

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Comment Sought on Bidding)	AU Docket No. 13-53
Procedures for Auction 902 and Certain)	
Program Requirements)	

COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (“CCA”) submits these comments in response to the *Public Notice* issued by the Wireless Telecommunications and Wireline Competition Bureaus (the “Bureaus”) on March 29, 2013 in the above-captioned docket.¹

I. INTRODUCTION AND SUMMARY

CCA is the principal association representing more than 100 competitive wireless providers across the United States, including rural, regional, and tribally-owned or tribally-controlled carriers, who have a particular interest in the Tribal Mobility Fund. CCA’s members also made up the vast majority of participants in Phase I of the Mobility Fund.

In related proceedings CCA has previously highlighted the wide disparity of support between the Connect America Fund and the Mobility Fund (including the Tribal Mobility Fund). This disparity remains a pressing concern, particularly in light of the modest amount of one-time support allocated for Tribal Mobility Fund Phase I.

In addition to this fundamental problem of unjustifiably allocating disproportionate funds for wireline carriers’ exclusive use, for Auction 902 the Bureaus should adopt simple, easy-to-understand auction and post-auction procedures to maximize participation. The FCC should also

¹ *Tribal Mobility Fund Phase I Auction Scheduled for October 24, 2013; Comment Sought on Competitive Bidding Procedures for Auction 902 and Certain Program Requirements*, Public Notice, AU Docket No. 13-53, DA 13-323 (rel. Mar. 29, 2013) (“*Public Notice*”).

adopt a few targeted changes based on lessons learned from Auction 901. Specifically, the Commission should consider alternatives to “drive tests” for demonstrating coverage performance requirements, particularly on Tribal lands, and refrain from requiring separate letters of credit (LOCs) for each winning bid as opposed to each winning bidder.

Finally, CCA urges the Bureaus to provide clarity regarding the Commission’s Tribal engagement rule and their Tribal Engagement Further Guidance. In particular, Tribal engagement obligations should not apply to competitive ETCs whose support is being phased-down. Additionally, CCA agrees with comments in the record explaining that the additional undertakings contained in the Tribal Engagement Further Guidance should be considered recommendations, rather than mandates.

II. DISCUSSION

A. The Commission’s Allocation of Mobility Fund and Tribal Mobility Fund Support Should Reflect Consumers’ Increasing Preference for Wireless

As the *Public Notice* rightly observes, “Tribal lands [] have significant telecommunications deployment and connectivity challenges.”² The Commission has previously recognized that “many Tribes suffer the effects of limited availability of wireless services on Tribal lands” and that “greater access to wireless services would offer members of Tribes and others on Tribal lands significant economic opportunities and increased social benefits.”³ In spite of these benefits and opportunities, however, the Commission changed course in its *USF/ICC Transformation Order* and called for substantial reductions in the amount of high-cost

² *Public Notice* at ¶ 2 (citing *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“*USF/ICC Transformation Order* or *USF/ICC Transformation FNPRM*”).

³ *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, Notice of Proposed Rulemaking, 26 FCC Rcd 2623, 2624 ¶ 1 (2011).

support flowing to wireless providers. Despite skyrocketing growth in the demand for wireless services while wireline connections plummet, the *USF/ICC Transformation Order* determined that the new Tribal Mobility Fund should be limited to a one-time allocation of \$50 million, and annual outlays of up to \$100 million for Tribal Mobility Fund Phase II.⁴ General Mobility Fund support was limited to \$300 million for Phase I, and \$500 million annually for Phase II including the \$100 million set aside for Tribal Mobility Fund Phase II.

In contrast to the decision to slash funding for wireless providers, the *USF/ICC Transformation Order* significantly *increased* the funding available to incumbent local exchange carriers (“LECs”)—including in particular by giving price cap carriers a right-of-first-refusal to receive \$1.8 billion in annual funding through the Phase II of the Connect America Fund (“CAF”), and the \$2 billion-plus available to rate-of-return carriers.⁵ But the *USF/ICC Transformation FNPRM* left the door open to modifications that could diminish the wireline preferences embedded in the *USF/ICC Transformation Order*. For example, the Commission sought comment on rule changes that would diminish support potentially available to ILECs in the future—which in turn would free up additional funding that could be redirected to wireless carriers, consistent with consumer preferences.

In response to the *USF/ICC Transformation FNPRM*, CCA (then known as RCA—The Competitive Carriers Association) filed comments urging restoration of more competitively and

⁴ Of note, the size of Tribal Mobility Fund Phase I is approximately 25 percent of the ongoing support awarded to competitive ETCs serving Covered Locations in 2010. *USF/ICC Transformation Order* at ¶ 485.

⁵ As a result of the *USF/ICC Transformation Order*, funding for wireless carriers was reduced by approximately 60 percent while funding for the price cap carriers increased by more than 60 percent. Wireless carriers now receive less than 20 percent of the amount allocated for either the price cap carriers or the rate-of-return carriers.

technologically neutral policies.⁶ In particular, CCA explained that the problems associated with separate funding mechanisms could be mitigated if the relative budgets for wireline and wireless support were not skewed so dramatically in favor of wireline carriers.⁷ To that end, CCA argued that where price cap LECs declined funding through Phase I of the CAF (and to the extent they decline future funds for which they have a right of first refusal during CAF Phase II), such funding should be shifted to the Mobility Fund.⁸ In addition, CCA supported changes to the rules governing rate-of-return carriers' support, which could make additional funding available for use by more efficient wireless providers.⁹

A comparison of the results of Phase I of CAF and Mobility Fund speak volumes on the wisdom of CCA's calls for competitively and technologically neutral support policies. While price cap carriers refused more than half of the funding made available to them on a right-of-first-refusal basis,¹⁰ wireless carriers committed to deploying services to high-cost areas through a competitive bidding process that effectively put to use nearly every dollar allocated for Phase I of the Mobility Fund.¹¹ Based on these results, CCA, along with a broad coalition representing various competitive providers, urged the Commission to ensure that "upcoming decisions addressing issues pertaining to CAF distributions put the support programs on a more

⁶ See generally Comments of RCA—The Competitive Carriers Association, WC Docket No. 10-90 *et al.* (filed Jan. 18, 2012).

⁷ *Id.* at 3.

⁸ *Id.* at 4-7.

⁹ *Id.* at 8-10.

¹⁰ See Press Release, FCC, *FCC Releases New Interactive Map Illustrating States Set to Receive 'Connect America Fund' Support to Bring 400,000 Americans High-Speed Broadband* (June 26, 2012). The price cap carriers left unclaimed \$185 million of the \$300 million allocated in Phase I.

¹¹ *Mobility Fund Phase I Auction Closes, Winning Bidders Announced for Auction 901*, Public Notice, DA 12-1566, 27 FCC Rcd 12031 (rel. Oct. 3, 2012).

competitively and technologically neutral path and ensure that support is distributed efficiently.”¹²

The Mobility Fund Phase I auction results demonstrate that wireless carriers can and will utilize valuable, necessary support to deploy broadband in high-cost areas. Support decisions should reflect the fact that increasingly reliable, high capacity, high-speed mobile technologies can and should be deployed in high-cost areas for both consumer¹³ and enterprise communications.¹⁴ It is particularly crucial that Tribal lands not be denied the “significant economic opportunities and increased social benefits” that come from wireless service. The Commission should therefore act to put the CAF and Mobility Fund initiatives on a more pro-competitive and pro-consumer footing.

B. The FCC Should Adopt Simple, Easy to Understand Auction Procedures

To encourage competitive carriers to take advantage of the scant amount of support allocated for Tribal Mobility Fund Phase I, and in turn to spur deployment of services to Tribal lands, the Bureaus should make simplicity a priority in devising auction procedures. The Bureaus can do so by adopting a single-round reverse auction, providing clear rules for carriers

¹² See Ex Parte Letter of Rebecca Thompson (CCA), Ross Lieberman (ACA), Steven Morris (NCTA), Matt Larsen (WISPA), Dean Marson (EchoStar), Jeffrey Blum (DISH Network, LLC), and Michael Rapelyea (ViaSat, Inc.), WC Docket No. 10-90 *et al.* (filed Aug. 3, 2012). See also Comments of Competitive Carriers Association, WC Docket No. 10-90 *et al.* (filed Dec. 21, 2012); Comments of Competitive Carriers Association, WC Docket No. 10-90 *et al.* (filed Jan. 28, 2013).

¹³ See S. J. Blumberg, J. V. Luke, et. al., *Wireless Substitution: State-level Estimates From the National Health Interview Survey, 2010–2011*, National Health Statistics Reports, at 2, available at <http://www.cdc.gov/nchs/data/nhsr/nhsr061.pdf> (October 12, 2012) (“Estimates for Adults and Children Living in Wireless-only Households”).

¹⁴ The skyrocketing prevalence of wireless tablets, mobile hotspots for laptops, and mobile applications are all examples of consumer preference for wireless.

to demonstrate performance requirements, streamlining the Letter of Credit process and refraining from setting reserve prices or maximum opening bid amounts for the auction.

First, the Commission should adopt a single-round reverse auction design.¹⁵ CCA agrees that “[o]ne advantage of the single-round format is that it would be simple and quick.”¹⁶ Bid amounts of other auction participants are not likely to contain information that will significantly affect an individual bidder’s own cost assessments, nor does the potential for strategic behavior support using a multiple-round auction in this case. Moreover, the results of Auction 901 are evidence that funds can be effectively allocated through a single-round auction.

Second, for purposes of evaluating whether a winning bidder’s population coverage requirement is met, the Bureaus should allow a provider to demonstrate population coverage over individual census blocks based on the amount of area covered.¹⁷ As the *Public Notice* points out, U.S. Census data does not specify how population is distributed within a census block,¹⁸ and therefore requiring winning carriers to make more granular showings would be unduly burdensome. Additionally, the Bureaus should refrain from requiring “drive tests” to demonstrate coverage for performance requirements, particularly on Tribal lands. As commenters have acknowledged in related proceedings, drive testing may be challenging in areas where there are private roads, logging routes or protected parklands, for example.¹⁹ The

¹⁵ *Public Notice* at ¶ 28.

¹⁶ *Id.*

¹⁷ *Id.* at ¶ 36.

¹⁸ *Id.*

¹⁹ See Comments of Competitive Carriers Association, WC Docket No. 10-90 *et al.* at 9 (filed Dec. 21, 2012); see also Comments of Atlantic Tele-Network, Inc., WC Docket No. 10-90 *et al.* at 16-17 (filed Dec. 21, 2012).

Bureaus should explore alternative options for carriers to demonstrate performance requirements, such as propagation models.

As CCA previously suggested in response to the Public Notice on Mobility Fund Phase II,²⁰ the Bureaus should not require separate commitment letters or letters of credit for each Tribal Mobility Fund winning bid.²¹ Obtaining individual letters requires a carrier to expend valuable time, money and other resources, which directly results in unnecessarily higher bids. CCA recommends the Bureaus require only one letter of credit per winning bidder rather than per winning bid. The Bureaus also should implement a procedure to allow winning bidders to vet the language of any letters of credit *prior to* their issuance, rather than after the fact. Requiring revisions to the letters of credit after their issuance increases the cost, diverting funds from network deployment, and delays the deployment of service. These recommendations would improve the efficiency of participants' bids and the program as a whole.

Finally, and similar to Auction 901, the Bureaus should not set reserve prices or maximum opening bid amounts for Auction 902.²² An adequate amount of competition exists to constrain bid amounts, especially in light of the finite amount of funding allocated for Tribal Mobility Fund Phase I.

²⁰ See Comments of Competitive Carriers Association, WC Docket No. 10-90 *et al.* at 8 (filed Dec. 21, 2012).

²¹ *Public Notice* at ¶ 9, n.25 (citing *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, Public Notice, AU Docket No. 12-25, 27 FCC Rcd 4725, 4770-72, ¶¶ 169-72 (2012) (requiring a Letter of Credit for each winning bid, or a written commitment letter from an acceptable bank to issue such an LOC.)).

²² *Id.* at ¶ 46.

C. The Bureaus Should Provide Clarity Regarding the Commission’s Tribal Engagement Rule and their Tribal Engagement Further Guidance

While CCA supports the Commission’s efforts to facilitate coordination between Tribal entities and carriers, it should clarify at least two points related to Tribal engagement. First, the Bureaus should expressly state that competitive ETCs whose support is being phased-down pursuant to the *USF/ICC Transformation Order*, and who do not receive Mobility Fund support for Tribal lands or Tribal Mobility Fund support, are not required to undertake any of the steps set out in either the Commission’s Tribal engagement rules²³ or the Bureaus’ and Office of Native Affairs and Policy’s Tribal Engagement Further Guidance.²⁴ The *USF/ICC Transformation Order* seems to support this conclusion, as it relates Tribal engagement requirements to bidders winning support for Tribal lands.²⁵ However, Section IX.A of the *USF/ICC Transformation Order* refers more generally to ETCs,²⁶ and the record shows that there is confusion in the industry as to the applicability of the Tribal engagement rules.²⁷ Accordingly, an announcement of rules governing Auction 902 would be an opportune time for the Bureaus to

²³ See 47 C.F.R. § 54.1004(d).

²⁴ See *Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund*, Public Notice, WC Docket Nos. 10-90, *et al.*, DA 12-1165, 27 FCC Rcd 8176 (2012) (Further Guidance).

²⁵ See, e.g., *USF/ICC Transformation Order* at ¶ 489 (encouraging applicants seeking to serve Tribal lands to engage with affected Tribal governments as soon as possible but no later than the submission of the long-form, and requiring any bidder winning support for areas within Tribal lands to notify the relevant Tribal government); see also 47 C.F.R. § 54.1004(d) (“A winning bidder for support in Tribal lands shall notify and engage the Tribal governments responsible for the areas supported.”).

²⁶ *Id.* at ¶ 637.

²⁷ See Ex Parte Letter of USTelecom *et al.*, WC Docket No. 10-90 *et al.* (filed Nov. 19, 2012) (arguing “that it ma[kes] little sense to compel a carrier whose support is being eliminated to discuss, for example, deployment plans with tribal governments, since these carriers very well have no deployment plans.”).

confirm that any Tribal engagement obligations apply only to carriers who provide service to Tribal lands contingent upon either Mobility Fund or Tribal Mobility Fund support, and specifically do not apply to competitive ETCs whose support is being phased-down under the *USF/ICC Transformation Order*.

In addition to the general requirements of the Tribal engagement rule,²⁸ the Bureaus, along with the Office of Native Affairs and Policy, issued their Further Guidance last year. The Further Guidance was presented as “the first step in the Commission’s implementation of the Tribal engagement obligation”²⁹ and contains numerous supplemental actions for ETCs to undertake upon receipt of support. As the Bureaus are aware, the *USF/ICC Transformation Order* imposes burdensome consequences on carriers, including potential reductions in support, should they fail to fulfill their Tribal engagement obligations.³⁰

The Further Guidance is currently the subject of a Petition for Reconsideration and Clarification filed by the United States Telecom Association (USTelecom).³¹ USTelecom argues that the Further Guidance, to the extent it attempts to impose substantive obligations on ETCs, suffers from a number of procedural deficiencies—including that it is not the product of a notice-and-comment rulemaking proceeding.³² Several commenters, including C Spire Wireless, Pioneer Cellular and U.S. Cellular,³³ as well as CTIA,³⁴ agree with this assessment. Finally, the

²⁸ 47 C.F.R. § 54.1004

²⁹ Further Guidance at ¶ 4.

³⁰ *USF/ICC Transformation Order* at ¶ 637.

³¹ Petition for Reconsideration and Clarification of the United States Telecom Association, WC Docket No. 10-90 *et al.* (filed Aug. 20, 2012).

³² *See generally, id.*

³³ *See Reply Comments of C Spire Wireless, Pioneer Cellular, and United States Cellular Corporation Regarding United States Telecom Association Petition for Reconsideration and Clarification, WC Docket No. 10-90 et al. at 10-14 (filed Oct. 11, 2012).*

Further Guidance should serve as a set of recommendations, rather than a mandatory “checklist” of action items, and CCA therefore encourages the Bureaus to clarify this point.

III. CONCLUSION

CCA urges the Commission to consider the drastically different results of Phase I of the CAF and Mobility Fund, as well as consumers’ overwhelming preference for wireless services, and act to rectify the significant harms caused by the wireline preferences reflected in the *USF/ICC Transformation Order*. The need to do so is particularly acute in Tribal areas, which suffer from limited availability of wireless services. In creating auction and post-auction procedures for Auction 902, the Bureaus should make simplicity a priority, and should clarify the scope and weight of the Commission’s Tribal engagement rule and the Tribal Engagement Further Guidance.

Respectfully submitted,

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³⁴ See Comments of CTIA-The Wireless Association, WC Docket No. 10-90 *et al.* at 6-7 (filed Sept. 26, 2012).