

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

In the Matter of
PTI Pacifica, Inc.
Request for Waiver and Extension of Time of
Mobility Fund Phase I Construction Deadline
GN Docket No. 20-104

ORDER

Adopted: March 31, 2023

Released: March 31, 2023

By the Chief, Office of Economics and Analytics; Chief, Wireline Competition Bureau; and the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, the Office of Economics and Analytics (OEA), the Wireline Competition Bureau, and the Wireless Telecommunications Bureau (the Bureaus), deny in part a request filed by PTI Pacifica, Inc. (PTI Pacifica), and amended several times, seeking waiver of the deadlines for the construction, drive testing, and reporting requirements associated with the receipt of final disbursements of Mobility Fund Phase I (MF-I) support. PTI Pacifica seeks waiver of those deadlines with respect to three census tracts (Rota, Marpi, and Tinian), all of which are located in the Commonwealth of the Northern Mariana Islands (CNMI). We do not address here PTI Pacifica's requests regarding the Rota and Marpi census tracts. For the Tinian census tract, we find that the request does not present special circumstances warranting extension of the applicable MF-I performance deadlines, and that granting it would not serve the public interest. Accordingly, we deny the request, assess a performance default payment, and order repayment of the MF-I support that PTI Pacifica has already received for the Tinian tract.

1 See PTI Pacifica, Inc. Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline for Three Census Tracts, WT Docket No. 10-208 (filed May 16, 2016) (Request); PTI Pacifica, Inc. Supplement To Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline For Three Census Tracts, WT Docket No. 10-208 (filed Aug. 15, 2017) (First Supplement); PTI Pacifica, Inc. Second Supplement to Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline For Three Census Tracts, WT Docket No. 10-208 (filed Aug. 7, 2018) (Second Supplement); PTI Pacifica, Inc. Third Supplement to Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline For Three Census Tracts, WT Docket No. 10-208 (filed Aug. 9, 2019); PTI Pacifica, Inc. Fourth Supplement to Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline For Three Census Tracts, WT Docket No. 10-208 (filed July 30, 2020) (Fourth Supplement); PTI Pacifica, Inc. Fifth Supplement to Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline For Three Census Tracts, WT Docket No. 10-208 (filed July 27, 2021) (Fifth Supplement); PTI Pacifica, Inc. Sixth Supplement to Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline For Three Census Tracts, WT Docket No. 10-208 (filed Aug. 1, 2022) (Sixth Supplement).

2 The three subject census tracts are T69100950100 (SAC 658001) (Rota), T69110000100 (SAC 658002) (Marpi), and T69120950200 (SAC 658007) (Tinian).

3 47 CFR § 54.1006(f). We note that PTI Pacifica's Request and its Supplements seek waiver and extension of the deadlines contained in 47 CFR § 54.1006(a). The deadlines in 47 CFR § 54.1006(a) apply to Auction 901 winning (continued....)

## II. BACKGROUND

### A. Mobility Fund Phase I

2. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost component of the Universal Service Fund by, among other things, establishing the Mobility Fund, a universal service support mechanism dedicated expressly to mobile services.<sup>4</sup> For MF-I, the Commission designated a fund of up to \$300 million in one-time universal service support, to be allocated through a reverse auction (Auction 901), for the deployment of mobile voice and broadband services.<sup>5</sup> Under these rules, winning bidders in Auction 901 committed to extend the availability of mobile voice and broadband services on networks that provide third-generation (3G) or better performance or to accelerate the deployment of fourth-generation (4G) wireless networks in areas that lacked such services.<sup>6</sup>

3. Before the start of Auction 901, each potential bidder was reminded that it was responsible “for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of Mobility Fund Phase I support it submits as a bid in Auction 901.”<sup>7</sup> Bidders were further advised that “[e]ach 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.”<sup>8</sup> The MF-I rules require winning bidders to provide service to at least 75% of the designated eligible road miles within the relevant area covered by their winning bids.<sup>9</sup> Winning bidders committing to provide service over a 3G network were required to meet their performance requirements within two years of being authorized to receive support,<sup>10</sup> while winning bidders committing to provide service over

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bidders who committed to construct 3G networks; winning bidders who committed to construct 4G networks are bound by the deadlines in 47 CFR § 54.1006(b). Because PTI Pacifica committed to construct 4G networks, the deadlines for which it seeks waiver lie within 47 CFR § 54.1006(b).

<sup>4</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17773, para. 299 (2011), *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (*USF/ICC Transformation Order*).

<sup>5</sup> *See id.*

<sup>6</sup> *See id.*, 26 FCC Rcd at 17674-75, para. 28.

<sup>7</sup> *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 4725, 4748, para. 71 (WTB/WCB 2012) (*Auction 901 Procedures Public Notice*).

<sup>8</sup> *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4748, para. 71.

<sup>9</sup> An Auction 901 winning bidder is required to provide service covering at least 75% of the eligible road miles within the area covered by its winning bid, and it will receive Mobility Fund support only for the actual road miles covered, up to 100%, within that area. Absent a waiver, a winning bidder that has been authorized to receive MF-I support will be required to repay any support it has received together with an additional performance default payment if it fails to meet its minimum coverage requirement by the specified deadline, fails to meet other service requirements, or fails to fulfill any other term or condition of support. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17814, para. 461; *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4777, para. 189; 47 CFR § 54.1006(f). For Auction 901, the additional performance default payment was set at 10% of the total level of support for which the winning bidder is eligible. *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4777-78, paras. 189-92. A winning bidder also could be disqualified from receiving MF-I support or other USF support. 47 CFR § 54.1006(f); *see also Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4777, para. 190.

<sup>10</sup> 47 CFR § 54.1006(a).

a 4G network were required to meet their performance requirements within three years of authorization.<sup>11</sup>

4. The rules further provide that MF-I support be disbursed to authorized winning bidders in up to three stages: the first disbursement of one-third of the total winning bid amount is made when the winning bidder is authorized to receive support;<sup>12</sup> a recipient becomes eligible to receive a second disbursement when it submits a report demonstrating coverage of 50% of the applicable coverage requirements;<sup>13</sup> and it becomes eligible to receive the final disbursement when it meets the final construction, testing, and reporting requirements by the applicable deadline.<sup>14</sup>

#### **B. PTI Pacifica's Winning Bids and Post-Auction Performance Efforts**

5. On August 16, 2013, the Bureaus authorized PTI Pacifica to receive up to approximately \$1.26 million in MF-I support for its Auction 901 winning bids for seven census tracts in the CNMI.<sup>15</sup> The deadline for PTI Pacifica to complete construction of 4G networks, drive testing, and submission of reports demonstrating coverage was August 16, 2016.<sup>16</sup> PTI Pacifica timely completed the performance requirements for four of the seven census tracts covered by its winning bids.<sup>17</sup> For the other three census tracts—Tinian, Rota, and Marpi—PTI Pacifica states that it encountered unforeseen and unexpected delays; this order addresses only the Tinian census tract.<sup>18</sup>

6. PTI Pacifica at first requested a one-year extension of the deadline to complete its wireless network, drive testing and data submission for the Tinian census tract.<sup>19</sup> Due to various delays that are described in detail below, PTI Pacifica has made six subsequent requests for further one-year extensions; its most recent submission seeks an extension to August 16, 2023, seven years after the original deadline.<sup>20</sup>

7. Initially, PTI Pacifica determined that it needed to provide additional network coverage to the northern and southern portions of the Tinian tract in order to meet its 75% coverage obligation. PTI Pacifica was constructing pole-mounted repeaters to cover the southern portion of the tract.<sup>21</sup> To cover the northern portion, PTI Pacifica negotiated with the United States Department of Defense (DoD) over a potential cell site in the North Field, a DoD-administered area.<sup>22</sup> Because DoD had not yet acted, PTI

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<sup>11</sup> 47 CFR § 54.1006(b).

<sup>12</sup> 47 CFR § 54.1008(b)(1).

<sup>13</sup> 47 CFR § 54.1008(b)(2). Recipients may request “the remainder of their total support” as a final disbursement upon completion of construction, after demonstrating coverage that meets the applicable requirements of section 54.1006 (a) or (b), as applicable. 47 CFR § 54.1008(b)(3).

<sup>14</sup> 47 CFR § 54.1008(b)(3).

<sup>15</sup> For the Tinian tract, PTI Pacifica's winning bid amount was \$399,970.34. Following staff review of its long-form application, it was authorized to receive an initial disbursement of \$133,323.45. *Mobility Fund Phase I Support Authorized for 50 Winning Bids; Default on Six Auction 901 Winning Bids Determined*, AU Docket No. 12-25, Public Notice, 28 FCC Rcd 12284, 12286 (WTB/WCB 2013) (*MF-I Support Authorization*).

<sup>16</sup> 47 CFR § 54.1006(b).

<sup>17</sup> Request at 2.

<sup>18</sup> See generally Request (initially seeking a one-year extension of the MF-I performance deadlines for the Rota, Marpi, and Tinian census tracts).

<sup>19</sup> Request at 1, 7.

<sup>20</sup> See generally First Supplement; Second Supplement; Third Supplement; Fourth Supplement; Fifth Supplement; Sixth Supplement.

<sup>21</sup> Request at 7.

Pacifica also sought alternative solutions at other sites.<sup>23</sup> Negotiations were still ongoing as of May 2016, when PTI Pacifica requested a one-year extension of its performance deadline, to August 16, 2017.<sup>24</sup> In that initial request, PTI Pacifica further stated that additional circumstances beyond its control caused unforeseen delays to its construction of the networks. A typhoon severed the lone undersea fiber optic cable connecting CNMI to Guam in July 2015.<sup>25</sup> PTI Pacifica owns the cable and submitted that it had to devote “all of its available resources” to repair it.<sup>26</sup> Another typhoon soon followed, and that storm knocked out power on the island of Saipan, which is home to the Marpi census tract.<sup>27</sup> Power was not completely restored for four months, and PTI Pacifica stated that during this period it had to focus its resources on preserving communications without interruption.<sup>28</sup>

8. PTI Pacifica found an alternative potential northern site on Mount Lasso while it awaited DoD’s approval of the North Field location. The Mount Lasso area is also subject to DoD administration, and the CNMI Historic Preservation Office there further required site assessment surveys before it would issue any construction approvals. Accordingly, PTI Pacifica asked for an extension to August 16, 2018.<sup>29</sup>

9. DoD ultimately did not approve the North Field site, and two prospective sites on Mount Lasso were found to be unsuitable because of their historical significance.<sup>30</sup> PTI Pacifica then asked for an additional year—until August 16, 2019—to complete historic surveys of a third potential Mount Lasso location, citing the unpredictability of the approval process timeline.<sup>31</sup>

10. A year later, surveys of the third location were complete, but DoD had yet to issue the long-term lease that PTI Pacifica needed to construct its cell site, so it asked for another extension to August 16, 2020.<sup>32</sup> However, by July 2020, PTI Pacifica still had not received final DoD approval. In seeking a further extension of the deadline to August 16, 2021, PTI Pacifica explained that the “process has been mired by additional requests for information, multi-step reviews by various divisions and offices within DoD, and other unexpected delays.”<sup>33</sup>

11. Although a necessary electromagnetic radiation study of the location was completed by mid-February 2021, DoD later informed PTI Pacifica that the Naval Facilities Engineering Systems Command would need to inspect the site and issue an Environmental Condition of Property (ECP) report before DoD would issue a long-term lease and construction could begin.<sup>34</sup> The ECP process requires an inspector to walk the site.<sup>35</sup> PTI Pacifica stated that the COVID-19 pandemic delayed that step, and that it

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 1, 7.

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 7-8.

<sup>29</sup> First Supplement at 1, 4.

<sup>30</sup> Second Supplement at 4.

<sup>31</sup> *Id.* at 2, 4.

<sup>32</sup> Third Supplement at 2, 4.

<sup>33</sup> Fourth Supplement at 2-4.

<sup>34</sup> Fifth Supplement at 5.

<sup>35</sup> *Id.*

had not received an estimate of when the inspection would be scheduled. DoD represented that PTI Pacifica could sign the lease after the ECP report was complete.<sup>36</sup> Because it could not be certain of the government's timeline to complete these final steps, PTI Pacifica requested a sixth extension of the deadline to August 16, 2022.<sup>37</sup>

12. The ECP report was completed in April 2022. But DoD later identified a road that was absent from a local land authority map, so a revised map was required to finalize the lease, and according to PTI Pacifica, that map was not submitted until July 28, 2022.<sup>38</sup> PTI Pacifica now "hopes to finalize the lease expeditiously" but requests a further extension of the deadline to do so.<sup>39</sup> PTI Pacifica states that it expects construction of the final site to be complete "within months of receiving the necessary Government approvals."<sup>40</sup> Because it remains uncertain as to the timeline of the lease's finalization, PTI Pacifica requests a seventh extension, to August 16, 2023.<sup>41</sup>

### III. DISCUSSION

13. We do not here address PTI Pacifica's requests with respect to the Rota and Marpi census tracts. Despite the typhoons that struck the area in the summer of 2015, the network on the Rota census tract has been operational since October 2016, roughly two months after the initial deadline.<sup>42</sup> The temporary network on Marpi was operational before the deadline passed, and PTI Pacifica states that it will eventually transition to a permanent network with no interruption to service on the tract.<sup>43</sup> PTI Pacifica has submitted its drive test data and awaits the Universal Service Administrative Company's (USAC) verification of PTI Pacifica's coverage in these two tracts. We will withhold our decisions regarding the Rota and Marpi tracts until after USAC has verified that PTI Pacifica's coverage in those tracts meets the coverage requirements associated with its MF-I support.

14. Generally, the Commission's rules may be waived for good cause shown.<sup>44</sup> Good cause is shown, and thus a waiver is appropriate, only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>45</sup>

15. The MF-I rules, including the performance deadlines applicable here, were designed to make 3G or better wireless networks available in areas where additional investment could make as substantial a

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 2, 6.

<sup>38</sup> Sixth Supplement at 6.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 7.

<sup>41</sup> *Id.* at 2, 7.

<sup>42</sup> *See, e.g.*, First Supplement at 1-2.

<sup>43</sup> *See, e.g.*, Second Supplement at 3.

<sup>44</sup> 47 CFR § 1.3.

<sup>45</sup> *See East Kentucky Network, LLC d/b/a Appalachian Wireless, United States Cellular Corporation, GCI Communication Corp., Union Telephone Company, Requests for Waiver of the Performance rules for Mobility Fund Phase I and Tribal Mobility Fund Phase I*, WT Docket No. 10-208, Order, 36 FCC Rcd 178, 188, para. 24 (WCB/WTB/OEA 2021) (*Appalachian Wireless Order*); *Standing Rock Telecommunications, Inc., Amended Request for Limited Waiver and Extension of Mobility Fund Phase I Public Interest Obligations*, WT Docket No. 10-208, Order, 34 FCC Rcd 9598, 9602, para. 11 (WCB/WTB/OEA 2019) (*Standing Rock Order*); *Leaco Rural Telephone Cooperative, Inc. and Pine Belt Cellular, Inc.*, WT Docket No. 10-208, Order, 31 FCC Rcd 9001, 9006, para. 15 (WTB 2016) (*Leaco/Pine Belt Order*); *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)); *see also NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008).

difference as possible in a transparent, simple, speedy, and effective way.<sup>46</sup> Prospective bidders were advised before Auction 901 to perform due diligence and confirm the availability of prospective transmitter sites and assure themselves that, if they became winning bidders, they would be able to build and operate facilities that comply with all applicable technical and legal requirements and Mobility Fund obligations, which include performance deadlines.<sup>47</sup> Furthermore, we have consistently warned that requests to waive or extend construction obligations will not be routinely granted.<sup>48</sup> When considering waiver requests involving MF-I construction, drive testing, and reporting deadlines, we therefore have made clear that justifications based on impediments that could reasonably have been foreseen, such as employee issues, vendor problems, inclement weather, and last-minute delays, would not in themselves warrant waiver of a performance deadline.<sup>49</sup>

16. PTI Pacifica argues that it faced multiple obstacles as it sought a suitable location for a cell site to fulfill its coverage obligation on the Tinian tract, and encountered further delays in obtaining necessary government approvals to construct its final tower.<sup>50</sup> Although some previous petitioners who faced delays in permitting, regulatory processes, lease negotiations, or other governmental approvals were granted waivers of the MF-I performance deadlines,<sup>51</sup> each was granted a waiver in part because it sought a reasonable extension in light of the delays it encountered, and no such request was for more than 18 months past the initial deadline.<sup>52</sup> Moreover, all those petitioners completed their construction, drive testing, and reporting requirements within the additional time requested.<sup>53</sup> Accordingly, in those cases, we determined that the requests demonstrated special circumstances that warranted deviation from the general rule, and thereby satisfied the first prong of the waiver standard.

17. However, we find that there are no such special circumstances in PTI Pacifica's case. The circumstances here make this case distinguishable from others in which we granted a waiver to allow a brief delay in meeting the performance deadlines. PTI Pacifica's delay in meeting its MF-I performance

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<sup>46</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17781, para. 322; see also *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4729, para. 8.

<sup>47</sup> *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4748-49, paras. 71-77.

<sup>48</sup> See *Skybridge Spectrum Foundation*, Order, 33 FCC Rcd 8138, 8145, para. 17 (WTB-MD 2018); *Wireless Telecommunications Bureau Reminds Wireless Licensees of Construction Obligations*, Public Notice, 32 FCC Rcd 4802, 4802-05 (WTB 2017).

<sup>49</sup> See, e.g., *Appalachian Wireless Order*, 36 FCC Rcd at 189-90, para. 26 & n.101; *Standing Rock Order*, 34 FCC Rcd at 9603-04, para. 13 & n.51; *Leaco/Pine Belt Order*, 31 FCC Rcd at 9006-07, para. 17 & n.47.

<sup>50</sup> See, e.g., Second Supplement at 4; Third Supplement at 3-4; Fourth Supplement at 3-4; Fifth Supplement at 4-6; Sixth Supplement at 4-7.

<sup>51</sup> We have explained that those grants should not be construed to diminish the important role of federal, state, and local regulatory processes. Such regulatory processes play a critical function in ensuring the lawfulness of tower construction, and Mobility Fund support recipients have an obligation to factor sufficient time into their construction schedules to allow for completion of regulatory reviews. Rather, our previous grants of such waiver requests recognized that even with proper planning, unforeseeable delays that can neither be avoided nor controlled, particularly in some of the hardest to serve areas, may sometimes occur. See *Appalachian Wireless Order*, 36 FCC Rcd at 190-91, para. 28.

<sup>52</sup> See *Appalachian Wireless Order*, 36 FCC Rcd at 180-88, 190-91, paras. 5-23, 27-31 (granting requests for extensions ranging from three to eighteen months after the initial deadline); *Standing Rock Order*, 34 FCC Rcd at 9600, 9604-05, paras. 6, 14-16 (granting a six-month request for waiver and extension); *Leaco/Pine Belt Order*, 31 FCC Rcd at 9003-04, 9006-07, paras. 7, 11, 16-18 (granting two-month and six-month requests for waiver and extension).

<sup>53</sup> See *Appalachian Wireless Order*, 36 FCC Rcd at 191, para. 29; *Standing Rock Order*, 34 FCC Rcd at 9604, para. 15; *Leaco/Pine Belt Order*, 31 FCC Rcd at 9003-04, 9005, paras. 9, 14.

requirements in the Tinian tract far exceeds any for which we have previously granted an MF-I recipient a waiver. As such, the totality of the circumstances here are not of the type that warrant a waiver of the MF-I deadlines and the resulting disbursement of USF funds. While our decision is not intended to disregard PTI Pacifica's effort to complete the required construction of the Tinian network, we cannot look merely at the circumstances leading to its delay in obtaining a tower site while ignoring the other circumstances present here, which include the extreme length of its delay in providing 4G service that meets the MF-I requirements. PTI Pacifica requests to extend its MF-I performance deadlines for seven years beyond its original deadline.<sup>54</sup> If permitted to do so, PTI Pacifica's deadline would be ten years after the Bureaus initially authorized its support, a result that, regardless of the cause, would be squarely at odds with the express purpose for which the Commission awarded MF-I support to provide "one-time support to immediately accelerate deployment of networks for mobile voice and broadband services in unserved areas."<sup>55</sup> We find that a delay of this magnitude outweighs any other circumstances, regardless of whether they could not reasonably have been foreseen, controlled, or avoided.<sup>56</sup> The Commission adopted MF-I performance default payment obligations in part to prevent situations like this one because long delays before the establishment of the networks burden the program and undermine its goals.<sup>57</sup> We therefore conclude that deviation from the general rule in light of PTI Pacifica's circumstances is not warranted.

18. We are also not persuaded by PTI Pacifica's claims that the two typhoons, which severed an undersea fiber optic cable and knocked out power on Saipan, support waiver of the performance deadlines for the Tinian tract. We do not here opine on whether inclement weather on the scale of these storms might have been anticipated as part of the normal course of PTI Pacifica's business in the CNMI.<sup>58</sup> To the extent that they were not foreseeable, both storms occurred in the summer of 2015, just over a year before the initial deadline, and eight years before the most recently requested extension date.<sup>59</sup> PTI Pacifica has not attributed to the typhoons the additional delays beyond its first request; none of its supplemental filings refer to the storms. Any delays associated with the 2015 typhoons do not support the grant of a waiver and extension of the Commission's MF-I performance requirements on the Tinian census tract to August 16, 2023.<sup>60</sup>

19. We further find that PTI Pacifica's request does not satisfy the second portion of the waiver standard. PTI Pacifica contends that deviation from the general rule will serve the public interest because it constructed a network that covers more than half of the Tinian tract within a few months of the original deadline; it has endeavored in good faith to fulfill its 75% coverage obligation; it lacked control over governmental delays; and it continues to make progress in its efforts to build a network serving a remote

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<sup>54</sup> Request at 1; Sixth Supplement at 2.

<sup>55</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17674-75, para. 28; *see also* 26 FCC Rcd at 17816, para. 469 (explaining that the Commission's purpose "is to aggressively extend coverage").

<sup>56</sup> *See Standing Rock Order*, 34 FCC Rcd at 9604-05, paras. 14-15; *Leaco/Pine Belt Order*, 31 FCC Rcd at 9006-07, paras. 17-18.

<sup>57</sup> *See USF/ICC Transformation Order*, 26 FCC Rcd at 17810-11, para. 446 ("We also recognize that a Mobility Fund recipient's failure to fulfill its obligations may impose significant costs on the Commission and higher support costs for USF.").

<sup>58</sup> *See Appalachian Wireless Order*, 36 FCC Rcd at 189-90, para. 26; *Standing Rock Order*, 34 FCC Rcd at 9603, para. 12; *Leaco/Pinebelt Order*, 31 FCC Rcd at 9006, para. 16.

<sup>59</sup> Request at 7.

<sup>60</sup> *See 1998 Biennial Regulatory Review--Streamlining of Mass Media Applications, Rules, And Processes et al.*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17539, para. 35 (1999) (finding that the effects of delays due to inclement weather on construction timelines are adequately overcome by a three-year construction term making additional time unwarranted).

island territory.<sup>61</sup> We disagree. Granting a waiver that would allow MF-I support to be disbursed despite the performance requirement not having been met for over six years would be contrary to the purpose of the Mobility Fund and therefore not serve the public interest. In establishing the Mobility Fund, the Commission expressly rejected a suggestion to permit a level of service that falls short of the required percentage of coverage for which the recipient could offset its liability for repayment because it would be inconsistent with MF-I's purpose "to aggressively extend coverage."<sup>62</sup> As noted above, none of the MF-I and Tribal Mobility Fund applicants for whom we found waiver and extension of the deadline to be in the public interest sought more than 18 months of additional time, and all of them completed the performance requirements within the time frame they requested.<sup>63</sup>

20. By contrast, granting a waiver that extends the deadline for PTI Pacifica to meet its performance obligations for an additional seven years beyond the initial three years would be wholly inconsistent with the MF-I objectives and undermine the Commission's policy of requiring adherence to the performance requirements in a timely manner.<sup>64</sup> As the Commission explained in the *USF/ICC Transformation Order*, MF-I support funds were made available "[t]o spur *immediate* broadband buildout" in unserved areas.<sup>65</sup> To that end, the Bureaus authorized PTI Pacifica's MF-I support not simply so that it would one day establish a 4G network on this underserved census tract, but that it would do so expeditiously, even in the face of whatever challenges its due diligence may have revealed.<sup>66</sup> The extraordinary length of PTI Pacifica's requested extension is at odds with MF-I's foundational purpose to expeditiously extend coverage to unserved areas, and granting it would therefore not serve the public interest in achieving such coverage.<sup>67</sup> Moreover, granting an extension of this length would undermine our ability to enforce the performance obligations of future recipients of USF high-cost support.<sup>68</sup> We therefore conclude that granting a waiver and extension request of this duration is not in the public interest.

21. Accordingly, we deny PTI Pacifica's requests for waiver and extension of performance deadlines for the Tinian tract. The Commission's rules provide that a winning bidder authorized to receive MF-I support that fails to meet its performance obligations will be subject to repayment of the support already dispersed, as well as an additional performance default payment.<sup>69</sup> In the *Auction 901 Procedures Public Notice*, the Bureaus adopted a performance default payment of 10% of the total level of support for which a winning bidder is eligible.<sup>70</sup> The total level of MF-I support for which PTI Pacifica was eligible for the Tinian tract was \$399,970.34, consequently it now owes a 10% performance default

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<sup>61</sup> See, e.g., Fifth Supplement at 6-7.

<sup>62</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17816, para. 469.

<sup>63</sup> See *Appalachian Wireless Order*, 36 FCC Rcd at 191, para. 29; *Standing Rock Order*, 34 FCC Rcd at 9604, para. 15; *Leaco/Pine Belt Order*, 31 FCC Rcd at 9003-04, 9005, paras. 9, 14; see also note 52, above.

<sup>64</sup> See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17781, para. 322; *Appalachian Wireless Order*, 36 FCC Rcd at 191, para. 31.

<sup>65</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17673, para. 22 (emphasis added).

<sup>66</sup> See *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4748, para. 71.

<sup>67</sup> See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17816, para. 469.

<sup>68</sup> See *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4777, para. 190 (adopting a performance default payment for Auction 901 because a winning bidder's "failure to fulfill its obligations may impose significant costs on the Commission and higher support costs for the [Universal Service Fund]"); see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-11, para. 446.

<sup>69</sup> 47 CFR § 54.1006(f).

<sup>70</sup> *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4777-78, paras. 189-92.



payment obligation of \$39,997.03.<sup>71</sup> To date, PTI Pacifica has received \$133,323.45 in support for the tract, and it must also repay that amount.

#### IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that, under the authority contained in sections 1, 4(i), 4(j), 5(c), 201, 254, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155(c), 201, 254, and 303(r), and sections 0.21, 0.91, 0.131, 0.271, 0.291, 0.331, and 1.3 of the Commission's rules, 47 CFR §§ 0.21, 0.91, 0.131, 0.271, 0.291, 0.331, and 1.3, PTI Pacifica, Inc.'s Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline for Three Census Tracts, together with its supplements, is DENIED only as to census tract T69120950200 (SAC 658007).

23. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 214, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, and 303(r), and section 54.1006(f) of the Commission's rules, 47 CFR § 54.1006(f), PTI Pacifica, Inc. is ASSESSED a performance default payment in the amount of \$39,997.03 for census tract T69120950200 (SAC 658007), for which it was the winning bidder in Auction 901.

24. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 214, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, and 303(r), and section 54.1006(f) of the Commission's rules, 47 CFR § 54.1006(f), PTI Pacifica, Inc. repay the support it has received to date for census tract T69120950200 (SAC 658007), in the amount of \$133,323.45.

25. IT IS FURTHER ORDERED that a copy of this Order SHALL BE transmitted to the Universal Service Administrative Company.

26. IT IS FURTHER ORDERED that, under section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Giulia McHenry  
Chief  
Office of Economics and Analytics

Trent Harkrader  
Chief  
Wireline Competition Bureau

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<sup>71</sup> *MF-I Support Authorization*, 28 FCC Rcd at 12286; *see also Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 12031, 12041-42, paras. 42-43 (2012).

Joel Taubenblatt  
Acting Chief  
Wireless Telecommunications Bureau