

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

In the Matter of

<b>Mobility Fund Phase I Auction</b>	)	AU Docket No. 12-25
	)	
<b>Public Notice, DA 12-121, Comment Sought On Competitive Bidding Procedures for Auction 901 and Certain Program Requirements</b>	)	
	)	
<b>Public Notice, DA 12-187, Updated List of Potentially Eligible Census Blocks</b>	)	
	)	

To: Chief Wireless Telecommunications Bureau  
Chief, Wireline Competition Bureau

**JOINT COMMENTS OF COMMNET WIRELESS, LLC, NTUA  
WIRELESS, LLC and SAL SPECTRUM, LLC**

Commnet Wireless, LLC, on behalf of itself and its subsidiaries (collectively, “Commnet”), NTUA Wireless, LLC (“NTUAW”) and SAL Spectrum, LLC (“SAL”) (Commnet, NTUAW and SAL collectively, “Joint Commenters”)<sup>1</sup> hereby submit their comments in response to the Public Notice, DA 12-121, “Mobility Fund Phase I Auction, Comment Sought on Competitive Bidding Procedures for Auction 901 and Certain Program Requirements” (“Request for Comments PN”) and the Public Notice, DA 12-187, “Mobility Fund Phase I Auction, Updated List of Potentially Eligible Census Blocks” (“Census Blocks PN”), issued jointly by the Wireless Telecommunications Bureau and the Wireline Competition Bureau (collectively, the “Bureaus”). In these Comments, Joint Commenters submit their corrections to the list of eligible

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<sup>1</sup> All of the Joint Commenters have substantial overlap of ownership and management. Commnet and SAL are each owned 100% by Atlantic Tele-Network, Inc. (“ATN”). NTUAW is owned 51% by the Navajo Tribal Utility Authority (“NTUA”) and 49% by a subsidiary of Commnet. NTUA is an enterprise of the Navajo Nation government (*i.e.*, a tribal entity).

census blocks for Auction No. 901.<sup>2</sup> As discussed herein, there are a number of census blocks tentatively listed in the Census Blocks PN as being eligible for Auction No. 901, but which in fact are ineligible for that reverse auction under the standards laid out by the Commission in the *USF/ICC Transformation Order*<sup>3</sup> and the Request for Comments PN.

## **DESCRIPTION OF THE JOINT COMMENTERS**

Commnet, through various subsidiaries, holds numerous cellular telephone and PCS licenses across rural America. The bulk of the cellular licenses were obtained via the unserved area site-by-site processing procedures, such that Commnet came in to serve areas that the national carriers had forgotten or otherwise chose not to serve, even after having been licensed for years to do so. Commnet and NTUAW collectively have numerous EVDO cell sites in various rural areas across the western United States. These operations are “3G” as defined by the Commission (*i.e.*, “EV-DO, EV-DO Rev A, UMTS/HSPA and HSPA+, LTE, and any other technologies offering equivalent speeds or better”, *USF/ICC Transformation Order*, ¶ 1124).

SAL is an affiliate of Commnet, as both are subsidiaries of ATN. SAL holds a number of 700 MHz licenses acquired in Auction No. 73. SAL has leased that part of its 700 MHz spectrum covering the Navajo Nation Reservation lands, as well as certain adjacent spectrum in

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<sup>2</sup> These Comments are timely submitted. *See* Public Notice, *Mobility Fund Phase I Auction Limited Extension of Deadlines for Comments and Reply Comments on Census Block Eligibility Challenges*, DA 12-236, rel. February 16, 2012.

<sup>3</sup> 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, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, rel. November 18, 2011 (“*USF/ICC Transformation Order*”).

Arizona, to NTUAW, to enable NTUAW to construct and operate a 700 MHz LTE network using BTOP grant funds awarded to NTUAW, as discussed below.

NTUAW is, as mentioned above, owned 51% by NTUA, an arm of the Navajo Nation government, and 49% by a wholly-owned subsidiary of Commnet. In addition to having received a BTOP grant to operate a new 700 MHz LTE network on the Navajo tribal lands,<sup>4</sup> NTUAW also leases cellular and PCS spectrum from Commnet, and uses that spectrum to operate a CDMA EVDO 3G wireless telecommunications network on the Navajo Reservation.

#### **I. Census Blocks Which Are the Subject of the BTOP Award**

As noted, NTUA is the prime recipient, and NTUAW the subrecipient, of a BTOP award – specifically, Award No. NT10BIX5570055 (“BTOP Award”). This BTOP Award is for a combined middle-mile/last-mile project, with NTUA being responsible for the middle-mile portion, and NTUAW being responsible for the last-mile portion. Pursuant to the BTOP Award, NTUAW is constructing a mobile wireless LTE network operating in the 700 MHz band, which will constitute the last-mile portion of the BTOP Award. NTUAW is constructing a 43-cell network which will cover portions of northeastern Arizona, southeastern Utah and northwestern New Mexico, using a combination of government BTOP grant funds and matching funds contributed by NTUAW. Appendix A hereto is the BTOP Award LTE coverage map, and Appendix B hereto is a spreadsheet with the list of census blocks whose centroids fall within that coverage area.<sup>5</sup>

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<sup>4</sup> NTUAW holds 700 MHz spectrum pursuant to the following spectrum leases: L000008871, L000009226, L000009227 & L000009301.

<sup>5</sup> Due to the map appendices being in color, and the spreadsheet appendices being voluminous, the Joint Commenters are uploading these Comments in multiple parts, as separate filings in this docket. Joint Commenters will also be sending courtesy copies of appendices to Auctions Division staff, so the staff can have the spreadsheet appendices available in Excel format, in addition to pdf format.

In the *USF/ICC Transformation Order, supra*, at ¶¶ 341 & n. 575, the Commission said:

[T]o help focus Mobility Fund Phase I support toward unserved locations where it will have the most significant impact, we provide that support will not be offered in areas where, notwithstanding the current absence of 3G wireless service, any provider has made a regulatory commitment to provide 3G or better wireless service, or has received a funding commitment from a federal executive department or agency in response to the carrier's commitment to provide 3G or better wireless service.<sup>575</sup>

<sup>575</sup> Such federal funding commitments may have been made under, but are not limited to, the Broadband Technology Opportunities Program (BTOP) and Broadband Initiatives Program (BIP) authorized by the American Recovery and Reinvestment Act of 2009, P.L. 111-5, 123 Stat. 115 (ARRA).

The Commission reiterated this decision to exclude BTOP-funded 3G and 4G areas from the Mobility Fund Phase I reverse auction. *Id.*, at ¶¶453 & n. 753. As the Commission explained, the point of the Phase I Mobility Fund is to direct funding to areas that otherwise would not be built out – by definition, an area that a BTOP grantee is obligated to build out using its BTOP grant money would not fall into that category. *Id.*

Accordingly, all of the census blocks listed in Appendix B hereto are ineligible for inclusion in the Mobility Fund Phase I reverse auction, and should be removed from the Commission's final list of eligible census blocks.

## **II. Census Blocks with Existing EVDO Coverage**

Separately, Joint Commenters are already providing EVDO coverage in numerous portions of Nevada, Arizona, Colorado, California, Oregon, Utah and New Mexico which have been tentatively listed as “eligible” for the Mobility Fund Phase I auction. Appendix C hereto is a map showing Joint Commenters' existing EVDO coverage in the western United States. Areas inside Joint Commenters' EVDO coverage area should not be eligible for inclusion in Auction

No. 901. Joint Commenters calculated their EVDO coverage based on -99dBm received signal strength<sup>6</sup>

### III. Removing Ineligible Census Blocks from the List

The following table summarizes, state-by-state, how many census blocks in the service areas of the Joint Commenters were inaccurately listed as “potentially eligible” in the spreadsheets released by the Commission staff:<sup>7</sup>

State	FCC Potential Blocks	EVDO Covered Blocks	Matched EVDO Coverage Blocks	BTOP Contour Blocks	Matched BTOP Contour Blocks	Combined EVDO &/or BTOP Matched Census Blocks
AZ	34,345	19,601	10,515	34,164	21,717	22,810
NM	19,000	10,472	1,979	8,097	502	2,470
UT	10,413	1,482	267	2,322	23	280
CO	11,271	5,164	260			
CA	19,650	102	73			
NV	9,621	13,679	1,452			
OR	31,034	161	12			

The above is just a summary – in order to correct its list, the Commission needs each specific ineligible census block identified by its census block number. Joint Commenters have completed this analysis in relevant markets and include those results in Appendices D through F hereto.

<sup>6</sup> Due to size considerations, Joint Commenters are not at this time submitting a spreadsheet of all census blocks within the coverage areas depicted in Appendix C. However, *infra*, they are providing spreadsheets, state-by-state, of the EVDO-covered census blocks which were included in the Commission’s “potentially-eligible” lists, and which therefore should be removed from the final eligibility lists.

<sup>7</sup> “Matched” in the above table means a particular census block appears in the Joint Commenters EVDO and/or BTOP coverage areas, and also on the Commission’s potentially-eligible list. Therefore, “Matched” also means the involved census blocks should be removed from and not included in, the final list of eligible census blocks. The yellow highlighting shows, for each state, how many census blocks need to be removed from the eligibility list for that state.

Appendix D is a state-by-state listing, for each of Arizona, New Mexico and Utah, of the specific census blocks in that state which are part of the BTOP grant 700 MHz LTE contours, and which are ineligible for inclusion in the reverse auction on that ground.<sup>8</sup>

Appendix E hereto is a state-by-state listing, for each of Arizona, California, Colorado, Nevada, New Mexico, Oregon and Utah, of the specific census blocks rendered ineligible due to pre-existing EVDO coverage.<sup>9</sup>

Finally, as discussed in notes 8 & 9, *supra*, because there is overlap between the census blocks rendered ineligible in Arizona, New Mexico and Utah due to BTOP and due to EVDO coverage, Joint Commenters are attaching hereto Appendix F, which is a state-by-state listing, for each of those three states, of census blocks rendered ineligible due to BTOP and/or EVDO coverage. This is the appendix which the Commission staff should utilize in correcting the eligibility list for these three states.

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<sup>8</sup> Because there are also census blocks in each of these three states which are ineligible due to existing EVDO coverage, this Appendix D is for background purposes only. For the actual census block deletions in each of Arizona, New Mexico and Utah, Joint Commenters have created and are submitting spreadsheets which show the census blocks rendered ineligible due to BTOP and/or EVDO coverage. *See* Appendix F, *infra*, and associated discussion in text.

<sup>9</sup> Appendix E should be used by the Commission to remove specific census blocks only for the states of California, Colorado, Nevada and Oregon – the states which have no connection to the NTUAW BTOP grant. As discussed in n.8, *supra*, for the states impacted by both BTOP and EVDO coverage, *i.e.*, Arizona, New Mexico and Utah, a combined spreadsheet is being provided in Appendix F hereto.

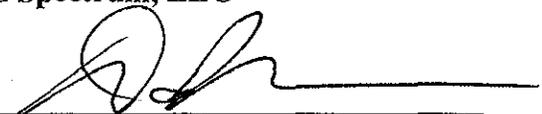
## CONCLUSION

For the reasons set forth above, the Commission should correct the final list of potentially available census blocks, by deleting the census blocks identified herein as either already served by 3G service, or already scheduled to receive 4G service pursuant to the outstanding NTUAW BTOP Award.

Respectfully submitted,  
**Commnet Wireless, LLC**  
**NTUA Wireless, LLC**  
**SAL Spectrum, LLC**

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