Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
Mobility Fund Phase I Auction	)	AU Docket No. 12-25

To: Wireless Telecommunications and Wireline Competition Bureaus

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.

The Rural Telecommunications Group, Inc. ("RTG")[1] submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Public*

[1] RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education. RTG's members have joined together to speed delivery of new, efficient, and innovative communications technologies to the populations of remote and underserved sections of the country. Many of RTG's members are competitive eligible telecommunications carriers. RTG's members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RTG's members serves less than 100,000 subscribers.

Notice[2] announcing the reverse auction to award $300 million in one-time Mobility Fund Phase I support and requesting comment on auction procedures and related programmatic issues.

I. Identifying Geographic Areas Eligible For Support

A. Current American Roamer Data Is Inaccurate And Should Be Updated Following The Eligible Area Challenge Period.

The FCC recently extended the deadline to file comments[3] challenging the portion of the *Public Notice* that deals with the revised list of potential eligible geographic areas that the Wireless Telecommunications and Wireline Competition Bureaus ("Bureaus") released on February 10, 2012.[4] Based on conversations with its members, RTG anticipates that several of its member companies will be asking the FCC to revise its list of eligible geographic areas. RTG has determined that many of the rural areas depicted as covered by American Roamer's coverage maps are not in fact covered and that in other instances areas that are not covered are in fact covered. The unreliability of this data is due to the fact that: (1) most of RTG's members do not report their coverage data to American Roamer; and (2) it is common practice for the larger Tier I carriers to report smaller carriers' coverage based on estimates derived from roaming agreements and observation of tower locations.[5] RTG notes that roaming agreements do not contain coverage areas nor is it common practice to share this data with roaming partners. While the larger carriers report coverage to American Roamer and purchase American Roamer coverage maps for sales and marketing purposes, this coverage cannot be relied on by the

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[2] Mobility Fund Phase I Auction Scheduled for September 27, 2012; Comment Sought on Competitive Bidding Procedures for Auction 901 and Certain Program Requirements, AU Docket No. 12-25, *Public Notice*, DA 12-121 (rel. February 2, 2012).
[3] Mobility Fund Phase I Auction, Limited Extension Of Deadlines for Comments and Reply Comments on Census Block Eligibility Challenges, AU Docket No. 12-25, *Public Notice,* DA 12-236 (rel. February 16, 2012).
[4] Mobility Fund Phase I Auction; Updated List of Potentially Eligible Census Blocks, AU Docket No. 12-25, *Public Notice*, DA 12-187 (rel. February 10, 2012).
[5] This information is not only inaccurate, but is also outdated in many instances. RTG's members are actively working with American Roamer to correct the coverage maps American Roamer is depicting in its January 2012 data files.

Commission for purposes of making a decision on how to allocate $300 million dollars of much sought after Mobility Fund support. Accordingly, the FCC must allow rural carriers to update their information and work with American Roamer to ensure that the information relied on by the FCC is accurate. After receiving these updates on March 16, 2012 and any subsequent challenges to those updates on March 26, 2012, the FCC should require American Roamer to update the coverage maps based on the publicly submitted data and the FCC should then use that updated coverage data to determine the eligible geographic areas in Auction 901.

B. Expanding Eligible Road Mile Categories Will Serve the Public Interest and Increase the Effectiveness of Auction 901.

The FCC uses road miles as the basis for calculating the number of units in each eligible census block for purposes of comparing winning bids and measuring the performance of Mobility Fund support recipients. The FCC has proposed to use only the following three categories of road miles for these purposes: Primary Roads (S1100), Secondary Roads (S1200) and Local Neighborhood Roads, Rural Roads, City Streets (S1400). Limiting eligible road miles to these categories would have the effect of eliminating many unserved areas from eligibility for support. The FCC should increase the list of TIGER road categories used in Auction 901 to include three additional categories of road miles: 4WD Vehicular Trails (S1500), Service Drives (S1640), and Private Roads for Service Vehicles (S1740). Increasing the categories of roads will allow unserved Census Blocks that are not depicted on the current eligibility map to be eligible for support. The FCC has not justified its proposed use of only three categories of road miles. Many of the nation's most remote rural areas contain none of the FCC proposed road categories, yet contain many miles of unpaved roads that are travelled by those in desperate need of 3G and higher services. Including more road categories will serve the public interest by making additional unserved areas eligible for support based on an accurate reflection of rural road coverage. For example, in CMA556 in New Mexico, CMA666 in Texas and CMA389 in Idaho, including these additional categories of roads would add, respectively, 130, 124 and 224 additional Census Blocks that would be available for competitive bidding. Expanding the categories of road miles to other rural CMAs, especially out West, will yield similar results.

There is significant use of these additional road categories by those living and traveling in rural America. In rural areas, 4WD vehicular trails (S1500) often serve as the functional equivalent of the local, neighborhood roads, rural roads, and city streets of the S1400 category. Private roads (S1740) for service vehicles are also heavily used in rural areas to serve various rural industrial areas, including access roads to mining areas, oil and natural gas facilities, ranching areas and forestry and logging facilities. Though privately owned, these roads are heavily traversed and used continuously. Similarly, Service Roads (S1640) should also be included. To meet the goal of providing mobile voice and broadband to areas where Americans live, work and travel, the Commission must include in its road mile counts all roads that are commonly used in rural and remote areas.

II. Determining Basic Auction Design

A. The Single Round Bidding Process Should Last One Week.

RTG supports the proposed use of a single round bid. RTG urges the FCC to allow five business days for bidders to submit their bids electronically so that bidders may have an opportunity to assess the different combinations of Census Blocks in formulating their bids and determine how the different combinations impact the amount per road mile bid. By allowing bidders to try out different combinations of Census Blocks, bidders will be able to strategically determine how to best formulate a successful bid. Alternatively, the FCC should establish a tool that will allow bidders to work on these combinations offline before they place their bids.

B. Bidder-Defined Aggregation And an 80 Percent Coverage Requirement Would Incent Bidders to Participate in Auction 901.

The FCC should use bidder-defined aggregation of Census Blocks to allow bidders to adjust bids to areas that make the most sense to serve and bid on areas where bidders are qualified eligible telecommunications carriers ("ETCs") and hold spectrum necessary to participate in the auction. To satisfy build out requirements associated with the bidder-defined area, coverage by the end of the relevant period (*i.e.*, two years for 3G and three years for 4G or better service) should be at 80% of the coverage area. Because there is no one size fits all for the Census Blocks, imposing a higher coverage requirement across the board would be unwieldy, particularly in Western rural areas where Census Blocks are larger and more elongated in order to capture residents living along rivers, creeks and other bodies of water. If the required build out (*i.e.,* 80%) is not met, then the awardee should be required to pay the money back for the portion not covered and be penalized, as discussed below. Penalizing the awardee by demanding a return of all of the funding would impose a penalty vastly disproportionate to the nature of the harm and would deter qualified parties from participating in the auction. Additionally, the FCC should specify that a waiver will be granted if the failure to build out is in the public interest and beyond the awardee's control (*e.g.*, unavailability of equipment, poor weather conditions or other natural or manmade disasters, labor issues such as strikes, etc.)

The FCC should not utilize predefined Census Tract aggregations. Doing so could put participants at a competitive disadvantage because they may not have ETC status in the entire Census Tract or may not hold spectrum throughout the area of the entire Census Tract. Furthermore, having pre-defined areas with less challenging coverage requirements is not as efficient use of the Mobility Funds because they are not as targeted as bidder defined areas. RTG also supports the FCC's proposal that Census Block aggregations not be larger than a cellular market area ("CMA"). Because the FCC has used CMAs as typical license areas and rural CMAs are readily defined, restricting Census Block aggregations to the boundaries of a single CMA is the most sensible approach.

RTG believes the bidder-defined aggregation option is the only viable aggregation option for many rural areas. The alternative aggregation options discussed in the Auction 901 *Public Notice* are not viable for many rural areas where an existing operator is already providing analog or 2G services. Many of these operators will be in a position to bid lower amounts to upgrade their networks to 3G or 4G because of their ability to piggyback on existing infrastructure. Having the FCC set a price for the areas being offered for bid could allow a windfall to some and a shortfall to others. Because there is no one size or one amount that fits all, the FCC should allow areas and amounts bid to be bidder-defined. Under such an approach, bidders would not be incented to submit inflated bids by a fear of not winning the award. Likewise, bidders also would not undercut the amounts they bid for fear of winning and then falling short of their performance requirements.

III. Establishing Other Bidding Procedures

A. Auction Procedures and Rules

Information Disclosure. The FCC should identify all bidders who are eligible to participate in the auction at least four weeks before the bidding takes place. Knowing who is eligible to participate in an auction is critical to determining whether an applicant will decide to actually submit a bid and will also impact the number of Census Blocks an applicant seeks to cover with its bid. For example, if several large carriers participate and because of their license holdings and ETC status can bid in hundreds of CMAs, then a smaller carrier may decide to scale down its bidding areas in order to be successful. If larger carriers are not participating, then smaller carriers may choose to scale up their bidding areas on the premise that more funding would be available to cover more areas of interest to them. Accordingly, the eligible participants should be disclosed prior to the start of the auction.

Bidding Period. As discussed above, the bidding period should last five business days. This extended period would afford bidders ample opportunity to submit multiple bidder-defined package bids with overlapping areas.

Bidding Procedures. Though RTG believes that there is no need for minimum or maximum bids, a zero bid per road mile should not be permitted. A zero bid on its face implies that Mobility Fund support is not necessary and would not further the goals of Auction 901.

Bid Removal. Bid removal should be allowed before the single round closes as this would give bidders the opportunity to try several different combinations of Census Blocks to develop the best bid possible. It would also allow bidders to correct errors without being penalized.

B. Default Payments

Calculating Auction Default Payments. RTG supports an auction default payment of 5% of the overall winning bid. This amount should be added to the bid amount and included in the required irrevocable stand by letter of credit ("LOC")[6]. The 5% auction default payment should remain in effect until such time that the awardee has met its auction obligations, including its performance obligations as further discussed below. The USF/ICC Transformation Order states that the LOC must remain in effect until at least 120 days after the awardee has completed its

[6] *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, ¶¶ 444-451, FCC 11-161, rel. Nov. 18, 2011 ("USF/ICC Transformation Order").

supported expansion to unserved areas and received its final payment of Mobility Fund Phase I support.[7] Once this time period passes, the awardee should be able to cancel the LOC.

Calculating Performance Default Payments. RTG supports a performance default payment of 10% of the overall winning bid if, and only if, the awardee fails to meet 80% of its proposed coverage. The FCC has already imposed stringent requirements on awardees to meet the build out requirements.[8] RTG is concerned that because of these stringent requirements, a small rural carrier could suffer serious financial harm if it builds out 50% of the coverage area and receives up to two thirds of its funding and then fails to meet a 100% build out requirement. Under the FCC's rules, failure to meet a build out requirement results in the awardee having to pay back all of the funding plus a potential 15% default penalty (5% auction default and 10% performance default penalty).[9] The best laid plans and proposals are sometimes waylaid by circumstances beyond one's control. Flexibility needs to be built into the process so that the goals of the Mobility Fund are not later put at risk. Accordingly, RTG believes that a performance default penalty should come into play only if the awardee does not meet an 80% coverage requirement. For example, if an awardee receives one third of its funding upon grant of its long form application and builds out 50% of its area and then receives another one third of its funding, the awardee should not have to pay all of the funding back as contemplated in the USF/ICC Transformation Order. Rather, the awardee should pay an auction default penalty and a performance default penalty and give back the money it did not use yet. As long as the awardee has not received more money than its percentage of coverage warrants, it should not be

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[7] Auction 901 *Public Notice* at ¶ 63.

[8] *See Id.* at ¶ 447-448 (The FCC will require winning bidders to obtain an LOC in an amount equal to the amount of Mobility Fund Phase I support it receives plus an additional percentage of that amount to safeguard against costs to the FCC and the USF. Failure to satisfy the terms and conditions of this USF support or failure to ensure completion of the supported project will be deemed a failure to properly use USF support and will entitle the FCC to draw the entire amount of the LOC).

[9] *Id.*

asked to repay any of its funding back for the failure to meet the final 80% build out requirement. Rather, such an awardee should simply be denied funding for what it has not built out by the deadline and be required to pay back a performance default payment and any overage it has been given for areas it pledged coverage that it did not cover. Similarly, the FCC should not penalize an awardee who has built out 80% or more of its proposed coverage area. The FCC should obviously not fund anything that is not built out, but since the payout of the funding is triggered by benchmarks based on the percentage covered and there is a two year or three year deadline depending on whether the awardee commits to 3G or 4G coverage drawn as a line in the sand, it is unnecessary to take the Draconian measure of requiring full repayment for areas that have been largely built out and are operational. A penalty of this magnitude is onerous and would be a substantial disincentive to participate in Auction 901.

RTG also respectfully requests that the FCC allow awardees to adjust the amounts of their LOCs as their benchmarks are met. LOCs usually have to be renewed periodically and it would be appropriate to allow an awardee to revise the amount of an LOC once it has met specific build out requirements to match the funding and default penalty monetary amounts remaining during the relevant period. Requiring an awardee to keep excessive funds tied up in an LOC when the funds are not needed to cover the potential defaults does not serve the public interest and imapcts the awardee's free cash flow.

C. Reasonably Comparable Rates

RTG agrees with the FCC's proposed reasonably comparable rates requirement for recipients of Mobility Fund Phase I support. However, the FCC must recognize that ongoing support through Phase II of the Mobility Fund is the key to ensuring that awardees are well positioned down the road to keep rates reasonable. Mobility Fund Phase I support is merely for capital expenditures and not for ongoing operational expenditures. The FCC must establish rules to ensure that those awarded Mobility Fund Phase I support are not hindered from receiving Mobility Fund Phase II support. To this end, the FCC should consider giving existing rural operators who have a demonstrated history of serving rural areas preference in obtaining Mobility Phase II ongoing support including those awardees who receive build out support from the Mobility Fund Phase I auction. The public interest is not served by awarding the $300 million in one-time support without an assurance of ongoing operational support though the Mobility Fund Phase II. Absent such ongoing support, the FCC's goal of achieving reasonably comparable rates may not be met.

IV. Conclusion

Based on the foregoing, RTG urges the Bureaus to adopt auction procedures that maximize participation and eligible area coverage in order to optimize the allocation of the $300 million of Mobility Fund Phase I support. Actions toward this end include (a) using only American Roamer data that has been updated following the upcoming eligible area challenge period; (b) expanding the list of TIGER road categories used in Auction 901; (c) adopting bidder-defined aggregation of eligible Census Blocks; (d) adopting a single round bidding period of one week; and (e) limiting amounts of default payments that must be made available upfront.

Respectfully submitted,

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