

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

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| In the Matter of |) | |
| |) | |
| Further Inquiry into Issues Related to |) | WC Docket No. 10-90 |
| Mobility Fund Phase II |) | WT Docket No. 10-208 |
| _____ |) | |

COMMENTS OF ATLANTIC TELE-NETWORK, INC.

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COMMENTS OF ATLANTIC TELE-NETWORK, INC.

Atlantic Tele-Network, Inc. (“ATN”),¹ by its attorneys, hereby respectfully submits its comments in response to the *Public Notice* released by the Federal Communications Commission (the “FCC” or “Commission”) in the above-captioned proceedings, in which the Commission seeks comment on a number of issues relating to the implementation of Phase II of the Mobility Fund.² In response, the following is respectfully shown:

I. INTRODUCTION AND SUMMARY

ATN is a telecommunications company that provides service, through its subsidiaries and affiliates, to under-served markets in North America and the Caribbean. ATN serves some of the most rural markets in the country with wireless and broadband services³ through the following

¹ These Comments are submitted on behalf of ATN and its FCC-regulated subsidiaries.

² *Further Inquiry Into Issues Related to Mobility Fund Phase II*, WC Docket No. 10-90, WT Docket No. 10-208, DA 12-1853, Public Notice (rel. Nov. 27, 2012) (“*Public Notice*”).

³ ATN also provides wireline service to rural markets of Vermont and New Hampshire, as well as fiber services to rural markets in New York.

subsidiaries: Allied Wireless Communications Corp., d/b/a/ Alltel (“AWCC” or “Alltel”);⁴ Commnet Wireless, LLC, (“Commnet”)⁵ and Choice Communications, LLC (“Choice”).⁶

Four of ATN’s subsidiaries (collectively referred to as “ATN”) successfully participated in Mobility Fund Phase I Auction 901, and these comments being offered below are limited to ATN’s experience in Phase I.⁷ In Auction 901, ATN subsidiaries had a collective total of 120 winning bids, awarded as follows: (1) AWCC had 93 winning bids with assigned support totaling \$45,853,493.28 and a total of 4,417.42 road miles covered;⁸ (2) Commnet Four Corners, LLC had 1 winning bid with assigned support totaling \$649,992.39 and a total of 28.41 road miles covered;⁹ (3) Commnet of Nevada, LLC had 6 winning bids with assigned support totaling \$21,060,477.75 and a total of 2,776.47 road miles covered;¹⁰ and (4) Georgia RSA 8 Partnership had 20 winning bids with assigned support totaling \$1,236,530.90 and a total of 211.61 road miles covered.¹¹ These comments are offered by ATN on behalf of these owned and operated entities.

⁴ AWCC is a retail mobile communications provider operating in six states (Georgia, South Carolina, North Carolina, Illinois, Ohio and Idaho) and 26 CMAs.

⁵ Commnet is a provider of wholesale and retail wireless in the southwestern United States, including Navajo Tribal lands.

⁶ Choice is a provider of wireless fixed and mobile service in the U.S. Virgin Islands.

⁷ Two ATN-affiliated companies, Commnet Wireless, LLC and NTUA Wireless, LLC also qualified to participate in Auction 901, however declined to bid in the Auction.

⁸ *Mobility Fund Phase I Auction Closes, Winning Bidders Announced for Auction 901*, Public Notice, DA 12-1566, Appendix A (rel. Oct. 3, 2012) (“*Auction 901 Winning Bidders Notice*”) (FRN 0018868786).

⁹ *Id.* (FRN 0009572884).

¹⁰ *Id.* (FRN 0018122879).

¹¹ *Id.* (FRN 0001838069; ATN holds a minority interest in Georgia RSA 8 Partnership, but generally manages the entity).

While recognizing there is no perfect solution to the distribution of funds for wireless broadband deployment to unserved or underserved areas,¹² ATN found that Auction 901 “extend[ed] the availability of mobile voice service on networks that provide 3G or better performance and [will] accelerate the deployment of 4G wireless networks in areas where it is cost effective to do so with one-time support.”¹³ ATN also believes that Phase I provides the Commission and participants a unique opportunity to evaluate the adopted procedures – and accompanying real-world experiences – which offers insight into possible improvements for the Mobility Fund Phase II procedures. Indeed, the Commission has acknowledged this chance to “evaluate and learn from Mobility Fund Phase I before the program details of Phase II are finalized.”¹⁴ ATN appreciates the opportunity to present additional considerations for the Commission’s review, in order to increase the likelihood that Mobility Fund Phase II is a success.

Consequently, ATN offers targeted modifications based on its companies’ experience participating in Mobility Fund Phase I Auction 901.¹⁵ These modifications are designed to maximize the benefits of the Mobility Fund and to assist the Commission in fulfilling its goals to “identify those areas where additional investment can make as large a difference as possible in

¹² While the *USF/ICC Transformation FNPRM* asked for comment on the implementation of forward-looking cost models for Phase II distribution, this issue was not presented in the *Public Notice* for comment. Therefore, in keeping with the scope of the *Public Notice* inquiry, ATN is not addressing that issue in these comments.

¹³ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 322 (2011) (“*USF/ICC Transformation Order*” or “*USF/ICC Transformation FNPRM*”).

¹⁴ *Public Notice*, ¶ 2.

¹⁵ These comments are limited to ATN’s experience, through its subsidiaries and affiliates, in Mobility Fund Phase I Auction 901.

improving current-generation mobile wireless coverage.”¹⁶ First, ATN suggests that the Commission prioritize, via bidding credits or other incentives, those areas that are not served by either subsidized or unsubsidized providers offering 3G or better service. Second, ATN suggests that the Commission adjust certain post-auction procedures, specifically the filing timeframe for the long-form application or FCC Form 680, and the prohibition on consolidated filings. For many small carriers with limited resources, meeting the short timeframes, as well as being required to file individual attachments and obtain letters of credit for each bid – sometimes in the hundreds – proved to be challenging, and should be revised for Phase II. Third, ATN urges the Commission to reaffirm, in accordance with existing, specific language in the Commission’s rules and orders, that companies which are either Tribally-owned or Tribally-controlled are eligible for Tribal credits. Fourth, ATN supports a minimum five-year term of support for Mobility Fund Phase II to account for Phase I results as well as other industry changes. Fifth, ATN requests that the Commission seek to classify Phase II support as capital recovery rather than as revenue for tax treatment purposes, in order to allow for more accurate modeling which consequently would ensure that more of the support provided goes towards deploying broadband service in eligible areas. Finally, ATN also encourages the Commission to permit the use of propagation models to demonstrate public interest obligations, as many rural areas are impassible by vehicular traffic and cannot allow for drive testing to occur.

In adopting these modifications, the Commission would properly be adopting a more reasoned and efficient approach to the regulations surrounding Mobility Fund Phase II. With the ultimate goal of the Mobility Fund being to increase broadband deployment, it is in the public

¹⁶ *USF/ICC Transformation Order*, ¶ 322.

interest to allow carriers to maximize the subsidies they are provided in order to benefit their consumers.

II. THE COMMISSION SHOULD PROVIDE BIDDING CREDITS IN ORDER TO PRIORITIZE CERTAIN ELIGIBLE AREAS FOR SUPPORT

In the *USF/ICC Transformation Order*, the Commission adopted substantial universal service reforms to secure funding for mobility through the development of the Mobility Fund. The first of its kind, this fund was designed “to increase the availability of current generation mobile broadband, as well as mobile voice, across the country.”¹⁷ The Commission’s rationalization of the fund was due to the conclusion that, despite the growth of funding for competitive ETCs, many areas of the country still lacked any mobile voice coverage as well as current generation mobile broadband coverage.¹⁸ The lack of current 3G mobile broadband has been a driving force of the Mobility Fund since it was first announced in 2010, and should continue to be an important consideration in the future design of the fund.¹⁹ Therefore, given that the Commission has already taken the steps to identify areas that are unserved by 3G or

¹⁷ *USF/ICC Transformation Order*, ¶ 295.

¹⁸ *Id.*

¹⁹ See e.g., *In the Matter of Universal Service Reform Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, ¶ 11, n.21 (rel. Oct. 14, 2010) (“*Mobility Fund NPRM*”) (stating that “the Mobility Fund would make available non-recurring support to providers to deploy 3G or better networks where these services are not currently available” and further noting that “unserved” or “uncovered” areas are “areas where advanced mobile wireless services are not available.”); *USF/ICC Transformation Order*, ¶ 301 (recognizing that “[m]illions of Americans live in communities where current-generation mobile service is unavailable” and “[i]n order to help ensure the availability of mobile broadband across America, we establish the Mobility Fund.”); *Mobility Fund Phase I Auction Scheduled for September 27, 2012 Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, Public Notice, ¶ 2 (rel. May 2, 2012) (“*Phase I Public Notice*”) (“Auction 901 will award one-time support to carriers that commit to provide 3G or better mobile voice and broadband services in census blocks where such services are unavailable.”).

better by *any* carrier during Phase I, such areas should continue to be targeted in Mobility Fund Phase II.

Under Mobility Fund Phase II support, the Commission anticipates identifying areas eligible for support by “excluding all areas where unsubsidized 3G or better services are available.”²⁰ Under such a proposal, Mobility Fund Phase II eligible areas would include “[c]ensus blocks with 2G service available from an unsubsidized provider as well as census blocks where 3G service is provided only by subsidized provider(s).”²¹ By permitting areas that are receiving one-time Mobility Fund Phase I support to be eligible to receive Phase II support, the Commission is allowing a broader range of census blocks to be eligible for this round of funding. While this is a positive development, ATN cautions that without some form of additional incentive, the areas that are currently not being served *at all* may continue to slip between the cracks, and prevent the Mobility Fund from reaching its full potential. Therefore, ATN recommends that the Commission provide an incentive, such as bidding credits, for census tracts that were eligible, but received no funding under Mobility Fund Phase I – that is, tracts that continue to have *no* 3G or better service. As noted by their lack of Mobility Fund Phase I support, these are areas that, without additional support, carriers are highly unlikely to choose to serve.²² By offering bidding credits to prioritize these areas, the Commission will ensure that its

²⁰ *USF/ICC Transformation FNPRM*, ¶ 1123.

²¹ *Id.* at ¶ 1124.

²² In addition, the Commission should consider providing incentives for *all* Mobility Fund Phase I eligible census tracts. As the Commission has noted, broadband deployment is critical for these areas and the Commission should consider an overall approach that promotes additional broadband deployment in all of these areas.

goal to “significantly improve coverage of current-generation or better mobile voice and Internet service for consumers in areas where such coverage is currently missing”²³ is fulfilled.

III. CERTAIN ASPECTS OF POST-AUCTION PROCEDURES SHOULD BE REVISED TO ELIMINATE SUBSTANTIAL BURDENS AND CHALLENGES FOR PARTICIPANTS

In order to ensure that the funds being provided through the Mobility Fund are directly provided to the areas that need them most, ATN strongly urges the Commission to revise certain aspects of the Mobility Fund Phase I post-auction procedures for Mobility Fund Phase II. First, ATN requests that the Commission provide a greater length of time for winning bidders to complete the long-form application (FCC Form 680). During Mobility Fund Phase I, the Commission announced the winning bidders and the post-auction procedures on October 3, 2012, and required that the forms be submitted less than a month after this announcement, on November 1, 2012.²⁴ ATN found that, as a small rural carrier with limited resources, meeting this short timeframe for filing its long-form application was extremely challenging. Moreover, certain requirements for the application, such as obtaining separate letters of credit or commitment letters for each winning bid, required carriers to conduct due diligence and/or engage in possible financial transactions that could take a substantial amount of time and resources. ATN respectfully requests that the Commission consider the challenges faced by small carriers when designing the timeframe, and related requirements, for the post-auction procedures of Mobility Fund Phase II.

²³ *Mobility Fund NPRM*, ¶ 1.

²⁴ This deadline was extended four days to Monday, November 5, due to the disruption caused by Hurricane Sandy, with the extension notice being released on October 31, the day before the original deadline. *Mobility Fund Phase I Auction Long-Form Application Deadline Extended*, AU Docket No. 12-25, Public Notice (rel. Oct. 31, 2012); see also *Auction 901 Winning Bidders Notice*, ¶ 6.

These aggressive timeframes would be more acceptable if the Commission reduces the burdens imposed from other Mobility Fund rules that would allow for greater efficiency, and not divert the attention of smaller carriers from complying with the relevant requirements. To this end, ATN requests that the Commission reconsider its requirement that winning bidders submit certain information with respect to each of multiple bids in separate attachments to a single long-form application.²⁵ In the event that a winning bidder had numerous bids – sometimes hundreds of bids – providing the Commission with individual attachments per bid took substantial time and resources. This was especially true with respect to obtaining letters of credit or commitment letters. Obtaining a separate commitment letter for each of the 120 bids that the ATN companies collectively won was an expensive and time-consuming process, one that could have potentially been avoided had ATN been permitted to submit one letter of credit per winning bidder. Indeed, each letter of credit requires a separate fee and specific resources to be expended.²⁶ Furthermore, some Auction 901 winners found themselves with banks they assumed would be eligible to issue these letters, but, under the Commission’s rules, were deemed ineligible – forcing carriers to find new banking institutes for this purpose – again, expending significant funds and time to do so.²⁷

²⁵ *Auction 901 Winning Bidders Notice*, ¶ 14.

²⁶ While ATN was fortunate to have an existing facility with sufficiently available credit, had this not been the case, it would have been difficult to put a facility in place in the short time frame between the announcement of winning bids and submission of final applications. While participants could put a credit facility in place before the auction begins, it is unlikely carriers would incur the financial or administrative expense until there is the certainty of a winning bid. This can be a critical issue for carriers that *do* find themselves in a situation where they do not have a bank or available credit – especially small, rural and mid-tier carriers – and is a problem that the Commission should address before it implements Phase II.

²⁷ In addition to the issues discussed in more detail herein, ATN urges the Commission to adopt rules for Mobility Fund Phase II that ensure funds are not diverted from broadband deployment by unnecessary administrative costs and burdens. For instance, the Commission should consider a broader definition of the types of entities that are eligible as a “qualifying bank” for purposes of the Letter of Credit requirements and allow carriers to use reputable banks of their choice that
(continued...)

These fees and resources would be much better spent on the Commission's main goal: broadband deployment. This requirement weighs heavily on small carriers such as ATN's subsidiaries, and as a result, ATN urges the Commission to take a more flexible view of this requirement, and consider permitting consolidated filings wherever possible, such as in this example by requiring one letter of credit per winning bidder, rather than per winning bid.

IV. THE COMMISSION MUST REAFFIRM LANGUAGE RELATING TO TRIBAL BIDDING CREDITS IN ACCORDANCE WITH COMMISSION RULES AND ORDERS

ATN urges the Commission to reaffirm, in accordance with the language of its rules and orders, that entities which are either Tribally-owned or tribally-controlled are eligible for bidding credits in the Mobility Fund auctions. Such clarification will reduce risks and increase certainty for potential applicants, as well as fulfill the Commission's goals of increasing broadband deployment to Tribal lands.

The Commission's rules for the Mobility Fund explicitly allow a twenty-five percent bidding credit for "Tribally-owned or -controlled entities [. . .] with respect to bids for support within the boundaries of associated Tribal lands."²⁸ In order to qualify for the bidding credit, the rules require an applicant to "certify that it is a Tribally-owned or -controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive

(...continued)

may not fit the definition under a narrow interpretation of the rules, but under a proper showing, fit the general description and allow for the same end result. Having a limited definition, as is currently the case, imposes significant burdens and depletes the resources of smaller, rural and mid-tier carriers. *See* 47 C.F.R. § 54.1007; *In the Matter of Mobility Fund Phase I Waiver of Section 54.1007(a)(1) of the Commission's Rules*, WC Docket No. 10-90, WT Docket No. 10-208, AU Docket No. 12-25, Order (rel. Nov. 1, 2012) (The Commission waived the bank requirements of Section 54.1007(a)(1)(i)(B) on its own motion to allow the use of CoBank, noting that multiple requests were made from Auction 901 winning bidders to use this bank).

²⁸ 47 C.F.R. § 54.1004(c) (emphasis added).

bidding.”²⁹ Subsequently, the Commission used the same language in many announcements and information requests relating to the auction.³⁰

Within the Commission documents released in connection with this proceeding, there is a general theme of encouraging participation of the Tribal entities so that the Tribal lands they seek to serve are provided the broadband services they need.³¹ This encouragement is most apparent in the Commission’s decision to establish an entirely separate Tribal Mobility Fund as a result of the “significant telecommunications deployment and connectivity challenges” in these areas.³² The recognition that these areas “currently lag behind the nation in [the] provisioning of advanced wireless services” prompted the Commission to allocate \$50 million from universal services funds for the Tribal Mobility Fund Phase I.³³ Such an intent to maximize the intended benefits of this separate fund was also seen when the Commission actually adopted the rules for the Mobility Fund and stated that “we adopt a preference for Tribally-owned or controlled providers [. . .] thus increasing the likelihood that Tribally-owned and controlled entities will receive funding.”³⁴

This intent is not only expressed in the Commission’s language, but also in the actions taken by the Commission, demonstrating the importance it places on increasing Tribal participation. This is most evident in the Commission’s decision to ease the restrictions on

²⁹ *Id.* (emphasis added).

³⁰ *E.g.*, *Public Notice*, ¶ 18; *Auction 901 Winning Bidders Notice; Mobility Fund Phase I Auction 52 Bidders Qualified to Participate in Auction 901*, AU Docket No. 12-25, 27 FCC Rcd 10919 (rel. Sept. 14, 2012) (“*Phase I Bidder Qualification Notice*”).

³¹ Indeed, the Commission previously found that “less than ten percent of residents on Tribal lands have access to broadband.” *Mobility Fund FNPRM*, ¶ 33.

³² *USF/ICC Transformation Order*, ¶ 481.

³³ *Id.* at ¶¶ 481, 482.

³⁴ *Further Inquiry into Tribal Issues Relating to Establishment of a Mobility Fund*, WT Docket No. 10-208, 26 FCC Rcd 5997, ¶ 490 (rel. Apr. 18, 2011). (emphasis added).

Tribal entities by permitting a Tribally-owned or controlled entity that does not yet have an ETC designation to participate in the Mobility Fund Auctions for both Tribal and general support.³⁵ This Tribal “exemption” indicates the effort of the Commission to ensure it eliminated any disincentive for participation.

The Commission itself has recognized certain challenges for both Tribes and carriers that are unique to Tribal lands – such as the lack of basic infrastructure, and the cultural and language barriers that carriers encounter when seeking to serve such lands.³⁶ Indeed, Tribal consultation and engagement plays an essential role in the successful deployment of broadband services to these areas – another unique aspect recognized by the Commission.³⁷ Consultation and engagement helps fulfill certain attributes that Tribes and carriers – when viewed independently – are lacking. For example, Tribes generally do not possess the telecommunications expertise and access to existing equipment needed to deploy broadband services, and carriers do not have a complete understanding of the Tribal culture and needs. Therefore, in order to protect the Tribal culture and meet the Tribal service goals of the Mobility Fund programs, many service providers have teamed up with Tribes to ensure strong participation in the Mobility Fund. This may require that the two entities enter into an agreement that provides the carrier *control* over the telecommunications equipment and services, but allows the Tribe to maintain *ownership*.³⁸ Such

³⁵ *USF/ICC Transformation Order*, ¶ 491.

³⁶ *Id.* at ¶ 482.

³⁷ *Id.* at ¶ 489.

³⁸ The Commission has specifically stated that “Tribal ownership” means majority ownership. *See id.* at ¶ 490, n. 814.

a mutually beneficial relationship frequently needs to exist for successful broadband deployment.³⁹

Nevertheless, there remains some confusion among the FCC staff, auction participants, and potential participants over whether the Commission will allow bidding credits for entities that are (1) either tribally-owned *or* controlled or (2) only for entities that are both tribally-owned *and* controlled.⁴⁰ The latter interpretation would fail to achieve the objective of bringing or expanding service to Tribal Lands – the clear objective of the Tribal Mobility Fund.

Therefore, in order to encourage additional participation in the critical area of tribal broadband deployment, ATN urges the Commission to reaffirm that the express language of the relied-upon rules will govern the grant of tribal bidding credits to entities that certify they are either tribally-owned or tribally-controlled entities in any Mobility Fund auction. Put another way, the Commission must clarify that, for the purposes of Mobility Fund Tribal bidding credits, and the associated certification that an entity is “Tribal,” either Tribal ownership or Tribal control is sufficient – but that both are not necessary.

Regardless of whether the Commission explicitly makes this clarification, the Commission should consider making available a pre-certification process for tribal entities before they engage in Mobility Fund Phase II Auction application procedures. Such pre-approval may be in the form of an earlier deadline for Tribal entities or a separate application process. This process would allow the FCC to inform Tribal entity/carrier partnerships prior to

³⁹ Even among the largest Tribes there are certain items, such as switching equipment and remote monitoring centers, for which the Tribe will lack sufficient size to achieve economies of scale necessary to support those operations. In these situations, where a carrier is providing critical infrastructure, carrier control is unavoidable even though the Tribe may, and typically does, have ownership. To require each Tribe to acquire and control its own facilities in these areas is tantamount to permanently denying Tribal access to mobile broadband.

⁴⁰ See, e.g., *Phase I Bidder Qualification Notice*, at n.3.

the auction on whether they have qualified under the Commission's rules. A Tribal-affiliated entity will therefore be afforded greater certainty before proceeding with Auction preparation, rather than to go through the process, expending resources and funds, only to find that it has not met the standard as a qualifying "Tribal" entity. Without such certainty, many providers may be less inclined to participate in the Mobility Fund, and hence, less funds will be provided to Tribal lands.

Such a pre-approval process is particularly appropriate here, for two reasons. First, unlike the ordinary licensing auction, where the effect of claiming a small business (or Tribal) preference but having it denied is merely to pay a slightly higher price for the spectrum,⁴¹ the effect here is to be identified as in default, receive no subsidy whatsoever, and pay a monetary penalty to the government.⁴² Second, Tribal Lands are largely unserved because: a) they involve smaller population densities and are more expensive to serve; and b) their populations have a much lower income level and less ability to pay for service. That means that even with Mobility Fund subsidies, profit margins are still lower than for other potential uses of the invested capital (*i.e.*, less benefit than other investments). The combination of higher risk and lower potential reward means that potential entrants may forego participating. However, a pre-approval process

⁴¹ See, e.g., *In re Application of Baker Creek Communications L.P.; For Authority to Construct and Operate Local Multipoint Distribution Services in Multiple Basic Trading Areas*, 13 FCC Rcd 18709, Memorandum Opinion and Order (rel. Sept. 22, 1998).

⁴² In the long-form application, each winning bidder for areas within Tribal lands is required to report on its engagement with the affected Tribal government. This certification must include a summary of the engagement with details on specific aspects of the discussions and deployment plans as well as on compliance with Tribal business and licensing requirements. Failure to satisfy this certification could subject carriers to "financial consequences, including potential reduction in support or liability for a performance default payment." *Auction 901 Winning Bidders Notice*, ¶¶ 26 – 28.

which significantly lowers the risk, changes the risk/reward ratio at no cost to the Commission, and increases participation.

V. THE TERM OF ONGOING SUPPORT FOR PHASE II SHOULD BE AT LEAST FIVE YEARS

ATN believes that the Commission should adopt a fixed term of support that will allow small, rural and mid-tier carriers the opportunity to build out undeveloped areas and improve current-generation mobile wireless coverage. Such a fixed term should be at least five years in duration. By spreading the ongoing support over a minimum of five years, it will allow carriers to effectively respond to the dynamic changes of the industry.⁴³ Indeed, some of these changes may even occur as a result of Mobility Fund Phase I. In addition, as the Commission recognized, the reality is that these areas need significant investments and carriers need “financial assurance to upgrade or extend networks.”⁴⁴ Such financial assurance would not exist with a less than five-year commitment. Permitting the term of Phase II ongoing support to be at least as long as the one-time issuance of support for Mobility Fund Phase I, will allow the results of Phase I to develop in an environment where necessary additions or upgrades will be fulfilled as a result of the Phase II funding, and will maximize the benefits of the Mobility Fund as a whole.

VI. MOBILITY FUND PHASE II SUPPORT MUST BE CLASSIFIED AS A “CAPITAL RESOURCE” TO ENSURE THAT FUNDS ARE NOT DIVERTED DUE TO TAX CONSEQUENCES

Through Auction 901, the Commission has been successful in distributing Phase I mobility funds to those areas in need, and at the same time, staying within its allotted budget.

⁴³ Accordingly, with the distribution of funds likely to cover a significant period of time, the Commission should also clarify how benefits and obligations may evolve over time (i.e., how such benefits and obligations would be affected by an assignment or transfer of control, particularly to a non-ETC provider).

⁴⁴ *Public Notice*, ¶ 15.

Indeed, one of the reasons that the Commission proposes to continue to use the reverse auction mechanism in Phase II is that it will “maximize the value of limited USF resources” and will allow the Commission to “identify those providers that will make most effective use of the budgeted funds, thereby benefiting consumers as widely as possible.”⁴⁵ Given the limited budget that is available and the expectation that the Commission has that bidding entities will use their own funds in addition to allotted funds, the Commission should do all in its power to ensure that all distributed funds are able to go directly to their intended purpose: “supporting mobile broadband services in areas where such services cannot be sustained or extended without ongoing support.”⁴⁶

ATN therefore requests that the Commission take the appropriate steps with the Internal Revenue Service (“IRS”) to designate Mobility Fund Phase II support as capital recovery instead of classifying the support as revenue for tax treatment purposes. The Commission has previously recognized that “in certain circumstances, the IRS treats governmental payments to private parties for the purpose of making capital investments to advance public purposes as contributions to capital under section 118 of the Internal Revenue Code.”⁴⁷ In this case, if Mobility Fund Phase II support is classified as revenue, those carriers intending to build on eligible census tracts will likely have to consider the resulting tax implications of this classification, and as a consequence, mark up their bids during the auction to account for the tax

⁴⁵ *USF/ICC Transformation FNPRM*, ¶ 1122.

⁴⁶ *Id.* at ¶ 1122.

⁴⁷ *In the Matter of Connect America Fund et al.*, WC Docket No. 10-90 et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, ¶ 363 (rel. Feb. 9, 2011) (It further notes that “Both NTIA’s BTOP grants and RUS’s BIP grants have been treated as contributions to capital.”) *Id.* While Universal Service Funds were excluded at the time by the IRS, ATN believes that the IRS was being overly cautious and did not have the opportunity to consider the changes in the FCC’s Universal Service Fund adopted in 2011, which occurred over a year after the IRS opinion.

expense. This result would directly conflict with the goals of the Mobility Fund, as it would limit the reach of Mobility Fund Phase II support into the areas that are in need of the funds.

VII. CARRIERS SHOULD BE ALLOWED TO DEMONSTRATE THEIR COMPLIANCE WITH PUBLIC INTEREST OBLIGATIONS THROUGH METHODS OTHER THAN DRIVE TESTING

ATN has found that many of the road miles in the eligible census blocks of Mobility Fund Phase I contain conditions that hinder, if not prevent, the required method of drive testing to measure and assess coverage and capacity of these areas for compliance purposes.⁴⁸ The road miles in some eligible census blocks may contain logging roads and private access roads that, while in need of improved mobile service, are not necessarily accessible for drive testing purposes. For example, in the winter months, many of these roads become inaccessible due to weather conditions, and may only become accessible when the snow dissipates or a private individual clears the roads. Until that point, however, vehicles with drive test gear (generally a truck or a car) cannot access these areas. As a consequence, an alternate method of coverage testing should be permitted. Therefore, ATN encourages the Commission to allow for the use of propagation models for Phase II – in accordance with accepted industry practices – to demonstrate and calculate road miles covered in areas where drive testing may not be possible. In doing so, carriers should also be permitted to use signal strengths that are proven to meet the required speeds in similar areas based on drive test data.

ATN recognizes that the Commission permits the use of propagation models to satisfy other requirements – such as construction build-out obligations. Propagation models are regularly used by carriers to satisfy their build-out obligations, and have proven effective and

⁴⁸ The Commission requires that “part[ies] demonstrate that they have deployed a network that covers the relevant area and meets their public interest obligations with data from drive tests.” *USF/ICC Transformation Order*, ¶ 370.

accurate in doing so. Based upon the Commission's reliance on these models in similar circumstances, and the difficulty of drive testing in certain situations, ATN requests that the Commission consider permitting such models for Phase II compliance reporting in instances where conditions may not allow for drive testing to be successfully completed.

VIII. CONCLUSION

ATN urges the Commission to take this opportunity to modify certain aspects of Mobility Fund Phase II based upon the results and real-life experiences of Mobility Fund Phase I. There remains additional modifications that the Commission can make to ensure that the funds are maximized to their full potential in the next round of funding, Phase II. Specifically, the Commission should focus on prioritizing those census tracts unlikely to be supported outside the Mobility Fund, and prioritize incentives for those tracts that did not receive funding in Phase I in order to increase broadband deployment in these areas. ATN also suggests that the Commission revise certain aspects of the post-auction procedures to ensure that the funds provided from Phase II are not being diverted towards administrative burdens. Furthermore, in keeping with the intent to encourage more Tribal participation, the Commission must reaffirm that either Tribally-owned or Tribally-controlled companies are eligible for tribal credits in the Mobility Fund.

ATN also believes that the term of ongoing support for Phase II should be a minimum of five years, and requests that the Commission take the necessary steps with the IRS to classify these on-going funds as a capital contribution. Finally, ATN requests that the Commission permit the use of propagation models, as many carriers already use such models, in the case that drive testing is not feasible due to the area conditions.

Respectfully submitted,

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