Before the
Federal Communications Commission
Washington, DC 20554

Mobility Fund Phase I Auction	)	AU Docket No. 12-25
Auction 91	)	

To: The Commission

COMMENTS OF NTCH, INC.

NTCH, Inc. ("NTCH"), by its attorneys, hereby offers these comments on the Commission's Competitive Bidding Procedures for Auction 91.

A. The Commission should delay the auction until the status of the *Corr Wireless* fund is determined.

The Commission noted in the *USF/ICC Order*[1] at Paragraph 564-567 that the $300 million which is to be used to fund the distributions from this auction is to come from the *Corr Wireless* reserve account. This account was a windfall that the Commission garnered by putting aside monies designated for CETCs as a result of certain carriers' renunciation of funds otherwise due them under the USF distribution scheme adopted at the time the Commission imposed caps on CETC distributions from the fund. The Commission's decision in that regard was highly suspect and is currently on appeal to the U.S. Court of Appeals.

It would be premature and potentially wasteful to proceed with implementation of an auction to distribute money that may not ultimately be available for distribution. While the Commission may, and probably should, proceed with preliminary planning, the auction and any associated deadlines should be deferred until the final outcome of the appeal of the *Corr Wireless* decision is known.

[1] *Connect America Fund*, FCC 11-161, rel. November 18, 2011 ("*USF/ICC Order*").

B. The auction should be delayed until the pending petitions for reconsiderations of the USF/ICC Order are resolved.

There are numerous petitions for reconsideration of the *USF/ICC Order* pending. Among these are a petition by NTCH suggesting that the Commission should significantly revise the Phase I and Phase II funding schemes to rationalize and harmonize the time line of the process, to simplify associated ETC designations, and to permit better planning by potential bidders regarding the funds that will be available for operating expenses on a going forward basis. More fundamentally, NTCH proposed that the Commission and the public would be better served by simply doing away with Phase I and Phase II funding altogether and instead requiring AWS-3 licensees to meet the requirements that would be imposed on Phase I winners. This would save the public some $5.3 billion dollars over ten years, not to mention the significant administrative and oversight expenses associated with the periodic distribution of money and oversight of its use. Adoption of these proposals could either affect the basic structure of the auction or result in its cancellation altogether. The Commission should therefore await the outcome of the reconsideration proceedings before plunging ahead.

C. The Commission should adopt Aggregation Option 2

In the February 2 Public Notice, the Commission offered several options to govern the aggregation of licenses. Some methodology is needed to account for the inherent "apples and oranges" situation of bidding on different sized aggregations of territory with different characteristics. NTCH believes that Option 2 best addresses that issue while also permitting a fair and wide distribution of funding to different licensees. Option 2 contemplates that pre-defined aggregations of census tracts would be defined, presumably all within individual CMAs.

Bidders would then bid against each other on those identified aggregations, thus permitting a true apples to apples comparison.

The cap of $300 million would be dealt with by awarding licenses to the lowest bidders until there the fund was exhausted. While this approach might leave some portions of the country underserved, it has the advantage of incenting bidders to bid the lowest price to deliver the required services since that is the only way they can "win." Option 1, as described by the Commission, would incent bidders to offer services to large numbers of census blocks but not necessarily at the lowest price, since breadth of coverage rather than economy would be favored. That approach might well result in somewhat larger coverage, but would also probably leave behind the small backwaters of underserved areas which have been left behind to date precisely *because* they are small backwaters. It may even be that by favoring low cost over breadth, Option 2 ends up outperforming Option 1 by effectively stretching the available funds over larger areas. In addition, as noted above, Option 1 substantially tips the auction scale in favor of national carriers who have large tracts of spectrum with large underserved areas. Because they would be the only carriers positioned to offer service over wide areas, they would almost certainly garner most of the proceeds, even though their bids would not be the lowest. Option 2 also has the advantage of ensuring that there is no overlap in winning bids, something which is inconsistent with the "one to a market" subsidy principle which the Commission has wisely adopted.

D. The Commission must make the "mathematical optimization procedure" under Option 1 available for review

Option 1 requires the Commission to apply a "mathematical optimization procedure" which would somehow sort through all of the bids at different prices over different sized tracts and determine who is to be awarded the funds within the constraints of the $300 million cap.

Unless the public is advised in advance of what the mathematical algorithm is and how it works, it cannot reasonably evaluate or comment on Option 1. Bidders would have to know how the algorithm works in order to know how to place their bids and even to know whether they won, or should have won, the auction based on the bids they made.

The difficulties associated with this approach make it highly likely that it would be subject to confusion and challenge after the auction, a result which would leave the money in limbo rather than putting it to immediate use in delivering broadband. NTCH therefore strongly recommends that the Commission reject this option for this reason, as well as those stated above. But in any event, if the Option is even under consideration, the algorithm must be put in the record promptly for review by the public.

E. Conclusion

For the reasons set forth above, the Commission should defer proceeding with the auction until major uncertainties regarding the auction and its source of funds are resolved. To the extent that planning with the auction goes forward, the Commission should adopt Option 2 as the procedure most likely to fairly distribute the funds widely around the country at the lowest price and with the greatest certainty.

Respectfully submitted,
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