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Universal Service Reform
Mobility Fund
WT Docket No. 10-208

NOTICE OF PROPOSED RULEMAKING

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**I. OVERVIEW**

**A. Introduction**

1. Millions of Americans live in communities where current-generation mobile service is unavailable, and millions more work in or travel through such areas. To accelerate our nation’s ongoing effort to close this mobility gap in a fiscally responsible manner, this Notice of Proposed Rulemaking (“NPRM”) seeks comment on using reserves accumulated in the Universal Service Fund (“USF”) to create a new Mobility Fund. The purpose of the Mobility Fund is to significantly improve coverage of current-generation or better mobile voice and Internet service for consumers in areas where such coverage is currently missing, and to do so by supporting private investment. The Mobility Fund would use market mechanisms – specifically, a reverse auction – to make one-time support available to service providers to cost-effectively extend mobile coverage in specified unserved areas.

2. In the three decades since the Commission issued the first cellular telephone licenses, the wireless industry has continually expanded and upgraded its networks to the point where third generation (often called “advanced” or “3G”) mobile wireless services that include both voice telecommunications service as well as e-mail and Internet access are now widely available.<sup>1</sup> But mobility gaps remain a problem for residents, public safety first responders, businesses, public institutions, and travelers,

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<sup>1</sup> In this NPRM, we use the terms “current generation,” “3G,” and “advanced” interchangeably to refer to mobile wireless services that include voice telecommunications service as well as email and Internet access.

particularly in rural areas. Such gaps impose significant disadvantages on those who live, work, and travel in these areas. Moreover, without existing modern wireless infrastructure, they are at risk of much-delayed access to the coming generations of high-speed wireless broadband services. For this reason, the *National Broadband Plan* recommended providing universal service support to promote the national build-out of 3G services as part of a comprehensive set of recommendations to reform the universal service program.<sup>2</sup> The proposals in this NPRM build on that recommendation.

3. The Commission recently undertook steps for fiscally responsible USF reform when, in the *Corr Wireless Order*,<sup>3</sup> we provided instructions for implementing the commitments of both Verizon Wireless and Sprint Nextel to surrender their high-cost universal service support over five years.<sup>4</sup> In doing so, we directed “that the surrendered support be reserved as a potential down payment on proposed broadband universal service reforms as recommended by the National Broadband Plan, including to . . . support a Mobility Fund to provide wireless broadband service in areas that lack coverage.”<sup>5</sup>

4. The Mobility Fund is one of a set of initiatives to promote deployment of broadband and mobile services in the United States through a financially sensible transformation of USF, using market-

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<sup>2</sup> See Federal Communications Commission, *Connecting America: The National Broadband Plan*, 146-48 (rel. Mar. 16, 2010) (*National Broadband Plan*). That same day, the Commission released a Joint Statement on Broadband stating that “[t]he nearly \$9 billion Universal Service Fund (USF) . . . should be comprehensively reformed to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs.” Joint Statement on Broadband, GN Docket No. 10-66, *Joint Statement on Broadband*, 25 FCC Rcd 3420, 3421 ¶ 3 (2010).

<sup>3</sup> High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC, WC Docket No. 05-337, CC Docket No. 96-45, *Order and Notice of Proposed Rulemaking*, FCC 10-155 (rel. Aug. 31, 2010) (*Corr Wireless Order*). Corr Wireless Communications, LLC asked that any support reclaimed from Verizon Wireless and Sprint Nextel in connection with conditions placed on their recent mergers, *see n.4 infra*, be redistributed to other competitive eligible telecommunications carriers (“ETCs”).

<sup>4</sup> On November 4, 2008, the Commission approved, with conditions, the transfer of control of licenses and other authorizations held by subsidiaries and partnerships of ALLTEL from Atlantis Holdings LLC to Verizon Wireless. *See Applications of Celco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17,444 (2008) (*Verizon Wireless Merger Order*). On the same day, the Commission also approved, with conditions, the transfer of control of licenses held by Sprint Nextel Corporation and Clearwire Corporation to New Clearwire Corporation, which is majority owned by Sprint Nextel. *See Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17,570 (2008) (*Sprint Nextel Merger Order*). Among other things, the Commission conditioned its approval of those transactions on those carriers’ voluntary commitments to surrender their high-cost universal service support in equal 20 percent increments over a period of five years from the closing date of the transactions. *Verizon Wireless Merger Order*, 23 FCC Rcd at 17,529-32 ¶¶ 192-97; *Sprint Nextel Merger Order*, 23 FCC Rcd at 17,611-12 ¶¶ 106-08. For purposes of this NPRM, “Verizon Wireless” refers to Celco Partnership d/b/a Verizon Wireless, as well as any subsidiaries or affiliates subject to the universal service commitments of the *Verizon Wireless Merger Order*. It does not refer to service territories divested by Verizon Wireless pursuant to the *Verizon Wireless Merger Order*. Similarly, “Sprint Nextel” refers to Sprint Nextel Corporation, as well as any subsidiaries or affiliates subject to the universal service commitments of the *Sprint Nextel Merger Order*.

<sup>5</sup> *Corr Wireless Order* at ¶ 1.

based and incentive mechanisms. In addition, we will continue to pursue other policies that promote the availability of mobile voice services in as much of the country as possible.

## B. Summary

5. In this NPRM, we seek comment on the creation of the Mobility Fund to provide an initial infusion of funds toward solving persistent gaps in mobile services through targeted, one-time support for the build-out of current- and next-generation wireless infrastructure in areas where these services are unavailable. Specifically, we seek comment on the following proposals for the Mobility Fund:

- We propose to use \$100 million to \$300 million from the USF to create the Mobility Fund. We propose to proceed in a fiscally responsible manner by using a portion of the several hundred million dollars in annual USF support voluntarily relinquished by Verizon Wireless and Sprint Nextel, which, as noted above, the Commission recently reserved as a down payment on broadband USF reform, so that the overall burden on consumers will not increase as a result of these proposals.<sup>6</sup>
- We propose to use a reverse auction – in which the potential providers of services in identified unserved areas compete for support from the Mobility Fund – to determine which providers get support, which specific geographic areas will receive support, and at what levels.
- We propose to identify the areas unserved by advanced mobile wireless services and seek comment on alternative ways by which we could distribute Mobility Fund support to those unserved areas.<sup>7</sup> Specifically, we propose to use coverage data compiled by American Roamer and population data from the Census Bureau to identify unserved areas. We seek comment on whether to make support available to any unserved area nationwide or whether to further target support by making it available in a limited set of unserved areas, such as those in counties or states where the percentage of the population with access to 3G services is more than three percentage points below the percentage of nationwide population with such access, which according to data currently available is 98.5 percent. We seek comment on whether we should target Mobility Fund support in this way or whether we should direct the Mobility Fund based on different criteria or in some other way.
- We seek comment on the minimum performance and coverage requirements we should establish for the service to be supported by the Mobility Fund, and on other ways to structure the support so as to ensure delivery of the desired service.
- We propose the following eligibility requirements for those seeking support from the Mobility Fund: (1) a provider must be designated (or have applied for designation) as an ETC, pursuant to Section 214(e) of the Communications Act of 1934, as amended (“Communications Act” or “Act”) for the area in which it seeks to provide service; (2) a provider must have access to spectrum capable of 3G or better service in the geographic area that it will serve; and (3) a provider must certify that it is financially and technically capable of providing service within the specified timeframe.

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<sup>6</sup> See *Corr Wireless Order*.

<sup>7</sup> For purposes of this NPRM, when we refer to “unserved” or “uncovered” areas we are referring to areas where advanced mobile wireless services are not available.

- We propose performance standards suitable for assessing and managing the program; mechanisms to deter waste, fraud, and abuse; and methods to recover improperly disbursed or used funds.

## II. BACKGROUND

6. The Communications Act created the Commission for the purpose of “mak[ing] available, so far as possible, to all the people of the United States” efficient wire and radio communications services.<sup>8</sup> The Communications Act mandates that the Commission base its policies for preserving and advancing universal service on a principle that “access to advanced communications and information services should be provided in all regions of the Nation.”<sup>9</sup> The statute also requires that universal service policies follow the principle that consumers in “rural, insular, and high cost areas” should have access to services “that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”<sup>10</sup> Moreover, the services to be provided are “an evolving level of telecommunications services ... taking into account the advances in telecommunications and information services.”<sup>11</sup>

7. The USF is an essential resource for achieving this goal.<sup>12</sup> As the *National Broadband Plan* recognized, while the USF and earlier programs played a critical role in disseminating voice service in the last century, the current USF was not designed to target support for broadband explicitly.<sup>13</sup> We therefore recognize the need for the USF to be modernized to support the services of the future provided over advanced networks.

8. Establishing the Mobility Fund, which seeks to help overcome cost barriers to expanding advanced mobile wireless services, is a critical step in modernizing the USF. The Mobility Fund would take a portion of the funds that would have gone to Verizon Wireless and Sprint Nextel to support wireless service in areas that were largely served by one or more other providers, and redirect that money to provide targeted support for cost-effective network build-out in unserved communities. We are also addressing other critical components of universal service in other proceedings. The Connect America Fund Notice of Inquiry and NPRM, which will help assure the availability of broadband on an ongoing basis, was the first step toward modernizing the USF to provide support for continuing advances in communications networks and services.<sup>14</sup>

9. The Mobility Fund proposed in this NPRM builds on prior proposals in connection with modernizing the structure and operation of the USF. It was the State Members of the Federal-State Joint Board on Universal Service (“Joint Board”) who first recognized the importance of directly addressing the infrastructure needs in those areas unserved by mobile service, and in a 2007 Recommended Decision, the Joint Board recommended that the Commission establish a Mobility Fund.<sup>15</sup> In the Recommended

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<sup>8</sup> 47 U.S.C. § 151.

<sup>9</sup> 47 U.S.C. § 254(b)(2) and (3).

<sup>10</sup> 47 U.S.C. § 254(b)(3).

<sup>11</sup> 47 U.S.C. § 254(c).

<sup>12</sup> 47 U.S.C. § 254(b).

<sup>13</sup> See *National Broadband Plan* at 140.

<sup>14</sup> Connect America Fund, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, *Notice of Inquiry and Notice of Proposed Rulemaking*, 25 FCC Rcd 6657 (2010) (*CAF Notice of Inquiry*).

<sup>15</sup> See Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Recommended Decision In the Matter of High-Cost Universal Service Support*, FCC07J-4 (Fed.-State Jt. Bd., rel. Nov. 20, 2007) (*Recommended Decision*). The Commission put the *Recommended Decision* out for public comment (continued....)

Decision, the Joint Board acknowledged that the universal availability of mobile services was a national priority and proposed that a Mobility Fund be created to subsidize the costs of construction of new facilities in “unserved” areas where significant population density lacked wireless voice service.<sup>16</sup> The Joint Board also contemplated that funds would be available to construct facilities along roads and highways, to advance important public safety interests.<sup>17</sup> Finally, the Joint Board recommended that some funds be made available – at least for some limited period of time – to provide continuing operating subsidies to carriers where service is essential but where usage is so slight that there is not a business case to support ongoing operations, even with substantial support for construction.<sup>18</sup>

10. More recently, following up on the Joint Board’s previous work and recommendation, the *National Broadband Plan* recommended a Mobility Fund in connection with broader reforms of the USF.<sup>19</sup> The plan recommended providing targeted, one-time support for deployment of 3G infrastructure in order to bring all states to a minimum level of mobile service availability, without increasing the size of the USF. The *National Broadband Plan* observed that supporting 3G build-out in states with 3G coverage lagging the national average would enable those states to catch up with the rest of the nation and improve the business case for 4G rollout in harder-to-serve areas.

### III. NOTICE OF PROPOSED RULEMAKING

#### A. Overall Design of the Mobility Fund

11. Drawing on some of the USF support voluntarily relinquished by Verizon Wireless and Sprint Nextel and reserved by the Commission, the Mobility Fund would make available non-recurring support to providers to deploy 3G or better networks where these services are not currently available.<sup>20</sup> In order to maximize the reach of available funds, we propose to provide Mobility Fund support to at most one provider in any given unserved area.<sup>21</sup> We propose to utilize a reverse auction mechanism to compare all offers to provide service across the unserved areas eligible for participation in the Mobility Fund program, which should give providers incentives to seek the least support needed and enable identification of the providers that will achieve the greatest additional coverage with the limited funding available.<sup>22</sup> We propose to specify unserved areas eligible for support on a census block basis, using industry data compiled by American Roamer, and to conduct competitive bidding to offer support in unserved census blocks grouped by census tracts.<sup>23</sup> We seek comment on a number of alternative

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on January 29, 2008. High Cost Universal Support; Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Notice of Proposed Rulemaking*, 23 FCC Rcd 1531 (2008).

<sup>16</sup> *Recommended Decision* at ¶ 16.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at ¶¶ 18, 38.

<sup>19</sup> *National Broadband Plan* at 146.

<sup>20</sup> *See Corr Wireless Order*. *See also* n.4 and 5 *supra*.

<sup>21</sup> As noted above, for purposes of this NPRM, when we refer to “unserved” or “uncovered” areas we are referring to areas where advanced mobile wireless services are not available.

<sup>22</sup> Paul Milgrom, Gregory Rosston, Andrzej Skrzypacz & Scott Wallsten, “Comments of 71 Concerned Economists: Using Procurement Auctions to Allocate Broadband Stimulus Grants,” submitted to National Telecommunications and Information Administration and the Department of Agriculture’s Rural Utilities Service (Apr. 13, 2009) (*71 Economists’ Proposal*). The *71 Economists’ Proposal* can be found in Appendix B of the *CAF Notice of Inquiry*.

<sup>23</sup> As the *National Broadband Plan* noted, “American Roamer reports *advertised* coverage as reported by many carriers who all use different definitions of coverage.” *National Broadband Plan* at 39 (emphasis in original). As a consequence, the data from American Roamer may overstate the coverage actually experienced by consumers.

methods we could use to distribute Mobility Fund support, including distributing support to any of the identified census tracts nationwide or targeting it to those identified census tracts in any county nationwide or in states where 3G deployment most significantly lags behind the percentage of nationwide population with 3G access. We propose to support only wireless networks performing as well as or better than 3G networks currently operating in the United States, for example networks using HSPA or EV-DO. We propose that parties receiving support be required to demonstrate the deployment and offering of service in previously uncovered areas within a specified period of time. We seek comment on ways to structure the program so that it directs funding to those places where deployment of advanced mobile wireless service is otherwise not likely to happen.

### 1. Legal Authority

12. We propose to distribute Mobility Fund support through the universal service program. Accordingly, the Commission's legal authority to create the Mobility Fund is based upon and delimited by its legal authority to distribute universal service funds. The Commission has authority to use universal service funds to support an evolving level of telecommunications services, taking into account advances in telecommunications and information technologies and services.<sup>24</sup> In addition, various statutory and regulatory requirements apply to the use of these funds.<sup>25</sup> We request comment on our authority to implement the proposals contained in this NPRM. We also seek comment on whether these proposals require any revisions to our existing regulations or to our existing authority. We further ask that commenters address, to whatever extent necessary, whether any alternative proposals that they suggest are within our current legal authority or require any expansion of that authority.

### 2. Size of the Mobility Fund

13. We propose to use \$100 million to \$300 million in USF high-cost universal service support to fund, on a one-time basis, the expansion of current-generation mobile wireless services through a new Mobility Fund. Prior voluntary agreements by Verizon Wireless and Sprint Nextel to surrender USF high-cost support<sup>26</sup> will likely make several hundred million dollars available annually that can be used for other USF purposes without increasing the overall size of the high-cost fund. The *National Broadband Plan* recommended using these foregone funds to implement its recommendations, including the creation of the Mobility Fund, and subsequently the Commission adopted an Order and Notice of Proposed Rule Making implementing the voluntary commitments.<sup>27</sup>

14. The ultimate impact of any amount of support would depend upon a variety of factors, including the extent to which non-recurring funding makes it possible to offer service profitably in areas previously uneconomic to serve, what percentage of the support must fund new facilities as opposed to upgrades to pre-existing facilities, the percentage of total capital costs that support must provide, and the extent to which new customers adopt services newly made available. We seek comment on the level of support to be provided through the Mobility Fund. Specifically, we ask commenters to consider whether there is an optimal size for the Mobility Fund. For instance, is there an amount that would exceed what is needed to target those areas where non-recurring support could be used most effectively to expand coverage within a relatively short timeframe? What amount would be too small to effectively jump-start deployment so as to provide service in the places where it might not otherwise become available?

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<sup>24</sup> 47 U.S.C. § 254(c).

<sup>25</sup> See generally 47 U.S.C. §§ 214, 254; 47 C.F.R. § 54.101.

<sup>26</sup> See n. 4 *supra*.

<sup>27</sup> *National Broadband Plan* at 146-47. See generally *Corr Wireless Order*.

### 3. One Provider Per Area

15. Given our objective of using the Mobility Fund to support the provision of expanded advanced mobile wireless services to as much of the currently unserved population in identified areas as possible, we propose that only one entity in a given geographic area receive Mobility Fund support. We recognize that mobile wireless providers have expressed competitive concerns, especially given that 3G service may use either CDMA or GSM technology, about the possibility of limiting support to one provider.<sup>28</sup> In light of these concerns, we propose below certain terms and conditions of support to encourage possibilities for competition. We seek comment on our proposal to make Mobility Fund support available to only one provider per area.

### 4. Auction to Determine Awards of Support

16. We propose to use a competitive bidding mechanism to determine the entities that will receive support under the Mobility Fund and the amount of support they will receive – that is, we propose to award support based on the lowest bid amounts submitted in a reverse auction, as we will discuss in more detail below. Such a mechanism should allow the market to reveal the costs of providing expanded access to advanced mobile services in unserved areas. This should allow us to select the providers that require the least support without requiring onerous cost showings by applicants and without guaranteeing that support payments will cover all, or any specific percentage of, the providers' actual costs.

17. In this reverse auction, which we propose to conduct using a single round of bidding, applicants formulating their bids would have to evaluate carefully the amount of support they need to provide the required services. In general, bidders would not want to overstate the support they require since they would be competing against other providers for limited support funds and a higher bid would reduce their chances of winning. At the same time, they would not want to understate the support they require, since they might be awarded such support based on a bid amount that does not cover their costs and then be expected to provide services to meet the performance requirements. As a result, the submitted bids should present a good estimate of the actual costs to the bidders of providing advanced mobile services as described above in the areas on which they bid to expand service. We seek comment generally on the use of a competitive bidding mechanism to determine recipients of Mobility Fund support and support amounts, and particularly, on the use of a single round reverse auction format.

18. More specifically, as described in more detail below, we propose to determine winning bidders for Mobility Fund support based on the lowest per-unit bids, using the population of unserved areas (and perhaps other characteristics, such as road miles)<sup>29</sup> as units and taking into account the requirement that there be no more than one Mobility Fund recipient in any particular area. The auction mechanism would compare all per-unit bids across all areas (that is, compare all bids against all other bids, rather than compare all bids for a single area), and order all the submitted bids from lowest per-unit amount to highest. The bidder making the lowest per-unit bid would first be assigned support in an amount equal to the amount needed to cover the population (or units based on other characteristics)

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<sup>28</sup> See, e.g., Notice of Ex Parte Presentation by T-Mobile USA, Inc., WC Docket 10-90, dated September 7, 2010 (urging Commission to design Mobility Fund to enable customers to roam in rural areas no matter what wireless technology they may use); Notice of Ex Parte Presentation by Rural Cellular Association, WC Docket No. 10-90, dated September 10, 2010 (urging funding to be competitively and technologically neutral); Notice of Ex Parte Presentation by Penasco Valley Telephone Cooperative, WC Docket 10-90, dated September 24, 2010 (urging preference be given to entities that propose to use a “more efficient and advanced 3G technology, such as LTE” instead of “[o]ther 3G technologies (e.g., EVDO) [that] will have to be replaced when implementing 4G.”)

<sup>29</sup> We note that some areas do not have roads or have relatively few roads, so using road miles could present challenges in making comparisons across different unserved areas.

deemed unserved in the specific area at the per-unit rate that was bid.<sup>30</sup> Support would continue to be assigned to the bidders with the next lowest per-unit bids in turn, as long as support had not already been assigned for that geographic area, until the running sum of support funds requested by the winning bidders was such that no further winning bids could be financed by the money available in the Mobility Fund.<sup>31</sup>

19. By awarding support to those bidders that are able to cover units in unserved areas at the least cost to the Mobility Fund, the greatest amount of population in the identified unserved areas can be covered with the available funds. We seek comment on this method of determining recipients of Mobility Fund support. We also seek comment on determining payment amounts as proposed – by multiplying the winning per-unit bid amounts by the units deemed unserved.

#### **5. Identifying Unserved Areas Eligible for Support**

20. We propose to identify unserved areas on a census block basis and, because individual census blocks are so small, we propose to conduct bidding to offer Mobility Fund support in unserved census blocks grouped by census tracts. We further seek comment on alternative ways to distribute support to these unserved areas.

##### **a. Identifying Unserved Areas by Census Block**

21. As a first step in identifying those areas for which applicants can bid for Mobility Fund support, we propose to determine the availability of service at the census block level, using a widely available dataset. Census blocks are the smallest geographic unit for which the Census Bureau collects and tabulates decennial census data, so determining coverage by census block should provide a detailed picture of the availability of 3G mobile services. By the end of the first quarter of 2011, census data from the 2010 decennial census should be available on a census block level.<sup>32</sup> We propose to use that data when it becomes available and seek comment on this proposal. For now, we will use in our discussion the projected census block data from Geolytics Block Estimates and Block Estimates Professional databases (2009).

22. Specifically, we propose to use American Roamer data identifying the geographic coverage of networks using EV-DO, EV-DO Rev A, and UMTS/HSPA as a measure of availability of current-generation mobile wireless services. For each census block, we would observe whether the data indicates that the geometric center of the block – referred to as the centroid – is covered by such mobile wireless services. If the data indicates that the centroid is not covered by such services, we propose to consider that census block as unserved. Alternatively, we could use the data to obtain the geographic proportion of the block that is uncovered – the proportional method. We could then consider unserved any census block where the data indicates that more than 50 percent of the area is unserved. Or, we could consider unserved that fraction of the census block's population (or other units).

23. We seek comment on our proposed use of American Roamer data to determine areas unserved by current-generation mobile wireless services. Are there distinctions in the way carriers report coverage to American Roamer that we should consider when using the data? Are there alternative available datasets we can use instead of, or in addition to, American Roamer data that would be more

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<sup>30</sup> For example, if the lowest per-unit bid were \$100 per person, the bidder placing that bid would be awarded support in the amount of \$100 times the population of the area on which it bid.

<sup>31</sup> We note that we propose below to use a two-stage application process pursuant to which winning bidders will be subject to post-auction review of a long-form application prior to award of support.

<sup>32</sup> See "2010 Census Frequently Asked Questions" – "Topic 19: Census Data – Availability and Use," available at [http://2010.census.gov/partners/pdf/2010\\_TQA\\_Agent\\_FAQs\\_english.pdf](http://2010.census.gov/partners/pdf/2010_TQA_Agent_FAQs_english.pdf).

reliable or better suited for identifying unserved areas? We seek comment also on the proposed centroid method of determining unserved census blocks and on the proportional coverage alternative we describe. Is the centroid method likely to identify areas that are good candidates for support consistent with the objectives of the Mobility Fund? Are there other transparent and workable methods for using the available data to define unserved areas? In addition, we seek comment on the extent to which the availability in unserved census blocks of other supported services using non-mobile wireless technologies should be a factor in determining whether those census blocks should be eligible for Mobility Fund support.

24. We recognize that data on mobile services coverage may change over a relatively short timeframe. Therefore, we propose to delegate to the Wireless Telecommunications Bureau (“Wireless Bureau”) the authority to identify unserved census blocks prior to announcing a Mobility Fund auction, using the method we adopt and the most recent data available for that purpose.

**b. Offering Support by Census Tract**

25. While we propose to identify unserved areas at the census block level using the method described above, we propose to group unserved census blocks by larger areas – census tracts – as a basis for competitive bidding, since individual census blocks may be too small to serve as a viable basis for providing support.<sup>33</sup> More specifically, we propose to accept bids for support to expand coverage to all the unserved census blocks within a particular census tract.<sup>34</sup>

26. We seek comment on whether census tracts are the most appropriate basic geographic unit for providing support to expand coverage. Are there other geographic units by which we might group unserved census blocks that might better balance the need to identify discrete unserved areas for which we propose to require coverage under the Mobility Fund with business plan requirements of wireless providers?<sup>35</sup>

**c. Establishing Unserved Units**

27. We propose at a minimum to establish the number of units in each unserved census block based on population. We also seek comment on whether we should take into account characteristics such as road miles, traffic density, and/or community anchor institutions in determining the number of units in each unserved census block to be used for assigning support under the Mobility Fund.<sup>36</sup> For example, should we utilize data compiled by the Department of Transportation (such as Traffic Analysis Zones) or data on community anchor institutions to establish the number of units in the census block that will be

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<sup>33</sup> Census tracts have between 1,500 and 8,000 inhabitants and average about 4,000 inhabitants. Each census tract consists of multiple census blocks and every census block fits within a census tract. There are over 8 million census blocks nationwide.

<sup>34</sup> We note that, as discussed below, a provider receiving support would be considered to cover a particular census block when it demonstrates compliance with the performance requirements adopted by the Commission, and not simply by covering the block’s centroid.

<sup>35</sup> We recognize that, as with any networked service, the benefits of expanding the availability of service accrue not only to the additional population reached by the expansion but also to the population already covered. Because there may be both commercial and public interest benefits in expanding service into areas in which the resident covered population is relatively low, we do not propose to set an absolute minimum resident population in an area below which a subsidy should not be provided to the area.

<sup>36</sup> We note that our proposal to require drive tests in order to demonstrate service (*see* para 40, *infra*), if adopted, would mean that providers receiving support would have to cover designated roads whether or not we decide to use road miles as a factor in determining the number of units in unserved blocks.

considered unserved?<sup>37</sup> Using such additional factors in determining the units in each unserved area may better represent the public benefits of providing new access to mobile services. Are there other factors that we should take into account when assessing coverage of unserved areas, such as work or recreation sites; anchor institutions such as schools, libraries, and hospitals; or accessibility to a road system? We ask that commenters address how we should measure the factors on which we seek comment as well as any other factors they advocate, and how coverage for one type of unit, such as a work site, should compare with coverage for other units, such as resident population, or whether such comparisons would be appropriate.

**d. Distributing Mobility Fund Support Among Unserved Areas**

28. The *National Broadband Plan* recommended creation of a Mobility Fund as a means of bringing all states to a minimum level of 3G (or better) mobile service availability. Here we seek comment on various methods we could use to distribute Mobility Fund support among unserved areas, including ways to target support to places that significantly lag behind the level of 3G coverage generally available nationwide.

29. We could make eligible for Mobility Fund support any area nationwide that we deem to be unserved, including territories. Thus, we seek comment on whether, if we were to adopt our proposal above for identifying census tracts with at least one unserved census block, we should make available for bids all such identified census tracts across the country.

30. We also seek comment on alternative ways of limiting Mobility Fund support to places that lag significantly behind the level of 3G coverage nationwide. Based on May 2010 American Roamer data and November 2009 population estimates, 98.5 percent of the population nationwide resides in areas with access to 3G services.<sup>38</sup> We note that, as proposed above, we would be using updated coverage and population data to determine areas unserved by 3G prior to any Mobility Fund auction, so it is possible that the level of nationwide coverage could change. Therefore, we seek comment on various ways to identify places that lag significantly behind that level of coverage based on more updated data.

31. For instance, we seek comment on making Mobility Fund support available for unserved census blocks in census tracts in any county nationwide where the countywide percentage of population with access to 3G services is more than three percentage points below the level of 3G deployment nationwide as determined prior to an auction based on updated data. We also seek comment on targeting Mobility Fund support to unserved blocks in census tracts in those states where the statewide percentage of population with access to 3G services is more than three percentage points less than the percentage of the national population with such access. Alternatively, we seek comment on whether we should target an expanded list of counties or states, for example, those with 3G coverage levels that are more than two percentage points below the nationwide level. We also invite suggestions of other means for identifying the counties or states that the Mobility Fund should target.

32. We invite comment on all of the above alternatives – distributing support among unserved areas nationwide and various methods for targeting support to a subset of unserved areas. We seek comment on the relative merits and drawbacks of these alternative approaches. In particular, we welcome any insights commenters can provide regarding which of these alternatives would most effectively utilize Mobility Fund support to benefit consumers through expanded 3G coverage. We also

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<sup>37</sup> A traffic analysis zone (“TAZ”) is a special area delineated by state and/or local transportation officials for tabulating traffic-related data- especially journey-to-work and place-of-work statistics. A TAZ usually consists of one or more census blocks, block groups, or census tracts. For more information on TAZs, see [http://www.census.gov/geo/www/cob/tz\\_metadata.html](http://www.census.gov/geo/www/cob/tz_metadata.html).

<sup>38</sup> Geolytics Nov. 2009 Population Estimates, American Roamer Advanced Services May 2010.

seek commenters' views on which of these ways of distributing Mobility Fund support would best help ensure that places with the lowest levels of 3G coverage will not fall even farther behind as the industry begins to deploy the next generation of 4G mobile broadband service. Finally, we note that some areas that we identify as lacking 3G coverage will have some level of mobile voice service, while other identified areas will have no mobile wireless service at all. We seek comment on whether and how we might prioritize support toward unserved areas that currently lack any mobile wireless service.

**e. Targeting Tribal Areas**

33. We seek comment on whether we should reserve funds for developing a Mobility Fund support program targeted separately to Tribal lands that trail national 3G coverage rates.<sup>39</sup> Communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population.<sup>40</sup> Available data illustrates that less than ten percent of residents on Tribal lands have access to broadband.<sup>41</sup> Also, Tribal lands are often in rural, high-cost areas, and present distinct connectivity challenges.<sup>42</sup> As a result, the *National Broadband Plan* noted that Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband will require increased funding.<sup>43</sup> We have recognized that Tribes are inherently sovereign governments that enjoy a unique relationship with the federal government.<sup>44</sup> In turn, we have reaffirmed our policy to promote a government-to-government relationship between the FCC and federally-recognized Indian tribes.<sup>45</sup> Because this relationship warrants a tailored approach that takes into consideration the unique characteristics of Tribal lands,<sup>46</sup> we believe addressing Mobility Fund support for Tribal lands on a separate track will be beneficial in providing adequate time to coordinate with American Indian Tribes and Alaska Native Village governments and seek their input.

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<sup>39</sup> "Tribal Lands" is defined as "any federally recognized Indian tribes reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlements Act (85 Stat. 688), and Indian Allotments." See also 47 C.F.R. § 54.400(e).

<sup>40</sup> See *National Broadband Plan* at 152, citing *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 11,794, 11,798 (2000).

<sup>41</sup> See *National Broadband Plan* at 152.

<sup>42</sup> The *National Broadband Plan* observed that many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high build-out costs, limited financial resources that deter investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning. *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, 16 FCC Rcd 4078 (2000) (*Tribal Policy Statement*); see also *National Broadband Plan* at 146. The United States currently recognizes more than 565 American Indian Tribes and Alaska Native Villages. See *The Federally Recognized Indian Tribe List Act of 1994*, Pub. L. 103-454, 108 Stat. 4791 (1994) (Secretary of the Interior is required to publish in the Federal Register an annual list of all Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians).

<sup>45</sup> *Tribal Policy Statement*, 16 FCC Rcd at 4079-80.

<sup>46</sup> *National Broadband Plan* at 146.

## 6. Performance Requirements

### a. Coverage Requirement

34. We propose to establish a coverage requirement that will ensure that Mobility Fund support is put to the purpose for which it is intended – to expand coverage in unserved areas. We seek comment here on the percentage of resident population in the census blocks deemed “unserved” we should require be covered by any party receiving support for a particular census tract. Should we require 100 percent coverage? Or would it be appropriate to require a level of coverage of between 95 and 100 percent of the resident population of census blocks deemed unserved in order to balance our goal of expanding service with concern that excessively high costs to serve a few residents in an area might deter providers from bidding to cover areas otherwise well suited for Mobility Fund support? We note that should we decide to require less than 100 percent coverage, recipients would receive support based on the percentage of coverage actually achieved, provided that they cover at least the required percentage.

35. Is a performance requirement as outlined above appropriate, given our proposed method of determining unserved areas, our proposed use of per-unit bids to determine the set of winning bidders, and our proposal that we will determine support amounts based on the units deemed unserved in the census blocks within the tract? We ask commenters to consider how we should monitor compliance with any coverage requirement, and to address the ways in which monitoring may create incentives for support recipients to further the goals of the Mobility Fund program. We invite commenters describing any alternatives to our proposal to explain with specificity why such alternatives would be preferable. To ensure that the Mobility Fund supports service where it is actually needed, should we require winning bidders to actively market their service in the area(s) for which they bid, and/or to provide service to a specified number or percentage of consumers in such areas by certain milestone dates?

36. We also make proposals to encourage possibilities for competition in the market for 3G or better services in the geographic areas in which we provide support. First, we propose that any new tower constructed to satisfy Mobility Fund performance obligations provide the opportunity for collocation. We seek comment on this proposal. Should we require any minimum number of spaces for collocation on any new towers and/or specify terms for collocation? In addition, we propose that the use of Mobility Fund support be conditioned on providing data roaming on reasonable and not unreasonably discriminatory terms and conditions on 3G and subsequent generations of mobile broadband networks that are built through Mobility Fund support. We seek comment on this proposal and ask that commenters provide specific information on the impact and/or the importance of such requirements in promoting the availability of advanced mobile services.

### b. Service Quality and Rates

37. We propose that Mobility Fund support be used to expand the availability of advanced mobile communications services comparable or superior to those provided by networks using HSPA or EV-DO, which are commonly available 3G technologies.<sup>47</sup> As detailed in connection with proof of

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<sup>47</sup> Universal service support may be provided for services based on widely available current generation technologies – or superior next generation technologies available at the same or lower costs – even though supported services could be based on earlier technologies. Technologies used to provide the services supported by universal service funds need not be technologies that are strictly limited to providing the particular services designated for support. See Federal-State Joint Board on Universal Service, *Order and Order on Reconsideration*, 18 FCC Rcd 15,090, 15,095-96 ¶ 13 (2003) (“We recognize that the network is an integrated facility that may be used to provide both supported and non-supported services. We believe that . . . our policy of not impeding the deployment of plant capable of providing access to advanced or high-speed services is fully consistent with the Congressional goal of ensuring access to advanced telecommunications and information services throughout the nation.”) (subsequent history omitted).

deployment requirements, supported networks would demonstrate their quality of service by proving that they have achieved particular data rates under particular conditions. We propose that these data rates be comparable to those provided by networks using the basic functionality of HSPA or EV-DO. We would not, however, require that supported parties use any particular technology to provide service. Instead, we propose to use widely deployed technologies to define a baseline of performance that any supported network must meet or exceed. We seek comment on this proposal. Should supported networks be required to provide data rates comparable to 4G networks? Alternatively, should supported networks be required to present a path to 4G service?

38. We also seek comment on how to implement, in the context of the Mobility Fund, the statutory principle that supported services should be made available to consumers in rural, insular, and high-cost areas at rates that are reasonably comparable to rates charged for similar services in urban areas.<sup>48</sup> Given the absence of affirmative regulation of rates charged for commercial mobile services, as well as the rate practices and structures used by providers of such services, how can parties demonstrate that the rates they charge in areas where they receive support are reasonably comparable to rates charged in urban areas? What should we use as a standard for “reasonably comparable” and “urban areas” in this context? What should be the consequence of failing to make the required showing?

#### c. Deployment Schedule

39. We propose that recipients be required to meet certain milestones for the provision of service in each unserved census block in a tract in order to remain qualified for the full amount of any Mobility Fund award. For example, we could require that recipients achieve fifty percent of the coverage requirement within one year after qualifying for support. We seek comment on this proposal and on appropriate coverage percentages and time periods for such a milestone. Are there critical factors that should be taken into account in establishing timetables for rollout in different areas, such as weather conditions or limited construction seasons? We note that service providers will have to comply with the Commission’s rules implementing the National Environmental Policy Act and other federal environmental statutes,<sup>49</sup> as well as all local requirements for construction. Are there areas where those requirements would make it appropriate to adopt alternative schedules?

#### d. Proof of Deployment

40. Parties supported by the Mobility Fund must provide 3G or better mobile coverage in specific areas previously deemed unserved by 3G. We propose that parties satisfy their performance requirement by proving that they have deployed a network covering the relevant area and capable of meeting certain minimum standards. We propose that data from the drive tests conducted after construction and optimization of the network be used to determine whether these requirements have been met. By drive tests, we refer to tests service providers normally conduct to analyze network coverage for mobile services in a particular area, *i.e.*, measurements taken from vehicles traveling on roads in the area. More specifically, we propose that recipients of Mobility Fund support would provide data from their drive tests showing mobile transmissions to and from the network meeting or exceeding the following minimum standards: outdoor minimum of 200 kbps uplink and 768 kbps downlink to handheld mobile devices at vehicle speeds up to 70 MPH. These data rates should be achieved with 90 percent coverage area probability at a sector loading of 70 percent. The transmissions would be required to support mobile voice and data.<sup>50</sup> We propose that the drive test would be conducted over all Interstate, US, and State

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<sup>48</sup> 47 U.S.C. § 254(b)(3).

<sup>49</sup> 47 C.F.R. Ch. 1, Subpart I.

<sup>50</sup> “The public switched telephone network is not a single-use network. Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services. . . . Thus, although the high (continued....)”

routes in the area, as well as any other roads that the applicable State Agency regulating the provision of telecommunications services deems essential to service. We propose that drive test data satisfying the foregoing requirements should be submitted within two months of a site providing service or two years of the date support is first provided, whichever comes earlier. We seek comment on these proposals.

41. As discussed, our proposal would not require that providers employ any particular type of technology in expanding coverage. Nevertheless, we seek comment on whether there are reasons to adopt technology-specific minimum standards. Is there any risk that providers will deploy particular technologies in inefficient ways or ways that limit their capacity for future growth in order to meet the minimum standards outline above? Or should we require superior performance from certain technologies that are capable of far exceeding the minimum requirements? For example, should we require that 4G technologies deployed with support satisfy minimum standards greater than 3G technologies deployed with support?

42. We seek comment on how to determine the roads that must be included in any drive tests subject to review. Would it be sufficient to cover Interstates, US Routes, and State Routes? Do circumstances vary sufficiently from state to state or region to region such that different approaches should be adopted for different states? What parties are likely to have the best available information regarding what roads are most important for mobile coverage? Should those parties be involved in the process of determining the roads that must be included in the drive tests?

43. To demonstrate coverage of the population within an unserved area, we propose that bidders submit in electronic Shapefiles<sup>51</sup> site coverage plots from a standard RF prediction tool that utilizes high resolution terrain data and has been calibrated to match the results of drive tests to the extent possible. These plots would be submitted along with the drive test data, preferably on the same plot, and each will display the same coverage threshold parameter, with adjustments to account for drive test configuration specified as necessary. The coverage threshold selected would be one that is a) sufficient to initiate and hold a voice call, and b) is mathematically capable using standard link budget calculations of supporting the minimum data rate requirements specified above. These link budget calculations showing derivation of the threshold would also be provided. The scale of the plots would be at least 1:240,000 such that reasonable coverage resolution is evident. In addition, the plots would be accompanied by all relevant site data, including site coordinates, antenna type(s), radiation centers (AGL), Effective Isotropic Radiated Powers ("EIRPs"), antenna azimuths, and antenna tilts. These plots would also include major roadways, census tract boundaries, and county (or its equivalent) and state boundaries, as well as the boundaries between served and unserved census blocks, as previously determined by the Commission, so that the site's coverage can easily be compared to areas previously deemed unserved. The specific census blocks may be identified on the plot or listed in accompanying data. Lastly, the plots would show the population previously deemed unserved of each block and the percentage of these that are now served.

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cost loop support mechanism does not support the provision of advanced services, our policies do not impede the deployment of modern plant capable of providing access to advanced services." Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking* in CC Docket No. 96-45, and *Report and Order* in CC Docket No. 00-256, 16 FCC Rcd 11,244, 11,322 ¶ 200 (2001).

<sup>51</sup> The ESRI Shapefile format is a commonly used GIS (Geographic Information System) file format representing vector data. The technical standards for this format can be obtained at <http://www.esri.com/library/whitepapers/pdfs/shapefile.pdf>.

44. We propose that parties receiving support be required to file annual reports with the Commission demonstrating the coverage provided with support from the Mobility Fund for five years after qualifying for support. We propose that the reports include maps illustrating the scope of the area reached by new services, the population residing in those areas (based on Census Bureau data and estimates), and information regarding efforts to market the service to promote adoption among the population in those areas. In addition, we propose that each party receiving support be required to include in its annual reports all drive test data that the party receives or makes use of, whether the tests were conducted pursuant to Commission requirements or any other reason. We seek comment on this proposal and discussion of any alternatives regarding the collection of information about supported services newly offered in previously unserved areas.

#### **B. Mobility Fund Eligibility Requirements**

45. In compliance with statutory requirements and to help ensure the commitment of applicants, we propose certain minimum requirements for those entities wishing to receive support from the Mobility Fund. Specifically, we propose that a provider be required to (1) be designated (or have applied for designation) as a wireless Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e) of the Act, by the state public utilities commission (“PUC”) (or the Commission, where the state PUC does not designate ETCs) in any area that it seeks to serve; (2) have access to spectrum capable of 3G or better service in the geographic area to be served; and (3) certify that it is financially and technically capable of providing service within the specified timeframe. We propose to require that, subject to these requirements, applicants be eligible to submit bids seeking support to deploy service in multiple unserved areas. We seek comment on these minimum requirements, inquire whether other minimum standards are desirable, and solicit comment on other provider eligibility issues.

46. We propose a two-stage application process similar to the one we use in spectrum license auctions. Based on the eligibility requirements for Mobility Fund support, we would require a pre-auction “short-form” application to establish eligibility to participate in the auction, relying primarily on disclosures as to identity and ownership and applicant certifications, and perform a more extensive, post-auction review of the winning bidders’ qualifications based on required “long-form” applications. Such an approach should provide an appropriate screen to ensure serious participation without being unduly burdensome. This would allow us to move forward quickly with the auction, which would speed the distribution of funding and ultimately the provision of advanced mobile wireless services to currently unserved areas. We seek comment on the use of this application process to ensure compliance with our eligibility requirements.

#### **1. ETC Designation**

47. All USF recipients must be designated as ETCs by the relevant state (or by the Commission)<sup>52</sup> before receiving high-cost support pursuant to Sections 214 and 254 of the Act.<sup>53</sup> Therefore, we propose to require that applicants for Mobility Fund support be designated as wireless ETCs covering the relevant geographic area prior to participating in a Mobility Fund auction. We seek comment on this proposal.

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<sup>52</sup> Some states have determined they have no jurisdiction over a wireless ETC designation request; in those cases, an ETC petition would be filed with the Commission.

<sup>53</sup> Section 254(e) of the Act provides that only ETCs designated under Section 214(e) shall be eligible to receive federal universal service support. 47 U.S.C. §§ 214(e), 254(e).

48. Alternatively, we seek comment on allowing entities that have applied for designation as ETCs in the relevant area to participate in a Mobility Fund auction.<sup>54</sup> Commenting parties should discuss whether the potential gain by allowing a larger pool of applicants offsets any potential abuse and delay that could result if a non-ETC were to bid and win the auction, but then be deemed ineligible for support.

49. In addition, we seek comment on the ETC designation requirements of Section 214(e). For example, ETCs must offer supported services “throughout the service area for which the designation is received.”<sup>55</sup> The statute also provides that when states handle the ETC designation, the states also designate the service areas.<sup>56</sup> Section 214 permits this Commission, with respect to interstate services, to designate ETCs and service areas “if no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) to an unserved community or any portion thereof that requests such service.”<sup>57</sup> The statute also provides that in states where the state commission lacks jurisdiction over the carrier seeking ETC status, which is sometimes the case for wireless carriers, this Commission designates the ETC and the service area.<sup>58</sup> How can the Commission best interpret these and all the interrelated requirements of Section 214(e) to achieve the purposes of the Mobility Fund?

## 2. Access to Spectrum to Provide Required Services

50. In order to participate in a Mobility Fund auction and receive support, we propose that an entity be required to hold, or otherwise have access to, a Commission authorization to provide service in a frequency band that can support 3G or better services. We seek comment on both the access to, and the type of, spectrum required for Mobility Fund eligibility.

51. As an initial matter, we propose that entities currently licensed to operate in identified unserved blocks should be deemed to meet this requirement. We also seek comment on whether entities other than current licensees should be eligible to participate if they have either applied for a Commission license or have entered into an agreement to acquire a license through an assignment or transfer of control. Therefore, we seek comment on whether a binding agreement to acquire the necessary authorization to use spectrum should be sufficient for Mobility Fund eligibility.

52. We also seek comment on using leased spectrum to provide the service that would meet the parameters of the Mobility Fund.<sup>59</sup> Commenters supporting Mobility Fund eligibility for entities using leased spectrum should indicate whether we should impose requirements regarding the terms of

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<sup>54</sup> Pursuant to 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.101(b), an ETC is obligated to provide all of the supported services defined in 47 C.F.R. § 54.101(a) throughout the area for which it has been designated an ETC. Therefore, an ETC must be designated (or have applied for designation) with respect to an area that includes area(s) on which it wishes to receive Mobility Fund support. Moreover, a recipient of Mobility Fund support will remain obligated to provide supported services throughout the area for which it is designated an ETC if that area is larger than the areas for which it receives Mobility Fund support.

<sup>55</sup> 47 U.S.C. § 214(e)(1). “Service area” is defined in 47 U.S.C. § 214(e)(5).

<sup>56</sup> 47 U.S.C. § 214(e)(2).

<sup>57</sup> 47 U.S.C. § 214(e)(3).

<sup>58</sup> 47 U.S.C. § 214(e)(6).

<sup>59</sup> In 2003, as part of its secondary market policies, the Commission adopted rules to permit mobile wireless licensees to lease all or a portion of their spectrum usage rights for any length of time within the license term, and over any geographic area encompassed by the license. In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 24,817 (2003), *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17,503 (2004).

spectrum leasing arrangements that will confer eligibility, such as the minimum duration of the arrangement, the amount of spectrum, etc. Moreover, we ask whether the entity must currently be leasing the spectrum at the time of the Mobility Fund's short-form or long-form application deadline or whether a signed agreement is sufficient.

53. We propose further that entities seeking to receive support from the Mobility Fund have access to spectrum (and sufficient bandwidth) capable of supporting the required services, such as spectrum for use in Advanced Wireless Services, the 700 MHz Band, Broadband Radio Services ("BRS"), broadband PCS or cellular bands. Should we limit eligibility based on access to specific spectrum suitable for providing the required services? If so, what spectrum should we consider appropriate? Do the technical rules and configuration for Specialized Mobile Radio ("SMR") frequencies permit 3G service? We also seek comment on whether, with or without regard to requiring access to particular frequencies, we should require that parties seeking support have access to a minimum amount of bandwidth and whether only paired blocks of bandwidth should be deemed sufficient.

### 3. Certification of Financial and Technical Capability

54. We also propose that each party seeking to receive support from the Mobility Fund be required to certify 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. We seek comment on how best to determine if an entity has sufficient resources to satisfy the Mobility Fund obligations. We likewise seek comment on certification regarding an entity's technical capacity. Do we need to be specific as to the minimum showing required to make the certification? Or can we rely on our post-auction review and performance requirements?

### 4. Other Qualifications

55. In addition to the three minimum qualifications described above (ETC designation, access to spectrum for 3G or better services, and certifications regarding financial and technical capabilities), we seek comment on other eligibility requirements for entities seeking to receive support from the Mobility Fund. Parties providing suggestions should be specific and explain how the eligibility requirements would serve the ultimate goals of the Mobility Fund. At the same time that we establish minimum qualifications consistent with the goals of the Mobility Fund, are there ways the Commission can encourage participation by the widest possible range of qualified parties? For example, are there any steps the Commission should take to encourage smaller eligible parties to participate in the bidding for support?

### C. Reverse Auction Mechanism

56. At this stage in the development of the Mobility Fund, we propose rules for and seek comment on certain auction design elements that will establish a general framework for the proposed reverse auction mechanism. Accordingly, as detailed in Appendix A, we propose rules that will provide the Commission, the Wireless Bureau, and the Wireline Competition Bureau ("Wireline Bureau") with some flexibility to choose among various methods of conducting the bidding and procedures to use during the bidding.<sup>60</sup> These rules are generally modeled on our rules that govern the design and conduct of our spectrum license auctions.<sup>61</sup>

57. While the rules we propose below establish the framework for conducting a Mobility Fund auction, they do not necessarily by themselves establish the specific detailed procedures that will govern any auction process. We envision that the Commission will develop and provide notice to

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<sup>60</sup> See Appendix A, *infra*.

<sup>61</sup> *Cf.*, 47 C.F.R. Part 1, Subpart Q.

potential bidders of detailed auction procedures prior to conducting a Mobility Fund auction. This will promote the use of specific procedures for an auction that take into account the particular program requirements and auction rules established in this proceeding. Specifically, we propose that, after establishing program and auction rules for the Mobility Fund in this proceeding, the Commission release a Public Notice announcing an auction date, identifying areas eligible for support through the auction, and seeking comment on specific detailed auction procedures to be used, consistent with those rules. We further propose that the Commission release a subsequent Public Notice specifying the auction procedures, including dates, deadlines, and other details of the application and bidding process. Consistent with our existing practice for spectrum auctions, we delegate authority jointly to the Wireless and Wireline Bureaus to establish as outlined here, through public notices, the necessary detailed auction procedures prior to a Mobility Fund auction, and to take all other actions needed to conduct any such auction. We seek comment on this proposal.

### 1. Basic Auction Design

58. A reverse auction, in which potential providers or sellers of a defined service or other benefit compete to provide it at the lowest price, can be a relatively quick, simple, and transparent method of selecting parties that will provide a benefit at the lowest price and of setting the price those parties should be paid. Here, we propose general rules for a Mobility Fund reverse auction as outlined above, including some other aspects of the auction design and process that must be considered before actually conducting an auction. As a threshold matter, although there are a number of formats that could be used for reverse auctions, including both multiple-round and single-round formats, we propose to use a single-round reverse auction to award Mobility Fund support. We propose a single-round auction because it is simple and because we expect bidders for Mobility Fund support to be well acquainted with the costs associated with providing access to advanced mobile wireless services in the areas they propose to cover, and to bid accordingly.

### 2. Application Process

59. As noted above, we propose to use a two-stage application process similar to the one we use in spectrum license auctions.<sup>62</sup> Under this proposal, we would require a pre-auction “short-form” application from entities interested in participating in a Mobility Fund auction. After the auction, we would conduct a more extensive review of the winning bidders’ qualifications through “long-form” applications. We envision that both applications would be filed electronically, in a process similar to that used for spectrum license auctions. Here we seek comment on the specifics of the “short-form” application for a Mobility Fund auction.

60. We propose that, in the short-form application, potential bidders provide basic ownership information and certify as to their compliance with the eligibility requirements for obtaining Mobility Fund support. Specifically, we propose that an applicant would need to provide information about its ownership similar to the Part 1 competitive bidding ownership rule for spectrum auctions.<sup>63</sup> This information will establish the identity of applicants and provide information that will aid in ensuring compliance with and enforcement of Mobility Fund auction and program rules. Also, a potential bidder would need to certify its qualifications to receive Mobility Fund support, including providing its ETC designation status and information regarding its access to adequate and appropriate spectrum.<sup>64</sup> Finally,

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<sup>62</sup> See Section III.B “Eligibility for Mobility Fund” *supra*.

<sup>63</sup> 47 C.F.R. § 1.2112(a) (generally requiring an auction or license applicant to provide the real party or parties in interest, any entity holding a direct or indirect 10 percent or greater interest in the applicant, and any FCC regulated entity in which the applicant holds a 10 percent or greater interest).

<sup>64</sup> See Section III.B “Eligibility for Mobility Fund” *supra*.

we propose that applicants be required to certify that they have and will comply with all rules for Mobility Fund competitive bidding. We seek comment on these proposed short-form application requirements.

61. In addition, we seek comment on whether we should require applicants to identify in their short-form applications the specific census tracts with unserved blocks on which they may wish to bid and provide service. As in our spectrum auctions, we would not necessarily require a bid on each census tract selected in an applicant's short-form application. However, the availability of this information could be helpful in ensuring compliance with our auction rules. We seek comment on this and on any other information that we should require of applicants in the pre-auction stage that would help ensure a quick and reliable application process.<sup>65</sup>

62. We propose that applications to participate in a Mobility Fund auction should be subject to review for completeness and compliance with our rules, and envision a process similar to that used in spectrum license auctions. Specifically, after the application deadline, Commission staff would review the short-form applications, and once review is complete, the Commission would release a public notice indicating which short-form applications are deemed acceptable and which are deemed incomplete. Applicants whose short-form applications were deemed incomplete would be given a limited opportunity to cure defects and to resubmit correct applications.<sup>66</sup> As with spectrum license auctions, applicants would only be able to make minor modifications to their short-form applications.<sup>67</sup> Major amendments would make the applicant ineligible to bid.<sup>68</sup> Once the Commission staff reviews the resubmitted applications, the Commission would release a second public notice designating the applicants that have qualified to participate in the Mobility Fund auction. We seek comment on adopting this application process in order to qualify entities to participate in a Mobility Fund auction.

### 3. Bidding Process

63. As noted, we propose to conduct a single-round reverse auction to identify those applicants that will receive Mobility Fund support and the amount of support they will receive, subject to post-auction processing requirements applicable to winning bidders. In this section, we seek comment on aspects of the bidding process for any Mobility Fund auction, so that potential bidders will understand how bids may be submitted, what bids will be acceptable, and how the auction mechanism will determine winning bidders.

64. Based on our proposal above to award support to bidders that will deploy service in unserved census blocks at the least per-unit cost to the Mobility Fund, we propose that bids for Mobility Fund support would state the dollar amount of support sought per each unit associated with the unserved area(s) in those census tracts covered by the specific bid submitted. In addition, based on our proposal to award support to only one provider per area, we propose that a Mobility Fund auction would select at most one winning bidder per census tract. We propose that after bidding closes, in order to select winning bidders, the auction mechanism will rank bids based on the per-unit bids from lowest to highest and calculate the running sum represented by those bids and the number of units in the unserved areas covered

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<sup>65</sup> We note that we propose below that the Commission have the discretion to determine how much, if any, information regarding Mobility Fund short-form applications should be made public.

<sup>66</sup> *Cf.* 47 C.F.R. § 1.2105(b)(2).

<sup>67</sup> *Id.* Major amendments would include, for example, changes in ownership of the applicant that would constitute an assignment or transfer of control.

<sup>68</sup> In addition, applicants who fail to correct defects in their applications in a timely manner as specified by public notice would have their applications dismissed with no opportunity for resubmission. *Cf.* 47 C.F.R. § 1.2105(b)(3).

by those bids.<sup>69</sup> We also propose that if there are any identical bids – in the same per-unit amounts to cover the same tract or tracts, submitted by different bidders – that only one such bid, chosen randomly, be considered in the ranking.

65. Under these proposals, the auction would identify winning bidders starting with the bidder making the lowest per-unit bid and continue to the bidders with the next lowest per-unit bids in turn, provided that support had not already been assigned for that census tract, so long as the running sum based on the units in the identified unserved areas covered by the bids does not exceed the available monies.

66. *Maximum bids and reserve prices.* We propose a rule to provide the Commission with discretion to establish maximum acceptable per-unit bid amounts for a Mobility Fund auction. We also propose that the Commission may, prior to the auction, establish reserve amounts, separate and apart from any maximum opening bids, and may elect whether or not to disclose those reserves.

67. *Aggregating service areas and package bidding.* We propose a rule to provide generally that the Commission shall have discretion to establish bidding procedures for any Mobility Fund auction that permit bidders to submit bids on packages of tracts, so that their bids may take into account scale and other essential efficiencies that tract-by-tract bidding may not permit.<sup>70</sup>

68. We seek comment generally on the use of package bidding. We propose that specific procedures for package bidding be among those determined as part of the process of establishing the detailed procedures for a Mobility Fund auction. We expect that proposals for such procedures would consider how to implement package bidding consistent with our proposal to award support to at most one provider in a census tract, without allowing geographic overlaps among packages to disqualify desirable bids. For this purpose, proposals might include limited package bidding, e.g., permitting only predefined non-overlapping packages, permitting bidders to submit package bids on geographically adjacent census tracts, and/or the possibility of requiring that bidders submitting package bids also submit separate bids on the component tracts.

69. *Refinements to the selection mechanism to address limited available funds.* As proposed above, the auction would identify winning bidders so long as the running sum of support represented by the winning bids does not exceed the monies to be made available in a Mobility Fund auction. However, there would likely be monies remaining after identifying the last lowest per-unit bid that does not exceed the funds available. We propose that the Commission's rules should provide it with discretion to establish procedures in the pre-auction process by which to identify winning bidder(s) for such remaining funds, e.g., by continuing to consider bids in order of per-unit bid amount while skipping bids that would require more support than is available, or by not identifying winning bidder(s) for the remaining funds and offering such funds in a subsequent auction. In exercising this discretion, the Commission must balance the advantages of assigning Mobility Fund support quickly and transparently with any disadvantages from supporting less cost-effective per-unit bids.

70. We also propose that, in the pre-auction process, the Commission determine procedures to address a situation where there are two or more bids for the same per-unit amount but for different areas ("tied bids") and remaining funds are insufficient to satisfy all of the tied bids. Specifically, we propose a rule that would give the Commission the discretion to identify winning bidders among such tied

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<sup>69</sup> We note that this process may be subject to any rules we may adopt regarding distribution of awards to particular states, as discussed above.

<sup>70</sup> If a bidder were awarded support based on a package bid, it would still be required to meet the performance requirements for each census tract in the package. For example, it would have to provide access to a specified percentage of the units in each census tract if the Commission were to establish such a requirement.

bids by awarding support to that combination of tied bids that would most nearly exhaust the available funds, by ranking the tied bids to establish an order in which they would be awarded based on remaining available funds, or by declining to select winning bidder(s) for the remaining funds and offering such funds in a subsequent auction.

71. We seek comment on these proposals for developing procedures to address the possibility that funds will remain after the auction has identified the last lowest per-unit bid that does not exceed the funds available through the auction. We ask commenters to address the relative advantages of any suggested approaches and on other options that may later be considered when the Commission develops specific auction procedures for a Mobility Fund auction.

72. *Withdrawn bids.* The Commission has discretion, in developing procedures for its spectrum license auctions, to provide bidders limited ability to withdraw provisionally winning bids before the close of an auction. While here we propose that the Wireless and Wireline Bureaus be delegated authority to determine any such procedures in the pre-auction process, we would not expect that the Bureaus would consider permitting any bids to be withdrawn or removed from consideration after the close of bidding in a single-round Mobility Fund auction.

73. In spectrum license auctions, we permit bid withdrawals in certain circumstances so that bidders can better manage their license aggregation strategies. We do not believe that aggregation issues are of comparable importance under the Mobility Fund, which targets support to particular hard-to-reach areas. Further, we believe that permitting bids to be withdrawn after the mechanism has selected winning bidders would unduly disrupt the prompt and smooth distribution of support.

74. We expect that bidders will consider carefully expected costs and the characteristics of the geographic areas they propose to serve if offered Mobility Fund support and bid accordingly, so that if offered support, they can proceed expeditiously to file their long forms and comply with post-auction procedures.

#### **4. Information and Competition**

75. In the interests of fairness and maximizing competition in the auction process, we propose to prohibit applicants competing for support in the auction from communicating with one another regarding the substance of their bids or bidding strategies.<sup>71</sup> Information available in short-form applications or in the auction process itself might also be used to attempt to reduce competition. Accordingly, for spectrum auctions, the Commission adopted rules providing it with discretion to limit public disclosure of auction-related information, for example by keeping non-public during the auction process certain information from applications and/or the bidding.<sup>72</sup> We propose to adopt similar rules for a Mobility Fund reverse auction and seek comment on this proposal.

#### **5. Auction Cancellation**

76. As with the Commission's spectrum license auctions, we propose that the Commission's rules provide it with the discretion to delay, suspend, or cancel bidding before or after a reverse auction begins under a variety of circumstances, including natural disasters, technical failures, administrative necessity, or any other reason that affects the fair and efficient conduct of the bidding.<sup>73</sup> We seek comment on this proposal.

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<sup>71</sup> Cf. 47 C.F.R. § 1.2105(c).

<sup>72</sup> Cf. 47 C.F.R. § 1.2104(h).

<sup>73</sup> Cf. 47 C.F.R. § 1.2104(i).

## D. Post-Auction Process, Administration, Management, and Oversight of the Mobility Fund

### 1. Administration of the Mobility Fund

77. The Universal Service Administrative Company (“USAC”), a subsidiary of the National Exchange Carrier Association (“NECA”),<sup>74</sup> is the private not-for-profit corporation created to serve as the Administrator of the USF under the Commission’s direction.<sup>75</sup> The Commission appointed USAC the permanent Administrator of all of the federal universal service support mechanisms.<sup>76</sup> USAC administers the USF in accordance with the Commission’s rules and orders. The Commission provides USAC with oral and written guidance, as well as regulation through its rulemaking process.<sup>77</sup> Because the Mobility Fund will be a part of the USF high cost support program, we propose to direct USAC to administer the Mobility Fund in accordance with the applicable terms of its current appointment as administrator, and subject to all existing Commission rules and orders applicable to the USF Administrator. We seek comment on whether there are any specific rules or orders currently applicable to USAC’s administration of the USF that should not apply specifically to USAC’s administration of the Mobility Fund, and whether there are new or different requirements we should apply to USAC’s administration of the Mobility Fund.

78. In 2008, the Commission entered into a Memorandum of Understanding (“MOU”) with USAC to facilitate efficient management and oversight of the Commission’s federal universal service program.<sup>78</sup> If the Commission establishes a Mobility Fund, we anticipate that Commission staff would work with USAC outside the context of this rule making proceeding to revise the MOU as necessary for efficient administration of the Mobility Fund. We nevertheless solicit input from interested parties on whether there are specific aspects of the MOU that we should consider revising based on the specific purpose and goals of the Mobility Fund. For example, under the MOU, the Commission’s Wireline Bureau is the USF Administrator’s primary point of contact regarding USF policy questions, including without limitation, questions regarding the applicability of the Commission’s USF rules, orders, and directives, unless otherwise specified in such requirements.<sup>79</sup> Because the Mobility Fund would be

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<sup>74</sup> NECA is an association of incumbent local exchange carriers established by the Commission to administer interstate access tariffs for companies that do not file separate tariffs and to collect and distribute access charge revenues for those companies. See 47 C.F.R. §§ 69.601, 69.603. The NECA Board of Directors is “prohibited from participating in the functions of the [universal service fund] Administrator.” 47 C.F.R. § 54.703(a).

<sup>75</sup> See Changes to the Board of Directors of the National Exchange Carrier Association, *Third Report and Order* in CC Docket No. 97-21, *Fourth Order on Reconsideration* in CC Docket No. 97-21 and *Eighth Order on Reconsideration* in CC Docket No. 96-45, 13 FCC Rcd 25,058, 25,063-66 ¶¶ 10-14 (1998); 47 C.F.R. § 54.701(a).

<sup>76</sup> USAC is responsible for performing numerous functions including, but not limited to, billing USF contributors, collecting USF contributions, disbursing funds, recovering improperly disbursed funds, processing appeals of funding decisions, submitting periodic reports to the Commission, maintaining accounting records, conducting audits of contributors and beneficiaries, and providing outreach to interested parties. See 47 C.F.R. §§ 54.702(b)-(m), 54.711, 54.715.

<sup>77</sup> See, e.g., Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company (Sept. 9, 2008) (*2008 FCC-USAC MOU*), available at <http://www.fcc.gov/omd/usac-mou.pdf>.

<sup>78</sup> See generally *2008 FCC-USAC MOU*.

<sup>79</sup> *2008 FCC-USAC MOU* at paragraph III.B.3. USAC engages in frequent consultations with the Commission. Currently, the Telecommunications Access Policy Division of the Wireline Bureau works with USAC to implement administration of the USF. Personnel from other Commission bureaus and offices such as the Office of the (continued....)

established to distribute support for the deployment of terrestrial mobile wireless networks providing 3G service, we seek comment on whether it would be appropriate to add the Wireless Bureau as a point of contact for the USF Administrator for policy questions pertaining to the Mobility Fund.

## **2. Post-Auction Application Process**

79. As detailed above, we propose a two-stage application process. An applicant for Mobility Fund support would file short-form application to participate in bidding, and the information on that application would be reviewed as part of the Commission's initial screening process to determine the applicant's eligibility for support based on its ETC status and its other qualifications under the Mobility Fund auction rules. After the conclusion of the auction, winning bidders would file "long-form" applications to qualify for and receive Mobility Fund support. Those applications would be subject to an in-depth review of the applicants' eligibility and qualifications to receive USF support. We seek comment here on each step of the post-auction application process described below. To the extent a commenter disagrees with a particular aspect of the proposed process, we ask them to identify that with specificity and propose an alternative.

### **a. Post-auction Application**

80. We propose that, after bidding has ended, the Commission will identify and notify the winning bidders and declare the bidding closed. Unless otherwise specified by public notice, within 10 business days after being notified that it is a winning bidder for Mobility Fund support, a winning bidder would be required to submit a long-form application pursuant to the program requirements governing the Mobility Fund. We seek comment on the specific information and showings that should be required of winning bidders on the long-form application before they can be certified to receive support from the Mobility Fund and before actual disbursements from the Mobility Fund can be made to them. We propose that a winning bidder would be required to provide detailed information showing that it is legally, technically and financially qualified to receive support from the Mobility Fund. We also propose that, if we were to adopt a rule allowing an applicant to participate in the auction while its ETC designation status is pending, the applicant would be required in its long-form application to demonstrate its ETC status by, for example, providing a copy of its ETC designation order from the relevant state PUC. We seek comment on these proposals and on the specific information that winning bidders should be required to provide to make the required showings.

81. We also seek comment on the procedures that we should apply to a winning bidder that fails to submit a long-form application by the established deadline. Imposition of some deterrent measure, in addition to dismissal of the late-filed application, could deter auction participants from submitting insincere bids and serve as an incentive for winning bidders to timely submit their long-form applications, enabling prompt application review and allowing expeditious distribution of support. With respect to the disposition of the Mobility Fund support for which a winning bidder does not timely file a long-form application, we propose that the funds that would have been provided to such an applicant be offered in a subsequent auction. We seek comment on this proposal.

### **b. Ownership Disclosure**

82. We discuss above a proposed requirement for auction participants to disclose certain ownership information as an aid to bidders by providing them with information about their auction competitors and alerting them to the entities that are subject to our rules concerning prohibited communications. We propose that in the post-auction application phase, an applicant would also be required to provide additional detailed information about its ownership and control. We seek comment on

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Managing Director ("OMD"), the Enforcement Bureau, and the Office of the Inspector General ("OIG") also assist with managing and overseeing the USF and USAC.

what ownership information should be required of applicants for Mobility Fund support. Given that wireless providers often create subsidiaries or related entities for specific licenses or other purposes, detailed ownership information may be necessary to ensure that applicants claiming ETC status in fact qualify for such status. In addition to providing information on an applicant's officers and directors, should we require disclosure of an applicant's controlling interests, that is, those individuals and entities with either *de jure* or *de facto* control of the applicant? Applicants for authorizations to provide wireless services are required to disclose ownership interests in the applicant of ten percent or more.<sup>80</sup> What threshold level of ownership interest in an applicant for Mobility Fund support should be required to be reported on the applicant's long-form application?

83. We also seek comment on the extent to which we can minimize the reporting burden on winning bidders by allowing them to use ownership information stored in existing Commission databases and either update the ownership information in the database or certify that there have been no changes in the ownership information since it was last submitted to the Commission.

### c. Project Construction

84. We seek comment on the level of information an applicant for Mobility Fund support should be required to provide regarding the network it will deploy with that support. We propose that an applicant be required to include in its long-form application a detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, and describes each specific development phase of the project (*e.g.*, network design phase, construction period, deployment and maintenance period). To ensure that projects proceed to completion, we propose that a participant be required to submit a project schedule that identifies the following project milestones: 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. We also propose that a participant's project schedule identify the dates by which it will meet applicable requirements to receive the installments of Mobility Fund support for which it subsequently qualifies.

### d. Guarantee of Performance

85. We also seek comment on whether a winning bidder should be required to post financial security as a condition to receiving Mobility Fund support to ensure that it has committed sufficient financial resources to meeting the program obligations associated with such support under the Commission's rules. In particular, we seek comment on whether all winning bidders should be required to obtain an irrevocable standby letter of credit ("LOC") no later than the date on which their long-form application is submitted to the Commission. We also seek comment on whether alternatively, only certain applicants that do not meet specified criteria should be subject to this requirement, and if so, what those criteria should be. For example, should we establish criteria, based on bond rating, market capitalization, or debt/equity ratios (combined with minimum levels of available capital) that, if not met, would make an LOC necessary? Would such a requirement unnecessarily preclude providers that otherwise might be able to satisfy the obligations of the Mobility Fund from seeking to participate?

86. We seek comment on how to determine the amount of the LOC necessary to ensure uninterrupted construction of a network, as well as the length of time that the LOC should remain in place. For example, the amount of the LOC could be determined on the basis of an estimated annual budget that could accompany the build-out schedule required as part of the long-form applications, or we could simply require a specific dollar figure for the LOC in an amount that would ensure that construction could proceed for a given amount of time. Should the amount of an initial LOC, or a subsequent LOC,

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<sup>80</sup> See 47 C.F.R. § 1.2112(a).

also ensure the continuing maintenance and operation of the network? Under what circumstances should the participant be required to replenish the LOC?

87. We also seek comment on what events would constitute a default by the recipient of Mobility Fund support that would allow a draw on the entire remaining amount of the LOC. Further, in the event of bankruptcy, the LOC should be insulated from claims other than the draws authorized for the construction and operation of the network. We seek comment on provisions we might adopt to provide safeguards to this effect.<sup>81</sup>

88. As an alternative to an LOC, we seek comment on whether we should require a winning bidder to guarantee completion of construction by obtaining a performance bond covering the cost of network construction and operation. Such a requirement would be similar to that which the Commission has imposed as a condition on satellite licenses.<sup>82</sup> We also seek comment on the types of requirements that bond issuers might impose and whether such requirements would be so unduly burdensome as to restrict the number of carriers that might be able to bid for Mobility Fund support. We also seek comment on the relative merits of performance bonds and LOCs and the extent to which performance bonds, in the event of the bankruptcy of the recipient of Mobility Fund support, might frustrate our goal of ensuring timely build-out of the network. We also seek comment on whether there are other protections that the Commission should reasonably seek to ascertain the financial viability of the winning bidder, and ensure construction of the network and its subsequent operation. For instance, are there ways that the Commission can facilitate timely build-out of the network in areas where recipients of Mobility Fund support enter bankruptcy before completing construction? Are there steps the Commission could take to facilitate completion of the network by another service provider?

**e. Other Funding Restrictions**

89. We seek comment on whether participants who receive support from the Mobility Fund should be barred from receiving funds for the same activity under any other federal program, including, for example, federal grants, awards, or loans.

**f. Certifications**

90. Finally, we seek comment on the certifications that should be required of a winning bidder to receive Mobility Fund support. We propose that prior to receiving Mobility Fund support, an applicant be required to certify to the availability of funds for all project costs that exceed the amount of support to be received from the Mobility Fund and certify that they will comply with all program requirements. Should we also require certifications regarding the provision of service at rates reasonably comparable to those offered in urban areas? We have sought comment on the definition of these terms for these purposes in our discussion of performance requirements above.

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<sup>81</sup> For example, we could require as a condition of receiving Mobility Fund support, that a winning bidder first provide the Commission with a legal opinion letter that would state, subject only to customary assumptions, limitations and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. Section 101 *et seq.* (the "Bankruptcy Code"), in which the winning bidder is the debtor, 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 the issuance of the LOC) under Section 541 of the Bankruptcy Code.

<sup>82</sup> See, e.g., 47 C.F.R. §§ 25.137, 25.165.