicants will provide information regarding parties with ownership interests in the applicant that must be disclosed pursuant to Commission rules.¹⁵ Commission rules also require the disclosure and

¹⁵ 47 C.F.R. §§ 1.2112(a), 54.1005(a)(1).

description of FCC-regulated businesses that are owned by the applicant and by parties with certain ownership interests in the applicant.¹⁶

- **Information Already on File with the Commission**

Some applicants may have previously filed FCC Form 602 disclosing ownership information in connection with wireless services. In addition, some applicants may have filed a short-form application (FCC Form 175 or FCC Form 180) for a previous auction disclosing ownership information. To simplify filling out FCC Form 180, an applicant's most current ownership information on file with the Commission will automatically be entered into the applicant's short-form application, if it is in an electronic format compatible with the short-form application (FCC Form 180) (such as information submitted in an online FCC Form 602 or in an FCC Form 175 or FCC Form 180 filed for a previous auction using the FCC Auction System). Applicants with ownership information automatically entered into FCC Form 180 will proceed directly to the *View/Edit Ownership* screen described below.

Each applicant is responsible for ensuring that information submitted in its FCC Form 180 is complete and accurate. An applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for submitting its short-form application in this auction. Information must be corrected directly in the FCC Form 180. After the deadline for filing this FCC Form 180, submitted ownership information will be considered to be the applicant's most current information on file with the Commission for this auction.

- **Disclosable Interest Holders and FCC-Regulated Businesses**

Section 1.2112(a) of the Commission's rules list the interest holders in the applicant that must be disclosed in FCC Form 180.¹⁷ **Applicants must report holders of both direct and indirect interests.**

Section 1.2112(a)(7) lists the FCC-regulated business entities, or applicants for an FCC license, that must be disclosed in FCC Form 180.¹⁸

The initial *Ownership* screen enables the applicant to add information regarding either a disclosable interest holder, or the FCC-regulated businesses in which either the applicant has an interest or parties with 10% or more ownership interest in the applicant have an interest. Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- **If an application includes one or more disclosable interest holders with indirect ownership in the applicant,¹⁹ the application must include an attachment describing the relationship between the indirect interest holder(s) and the applicant.** The attachment should provide an overview of the ownership chain that links the indirect owner(s) to the applicant, e.g., indirect owner X owns 50% of holding company Y; indirect owner Z owns 50% of holding company Y;

¹⁶ 47 C.F.R. §§ 1.2112(a), 54.1005(a)(1).

¹⁷ Section 54.1005 requires the disclosure on the short-form application of applicant ownership information as set forth in section 1.2112(a). 47 C.F.R. §§ 1.2112(a), 54.1005.

¹⁸ 47 C.F.R. § 1.2112(a)(7).

¹⁹ 47 C.F.R. § 1.2112(a)(6).

and holding company Y owns 100% of the applicant.²⁰ One attachment connecting all indirect owners to the applicant is sufficient. Applicants should not provide separate attachments for each indirect owner. An overview of the ownership connections is sufficient. The attachment should not duplicate all of the detailed information already provided in the data fields of the FCC Form 180.

- The “Percent of Interest Held in Applicant” should reflect the disclosable interest holder’s aggregate ownership interest in the applicant (both direct and indirect). In some cases, e.g., circumstances where there is joint ownership or indirect ownership resulting in different owners sharing the same ownership interests, the sum of all the percentages held by disclosable interest holders may exceed 100%. In other cases, a disclosable interest holder may have a 0% ownership interest in the applicant.
- FCC-regulated businesses in which the applicant has a direct interest can be entered from the initial *Add Ownership Disclosure Information* screen. FCC-regulated businesses in which a disclosable interest holder has a direct interest can be entered from the *Add FCC Regulated Business* screen in the series of screens for entering information about a disclosable interest holder.
- When adding an FCC-regulated business, “Percent of Interest Held” refers to the percent of interest held directly by the applicant or disclosable interest holder, as applicable, in the FCC-regulated business. FCC-regulated businesses in which the applicant or disclosable interest holder has an indirect interest need not be reported in the FCC Form 180.
- To simplify filling out the FCC Form 180, applicants can click on the **Select Business(es) Already Submitted** link when entering an FCC-regulated business previously entered as an FCC-regulated business for the applicant or another disclosable interest holder. When doing so, be certain to enter the “Percent of Interest Held” in the FCC-regulated business by the current party, either the applicant or the disclosable interest holder, with respect to which the FCC-regulated business is being entered.

- **View/Edit Ownership Disclosure Information**

The *View/Edit Ownership Disclosure Information* screen summarizes ownership information already entered in the FCC Form 180, either automatically from compatible ownership information on file with the Commission or directly by the applicant, and provides links enabling existing information to be revised and additional information to be added.

Existing ownership information is divided into two groups:

- Disclosable Interest Holders of this Applicant
- FCC-Regulated Businesses of this Applicant

To view the detailed information submitted regarding the applicant, a disclosable interest holder, or FCC-regulated business, click on the relevant party’s name. To delete existing information or add a new entry in one of the categories, click on the relevant link. This screen also provides a link enabling applicants to

²⁰ *Id.*

add an FCC-regulated business directly to an existing disclosable interest holder, without needing to reenter the disclosable interest holder's information.

- **Summary**

The *Summary* screens summarizes information applicants have provided in the previous screens, offering an overview of an applicant's FCC Form 180 to help locate specific information. These screens will appear prior to the *Certify and Submit* screens, in order to permit the applicant to review all of the information entered in previous screens and to provide an opportunity to check for certain inconsistencies or omissions in the information within the FCC Form 180.

The first *Summary* screen, the *Summary Overview* screen, lists the first four series of screens in the application and provides a **VIEW/EDIT** button to access each one.

- Clicking **VIEW/EDIT** for Applicant Information produces a *Detail for Applicant Information* screen showing the information entered for each data entry field. To change any data item, the applicant should click the **Edit** icon for the relevant data field.
- Clicking **VIEW/EDIT** for Potentially Eligible Areas takes the applicant to the *View/Edit Potentially Eligible Areas* Summary screen.
- Clicking **VIEW/EDIT** for Agreements takes the applicant to the *Agreements* screen discussed above in the Agreements section.
- Clicking **VIEW/EDIT** for Ownership takes the applicant to the *View/Edit Ownership Disclosure Information* screen discussed above in the Ownership section.

Clicking on the **CHECK ERRORS** button initiates an automated check of the application. If the automated check encounters certain inconsistencies or omissions in information within the FCC Form 180 that must be corrected before submitting the application, the inconsistencies or omissions will be listed in an Error box at the top of the screen. To correct one of these errors, click its corresponding **EDIT** button. In addition, if the automated check encounters certain apparent inconsistencies or omissions that might render the application incomplete or deficient if the application is submitted with current information, the apparent errors will be listed in a Warning box. To revise the information related to an apparent inconsistency or omission, click its corresponding **EDIT** button.

Each applicant is solely responsible for providing complete and accurate information in its FCC Form 180. The automated check is provided to assist applicants in completing the FCC Form 180. However, the automated check cannot be relied upon to determine whether the information provided is complete or accurate. The automated check may not catch all errors and applicants cannot rely on the automated check to determine the completeness or the accuracy of submitted information.

If the automated check does not encounter certain inconsistencies or omissions, a box will appear displaying the message, "**No Errors found - You may continue to Certify and Submit.**" Applicants may then click the **CONTINUE TO CERTIFY** button.

NOTE: An error message "You must upload a 'Spectrum Access' attachment that provides all required information relating to spectrum access" will display if the applicant has not attached the required documentation. See "Attaching Additional Information," below, for instructions about how to provide an attachment.

- **Attaching Additional Information**

If an applicant needs to provide additional information not requested directly in the screens comprising the FCC Form 180, that information can be provided in an attachment. For example, an applicant can provide information regarding its ETC designation in an attachment.

For Auction 902, an applicant is required to provide an attachment to FCC Form 180 disclosing all required information relating to spectrum access in regards to its plans for meeting Mobility Fund obligations in the particular area(s) for which it plans to bid. The attachment type must be designated as “Spectrum Access.” Applicants should refer to section III.E.2 of this Public Notice for further details about the information to be included in this required attachment.

The screen for adding an attachment to FCC Form 180 can be accessed by clicking on the **Attachments** link in the upper right of any screen. This screen requests information regarding the type of attachment to be added, the name of the file to be attached, and a brief description of the attachment.

NOTE: If the attachment is a request for a waiver or exemption of any of the Commission’s rules or procedures, the applicant must identify the “Type” of attachment as a “Waiver” to facilitate prompt processing.

Once the requested information is provided, applicants can add the attachment to the application by clicking on the **ADD ATTACHMENT** button. A list of any attachments already uploaded along with the applicant’s FCC Form 180 will appear at the bottom of the screen.

When uploading attachments, applicants may use a variety of file formats, including MS Word, WordPerfect 5.x or later, Adobe PDF, and ASCII text. Applicants must, however, verify that the files contain all attachment information, and files may be no larger than 10 Mb and must not be password-protected. Graphics files (e.g., .bmp, .tiff, .jpg) and spreadsheets (e.g., Excel, Lotus) are supported but not recommended.

- **Certify and Submit**

The *Certify and Submit* screen is the fifth and final screen in FCC Form 180. In this screen, applicants provide certifications required of all participants in the Tribal Mobility Fund Phase I auction.²¹

The *Certify and Submit* screen lists the certifications required of all applicants in the Commission’s Tribal Mobility Fund Phase I auction and requests that the applicant’s certifying official be identified and sign the application.

Who Can Certify. If the applicant is a partnership, the short-form application can be certified by one of the partners. If the applicant is a corporation, the short-form application can be certified by an officer, director, or duly-authorized employee.

Applicants are reminded that submission of an FCC Form 180 constitutes a representation by the certifying official that he or she is an authorized representative of the applicant and has read the form’s instructions and certifications, and that the contents of the application, its certifications, and any attachments are true, complete, and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future

²¹ See 47.C.F.R. § 54.1005.

auctions, and/or criminal prosecution. As noted above, a change of certifying official is considered a major change of the short-form application and will not be permitted after the application deadline. Additional details about the certifications can be found in this Public Notice.

Once the *Certify and Submit* screen has been filled out, the application may be submitted by clicking on the **SUBMIT** button.

After the application has been submitted, a confirmation screen will be displayed that states the submission time and date, along with a unique file number. An applicant should print a copy of the confirmation page for its records. An applicant may then view and print copies of its submitted application by clicking on the **PRINT PREVIEW** button.

FCC Form 180 applications for Auction 902 must be submitted and confirmed prior to 6:00 p.m. EST on Wednesday, October 9, 2013. Late applications or unconfirmed submissions of electronic data will not be accepted.

- **Withdrawing a Short-Form Application Before the Filing Deadline and Updating Existing Short-Form Applications**
 - **Withdrawing an Application**

To withdraw a submitted application before the short-form application filing deadline, applicants should click on the **Withdraw Application** icon on the Auction Application Manager *Create or Review Auction Applications* page. All previously-submitted data will be deleted.

After the short-form application filing deadline, an application may not be withdrawn.

- **Updating Existing Applications**

The *Create or Review Auction Applications* page displays any application created or submitted within a filing window. This page shows the application status, the date and time the application was last updated, and the date and time the application was last submitted. It may be used as a reference to confirm the date and time of the most recent submission of the application.

To review or continue working on an existing short-form application, an applicant should click the application auction number, which will produce the application's *Summary* page in a view/edit mode. After making any updates or changes, an applicant must go to the *Certify and Submit* screen and click the **SUBMIT** button to submit any changes made to its FCC Form 180 application. After the revised application has been submitted, a confirmation page will display the application's file number and submission time and date. You should print a copy of the confirmation page for your records. An applicant may then view and print copies of its submitted application by clicking on the **PRINT PREVIEW** button.

After the filing deadline, an applicant may make only minor changes to its application. Major modifications will not be permitted (e.g., change in ownership of the applicant that would constitute an assignment or transfer of control, or the identity of the applicant, or the certifications required in the application).²²

²² 47 C.F.R. § 54.1005(b)(3)(iv).

- **Miscellaneous**
 - **Access to View Short-Form Applications**

After the deadline for filing short-form applications, the Commission will process all timely-submitted applications to determine which are complete. The Commission will subsequently 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. Once that public notice is released, any interested parties may be able to view the short-form applications by searching the FCC Auction System.

To start a search, go to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov> (secondary location) and click the **Auction Application Search** link in the Public Access area on the *FCC Auction System* page.

- **Technical Support**

For technical assistance with using FCC software, contact the FCC Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY). The FCC Technical Support Hotline is available Monday through Friday from 8:00 a.m. to 6:00 p.m. EST. All calls to the FCC Technical Support Hotline are recorded.

Paperwork Reduction Act Approval: The FCC Form 180 was assigned control number 3060-1166 and was approved, as revised, by the Office of Management and Budget on April 16, 2012.

ATTACHMENT E

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

A. Judicial Decisions

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

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

B. Commission Decisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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1. Public Notices

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

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How to Obtain Copies of Listed Decisions

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

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