

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

UNIVERSAL SERVICE REFORM)
) **WT Docket No. 10-208**
MOBILITY FUND)

**COMMENTS OF THE

INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

**1101 Vermont Avenue, NW
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SUMMARY

ITTA supports the National interest in furthering broadband deployment across the Nation. Mobile broadband services enable users to enjoy unique but complementary benefits to those accorded by robust wireline networks. Regulations aimed at increasing the deployment of mobile broadband services should contemplate and define the unique goals, benefits, costs, and other aspects of mobile services. Upon those bases, the structure of programs intended to foster increased deployment, including support distribution and recipients' obligations, can be formed.

While ITTA supports programs that are tailored to meet sound policy goals, it cautions the Commission to ensure that solutions tailored to meet one set of principles are not inappropriately applied to another. The Commission has enabled great progress in wireline deployment across the Nation; the goals-driven, cost-cognizant overviews of those programs should inform the process the Commission undertakes for mobile broadband. As such, while ITTA comments on the Commission's proposal to employ "reverse auctions" in order to further deployment of mobile services in unserved areas, ITTA illuminates the hazards that could occur were those mechanisms employed where incumbent providers of last resort serve.

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INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

To the Commission:

I. INTRODUCTION

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits comments in the above-captioned proceeding.¹ ITTA represents mid-size telephone companies that collectively provide wireline and wireless voice, video, and broadband Internet access services to approximately 19 million customers in primarily rural areas of 44 states. ITTA's members are engaged actively in advancing the National interest in greater broadband deployment, and ITTA takes this opportunity to comment on the Commission's inquiries regarding mobile wireless broadband services. ITTA supports programs that are tailored to meet sound policy goals, but cautions the Commission to ensure that solutions tailored to meet one set of principles are not inappropriately applied to another. As such, while ITTA comments on the Commission's proposal to employ "reverse auctions" for unserved areas, ITTA illuminates the hazards that could occur were those mechanisms employed where incumbent providers serve.

¹ *Universal Service Reform, Mobility Fund: Notice of Proposed Rulemaking*, WT Docket No. 10-208, FCC 10-182 (2010) (NPRM).

II. DISCUSSION

A. **MOBILITY PROGRAMS SHOULD BE DISTINGUISHED FROM THOSE USED TO SUPPORT PROVIDERS OF LAST RESORT**

Mobile broadband services enable users to enjoy unique but complementary benefits to those accorded by robust wireline networks. Regulations aimed at increasing the deployment of mobile broadband services should, as a threshold matter, contemplate, if not define, the unique goals, benefits, costs, and other aspects of mobile services. Upon those bases, the structure of programs intended to foster increased deployment, including support distribution and recipients' obligations, can be formed.

The Commission seeks comment on the creation of a mobility fund intended to “close [the] mobility gap.”² The Commission proposes to distribute “reserves accumulated in the Universal Service Fund (USF)” through reverse auctions to “make one-time support available” to extend mobile services in unserved areas.³ ITTA has previously advised that, at best, any implementation of reverse auctions should be on a limited, focused basis in unserved, low-risk areas;⁴ ITTA submitted that recommendation after assessing the risks inherent in a reverse auctions process, particularly where the outcomes would implicate the ability of providers of last resort (POLRs) to meet their critical obligations. Accordingly, as the Commission considers a reverse auctions process to increase deployment of mobile services in unserved areas, it should not import the outcomes of this proceeding to areas presently served by POLRs.

² NPRM at para. 1.

³ NPRM at para. 1.

⁴ *See, Federal-State Joint Board for Universal Service: Comments of Ballhoff & Rowe, LLC on behalf of the Independent Telephone & Telecommunications Alliance, WC Docket No. 05-337, CC Docket No. 96-45 (Oct. 10, 2006).*

Also as described below, mobile support recipients should be subject to standards addressing (1) goals for carrier investment, (2) coverage issues, (3) quality of service standards and other obligations, and (4) accountability mechanisms. A reverse auction process must be capable of ensuring adequate incentives in all of those regards. The Commission has enabled great progress in wireline deployment across the Nation; the goals-driven, cost-cognizant overviews of those programs should inform the process the Commission undertakes for mobile broadband.

B. DESIGN OF THE MOBILITY FUND

Size of the Mobility Fund

The Commission proposes to use \$100 million to \$300 million in USF high-cost universal service support to provide “one-time” support for the expansion of mobile wireless services.⁵ The Commission asks whether that amount is “optimal” for the mobility fund, including whether more is required to “jump-start” deployment with such non-recurring money.⁶ ITTA does not presume to determine the proper amount *per se* for funding mobile deployment, but rather suggests that funding levels be built atop defined principles underlying the policy of supporting mobile services. As an overarching matter, however, the Commission should not perpetuate presumptions that capital expenditures alone are sufficient to bring broadband to rural America, either by wired or mobile sources. Rather, the presumption should be that, in areas where a business case for broadband deployment does not exist, on-going support will be necessary to maintain networks, and that presumption should be manifested as part of the process by which high-cost support is distributed. A presumption that only cap-ex is

⁵ NPRM at para. 13.

⁶ NPRM at para. 14.

necessary risks limiting crucial on-going support to rural America, compelling carriers to either forsake maintenance or increase end-user rates in order to generate sufficient operating revenues. The latter option could run counter to universal service principles requiring reasonably comparable rates, and could likewise risk adoption rates by pricing services too high. These outcomes should be avoided.

Limiting Support to One Provider per Area

The Commission proposes that only one provider in a geographic area should receive Mobility Fund support.⁷ ITTA supports this proposal, which is consistent with prior ITTA advocacy that the Commission desist from allocating support to multiple duplicative networks in common geographic regions. This practice played a role in the rampant growth of support paid to competitive eligible telecommunications carriers (CETCs), which ultimately was revealed to offer no correlative consumer benefits: a study undertaken when the Commission was considering an interim cap on CETC support revealed that of the 103.2 million people with coverage from wireless CETCs, more than 52 percent had coverage from more than one supported CETC.⁸ The study also revealed that more than 97 percent of consumers served by a supported wireless CETC were able to obtain service from a non-supported carrier.⁹ Accordingly, the Commission should avoid the pratfalls occasioned by supporting multiple duplicative carriers in a single region; resources should be spent more wisely.

⁷ NPRM at para. 15.

⁸ “The Availability of Unsubsidized Wireless and Wireline Competition in Areas Receiving Universal Service Funds,” Nicholas Vantzelfde, Criterion Economics, LLC, at 12 (2007).

⁹ *Id.*, at 15.

Distribution of mobility fund support to one provider per unserved geographic area would be consistent with proper refocusing of high-cost mechanisms to the task of supporting service where a business case cannot otherwise be made. The lessons learned from the CETC ventures must be applied to new high-cost distribution processes. The statements of then-Commissioner Kevin J. Martin, offered in opposition to funding multiple providers in the same region, resonate: “. . . I have continued to express my concerns with the Commission’s policy of using universal service support as a means of creating ‘competition’ in high-cost areas. . . . I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier.”¹⁰ High-cost support should be used to increase deployment, rather than competition. Accordingly, ITTA supports limiting the distribution of mobility support to one provider per region.

Using Auctions to Determine Awards of Support

The Commission seeks comment on whether it should use a competitive bidding mechanism to determine the entities that will receive support under the Mobility Fund, as well as the amount of support entities should receive.¹¹ The Commission proposes a single round auction in which bids are presented on a “per-unit” basis. The lowest per-unit bid would be the first assigned support, and that per-unit would be multiplied to meet the amount needed to cover the population. Support would continue to be assigned to the next-lowest bid (except that it would not be assigned to an entity bidding to serve an area

¹⁰ *Federal-State Board on Universal Service, Virginia Cellular, LLC, Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia: Memorandum Opinion and Order, Dissenting Statement of Commissioner Kevin J. Martin, CC Docket No. 96-45, FCC 03-338 (2004).*

¹¹ NPRM at para. 16.

already captured by a winning bidder), and so forth, until the available funds are exhausted.

ITTA does not oppose outright the use of reverse auctions to determine support levels in unserved, green-field areas. The Commission, however, must differentiate between unserved and POLR-served areas, in which auctions augur hazards. These hazards are of particular concern when they might affect adversely the ability of POLRs to serve end-users, and should therefore not be proliferated by widespread implementation of reverse auction mechanisms. The Nation's impressive record of telephone network deployment, and the adoption rate among users, is the result of reasoned policy and supportive regulatory fixtures. Since those mechanisms have apparently not fostered deployment of mobile services in the areas that remain unserved, the Commission now contemplates an alternative mechanism. At this time, however, it is valuable to review the potential adverse impacts that may accrue from a reverse auction, which in turn illuminate why the potential for harm should not supplant success that has already been implemented.

To begin, auction winners may be encouraged to restrict deployment of new technology in order to avoid interference with pre-determined business models that conform to the price of their bid. This is especially true where auctions are conducted only once per area, and where only cap-ex is provided. In instances in which multiple periodic auctions are contemplated, deliberate underinvestment may emerge toward the end of an auction term, when the then-incumbent provider is faced with the prospect of either stranding investment or transferring assets to a new auction "winner." The concerns regarding stranded investment would affect not only providers, but, by

extension, investors, as well, whose willingness to support a long-term rural business model would be compromised by the risks imposed by periodic auctions.

Consumers, too, could suffer unintended consequences in a periodic auction: the Commission must address the possibility of deteriorating service, especially in the final years of the “bid,” and whether a newcomer could immediately assume POLR obligations of which the exiting provider is relieved. Finally, auction cycles must contemplate the natural correlation between investment and depreciation cycles: a longer investment term is better than a shorter term, but the longer term may not be as attractive when confronted by regulator and consumer interest in emerging features and services. And, an auction process must be reconciled with the usual cyclical replacement of plant with different depreciation lives, rather than “all at once,” characterized by the Commission as “lumpy investment patterns.”¹²

These concerns are particularly relevant in the context of POLRs serving rural areas. As noted earlier, and as evidenced in the current universal service model, support is necessary not only for initial deployment, but also for maintaining network operations. Moreover, a cap-ex only auction would discourage providers’ incentives to enhance existing networks if appropriate recovery for new capital expenditures was foreclosed. A POLR must have sufficient reassurance that it will be able to meet its universal service

¹² *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers: Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-777 and 98-166, FCC 01-304, 16 FCC Rcd 19,613, at para. 86 (2001).*

mandate of providing reasonably comparable services at reasonably comparable rates; precluding provider, and investor, reassurance would run contrary to achieving the goals of universal service. These risks are hardly tolerable, but might be accepted in otherwise-unserved areas where limited implementation enables quick review and revision of problematic outcomes as they arise. By contrast, the replacement of successful regulatory regimes with risk-prone solutions is an untenable approach, and should be avoided.

Identifying Unserved Areas by Census Block

The Commission proposes to identify unserved areas by census block, the smallest geographic unit by which the Census Bureau tabulates data.¹³ ITTA does not *per se* oppose census block basis for evaluating areas unserved by mobile broadband; evaluations and consequent distribution of support on a small-unit basis is consistent with ITTA advocacy for more precisely targeted funding, generally, and may be useful in a “green-field” environment. However, ITTA urges the Commission to distinguish between “green-field” wireless networks and ILEC wireline operations. The census block metric should not be used in the wireline environment. The wireline environment should be evaluated using wire centers in order to ensure that targeted support conforms to geographic patterns that match the parameters of networks as they have been deployed.

The Commission also seeks 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

¹³ NPRM at para. 21.

eligible for Mobility Fund support.”¹⁴ How, or whether, the availability of other technologies¹⁵ should be considered in determining whether a particular area should be eligible for mobility support presents a textured issue. Conceivably, the Commission could increase the proportion of “served” areas if service availability from a non-mobile wireless provider is sufficient to preclude an area from being considered for auction. As stated above, however, the goal of supporting access to mobile broadband should be based upon specific, independent public policy goals relating to mobile wireless broadband services. Under that construct, the availability of a wired service in a particular geographic region should not necessarily preclude a mobile provider in that area from being eligible for high-cost support.

Offering Support by Census Tract

The Commission proposes to use census blocks as the unit by which an area is adjudged to be served or unserved. For purposes of bidding, however, census blocks would be combined and the larger census tract would be used as the base unit, with the “accepted” bids effectively operating to expand coverage to all unserved areas in the census tract.¹⁶ ITTA submits that consolidating bids by census tract might introduce some measure of efficiency to the extent that bidding by census blocks would result in numerous separate bids to be managed and tracked. The efficiencies of *auction administration*, however, should not be confused with supposed possible efficiencies of scale. To the extent economies may be borne of combining unserved areas for purposes

¹⁴ NPRM at para. 21.

¹⁵ See NPRM at para. 23.

¹⁶ NPRM at para. 25.

of initial deployment, that analytical construct does not extend to areas in which existing providers have scaled networks to meet local market requirements, including, but not limited to, POLR obligations established by local or state requirements. The Commission should distinguish between mechanisms used to promote mobile services in unserved areas, and mechanisms to support POLRs.

Establishing Unserved Units

The Commission proposes that “unserved units” be based on population. The Commission asks whether it should take into account geographic and demographic characteristics, including community anchor institutions.¹⁷ ITTA submits the Commission should consider households, rather than community institutions. Households should be distinguished from population, since as the intent is to make broadband widely available, it should be assumed that members of a household can avail themselves of the same connection that serves the other members of that household, whether through a same or different device. Road miles and population density, cited among the geographic considerations the Commission enumerates, will contribute to the bidder’s anticipated costs to provide service and be reflected in the bid. Overall, lower per-unit bids will likely be submitted for unserved areas with greater population density, and those areas with the sparsest population will likely earn the highest per-unit bids, reflecting the likely cost of providing service there. This phenomenon reflects economic realities: the higher cost to serve, the more supplemental support will be required. This is consistent, as well, with National Broadband Plan (NBP) findings that the last frontiers

¹⁷ NPRM at para. 27.

are the highest cost,¹⁸ translating to the reality that absent sufficient funding, some areas will lack mobile wireless broadband access.

Coverage Requirements

The Commission seeks comment on whether it should require 100 percent coverage, or a range of coverage falling between 95 and 100 percent; support would be distributed based upon the amount of the area covered.¹⁹ ITTA submits that requiring coverage at 100 percent levels could be counterproductive. As noted in the NBP, the costs of broadband deployment increase exponentially as the last customers are served.²⁰ Factoring those very high costs into bids could discourage bids for certain areas that contain extraordinarily high-cost areas, leaving the remaining consumers unserved. Consequently, in regions in which 98 percent coverage can be achieved with some measure of economic reasonableness (accommodating both investor and high-cost funding) the remaining two percent would be so costly as to force the bid amount beyond a point at which it could be reasonably expected to win. If that were to happen, the balance of users in the unserved area would suffer. Bids should contemplate serving a range less than 100 percent.

The Commission also seeks comment on how compliance can be monitored, and what sort of incentives should be created to “further the goals of the Mobility Fund

¹⁸ “Connecting America: The National Broadband Plan,” Federal Communications Commission, at 138 (2010) (NPB).

¹⁹ NPRM at para. 34.

²⁰ NBP at 138.

program.”²¹ Compliance can be monitored with regular reporting requirements that describe build-out and technical data on network operability. If the Commission seeks to promote additional mobile wireless broadband deployment, then it can and should promulgate incentive programs that will encourage deployment beyond that which is undertaken by recipients of Mobility Fund support, whether through tax-based or other creative incentives. To the extent the Commission should ensure that recipients of Mobility Fund support comply with regulations (that are intended to “further the goals of the Mobility Fund program”), then the Commission should enact strict auditing and oversight requirements, similar to those to which current ILEC recipients of high-cost support are subject.

The Commission also seeks comment on whether it should require recipients to (a) actively market their service, or (b) provide service to a specified number of customers by certain milestone dates. The requirement to advertise is not necessary: firms interested in maximizing profitability will seek customers actively. Likewise, a requirement to provide service to a specified number of customers is not necessary. Providers cannot compel consumers to take service, and requirements for providers to obtain a defined number of subscribers would be simply unworkable, even if mechanisms enabling steep rate discounts could be created. More appropriate than measuring customers is a requirement to make service available within defined geographic areas.

Finally, the Commission seeks comment on “proposals to encourage competition,” including that any new tower constructed for Mobility Fund obligations provide opportunities for collocation, and whether bidding should include conditions to

²¹ NPRM at para. 35.

provide data roaming on reasonable and not unreasonably discriminatory terms and conditions.²² ITTA urges the Commission to maintain focus on the goal of extending coverage, a pursuit that should not be confused with expanding competition. The conflation of universal service policies with competition engendered the flawed CETC funding policy. By contrast, the proposed mobility fund offers an opportunity to test efficient green-field deployment strategies that should not be anchored by notions that competition can exist competently in areas unable to support even a sole provider. The mobility fund should be used to extend service, but without network sharing requirements that could undermine the ability of the supported provider to secure needed market share.

Service Quality and Rates

The Commission proposes that auction winners should not be required to use a particular type of technology; rather, the Commission proposes to define a “baseline of performance” that any supported network must meet or exceed. The Commission also seeks comment on whether supported networks should provide (a) data rates comparable to 4G, or (b) a “path to 4G service.”²³ ITTA supports a technology-neutral “baseline of performance” standard that does not require the use of a particular specimen of technology. The market will determine the best technology that meets the balances demanded by provider and end-user needs. In each market, consumer demand will inform provider deployment; technologies well-suited to one area may be ill-suited to another, and the Commission should not act as the arbiter in place of the market.

²² NPRM at para. 36.

²³ NPRM at para. 37.

The Commission also seeks comment on how it can address the statutory principles that rates in rural, insular, and high-cost areas are reasonably comparable to those that are available in urban areas, given the “absence of affirmative regulation of rates” for commercial mobile radio services (CMRS). The Commission also seeks comment on what it should use as the standards for “reasonably comparable” and “urban areas.” What is “reasonably comparable” depends upon the subjective input of variable factors, including, but not limited to, population density, cost of deployment, terrain and topography. The Commission need not regulate rates, *per se*. Rather, the Commission can condition receipt of support upon provider rates that fall within a certain defined range; adherence to “reasonably comparable” rates may in that way be characterized as a voluntary commitment, in return for which the Commission provides high-cost support.

Deployment Schedule

The Commission seeks comment on milestones for deployment, including contemplation of the National Environmental Policy Act and other Federal and state regulations and requirements.²⁴ ITTA recommends that build-out goals include reasonable periodic milestones calibrated to ensure that auction winners maintain a regimen that leads to fulfillment of their obligations. The schedule must contemplate topographic, environmental, and local regulatory characteristics. This approach is necessary in an auctions environment, as contrasted against ILEC USF programs, which distribute support only after expenses have been incurred and subsequently reviewed. Any build-out obligations should be subject to waivers for which awardees may petition; these waivers may be appropriate in instances in which circumstances beyond the

²⁴ NPRM at para. 39.

reasonable control of the provider arise, including, but not limited to, substantial and unanticipated zoning or logistical obstacles.

Mobility Fund Eligibility Requirements

The Commission proposes several minimum requirements for Mobility Fund eligibility. As a threshold matter, the Commission proposes to require Mobility Fund recipients to be eligible telecommunications carriers (ETCs).²⁵ This is an appropriate first step; meaningful initial minimum requirements should be instituted. Where the Commission seeks to reinforce efficiencies in high-cost support, scarce resources ought not be spent determining eligibility “after the fact.” Rather, the winnowing process that separates competent from incompetent bidders should be undertaken early in the process in order to reduce opportunities for expending unnecessary auction resources on bidders who ultimately would not be eligible to obtain distributions. The statute’s enumerated ETC obligations are a logical starting point for formulating Mobility Fund recipient obligations. The Commission should consider, however, the need for adequate coordination with state entities in order to ensure that bidders are not rendered ineligible due to potential state administrative processes that are beyond their control. The Commission also proposes to require that applicants have access to sufficient spectrum,²⁶ and asks whether entities that have applied for a license or are acquiring a license via assignment or transfer of control should be considered eligible.²⁷ ITTA agrees that auction participants must demonstrate access to spectrum that is adequate to support the

²⁵ NPRM at para. 45.

²⁶ NPRM at para. 45.

²⁷ NPRM at para. 51.

services demanded of Mobility Fund providers. The Commission must take care to ensure that providers do not enter the auction only to quickly exit the market, stranding both Federally-supported investment as well as end-users.

Finally, the Commission proposes that prospective bidders demonstrate financial and technical capability.²⁸ In this regard, the Commission proposes to obtain from potential bidders a certification attesting to technical and financial capability, and asks whether bidders should comply with specific minimal showings, or whether the Commission should rely on post-auction review and performance requirements.²⁹ ITTA urges the Commission to execute no lower level of due diligence than an ordinary institutional investor would undertake before investing.

Other Qualifications

As an adjunct to the criteria described above, the Commission seeks comment on whether it should take any other steps to ensure participation by the widest range of potential providers.³⁰ As noted above, the Commission's Mobility Fund should focus primarily on processes aimed at deploying mobile broadband services that meet public policy goals. Providers that respond to the Commission's auction or other process should be those that are committed to providing service within the framework envisioned by the applicable regulatory process, with regard to financial, technical, and managerial expertise. The Commission should not seek to expand the pool of potential providers

²⁸ NPRM at para. 45.

²⁹ NPRM at para. 55.

³⁰ NPRM at para. 56.

solely for the sake of broadening the applicant pool, but should rather ensure that sufficient incentives to attract the “best and the brightest” are in place.

Other Funding Restrictions

The Commission seeks comment on whether recipients should be barred from receiving funding from other Federal programs, *i.e.*, grants, awards, or loans.³¹ ITTA submits that no such limitations should be placed upon prospective bidders. Providers should enjoy the benefit of leveraging multiple resources.

Disbursing Support: Payments, Liabilities, Audits

The Commission seeks comment on whether it should distribute support in phases.³² The Commission also seeks comment on its recourse if a bidder fails to meet obligations, including, but not limited to, repaying support, or additional penalties; whether penalties should be invoked where some service is provided, but not to level to which bidder committed; whether parent or subsidiary corporations should be liable for failure of bidder; whether the Commission can limit possibility that Mobility Fund support becomes an asset in bankruptcy proceedings.³³ ITTA submits that this problem is an endemic challenge to the auction model, and is avoided where support is paid to winners as reimbursement for incurred expenses, similar to the manner in which ILECs obtain USF high-cost support. To the extent some manner of penalty is warranted, financial repercussions that could risks an adverse impact on end-users should be avoided. Penalties garnered from future earnings may offer more reassurance toward the

³¹ NPRM at para. 89.

³² NPRM at para. 91.

³³ NPRM at para. 94.

provider's ability to deploy and operate a network if a payment schedule is tailored to accommodate operational needs. Finally, the Commission seeks comment on whether more than standard USAC audits should be implemented.³⁴ USAC audits are sufficient, but if the Commission moves toward a model in which support is paid as reimbursement, some oversight must be in place to adjudge suitability of expenses as "used and useful."

III. **CONCLUSION**

ITTA supports programs that are tailored to meet sound policy goals. Regulations aimed at increasing the deployment of mobile broadband services should, as a threshold matter, contemplate, if not define, the unique goals, benefits, costs, and other aspects of mobile services. The Commission should ensure, however, that solutions tailored to meet one set of principles are not inappropriately applied to another. As such, while reverse auctions may be considered for unserved "green field" areas, they augur hazards for POLRs, and according should not be implemented where incumbent POLRs serve.

Respectfully submitted,



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³⁴ NPRM at paras. 96, 97.