

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

In the Matter of)	
)	
Universal Service Reform)	WT Docket No. 10-208
)	
Mobility Fund)	

COMMENTS OF AT&T INC.

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I. INTRODUCTION AND BACKGROUND

AT&T strongly supports the Commission's efforts to shift the focus of its universal service support mechanisms and policies to support ubiquitous deployment of broadband to all Americans. As the Commission has recognized, universal access to communications services (broadband communications services, in particular) is essential to promote economic growth, job creation, and public welfare and safety.¹ That is especially true for mobile wireless services as more consumers are choosing the convenience of mobility every day.² But, as the Commission also has recognized, market forces alone will not ensure ubiquitous deployment and availability of broadband, and the existing universal service support mechanisms were never designed to encourage deployment of such services by fixed or mobile wireless networks to fill the resulting gap. Creating a new high-cost support mechanism targeted at mobile wireless services (together with the Commission's related proposals to shift high-cost support from the PSTN to broadband) thus is essential to achieve the Commission's and Congress's ambitious broadband deployment objectives.

In the Mobility Fund Notice of Proposed Rulemaking (*NPRM*), the Commission proposes to make available a limited amount of funding (between \$100 million to \$300 million) over a relatively short period of time in order 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-

¹ Connecting America: The National Broadband Plan, at xi (rel. March 16, 2010), *available at* 2010 WL 972375.

² CDC, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2009, at 1 (rel. May 12, 2010), *available at* <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.pdf>.

and next-generation wireless infrastructure in areas where these services are unavailable.”³ The proposed Mobility Fund thus is quite modest in scope and duration when compared to the Commission’s other high cost support mechanisms.⁴ The Commission further proposes to award Mobility Fund support by conducting a single reverse auction, in which it would select the bidders that propose to deploy mobile broadband service for the least per-unit cost.⁵ The Commission thus proposes to award support, via a competitive process, based on a wireless provider’s costs, and not the costs of an incumbent carrier.⁶ AT&T believes that this proposal is

³ *Universal Service Reform, Mobility Fund*, WT Docket No. 10-208, FCC 10-182, at ¶ 5 (rel. Oct. 14, 2010). Thus, as proposed in the *NPRM*, an “unserved area” can be one that is served by mobile voice service but not mobile broadband service. *See id.* at n.7.

⁴ By contrast, the Universal Service Administrative Company (USAC) estimates that, in 2010, it will have disbursed about \$1.76 billion in interstate common line support; \$1.47 billion in high-cost loop support; \$585 million in interstate access support; \$400 million in local switching support; and \$323 million in high-cost model support. *See* USAC’s Federal Universal Service Support Mechanisms Fund Size Projections for Fourth Quarter 2010 (August 2, 2010), *available at* <http://www.usac.org/about/governance/fcc-filings/2010/Q4/4Q2010%20Quarterly%20Demand%20Filing.pdf>. These programs are, under the current rules, permanent and provide recipients with recurring support so long as the carriers meet the mechanisms’ requirements.

⁵ *NPRM* at ¶ 64. Under the Commission’s proposal, providers of mobile broadband service will compete to provide this service in Commission-identified unserved areas in exchange for Mobility Fund support. The Commission proposes to select those bidders proposing the lowest per-unit bids (using the population of the unserved areas as units), with no more than one Mobility Fund recipient in any particular area, until the Commission reaches its funding cap. *Id.* at ¶ 18. Unlike a traditional auction, in which parties are bidding for the identical prize (e.g., the unserved population in a defined geographic area), the Commission proposes to compare and rank bids that could cover completely different geographic areas. If selected, the Commission will award the recipient the amount of support requested in its bid. While the Commission proposes to spread Mobility Fund payments over some period of time (versus awarding the winning bidder one lump-sum payment), the recipient will not receive support in excess of the amount contained in its bid. The Commission refers to this support structure as “one-time” or “non-recurring” support. *Id.* at ¶¶ 5, 11. It is our understanding that these terms are not intended to limit Mobility Fund support to a provider’s non-recurring *costs*, which may only be capital costs. Rather, the Commission was merely signaling that Mobility Fund recipients are ineligible for support beyond the amounts contained in their winning bids. Those bids, however, could reflect a carrier’s estimated capital and ongoing costs of providing service for the Commission’s required term of service.

⁶ *Id.* at ¶¶ 1-2.

a potentially useful, but – with a budget of only \$100 million to \$300 million – by no means sufficient, first step to close the Commission-recognized “mobility gap.”⁷

As a limited trial, the Mobility Fund will allow the Commission to gain experience in a relatively brief period of time with using reverse auctions to award universal service support, something that it has not previously tried. With such a small budget, this reverse auction experience may be the greatest benefit of the new fund (and the Commission should plan to collect and analyze the resulting data). But if the Commission intends to narrow (if not eliminate) the current mobility gap, it will have to do a lot more following the expiration of the Mobility Fund, which the Commission seems to acknowledge by describing the Mobility Fund as “provid[ing] an *initial* infusion of funds.”⁸ Thus, it is imperative that the Commission develop a comprehensive plan to eliminate this gap post-Mobility Fund. AT&T recommends that the Commission seek comment on a permanent fund to support mobile broadband service as part of its Connect America Fund (CAF) NPRM, expected early next year.⁹

⁷ *Id.* at ¶ 2 (explaining that “mobility gaps remain a problem for residents, public safety first responders, businesses, public institutions, and travelers, particularly in rural areas. Such gaps impose significant disadvantages on those who live, work, and travel in these areas.”).

⁸ *Id.* at ¶ 5.

⁹ Among other issues on which the Commission should request comment in the CAF NPRM are, which telecommunications and information services are being used in urban areas and whether reasonably comparable services are being made available in high-cost areas? *See* 47 U.S.C. §254(b)(3). Mobile broadband service is clearly a service that is provided in urban areas but remains unavailable in many high-cost areas. Even worse, many residents in those high-cost areas lack access to mobile *voice* service. Additionally, as part of the Commission’s order finalizing either its Mobility Fund rules or its CAF rules, the Commission should agree with the Joint Board that “mobility” should be a supported service in its own right. In its 2007 Recommended Decision, the Joint Board concluded that “mobility” is “a fundamental necessity for an overwhelming majority of consumers for public health, safety, and economic development.” *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 07J-4, at ¶ 64 (2007). For these reasons and others, the Joint Board concluded that “mobility satisfies the statutory requirements for inclusion as a separately supported service and should no longer be eligible for support because it happens to satisfy requirements designed for wireline voice communications.” *Id.* at ¶ 63.

For the Mobility Fund to be a success, both at narrowing the mobility gap and serving as a reverse auction test bed, it is essential that the Commission provide clear specifications about what precisely the bidders are bidding on and the criteria by which the Commission will evaluate bids. Bidders must have a common understanding about what is required of them and how the Commission will score their bids vis-à-vis their competitors' bids. If the evaluation criteria are not detailed and clear, the Commission is less apt to attract bidders and, as a result, the auction is unlikely to be successful.

One such example of an evaluation criterion that the Commission will need to establish and publicize prior to the commencement of the reverse auction – and an essential one at that – is whether the Commission will give priority to truly unserved areas (i.e., areas that lack *any* mobile wireless service) over bids to upgrade second generation (2G) networks to third generation (3G) or better networks. If the Commission ranks bids based solely on the cost per unit, it seems likely that most, if not all, of the lowest per unit bids will be for network upgrades to provide mobile broadband service in areas that already have mobile voice service, rather than to provide service in truly unserved areas, because the per unit cost for new construction is likely to be significantly higher than the per unit cost to upgrade existing facilities.¹⁰

AT&T believes that, when distributing scarce universal service dollars, the Commission should always afford a preference to truly unserved areas. The adverse consequences of the mobility gap described by the Commission in its *NPRM* (e.g., problems for public safety first responders, residents and travelers) are not problems created by the lack of mobile broadband but

¹⁰ See *NPRM* at ¶ 32 (requesting comment on whether it should prioritize bids for areas that lack any mobile service over areas that have mobile voice service but no mobile broadband service).

by the lack of any mobile service at all. And, as a practical matter, it will be challenging, if not impossible, for the Commission to identify the areas in which mobile service providers likely would upgrade their existing 2G networks to provide 3G or 4G service in the near term without any universal service high-cost support. Everyone should agree that it would be an inefficient use of federal universal service dollars to pay a carrier to provide a service when that carrier likely would have provided that same service (in this case, mobile broadband service) in a year or so without any Mobility Fund support. By ranking bids for truly unserved areas ahead of bids proposing to upgrade existing networks to 3G or better in “underserved” areas (i.e., those areas that have mobile voice but not mobile broadband service), the Commission can be assured that it will get “the biggest bang for the buck” by directing support to areas where no provider has concluded that there is an economic case to deploy mobile wireless facilities absent federal funding. By contrast, if the Commission chooses to fund upgrades, it will never have any assurance that these upgrades would not have been made without Mobility Fund support.

For the remainder of these comments, we discuss which wireless providers should be permitted to participate in the reverse auction for Mobility Fund support; what are participants bidding on and what evaluation criteria the Commission should use; and how should the auction be designed.

II. DISCUSSION

A. Mobility Fund Eligibility Requirements

Mobility Fund ETC Designation. The Commission proposes that, in order for an entity to participate in the Mobility Fund auction, that entity first must obtain designation as an eligible telecommunications carrier (ETC) for the geographic area(s) it intends to include in its bid by the relevant state commission (or the Commission in those states in which the state commission has

determined that it has no jurisdiction over a wireless ETC designation request).¹¹ The Commission asks whether, alternatively, it should allow entities that have applied for an ETC designation covering the area upon which it will bid to participate in the auction.¹²

AT&T recommends that the Commission scrap its proposal to require applicants for Mobility Fund support to obtain generic ETC status for the areas they propose to serve before they may apply for funding. As the Commission previously has recognized, “a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support.”¹³ If the Commission were to require Mobility Fund applicants to obtain ETC status (and corresponding service obligations) before they may apply for funding, it seems likely that only existing wireless competitive ETCs will participate in the auction, which, in turn, would likely result in higher, less competitive bids. Instead, the Commission should create a new, separate Mobility Fund ETC Designation that would be granted by the Commission (not state commissions),¹⁴ and limited to the specific geographic area(s) covered by an applicant’s bid, which thus would define and limit the geographic scope of any service obligation(s) imposed on the applicant as a condition for receiving Mobility Fund support. The Commission should direct bidders to include

¹¹ *Id.* at ¶ 47 & n.52.

¹² *Id.* at ¶ 48.

¹³ *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, ¶ 13 (2000) (Declaratory Ruling).*

¹⁴ Because the Mobility Fund’s supported service, broadband, is an interstate service, it is appropriate for the Commission, not the states, to grant the Mobility Fund ETC designations. Additionally, the short-term nature of the Mobility Fund is another reason for the Commission to grant all of these designations as it will be able to act without delay on these applications.

applications for such designation with their bids, and should grant such applications at the same time it selects a particular mobile wireless provider's bid for funding.

The Commission not only should limit Mobility Fund ETC status and corresponding service obligations to those areas an applicant proposes to serve (and for which it receives funding) but also tailor such obligations to the goals of the Mobility Fund, rather than applying the generally-applicable ETC obligations imposed on non-Mobility Fund ETCs. Under the Commission's current rules, all ETCs are required to provide the so-called nine supported services and functionalities (e.g., voice-grade access to the PSTN, dual-tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent),¹⁵ as well as to participate in its low-income program.¹⁶ Rather than reflexively requiring Mobility Fund ETCs to provide the same nine supported services and functionalities, the Commission instead should simply require Mobility Fund recipients to offer broadband service with access to voice service¹⁷ throughout their Mobility Fund-designated service areas.¹⁸

In addition, to the extent the Commission limits Mobility Fund support to fund construction of facilities to serve areas lacking *any* mobile service today, a decision that we

¹⁵ 47 C.F.R. §54.101(a).

¹⁶ 47 C.F.R. §54.405.

¹⁷ This means access to and from the PSTN and interconnected VoIP providers, access to emergency services (911), and access to telecommunications relay service (711). To be clear, these obligations should be in lieu of, and not in addition to, the nine supported services and functionalities.

¹⁸ These ETCs also would participate in the Lifeline/Link-Up program until the Commission establishes a stand-alone Lifeline Provider designation that is separate from the ETC designation, as AT&T has recommended in other proceedings before the Commission. *See, e.g.*, AT&T Comments, CC Docket No. 96-45, WC Docket No. 03-109 (filed July 15, 2010); AT&T Comments, WC Docket No. 05-337, CC Docket No. 96-45, at 25-27 (filed April 17, 2008); AT&T Comments, WC Docket Nos. 05-337, 03-109, 06-122, 04-36; CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68, at 53-54 (filed Nov. 26, 2008).

support, the winning bidder obviously could not begin providing supported services (i.e., mobile broadband with access to voice) on the first day it is designated as a Mobility Fund ETC. Rather, it could do so only once it has completed construction of such facilities. While the Commission has recognized this issue in prior orders, finding that “a new entrant can make a reasonable demonstration . . . of its capability and commitment to provide universal service without the actual provision of the proposed service,”¹⁹ to our knowledge, prior ETC applicants were providing service in at least part of the area for which they were seeking ETC designations. Here, by contrast, the Mobility Fund ETC applicant will have *no* capability to provide the supported service for many months. The Commission thus should make clear that a Mobility Fund ETC’s service obligations do not become effective until it has deployed the facilities necessary to offer the supported service. The Commission also should clearly state that, at the expiration of the service term (e.g., five years after completion of the build-out), the carrier’s Mobility Fund ETC designation automatically sunsets.

Demonstration that the Wireless Provider Is Qualified. The Commission asks whether it should require potential Mobility Fund participants to follow the Commission’s two-stage application process used for spectrum auctions. Under this process, all bidders are required to submit a “short form” application, with winning bidders required to submit a second, “long form” application to “show[] that [they are] legally, technically and financially qualified to receive support from the Mobility Fund.”²⁰ While a two-stage approach may make sense in the context of spectrum auctions, where bidders are competing to *pay* the Commission, AT&T believes that any participant in an auction designed to *award* funding should be required to be

¹⁹ *Declaratory Ruling* at ¶ 24.

²⁰ *NPRM* at ¶¶ 59, 80.

deemed “legally, technically and financially qualified” before the auction is conducted. The Commission therefore should require would-be bidders to provide whatever information the Commission needs to determine whether they are so qualified when they submit their bids. To demonstrate that the bidder is technically qualified, the Commission could direct bidders to include details about the technology and the network the bidder proposes to deploy to satisfy its Mobility Fund obligations.²¹

B. Mobility Fund Design

In this section, we discuss the Commission’s proposals to: determine which areas are eligible for Mobility Fund support, rank bids, impose conditions on winning bidders, require participants to meet certain service milestones, and require recipients to demonstrate that they have satisfied their performance requirements.

1. Identifying Areas Eligible for Mobility Fund Support

Identifying “Unserved” Areas. The Commission proposes to identify those areas eligible for Mobility Fund support (*i.e.*, census blocks that do not have access to supported services today) based on industry data compiled by American Roamer.²² While we support the Commission’s proposal to identify unserved areas at the census block level, we are concerned that American Roamer data may not be sufficiently comprehensive and accurate for that purpose (indeed, no data may be complete and accurate).²³ The Commission therefore should establish a

²¹ *Id.* at ¶ 84. On the other hand, it seems unnecessary to require bidders to provide a detailed project schedule as proposed in the *NPRM* (*e.g.*, start and end dates for drafting and posting requests for proposal, start and end dates for selecting vendors).

²² *Id.* at ¶ 11.

²³ *See id.* at n.23 (“As the *National Broadband Plan* noted, ‘American Roamer reports *advertised* coverage as reported by *many* carriers who all use different definitions of coverage.’” (First emphasis in

process pursuant to which a party can challenge the designation of a particular area as “unserved” before the start of the auction to prevent waste and ensure that support only goes to areas that truly are unserved. In the event a party files such a challenge with the Commission, we recommend that the Commission resolve that challenge through a written order, publishing the results of its reviews.²⁴

In addition, the Commission proposes to determine whether a particular census block is unserved based on “whether the data indicates that the geometric center of the block – referred to as the centroid – is covered by [supported] mobile wireless services.”²⁵ If it does not, the Commission would consider the census block unserved. We believe this is reasonable and more administratively manageable than the alternative methodology suggested for consideration.²⁶

Offering Support by Census Tract. Given the very large number of census blocks across the country, AT&T believes it would be reasonable and appropriate to require would-be Mobility Fund applicants to submit bids to serve all of the unserved areas of census blocks within a particular census tract, as the Commission proposes,²⁷ in order to reduce the administrative

original, second emphasis added). While the nationwide mobile wireless providers do provide data to American Roamer, we do not know whether small rural wireless companies do as well.

²⁴ By contrast, NTIA did not make the results of its BTOP challenge reviews public. Thus, challenging parties were left to guess why their data were inadequate or whether their data were reviewed at all. We believe that this lack of transparency may have resulted in NTIA awarding money to applicants to overbuild in certain areas.

²⁵ *NPRM* at ¶ 22.

²⁶ The listed alternative is the “proportional method,” in which the Commission would obtain the geographic proportion of the block that is uncovered and then the Commission would consider “unserved” any census block where the data indicates that more than 50 percent of the area is unserved, or the Commission would consider unserved that fraction of the census block’s population. *Id.*

²⁷ *Id.* at ¶ 25.

burden on bidders of preparing and submitting bids for every census block with unserved areas, and on the Commission of evaluating all those bids. To be clear, however, regardless of whether a census tract contains some “served areas,” a winning bidder’s service obligations should apply only to those unserved areas within that census tract. To the extent the “served” area of a tract is served by another mobile provider, the winning bidder may not have the facilities and network infrastructure to provide supported services in that area, and may lack the funds and business case necessary to justify investment in such facilities.

Establishing Unserved Units. The Commission proposes to evaluate and rank bids by the lowest per-unit bids. A “unit” would be based on population.²⁸ The Commission asks whether, in addition to ranking bids based on the lowest per-unit cost, it should assign some number of units to road miles, traffic density, and/or community anchor institutions.²⁹ While we do not disagree that affording some weight to these other factors may “better represent the public benefits of providing new access to mobile services,” doing so would significantly complicate evaluation and comparison of competing bids (e.g., how would the Commission determine that x number of people in an unserved census block is equivalent to y miles of roads for purposes of assigning units?). For such a limited trial, we recommend that the Commission consider population only when evaluating and ranking competing bids.

Distributing Support among Unserved Areas. The Commission also asks whether it should alter the bid evaluation criteria in order to direct more Mobility Fund support to particular

²⁸ *Id.* at ¶27.

²⁹ *Id.*

geographic areas.³⁰ As discussed above, we believe the Commission should rank bids based solely on population to avoid unnecessarily complicating this pilot program.

2. Performance Requirements

Coverage Requirements. The Commission sought comment on whether it should impose several “coverage” related conditions on winning bidders. These proposed conditions include requiring successful bidders to: (1) provide mobile broadband coverage to 100 percent of the unserved population in a census tract or something less than 100 percent, such as some percentage between 95-100 percent;³¹ (2) “actively market” their services in the designated areas; (3) provide mobile broadband service to a specified number or percentage of consumers in the designated area by a certain date;³² (4) provide the opportunity for collocation on new towers; and (5) provide data roaming on reasonable and not unreasonably discriminatory terms and conditions.³³ As discussed below, AT&T opposes any conditions that are not necessary to ensure that mobile broadband is deployed in unserved areas. Imposing any such conditions will only deter participation in the auction – preventing achievement of Commission objectives, raising the cost of doing so, or both.³⁴ We address each of the proposed conditions in turn.

³⁰ *Id.* at ¶¶ 28-32.

³¹ *Id.* at ¶34.

³² *Id.* at ¶ 35.

³³ *Id.* at ¶ 36.

³⁴ The federal government experienced this firsthand with its BTOP awards, in which many broadband providers, including AT&T, declined to apply directly for funding due to several onerous conditions. NTIA’s application pool suffered as a result and the agency likely spent more money than it otherwise would had it been more judicious with its conditions.

First, it seems reasonable to expect a winning bidder to eventually make available mobile broadband service to a high percentage of consumers residing in the unserved areas covered by its selected bid. AT&T recommends that the Commission permit bidders to satisfy this requirement in one of two ways (one of which the bidder would specify in its bid): (1) Bidders would commit to offering the supported service to a defined percentage (e.g., 90 percent)³⁵ of the unserved population within x number of years after receiving Mobility Fund support; or (2) bidders would commit to offering the supported service at the centroid of each census block included in their bids within x number of years after receiving Mobility Fund support. While we believe the practical effect of these options is the same (the winning bidder will provide service to the overwhelming majority of the residents in the previously unserved areas covered by its bid), these alternative approaches recognize that the size of census blocks varies enormously. In areas in which census blocks are geographically large (e.g., areas in the Western part of the country), it seems appropriate that bidder should provide coverage to 90 percent of unserved population inside a census block.³⁶ By contrast, in the Eastern part of the country where census blocks are geographically small, a winning bidder could commit to provide the supported service

³⁵ The Commission should permit bidders to include a higher level of coverage (e.g., 100 percent) in their bids. The Commission would calculate bidders' per unit costs based on whatever percentage of unserved population they included in their bids, which could be, for example, 100 percent or 90 percent. So long as the bidder's proposed coverage is reflected in its per-unit bid so that the Commission can evaluate it alongside a bid with a different proposed coverage percentage, then we see no reason for the Commission to mandate a single percentage versus a percentage that acts as a floor.

³⁶ To design a network that would cover a minimum percentage of the unserved population in a census tract with geographically large census blocks, the bidder would likely geocode the location of every housing unit in those unserved areas and locate those housing units on a map. From that map, it would determine where to construct facilities to reach the 90 percent coverage requirement. This process obviously increases a provider's costs so that if the Commission were to require all bidders to cover 90 percent of the unserved resident population, bidders likely would follow the process described above. We believe this step is unnecessary in smaller census blocks and that bidders could instead rely on covering the centroid.

at the centroid of a block and end up covering almost all of the unserved population in that census block.

Regardless of which option the bidder selects (percentage of unserved population or the centroid), the Commission should distinguish between coverage and service availability in defining a successful bidder's service obligation. "Coverage" may differ (in some cases significantly) from service availability because there are known propagation considerations (e.g., mountains, valleys) that might prevent someone in a "covered" area from receiving service, and who thus may not have service "available." As the Commission establishes a coverage requirement for successful bidders, it should acknowledge these propagation issues and make clear that an inability to provide service to particular customers because of propagation considerations does not constitute a failure to comply with such a requirement.

Second, ETCs already are required by statute to advertise the availability of supported services and their charges using "media of general distribution."³⁷ This requirement obviously would apply Mobility Fund ETCs. Imposing any other advertising obligation on Mobility Fund ETCs thus would be both unnecessary and redundant. Third, requiring winning bidders to sign up a certain number or percentage of consumers in a particular area ignores the reality that many consumers do not want broadband service or cannot afford it. A bidder that fulfills its obligation to deploy all of the facilities necessary to offer mobile broadband throughout its designated area should not be penalized because, for example, the residents of that area are slow to adopt mobile broadband.

³⁷ 47 U.S.C. §214(e)(1)(B).

Fourth, we believe that it is also unnecessary for the Commission to “specify terms for collocation,” such as the “minimum number of spaces for collocation on any new towers.”³⁸ Because there may be circumstances outside of the winning bidder’s control that may limit its ability to grant certain (or any) collocation requests (e.g., the tower is owned by another party and the lessor imposed lease limitations on the winning bidder), winning bidders should be required only to commit to negotiate in good faith with providers using other technologies to deploy their own wireless transmission facilities at any new cell sites constructed with Mobility Fund support, to the extent feasible and on a nondiscriminatory basis.³⁹ Finally, mandating data roaming is another example of an obligation that is unrelated to the stated goal of the Mobility Fund – to cost-effectively extend mobile broadband coverage in specified unserved areas – and, in fact, may be at odds with that “cost-effective” goal if it chills participation in the auction.

Service Rates. The Commission requests comment on how winning bidders can demonstrate that the rates they charge in areas where they receive Mobility Fund support are reasonably comparable to rates charged in urban areas.⁴⁰ Given the limited scope and duration of the Mobility Fund (at least as currently proposed), the Commission should permit winning bidders to demonstrate that rates charged in areas where they receive support are reasonably comparable to rates charged in urban areas through a self-certification process. If audited by USAC or the Commission, a winner could establish compliance with a reasonable comparability requirement by showing, *inter alia*, that it is offering the same rates in urban and rural areas or

³⁸ *NPRM* at ¶36.

³⁹ As an aside, we note that mandating a minimum number of collocation slots may eliminate some excellent unobtrusive locations as tower candidates.

⁴⁰ *NPRM* at ¶ 38.

that it offers uniform national rate plans for the supported services. What the Commission should not do is establish a national benchmark rate against which it would compare a winning bidder's rates to determine whether its rates are reasonably comparable. Doing so would needlessly complicate and delay implementation of the Mobility Fund by requiring additional, extended proceedings to establish the benchmark, which likely would be difficult in any event given the wide variety of pricing plans and terms offered by wireless carriers. It also could inhibit competition by encouraging wireless carriers accepting Mobility Fund support to price to the benchmark rather than continuing to develop and modify their rates, terms, and conditions in response to market forces.

Deployment Schedule. The Commission proposes to require winning bidders to meet certain service milestones in order to receive the full amount of a Mobility Fund award. In particular, the Commission proposes that recipients “achieve fifty percent of the coverage requirement within one year after qualifying for support.”⁴¹ Even if the Commission decides to fund only upgrades to existing service under the Mobility Fund, it is unlikely that any carrier could satisfy such a requirement. One year is simply an inadequate amount of time to “achieve fifty percent of the coverage requirement.” A more realistic metric would be to complete coverage (however the bidder defined “coverage” in its application) in two years for upgrades to existing facilities. If the Commission prioritizes Mobility Fund support to truly unserved areas, this timeline should recognize that awards involving new construction will require winning bidders to obtain zoning approval and a variety of permits, adding many months to the process.

⁴¹ *Id.* at ¶ 39.

Proof of Deployment. To demonstrate that recipients have satisfied their performance requirements (i.e., providing 3G or better mobile coverage in specific areas previously unserved by 3G), the Commission proposes to require recipients to conduct drive tests using Commission-defined minimum standards (e.g., 200 kbps uplink/768 kbps downlink to handheld mobile devices at vehicle speeds of up to 70 MPH).⁴² While the Commission's proposed standards seem comparable to today's industry drive test standards, it is possible that the industry standards will change over time. Thus, instead of memorializing these minimum standards, as proposed in the *NPRM*, which may become outdated over the next several years, we recommend that the Commission permit recipients to follow standard industry benchmarks (i.e., data rates should be no lower than x percent of the industry average). We disagree with the Commission's proposal to require superior performance from 4G technologies if the recipient chooses to spend Mobility Fund support on 4G, not 3G, technologies. Applying different standards to 3G and 4G technologies would cloud an otherwise clear auction parameter and would complicate the Commission's evaluation of bids.

In paragraph 44 of the *NPRM*, the Commission proposes that Mobility Fund participants file annual reports with the Commission demonstrating their coverage in the designated service area for a period of five years.⁴³ This seems to be the closest that the Commission comes to identifying a service term. The Commission must be dramatically clearer about what is a winning bidder's service obligation. Proposed rule 54.1005(a) contained in Appendix A states that Mobility Fund recipients shall submit annual reports to the Commission for *ten years*.⁴⁴ Ten

⁴² *Id.* at ¶ 40.

⁴³ *Id.* at ¶ 44.

⁴⁴ *Id.*, App. A at 38.

years is an unreasonably long service term, particularly given that, as proposed, the Mobility Fund will disburse one-time support to participants. We recommend that the Commission issue clear rules setting forth the amount of time a winning bidder has to complete construction and begin offering the supported service throughout its designated service area (e.g., two years), and the amount of time it is obligated to offer the service thereafter (e.g., three years, five years). If there is any ambiguity about what bidders are bidding on (and, obviously, contradictory requirements contained in the proposed rule and the text in the *NPRM* do not help clarify matters), the Commission may not receive many bids, which may result in it spending more for fewer projects.

C. Reverse Auction Design

Reserve proposal. The Commission proposes to give itself the discretion to establish maximum acceptable per-unit bid and reserve amounts (along with discretion about whether to disclose such reserves).⁴⁵ We recommend that the Commission decline to establish maximum opening bid and reserve amounts. By its very nature, an auction is useful when the auctioneer (the Commission) does not know what is the minimum cost of providing universal service in a given area. If the Commission sets a reserve (and, for that matter, a maximum acceptable bid amount), it is acknowledging that while the absolute minimum cost of universal service is not known, it is known absolutely that this cost is not above the reserve level (or above the maximum bid amounts). If the Commission sets the reserve and the maximum bid amounts too low, no wireless carrier will find it profitable to serve these areas and no one will bid. Also, if the Commission publishes the reserve and maximum bid amounts, it provides bidders with a

⁴⁵ *Id.* at ¶ 66.

focal point, making it unlikely that carriers will bid below the reserve or the maximum opening bid amounts. For that reason, in the event that the Commission goes forward with its proposal to establish reserve and maximum acceptable bid amounts, we recommend that the Commission not publish these amounts. If an insufficient number of bidders bid beneath the reserve price (or no bidder bids beneath the reserve price), the Commission should increase the reserve (and maximum opening bid amount) by some percentage in order to select additional winning bids until it has no more Mobility Fund support to disburse.

Package Bidding. The Commission seeks comment on its proposal to give itself the discretion to permit bidders to submit bids on packages of census tracts, which may enable carriers to offer lower bids that take into account economies of scale that would not exist with tract-by-tract only bidding.⁴⁶ Because this proposal significantly would complicate the Commission's proposed auction (particularly, the Commission's evaluation of bids that are for single tracts versus bids for packages that include those same tracts),⁴⁷ we do not believe the Commission should permit bidders to submit bids containing packages of tracts.

Support payments. The Commission proposes to pay Mobility Fund recipients in three installments: 1/3 once the Commission selects its bid; 1/3 when the recipient files a report demonstrating coverage of 50 percent of the population associated with the census block(s) deemed unserved that are within that census tract; and 1/3 when the recipient files a report demonstrating coverage of 100 percent of the resident population in the unserved census block(s)

⁴⁶ *Id.* at ¶¶ 67-68.

⁴⁷ For example, as part of its evaluation criteria that the Commission would publish before soliciting Mobility Fund bids, the Commission would have to explain how it would rank a bid for a single tract (census tract A) with a low per unit cost against a bid for a package of tracts (that includes census tract A) with a slightly higher per unit cost: Would the Commission value the bid that proposes to serve more consumers at a slightly higher cost over the bid that proposes to serve a smaller number of consumers?

in the census tract.⁴⁸ To protect against half-completed, useless networks, the safest course for the Commission is to pay winning bidders in full once the selected bidder certifies that it is providing the supported service throughout its designated service area. Requiring bidders to complete construction and actually begin offering the supported service throughout their service areas before receiving any Mobility Fund support will guarantee that bidders live up to their commitments. Most importantly, this approach will best protect consumers who, after all, ultimately will pay for the Mobility Fund. If the Commission disagrees and decides to issue payments in installments, we think it makes little sense to compensate a carrier when it is providing coverage to 50 percent of the previously unserved population in a census block. That threshold corresponds neither to a provider's costs nor to how it deploys a network, where it may take many months to reach 50 percent coverage but only a short time thereafter to reach 100 percent coverage. As an alternative, the Commission could disburse 1/3 of the support amount once the Commission selects a provider's bid and the remaining 2/3 after completion of construction and after the selected bidder certifies that it is offering the supported service throughout its designated service area.

The Commission also seeks comment on how it could ensure that the Mobility Fund recipients use their support for the purpose in which it is intended under section 254(e) of the Act, suggesting that recipients explain how the funds were used.⁴⁹ It is unnecessary to require participants to detail how they spent their support. It matters not, for example, that one recipient spent most of its support on capital expenditures while another carrier spent half of its support on operating expenses. What does matter is whether, at the conclusion of the build-out term, the

⁴⁸ *NPRM* at ¶ 92.

⁴⁹ *Id.* at ¶ 93.

recipient has satisfied its coverage obligations. If the recipient met these obligations, the Commission should agree that the carrier used the support for which it was intended: providing mobile broadband service in previously unserved areas. As a check, the Commission could require Mobility Fund recipients to file a letter each year certifying that they are using their support for the intended purpose, consistent with section 254(e). The Commission requires IAS recipients to make these same certifications directly to the Commission on an annual basis.⁵⁰

III. CONCLUSION

With the modifications described above, AT&T believes that the Commission could gain valuable experience and information from the limited reverse auction proposed in the Mobility Fund *NPRM*. While a topic of discussion for years, using a reverse auction to distribute universal service funding has never been attempted and experimenting with a limited trial program makes sense. However, in order to make a real impact on mobile broadband availability, AT&T urges the Commission to ensure that the new CAF is designed to recognize the role that mobile services now play in American lives. Subscription rates have soared because consumers increasingly rely on mobile voice and broadband services, not to replace wired

⁵⁰ See 47 C.F.R. § 54.809.

services, but to complete their communications portfolios. The Mobility Fund can only be considered a first small step, albeit a valuable one, towards implementing a new universal service policy for a broadband and a mobile future.

Respectfully Submitted,

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