



PUBLIC NOTICE

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TRIBAL MOBILITY FUND PHASE I AUCTION
UPDATED LIST OF ELIGIBLE AREAS
PETITION FOR RECONSIDERATION OF AUCTION 902 PROCEDURES PUBLIC NOTICE
GRANTED IN PART

AU Docket No. 13-53

1. With this Public Notice, the Wireless Telecommunications and Wireline Competition Bureaus (collectively, the Bureaus) release an updated list of eligible areas for the reverse auction that will award up to \$50 million in one-time Tribal Mobility Fund Phase I support, Auction 902. The updated list (1) reflects changes to the eligible areas for Auction 902 based on authorizations of support and default determinations from the initial auction of Mobility Fund Phase I support (Auction 901), and (2) incorporates 40 additional census blocks in northwestern New Mexico based on a partial grant of a petition for reconsideration filed by Smith Bagley, Inc. (SBI).

2. This is an update of the list of census blocks identified by the Bureaus in the *Auction 902 Procedures Public Notice* as eligible for the Tribal Mobility Fund Phase I support to be offered in Auction 902.¹ At that time, the Bureaus released a file with information about the bidding areas for Auction 902 and a file containing detailed information about the census blocks of those bidding areas.² The updated list of bidding areas is released as Attachment A to this Public Notice. Attachment B to this Public Notice is a list of the 40 census blocks being added in northwestern New Mexico. An updated version of the file containing detailed information about the census blocks of all of the bidding areas will soon be available on the Auction 902 website at <http://wireless.fcc.gov/auctions/902/>.³ Once updated, the link for that file will be displayed with a notation of when it was updated.

¹ Tribal Mobility Fund Phase I Auction Rescheduled for December 19, 2013; Notice and Filing Requirements and Other Procedures for Auction 902, *Public Notice*, AU Docket No. 13-53, DA 13-1672, 28 FCC Rcd 11628 (*Auction 902 Procedures Public Notice*).

² *Id.* at 11696-714 (Attachment A-2); see also “Attachment A File – Eligible Census Blocks,” available at <http://wireless.fcc.gov/auctions/902/>.

³ We note that in addition to the changes in eligible areas, the files reflect changes to the names assigned to some of the bidding areas in Alaska. These bidding area names have been changed since the release of the *Auction 902 Procedures Public Notice* in order to display the bidding areas in the correct order in the bidding system. Leading zeros were added to the trailing digits of some of the bidding area names. For example, what was previously named AK-Ahtna-2 is now listed as AK-Ahtna-02 so that when sorted by bidding area name, it will come after AK-Ahtna-01 instead of after AK-Ahtna-19.

Changes Based on Auction 901 Authorizations and Defaults

3. The eligible areas for Tribal Mobility Fund Phase I (Auction 902) have been updated to reflect Auction 901 support authorizations and default determinations.⁴ In the list of bidding areas released with the *Auction 902 Procedures Public Notice*, the Bureaus identified with an asterisk the items with one or more census blocks that were the subject of a winning bid in Auction 901 for which the relevant long-form application remained pending.⁵ In that Public Notice, the Bureaus explained that if any winning bids from Auction 901 covering blocks that would otherwise be eligible for Auction 902 could not be authorized prior to Auction 902, then such eligible blocks would be made available in the auction.⁶ Similarly, we explained that we would exclude certain blocks if we were to authorize Auction 901 support in those blocks prior to Auction 902.⁷

4. By this Public Notice, we announce the removal of certain census blocks for which support has been authorized for Auction 901 winning bids, as these areas will not be available for support in Auction 902. Also, for those blocks on which Auction 901 winning bidders have defaulted, we remove the asterisks in the list that previously identified the relevant census blocks as having received winning bids in Auction 901, and these areas will be eligible for bidding in Auction 902.⁸ Some Auction 901 long-form applications remain pending, and we plan to update the list of Auction 902 eligible areas prior to the date of the auction to reflect any further Auction 901 authorizations of support or default determinations.

Addition of Certain Blocks in Northwestern New Mexico

5. We grant in part SBI's petition for reconsideration of the *Auction 902 Procedures Public Notice* and, thus, we add certain census blocks in northwestern New Mexico to the list of eligible areas for Auction 902.⁹ Specifically, we add census blocks that SBI drive tested, but only to the extent that such blocks are on Tribal lands, are populated, and are not served, as demonstrated in the record, by AT&T or Commnet.¹⁰

⁴ Public notices announcing support authorizations and default determinations for Auction 901 are available at <http://wireless.fcc.gov/auctions/901>.

⁵ *Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11640, para. 28.

⁶ *Id.*

⁷ *Id.*

⁸ See, e.g., Applications of AT&T Inc. and Atlantic Tele-Network, Inc. for Consent to Transfer Control of and Assign Licenses and Authorizations, *Memorandum Opinion and Order*, WT Docket No. 13-54, DA 13-1940, at para. 99 n.298 (Sept. 20, 2013) (noting Auction 901 default by Allied Wireless Communications Corporation).

⁹ See Petition for Reconsideration of Smith Bagley, Inc., AU Docket No. 13-53 (Sept. 6, 2013) (SBI PFR); Smith Bagley, Inc. Reply to Joint Opposition to Petition for Reconsideration, AU Docket No. 13-53 (Sept. 23, 2013) (SBI PFR Reply); see also Comment Sought on Petition for Reconsideration of Auction 902 Procedures Public Notice, *Public Notice*, AU Docket No. 13-53, DA 13-1876 (Sept. 9, 2013).

¹⁰ AT&T Inc. filed reply comments in the Auction 902 comment proceeding, and comments in response to SBI's petition for reconsideration, on behalf of its wholly-owned subsidiary AT&T Mobility LLC. See Reply Comments of AT&T, AU Docket No. 13-53 (May 24, 2013) (AT&T Reply Comments); Comments of AT&T, AU Docket No. 13-53 (Sept. 16, 2013) (AT&T PFR Comments). Commnet Wireless, LLC, filed reply comments in the Auction 902 comment proceeding on behalf of itself and its subsidiaries and affiliates, including NTUA Wireless, LLC. See Reply Comments of Commnet Wireless, LLC, AU Docket No. 13-53 (May 24, 2013) (Commnet Reply Comments). Commnet Wireless, LLC, together with the Navajo Tribal Utility Authority and NTUA Wireless, LLC, filed a joint opposition to SBI's petition for reconsideration. See Joint Opposition of Commnet Wireless, LLC, the Navajo (continued....)

6. SBI sought reconsideration of the Bureaus' determination in the *Auction 902 Procedures Public Notice* "that the drive test data submitted by SBI is not sufficiently verifiable to justify the addition of the census blocks requested."¹¹ In support of its request that several thousand census blocks in northwestern New Mexico be added to the list of eligible areas for Auction 902, SBI's petition for reconsideration provides additional information regarding the drive tests that it previously conducted in support of its comments, including a certified statement from an SBI radiofrequency engineer who conducted the drive tests.¹² SBI also supplied two lists of census blocks, one listing census blocks containing roads on which it conducted tests and the second listing untested areas. Commnet Wireless, LLC ("Commnet"), the Navajo Tribal Utility Authority, and NTUA Wireless, LLC ("NTUAW") jointly oppose SBI's petition, contending that SBI did not test Commnet's network at all, and that it is probable that SBI's drive test failed to identify the presence of NTUAW's 4G 700 MHz operations in certain census blocks.¹³ The joint filers also argue that the Bureaus should not consider SBI's additional information.¹⁴ AT&T submitted comments asserting that it provides service to certain census blocks in these areas using the 850 MHz band.¹⁵ AT&T also claims that SBI did not test AT&T's service using the 850 MHz frequency.¹⁶ In its reply to the Joint Opposition, SBI reiterates points made in its petition and "categorically rejects the idea that any other carrier is today providing a robust 3G or 4G mobile service" in these areas.¹⁷ SBI also concedes that it did not drive test the Commnet network.¹⁸ SBI does not respond to AT&T's filing.

7. As an initial matter, we find that it is in the public interest to consider the additional information provided in SBI's petition for reconsideration.¹⁹ We note that SBI's petition does not present wholly new evidence or newly discovered evidence, but rather more fully explains the drive tests that it already conducted.²⁰ However, in light of the Commission's goal of promoting provision of 3G or better

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Tribal Utility Authority and NTUA Wireless, LLC to Petition for Reconsideration, AU Docket No. 13-53 (Sept. 16, 2013) (Joint Opposition). For ease of reference, we refer to "AT&T" and "Commnet" when discussing their filings and their demonstrations of their subsidiaries' and affiliates' service coverage.

¹¹ *Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11639, para. 26.

¹² See SBI PFR at Attachment A.

¹³ Joint Opposition at 6-7; see also Commnet Reply Comments at 4-5.

¹⁴ Joint Opposition at 2-5 (arguing that SBI's petition should be dismissed or denied because it relies on information that should have been introduced during the notice and comment period).

¹⁵ AT&T PFR Comments at 2-3.

¹⁶ *Id.*

¹⁷ SBI PFR Reply at 3; see also SBI PFR at 5.

¹⁸ SBI PFR Reply at 3-4.

¹⁹ 47 C.F.R. §§ 1.106(p), (c)(2) (permitting consideration of facts not previously presented if required in the public interest). See Joint Opposition at 2-5 (arguing that SBI's petition should be dismissed or denied because it relies on information that should have been introduced during the notice and comment period).

²⁰ See 47 C.F.R. §§ 1.106(p), (b)(2) (permitting consideration of facts not previously presented if they relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters, or if the facts were unknown to petitioner until after his last opportunity to present them).

mobile voice and broadband services to Tribal lands that lack such services,²¹ we believe that consideration of the information in the petition is warranted.

8. We grant SBI's petition as to certain census blocks in which SBI conducted drive tests that show no 3G or 4G service. We are not, however, persuaded by SBI's argument that nearby census blocks untested by SBI should be presumed to have a similar lack of 3G or better service.²² Such an assumption is not sufficient to rebut the Mosaik data indicating that 3G or better service is available in those areas. We also will not add census blocks where AT&T or Commnet show that they provide 3G or better mobile voice and broadband service. SBI admits that it did not conduct testing of Commnet's network.²³ Thus SBI fails to rebut Commnet's showing regarding its service coverage, which includes maps, an explanation of methodologies for determining coverage, and certifications as to the veracity of the material provided.²⁴ In addition, SBI's earlier uncertified statement that it tested AT&T's 850 MHz frequencies is insufficient to rebut the evidence submitted by AT&T regarding its service coverage, which includes a map, an explanation of methodologies for determining coverage, and certifications as to the veracity of the material provided.²⁵ Finally, Tribal Mobility Fund Phase I support is only available in populated census blocks on Tribal lands. We therefore will not add census blocks that have a population of zero,²⁶ and we will not add census blocks that are beyond the external borders of the Navajo Nation (and that are not otherwise identified as Tribal lands in the 2010 Census data).²⁷ In sum, we add 40 census blocks that SBI drive tested, that are not served by AT&T or Commnet, as demonstrated in the record, and that are both located on Tribal lands and populated.²⁸ A list of those 40 census blocks is attached to this Public Notice.

²¹ See Comments of the Navajo Nation Telecommunications Regulatory Commission in Support of the Petition for Reconsideration Filed by Smith Bagley, Inc., AU Docket No. 13-53, at 4 (Sept. 16, 2013); see also SBI PFR Reply at 3.

²² SBI Comments at Exhibit C, Declaration of Guy B. Turley, Director of Engineering and Technical Operations, Smith Bagley, Inc. ("In areas where the roadways have poor or no service, you can be sure that nearby interior areas with no roads or population centers lack coverage as well."); SBI Letter at 2; SBI PFR at 5.

²³ See SBI Letter at 3; SBI PFR Reply at 3-4; see also SBI PFR at Attachment A (stating that AT&T and Verizon devices were used to conduct the drive tests).

²⁴ See Commnet Reply Comments.

²⁵ Compare SBI Letter at 2 with AT&T Reply Comments; AT&T PFR Comments at Attachment 1, Declaration of Mark Jacobson, Area Manager – Radio Access Network Engineering, AT&T Mobility Services LLC ("It is my belief that, to obtain the testing results it did on the roads that its employee drove, Smith Bagley did not test AT&T Mobility's network using the 850 MHz frequency, or Smith Bagley's testing equipment or its processing of the drive test data was fundamentally defective."); see also SBI PFR Reply (containing no response to AT&T's reiterated assertions that SBI did not drive test AT&T's 850 MHz frequencies).

²⁶ *Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11641-42, paras. 32-36; see also Commnet Reply Comments at 5 n.17 (noting that most of SBI's proposed additional census blocks have a population of zero); Joint Opposition at 7 (same).

²⁷ See *Auction 902 Procedures Public Notice*, 28 FCC Rcd at 11637, para. 21.

²⁸ We also note that some of the census blocks that SBI requested were already included in the list of eligible areas.

Eligible Areas Map and GIS Data

9. The [interactive map of eligible areas](http://www.fcc.gov/maps/tribal-mobility-fund-phase-1-eligible-areas) has been updated to reflect these changes to the eligible areas for Auction 902.²⁹ The Bureaus are also making available geographic information system (GIS) data for the eligible areas. This GIS data, which is simply another format of the eligible census block data, is being provided as a downloadable shapefile that is or will soon be available on the Auction 902 website at <http://wireless.fcc.gov/auctions/902/>.³⁰

Contact Information

10. For further information, contact Patricia Robbins of the Wireless Telecommunications Bureau, Auctions and Spectrum Access Division at (202) 418-0660. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

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²⁹ The link to the interactive map is available on the Auction 902 website at <http://wireless.fcc.gov/auctions/902/>, and the map itself is at <http://www.fcc.gov/maps/tribal-mobility-fund-phase-1-eligible-areas>.

³⁰ The shapefile is a compressed file (.zip) of four individual files (.dbf, .shp, .shx, and .prj) all with the same prefix. The shapefile format is generally recognized as a standard transfer file for GIS data and is accepted in GIS software packages. For more information, see "Esri Shapefile Technical Description," <http://www.esri.com/library/whitepapers/pdfs/shapefile.pdf> (last visited Sept. 27, 2013).