

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Petition of)	
NTUA WIRELESS, LLC)	
For Designation as an)	WC Docket No. 09-197
Eligible Telecommunications Carrier)	
Pursuant to Section 214(e)(6) of the)	
Communications Act of 1934,)	
As Amended)	
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	

ORDER

Adopted: December 4, 2013

Released: December 4, 2013

By the Chief, Wireline Competition Bureau and the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. The Wireless Telecommunications Bureau and the Wireline Competition Bureau (together, the Bureaus) adopt in this Order limited forbearance from requiring that the service area of an eligible telecommunications carrier (ETC) conform to the study area of any rural telephone company serving the same area, pursuant to section 214(e)(5) of the Act and section 54.207(b) of the Commission’s rules.¹ This forbearance applies to applications for conditional ETC designations to participate in Auction 902, the Tribal Mobility Fund Phase I auction—that is, ETC designations that will be conditioned on receipt of Tribal Mobility Fund Phase I support.² Such conditional ETC designations, and thus this forbearance, apply only to the specific areas in which such an ETC becomes authorized to receive Tribal Mobility Fund Phase I support. Forbearance will enable any otherwise eligible telecommunications carrier to be designated as an ETC for any service area, conditioned on winning support throughout that area in Auction 902.

2. On October 17, 2013, NTUA Wireless, LLC (NTUA Wireless), filed a petition requesting that the Commission forbear, pursuant to section 10 of the Communications Act of 1934, as amended, from enforcing section 214(e)(5) of the Act and section 54.207 (b) of the Commission’s rules in connection with applications for conditional designation as ETCs for purposes of participating in Auction

¹ 47 U.S.C. §214(e)(5); 47 C.F.R. § 54.207(b).

² 47 C.F.R. § 54.1003(a); *see also* 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*, 26 FCC Rcd 17663, 17798-99, paras. 389, 392 (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).

902, the Tribal Mobility Fund Phase I auction.³ NTUA Wireless has pending a petition for designation as an ETC.⁴ In part, NTUA Wireless seeks a designation as an ETC in areas for which it may win support in Auction 902.⁵ The Commission previously adopted a limited forbearance nearly identical to that requested by NTUA Wireless with respect to ETC designations conditioned on receipt of support in Auction 901, the Mobility Fund Phase I auction.⁶ We conclude that the same analysis applies here, and that, therefore, the Bureaus may resolve the NTUA Wireless petition by the simple application of existing precedent.⁷

3. As the Commission did with respect to Auction 901, we conclude that forbearance in the limited circumstances of Auction 902 furthers the public interest, advancing the goal of promoting access to mobile service over current and next generation wireless networks in areas currently without such service by reducing barriers to participation in Phase I of the Tribal Mobility Fund. Moreover, we find that application of the service area conformance requirements set forth in section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules in these limited circumstances is not necessary to ensure that rates remain just and reasonable or to protect consumers.⁸ We emphasize that this forbearance is limited to petitioners that seek conditional designation as ETCs in areas eligible for Tribal Mobility Fund Phase I support in order to participate in the Tribal Mobility Fund Phase I auction and that receive such support. Furthermore, parties petitioning for designation as an ETC for this purpose must satisfy all of the other statutory requirements applicable to ETCs under the Act. This forbearance Order does not apply with respect to petitions for designation as an ETC for other purposes. In light of the requirement that, with an exception for Tribal entities, an applicant for the Tribal Mobility Fund Phase I auction, Auction 902, must be designated as an ETC in every geographic area on which it wishes to bid by the time it applies to

³ 47 U.S.C. § 160; Petition for Forbearance of NTUA Wireless, LLC, WT Docket No. 10-208, AU Docket No. 13-53 (filed Oct. 17, 2013). *See also* Wireless Telecommunications and Wireline Competition Bureaus Seek Comment on NTUA Wireless, LLC's Petition for Forbearance from Eligible Telecommunications Carrier Service Area Requirement, WT Docket No. 10-208, WC Docket No. 09-197, *Public Notice*, 28 FCC Rcd 15054 (2013). No comments were filed in response to NTUA Wireless's petition.

⁴ Second Amendment to Petition of NTUA Wireless, LLC for Designation as an Eligible Telecommunications Carrier for Lifeline Service and for Conditional ETC Status to Participate in the Tribal Mobility Fund Phase I (Auction 902) on the Navajo Nation, WC Docket No. 09-197, WT Docket No. 10-208, AU Docket No. 13-53 (filed Sept. 30, 2013); Amendment to Petition of NTUA Wireless, LLC for Designation as an Eligible Telecommunications Carrier for Lifeline Service and to Qualify for the Mobility Fund Phase I (Auction 901) on the Navajo Nation (filed Sept. 5, 2012); ETC Application by NTUA Wireless, LLC for the Navajo Nation Pursuant to 47 U.S.C. § 214(e)(6) of the Communications Act of 1934, As Amended (filed March 3, 2011) (March 2011 Petition).

⁵ *See* March 2011 Petition.

⁶ 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 a 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, *Second Report and Order*, 27 FCC Rcd 7856 (2012)(*Mobility Fund Phase I Forbearance Order*).

⁷ *See, e.g.*, Petition of SBC Communications Inc., for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Nonlocal Directory Assistance Services, WT Docket No. 02-156, *Memorandum Opinion and Order*, 18 FCC Rcd 8134, 8138-39, para. 9 (Wir. Comp. Bur. 2003) (explaining that the Bureau was granting forbearance there based on the same reasoning used by the full Commission in granting a prior request for forbearance, and observing that the Bureau likewise had done so in other instances subsequent to the Commission's forbearance decision). *Cf.* 47 C.F.R. § 1.57 (establishing procedures for circulation for Commission vote of orders addressing petitions for forbearance that present new questions of fact, law and policy that cannot be resolved under existing precedent).

⁸ *See* 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b).

participate in the auction, and in light of the short time remaining before the December 5, 2013, deadline for filing Auction 902 applications, we find that case-by-case forbearance is not feasible and grant this limited forbearance to all relevant applicants. Our conclusions are nearly identical to and completely consistent with the conclusions the Commission reached with respect to Auction 901, the Mobility Fund Phase I auction.⁹

II. BACKGROUND

4. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the universal service system to ensure that robust, affordable voice and broadband services, both fixed and mobile, are available to Americans throughout the nation.¹⁰ As part of this comprehensive reform effort, the Commission adopted the goal of ensuring universal availability of modern networks capable of providing advanced mobile voice and broadband service.¹¹ To further achievement of that goal, the Commission created the Mobility Fund to ensure availability of mobile broadband networks in areas where a private-sector business case for those networks is lacking.¹² In particular, the Commission provided that in Phase I of the Tribal Mobility Fund, it would award by reverse auction up to \$50 million in one-time support to immediately accelerate deployment of current and next generation networks providing mobile voice and broadband services in Tribal lands not presently covered by such networks.¹³

5. Auction 902 is scheduled to take place on February 25, 2014, and parties seeking to participate must file an auction application by December 5, 2013.¹⁴ The Bureaus have identified, pursuant to the Commission's criteria, particular census blocks that are eligible for Tribal Mobility Fund Phase I support in Auction 902.¹⁵ In Auction 902, applicants will bid for the amount of support they need to meet the Tribal Mobility Fund Phase I service and other public interest obligations in the eligible census blocks covered by the geographic areas on which they bid. Applicants, except for Tribally-owned and controlled entities, must be designated as ETCs in the areas on which they wish to bid prior to filing their auction applications.¹⁶ The designation may be conditional subject to the receipt of Tribal Mobility

⁹ See generally *Mobility Fund Phase I Forbearance Order*.

¹⁰ See generally *USF/ICC Transformation Order*, 26 FCC Rcd 17663.

¹¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17682, para. 53.

¹² *Id.* at 17674–75, para. 28.

¹³ *Id.* at 17773, para. 299.

¹⁴ Tribal Mobility Fund Phase I Auction Rescheduled for February 25, 2014; Notice of Changes to Auction 902 Schedule Following Resumption of Normal Commission Operations, AU Docket No. 13-53, *Public Notice*, 28 FCC Rcd 14656, 14656 at paras. 1-2 (2013).

¹⁵ 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, *Public Notice*, 28 FCC Rcd 11628, 11633-41, at paras. 11-31, Attachment A (2013) (*Auction 902 Procedures Public Notice*); see also Tribal Mobility Fund Phase I Auction; Updated List of Eligible Areas; Petition for Reconsideration of Auction 902 Procedures Public Notice Granted in Part, *Public Notice*, AU Docket No. 13-53, 28 FCC Rcd 13881 (2013).

¹⁶ *Auction 902 Procedures Public Notice*, 28 FCC Rcd 11644-45 at para. 43 (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17798–799, paras. 388–92); 47 C.F.R. § 54.1003. A Tribal entity may participate provided it has applied for designation as an ETC for the relevant area and that application is still pending. Any such entity must still receive designation prior to support being awarded. *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 491; 47 C.F.R. § 54.1004(a).

Fund Phase I support.¹⁷ The Commission currently has pending two petitions for conditional designation as an ETC for purposes of participating in Auction 902.¹⁸

6. Congress directed the Commission to establish policies to help ensure that “[q]uality services [are] available at just, reasonable, and affordable rates [and a]ccess to advanced telecommunications and information services [is] provided in all regions of the Nation.”¹⁹ The Commission’s Tribal Mobility Fund Phase I will help achieve this goal by providing support for the expansion of current and next generation wireless networks in Tribal lands currently unserved by such networks. Section 254(e) of the Act provides that only an entity designated as an eligible telecommunications carrier shall be eligible for universal service high-cost and low-income support.²⁰ To become an ETC, a carrier must offer and advertise the services supported by the federal universal service support mechanisms throughout its designated service area.²¹

7. The Act and the Commission’s rules define the term “service area” and how it is established for each ETC. An ETC’s “service area” is a geographic area within which an ETC has universal service obligations and may receive universal service support.²² A carrier seeking to become an ETC typically requests designation in a specific service area, but it is the commission designating that carrier that establishes the ETC’s service area.²³ When a competitive carrier seeks to serve an area already served by a rural telephone company,²⁴ section 214(e)(5) of the Act requires that the competitive ETC’s service area must conform to the rural telephone company’s service area.²⁵ Accordingly, if a commission wishes to designate a competitive ETC for an area that differs from a rural telephone company’s existing service area, that rural service area must first be redefined under the process set forth under the Act.²⁶

8. In particular, the Act defines the service area of each rural telephone company to be that “company’s ‘study area’ unless and until the Commission and the States, after taking into account

¹⁷ 47 C.F.R. § 54.1003(a); *see also* *USF/ICC Transformation Order*, 26 FCC Rcd at 17798–99, paras. 389, 392.

¹⁸ *See generally* March 2011 Petition and Petition to Designate CSE Wireless, Inc. an Eligible Telecommunications Carrier for Participation in Auction 902, WC Docket No. 09-197, WT Docket No. 10-208 (filed Sept. 17, 2013).

¹⁹ 47 U.S.C. § 254(b)(1), (2).

²⁰ 47 U.S.C. § 254(e). An entity need not be an ETC to participate in the schools and libraries or rural health care universal service programs. 47 U.S.C. § 254(h)(1)(A), (B)(ii); *see* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 9015 para. 449 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Fourteenth Order on Reconsideration*, 14 FCC Rcd 20106, 20114–15, para. 19 (1999) (*Fourteenth Order on Reconsideration*).

²¹ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

²² *See* 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

²³ *See* 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a). Generally, the states have primary jurisdiction to designate ETCs; the Commission designates ETCs where states lack jurisdiction. *See* 47 U.S.C. § 214(e)(6).

²⁴ *See* 47 U.S.C. § 153(44) (defining “rural telephone company”).

²⁵ 47 U.S.C. § 214(e)(5); *see also* 47 C.F.R. § 54.207(b).

²⁶ 47 U.S.C. § 214(e)(5); Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia, CC Docket No. 96-45, *Memorandum Opinion and Order*, 19 FCC Rcd 1563, 1582, para. 41 (2004) (*Virginia Cellular Order*) (“In order to designate [a competitive carrier] as an ETC in a service area that is smaller than the affected rural telephone company [service] areas, we must redefine the service areas of the rural telephone companies in accordance with section 214(e)(5) of the Act.”); Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia, CC Docket No. 96-45, *Memorandum Opinion and Order*, 19 FCC Rcd 6422, 6439, paras. 37–38 (2004) (*Highland Cellular Order*) (same).

recommendations of a Federal-State Joint Board . . . establish a different definition of service area for such company.”²⁷ The Commission has interpreted this language to mean that “neither the Commission nor the states may act alone to alter the definition of service areas served by rural carriers.”²⁸ In reviewing a potential redefinition of a rural service area in evaluating a request for ETC designation, the Commission and the states have traditionally taken into account the three factors recommended by the Federal-State Joint Board on Universal Service: cream skimming, the Act’s special treatment of rural telephone companies, and the administrative burdens of redefinition.²⁹ The Commission’s rules set forth the procedures for considering redefinition petitions and allow either the state commission or the Commission to propose to redefine a rural telephone company’s service area.³⁰ A proposed redefinition, however, does not take effect until the Commission and the appropriate state commission agree upon a new definition.³¹

III. DISCUSSION

9. The Act allows the Commission to forbear from applying any requirement of the Act or of its regulations to a telecommunications carrier if the Commission determines that: (1) enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest.³²

10. We consider here whether we should forbear from applying the section 214(e)(5) service area conformance requirement to parties petitioning for ETC conditional designation in areas eligible for Tribal Mobility Fund Phase I support in order to participate in the Tribal Mobility Fund Phase I auction and receive such support. As the Commission did with respect to Auction 901, we conclude that forbearance is appropriate and in the public interest under these limited circumstances.³³ Accordingly, for the limited purpose of conditional designation as an ETC in areas eligible for Tribal Mobility Fund Phase I support in order to participate in the Tribal Mobility Fund Phase I auction, we forbear from applying section 214(e)(5) of the Act and section 54.207(b) of the Commission’s rules, insofar as those sections require that the service area of such an ETC conform to the service area of any rural telephone company.³⁴ We note that forbearing from the conformance requirements eliminates the need for redefinition of any

²⁷ 47 U.S.C. § 214(e)(5); *see also* 47 C.F.R. § 54.207(b).

²⁸ *Universal Service First Report and Order*, 12 FCC Rcd at 8880, para. 187.

²⁹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, 12 FCC Rcd 87, 179-80, paras. 172-74 (1996) (*1996 Recommended Decision*); *see also Highland Cellular Order*, 19 FCC Rcd at 6426, para. 9. A carrier “cream-skims” when it serves only those consumers that are least expensive to serve. *See Universal Service First Report and Order*, 12 FCC Rcd at 8881-82, para. 189.

³⁰ 47 C.F.R. § 54.207(c), (d).

³¹ 47 C.F.R. § 54.207(c)(3), (d)(2).

³² 47 U.S.C. § 160(a). In making a public interest determination, section 10(b) requires the Commission to consider whether forbearance will promote competitive market conditions. 47 U.S.C. § 160(b).

³³ *See* 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207.

³⁴ The Commission has forbore from applying these requirements before, where circumstances met the applicable criteria. *See Mobility Fund Phase I Forbearance Order*, 27 FCC Rcd at 7860, para. 10; Telecommunications Carriers Eligible to Receive Universal Service Support; NTCH, Inc. Petition for Forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b); Cricket Communications, Inc. Petition for Forbearance, *Order*, 26 FCC Rcd 13723 (2011) (granting forbearance from service area conformance requirement to petitioners for Lifeline-only ETC designations).

rural telephone company service areas in the context of Tribal Mobility Fund Phase I.³⁵ We emphasize, however, that this decision does not change the requirements that apply if a party petitions to be an ETC for other purposes in part of a service area served by a rural telephone company.

11. We conclude that blanket forbearance from the service area conformance requirement is warranted in these limited circumstances. As noted above, the Tribal Mobility Fund Phase I rules require that most applicants must be designated as ETCs in every geographic area on which they wish to bid for support, prior to filing an Auction 902 application. Those rules also provide that a conditional designation is sufficient to meet the requirement, *i.e.*, a designation effective only for the areas, if any, in which the ETC becomes authorized to receive Tribal Mobility Fund Phase I support.³⁶ We find that case-by-case forbearance is not feasible in the short time available before the filing deadline.

12. *Just and Reasonable.* Section 10(a)(1) of the Act requires that we consider whether enforcement of the provisions from which forbearance is sought is necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory.³⁷ We conclude that compliance with the service area conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is not necessary to ensure that the charges, practices, and classifications of carriers conditionally designated as ETCs in areas eligible for Tribal Mobility Fund Phase I support for purposes of participation in Tribal Mobility Fund Phase I auction and receiving such support are just and reasonable and not unjustly or unreasonably discriminatory.³⁸ Consistent with the Commission's decision with respect to Auction 901,³⁹ and as discussed below, we find that the three factors traditionally taken into account by the Commission and the states when reviewing a potential redefinition of a rural service area pursuant to section 214(e)(5) of the Act no longer apply in the context of conditionally designating ETCs in areas eligible for Tribal Mobility Fund Phase I support for purposes of participation in the Tribal Mobility Fund Phase I auction.⁴⁰ Forbearance from the service area conformance requirement would not prevent the Commission from enforcing sections 201 or 202 of the Act, which require all carriers to charge just, reasonable, and non-discriminatory rates.⁴¹ Moreover, all ETCs—whether rural ETCs or carriers designated as ETCs in areas eligible for Tribal Mobility Fund Phase I support for purposes of participation in the Tribal Mobility Fund Phase I auction and receiving such support—will continue to be subject to the requirements of the Act and of the Commission's rules that consumers have access to reasonably comparable services at reasonably comparable rates.⁴² In fact, the expansion of current and next generation wireless networks supported by Tribal Mobility Fund Phase I will expand the choice of telecommunications services for consumers in the relevant area. The resulting competition is likely to help ensure just, reasonable, and nondiscriminatory offerings of services. For these reasons, we find that the first prong of section 10(a) is met.

³⁵ Accordingly, Commission rules regarding the redefinition process are inapplicable to petitions that are subject to this Order. *See* 47 C.F.R. § 54.207(c), (d).

³⁶ 54 C.F.R. § 54.1003(a).

³⁷ 47 U.S.C. § 160(a)(1).

³⁸ A provision or regulation is “necessary” if there is a strong connection between the requirement and regulatory goal. *See CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

³⁹ *See Mobility Fund Phase I Forbearance Order*, 27 FCC Rcd at 7861, para. 13.

⁴⁰ *See id.* at 7863, paras. 18–20 (finding that service area conformance in these limited circumstances is not essential to protect the ability of rural telephone companies to continue to provide service nor will forbearance harm competitive market conditions).

⁴¹ *See* 47 U.S.C. §§ 201, 202.

⁴² 47 U.S.C. § 254(b)(3); *see also, e.g.*, 47 C.F.R. §§ 54.313(a)(10), 54.314.

13. *Consumer Protection.* Section 10(a)(2) requires that we consider whether applying the service area conformance requirement to a mobile wireless voice service provider that seeks a conditional ETC designation in areas eligible for Tribal Mobility Fund Phase I support is necessary for the protection of consumers. Forbearance from the conformance requirement in these limited circumstances will not harm consumers currently served by the rural telephone companies in the relevant service areas.⁴³ To the contrary, these consumers will benefit from the use of Tribal Mobility Fund Phase I support to expand current and next generation mobile services. Indeed, as the Commission has noted, the national goal of ubiquitous mobile broadband depends in part on offering targeted and efficient support for mobile services through the Mobility Fund.⁴⁴ Finally, every ETC, including any party receiving Tribal Mobility Fund Phase I support, must certify that it will satisfy applicable consumer protection and service quality standards in its service area.⁴⁵ As the Commission concluded for Auction 901, for these reasons, we find that the second prong of section 10(a) is met.⁴⁶

14. *Public Interest.* Section 10(a)(3) requires that we consider whether applying the service area conformance requirement to a facilities-based mobile wireless carrier that seeks conditional ETC designation in areas eligible for Tribal Mobility Fund Phase I support in order to participate in Tribal Mobility Fund Phase I and receive such support is in the public interest. Absent forbearance, we find that parties seeking support may be required to take on unsupported ETC obligations in portions of rural carriers' study areas—areas that may not be eligible for support or for which they may not win support—and that this is likely to discourage participation in Tribal Mobility Fund Phase I. Geographic eligibility for Tribal Mobility Fund Phase I support is based on whether specific census blocks are presently served by current or next generation wireless networks, a definition that is unrelated to the boundaries of rural carrier service areas. Moreover, the current rules for redefining service areas require concurring decisions by both the Commission and the related state commission, a process not likely to be completed before parties seeking Tribal Mobility Fund Phase I support will have to apply to participate in Auction 902. Hence, consistent with the Commission's conclusions in the context of Auction 901, we find that forbearing from the conformance requirement will encourage participation by assuring that obligations of new ETCs will not extend to portions of rural service areas for which a new ETC may not receive support.⁴⁷ By providing this assurance, we reduce the cost of auction participation, encourage lower bids, and improve auction outcomes.

15. Enabling new ETC service areas to be defined in a more targeted manner for Tribal Mobility Fund Phase I is consistent with the Commission's approach of targeting support to areas with a specific need for the support, helps preserve those efficiencies, and thus serves the public interest. As set out in the *USF/ICC Transformation Order*, Tribal Mobility Fund Phase I support will be determined by a competitive bidding process in which ETCs will bid for the support they need to serve a specific area, rather than any larger area such as an underlying rural telephone company study area. This targeted and efficient provision of support is critical to furthering the public interest goal of ubiquitous mobile service in a fiscally responsible manner.⁴⁸ To require Tribal Mobility Fund Phase I support recipients to serve a wider area runs counter to the Commission's recent and ongoing efforts to serve the public interest by focusing USF resources on defined areas of need.⁴⁹

⁴³ See *Mobility Fund Phase I Forbearance Order*, 27 FCC Rcd at 7861, para. 13.

⁴⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17771–72, para. 295.

⁴⁵ 47 C.F.R. § 54.202(a)(3).

⁴⁶ See *Mobility Fund Phase I Forbearance Order*, 27 FCC Rcd at 7862, para. 14.

⁴⁷ See *id.* at 7862, para. 15.

⁴⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17771–73, paras. 295–99.

⁴⁹ See *Mobility Fund Phase I Forbearance Order*, 27 FCC Rcd at 7862, para. 16.

16. By granting forbearance in these limited circumstances, we are allowing new ETCs, and any existing ETCs that wish to conditionally expand their service areas for Auction 902, to match their specific new and additional service areas to the geographic area for which they incur obligations under Tribal Mobility Fund Phase I.⁵⁰ Thus, by granting blanket forbearance from the conformance requirement, we prevent that requirement from creating an obstacle to participation by any carrier considering it. Removing such disincentives to participation may increase competition in the auction resulting in lower bids for support and enabling greater coverage within the Tribal Mobility Fund Phase I budget.⁵¹

17. The public interest benefits go beyond efficiently expanding current and next generation wireless networks to expanding access to such services by consumers. An ETC with a conditional designation will have the obligations of any other ETC receiving Tribal Mobility Fund Phase I support for the areas in which the condition is satisfied, including an obligation to make available Lifeline service to eligible for low income consumers.⁵² Thus, an ETC expanding advanced wireless networks to new areas as part of the Tribal Mobility Fund Phase I also will be making its network available to low-income consumers who may qualify to receive reduced charges for these next generation services.⁵³

18. In addition, we find, consistent with the Commission's conclusions in the context of Auction 901,⁵⁴ that in these limited circumstances requiring conformance is not essential to protect the ability of rural telephone companies to continue to provide service. Past concerns that an ETC serving only a relatively low cost portion of a rural carrier's service area might cream skim by receiving per line support based on the rural carrier's costs of serving the entire area do not apply to Tribal Mobility Fund Phase I support. Unlike the legacy identical support rule, under which a competitive ETC received the same per-line support as an incumbent calculated based on the incumbent's cost of serving its entire service area, the amount of Tribal Mobility Fund Phase I support is not linked to the support received by an overlapping rural carrier but is determined by the results of competitive bidding for support. Consequently, cream skimming concerns that arose under the identical support rule are not relevant in considering the conditional designation of an ETC for purposes of seeking Tribal Mobility Fund Phase I support. Moreover, we note that the Commission decided in the *USF/ICC Transformation Order* that universal service would support both mobile and fixed services in a given area. Consequently, we see no inherent conflict between a mobile provider receiving support to offer previously unavailable service in a portion of a rural telephone company's study area and the rural telephone company continuing to provide its pre-existing service.

19. For similar reasons, we conclude that forbearance in these circumstances will not harm competitive market conditions.⁵⁵ We expect forbearance to remove disincentives to participation in the

⁵⁰ We note that we do not address relinquishment or redefinition with respect to the service areas of existing ETCs with respect to new targeted support mechanisms other than Tribal Mobility Fund Phase I. Furthermore, to the extent that an existing ETC seeks Tribal Mobility Fund Phase I support for areas within its existing service area, the new obligations will apply only to the portion of its existing service area for which it wins such support and will not have any impact on pre-existing obligations and support mechanisms with respect to the existing service area.

⁵¹ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17797-98, para. 387 ("ensure serious participation without being unduly burdensome").

⁵² See 47 C.F.R. § 54.405 (ETC obligation to offer Lifeline).

⁵³ See *Mobility Fund Phase I Forbearance Order*, 27 FCC Rcd at 7862, para. 17.

⁵⁴ See *id.* at 7863, para. 18.

⁵⁵ See 47 U.S.C. § 160(b) (requiring the public-interest determination to consider whether forbearance would promote competitive market conditions). See also *Mobility Fund Phase I Forbearance Order*, 27 FCC Rcd at 7863, para. 19 (making the equivalent finding under section 10(a)(3) with respect to Auction 901).

auction process, to enhance competition further by introducing new service providers and, as discussed above, not to eliminate any existing market participants or to introduce concerns about cream skimming.⁵⁶

20. We further note that forbearance from the conformance requirement for these limited purposes should not affect rural carriers' abilities to serve their entire rural service territories. Moreover, the Act contains safeguards to address any such potential concerns. The Act already requires designating commissions to affirmatively determine that designating a carrier as an ETC within a rural service area is in the public interest, and this is not affected by this grant of forbearance.

21. Finally, forbearance in these limited circumstances preserves the role of states in ETC designation. State commissions are still required to consider the public interest, convenience and necessity of designating an ETC in a rural area already served by a rural telephone company.⁵⁷ Our action does not disturb the roles of state commissions and this Commission in the ETC designation process or in the redefinition process in other circumstances when redefinition is required.⁵⁸

IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, 214, 254, and delegated pursuant to sections 0.91, 0.131, 0.291, and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.131, 0.291, and 0.331, the Commission will FORBEAR from applying the conformance requirement of section 214(e)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(5), and section 54.207(b) of the Commission's rules, 47 C.F.R. § 54.207(b), to petitions for conditional designation as an eligible telecommunications carrier in areas eligible for Tribal Mobility Fund Phase I support in order to participate in the Tribal Mobility Fund Phase I auction and receive such support to the extent discussed herein.

23. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau

Roger C. Sherman
Acting Chief
Wireless Telecommunications Bureau

⁵⁶ See *supra* para. 16.

⁵⁷ 47 U.S.C. § 214(e)(3); 47 C.F.R. § 54.201(c).

⁵⁸ The redefinition process is still required for ETCs seeking other kinds of support and nothing in this order alters the redefinition process for such ETCs. *Mobility Fund Phase I Forbearance Order*, 27 FCC Rcd at 7863, para. 21 n.49.