

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	WC Docket No. 10-90
Connect America Fund)	
)	WT Docket No. 10-208
Universal Service Reform – Mobility Fund)	
)	AU Docket No. 12-25
Mobility Fund Phase I Auction)	

PETITION FOR DECLARATORY RULING

United States Cellular Corporation (“U.S. Cellular”), by counsel and pursuant to Section 1.2 of the Commission’s Rules, respectfully requests the Commission to issue a Declaratory Ruling (1) finding that awarding unclaimed Mobility Fund Phase I support, originally awarded in Auction 901, to next-in-line bidders is the best use of these funds; (2) finding that the Wireless Telecommunications Bureau and the Wireline Competition Bureau (“WCB” or the “Bureau”) (collectively, the “Bureaus”) have delegated authority to take this action; and (3) requiring the Bureaus to take this action on an expedited basis.¹

More than a year after completion of Auction 901,² more than \$68 million of the \$300 million originally made available for funding mobile broadband investments in unserved areas

¹ U.S. Cellular first suggested this course of action shortly following the close of Auction 901. *See, e.g.*, Letter from David A. LaFuria, Counsel for U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 12-25, GN Docket No. 09-51, WC Docket Nos. 05-337 and 10-90, WT Docket No. 10-208, filed Dec. 18, 2012, at 1 (“urging the Commission to distribute [defaulted Mobility Fund Phase I] funds . . . to fulfill bids in Auction 901 that were not awarded”); *see also* Letter from David A. LaFuria, Counsel for U.S. Cellular, to Ruth Milkman, Chief, Wireless Telecom. Bur. & Julie Veach, Chief, Wireline Telecom. Bur., filed Sept. 23, 2013, at 1 (requesting the Bureaus to “expeditiously award returned Auction 901 funds to the next-in-line bidders”).

² Auction 901 closed on September 27, 2012. Mobility Fund Phase I Auction 901 Fact Sheet (“Auction 901 Fact Sheet”), *accessed at* http://wireless.fcc.gov/auctions/default.htm?job=auction_factsheet&id=901#key_dates.

remains unclaimed due to winning bidders defaulting on their bids. These defaulted amounts can and should be awarded to the next-in-line bidders who remain ready, willing, and able, to meet the goals of the program and expand the reach of mobile broadband into areas that remain unserved and which were eligible for funding under the rules of Auction 901.

As set forth below, the Commission should issue a Declaratory Ruling resolving uncertainties that have affected the award of the unclaimed funds, and requiring that the Bureaus act promptly to make these funds available to next-in-line bidders in Auction 901.

I. BACKGROUND.

“Ubiquitous mobile coverage must be a national priority. To increase the availability of current generation mobile broadband, as well as mobile voice, across the country, universal service funding for mobile networks must be deployed in a more targeted and efficient fashion than it is today.”³ In its decision to revamp the high-cost support mechanism, the Commission decided to “rely on incentive-based, market-driven policies, including competitive bidding, to distribute universal service funds as efficiently and effectively as possible[.]”⁴ and found that “a reverse auction format . . . is the best available tool for identifying . . . areas [where it is cost effective to extend deployment of 3G networks and accelerate deployment of 4G networks with one-time support]—and associated support amounts—in a transparent, simple, speedy, and effective way.”⁵

³ *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, 26 FCC Rcd 17663, 17771-72 (2011) (“*CAF Order*”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir., oral argument held Nov. 19, 2013) (and consolidated cases).

⁴ *Id.* at 17,673.

⁵ *Id.* at 17,781.

The Commission budgeted \$300 million for the first phase of the Mobility Fund, “to immediately accelerate deployment of networks for mobile voice and broadband services in unserved areas.”⁶ Emphasizing the importance of moving forward expeditiously, the Commission stated, “[w]e expect to distribute this support as quickly as feasible, with the goal of holding an auction in 2012, with support beginning to flow no later than 2013.”⁷

To its substantial credit, the Commission has met this tight time frame. The auction closed on September 27, 2012, and to date, the Commission has authorized the award of \$230,275,415.50 to 738 winning bids, conditioned on the successful completion of performance conditions.⁸ Of the \$230 million awarded to date, some winning bidders have defaulted on \$68,061,434 in funds awarded, for a variety of reasons.⁹ Since all winning bids have not yet been awarded,¹⁰ the amount of unclaimed funds may go higher.

II. THE ACT AND THE CAF ORDER SUPPORT THE PROMPT AWARD OF RETURNED FUNDS TO NEXT-IN-LINE BIDDERS.

In establishing the Mobility Fund, the Commission was fulfilling one of its central missions, to make “available ... to all the people of the United States ... a rapid, efficient, nation-

⁶ *Id.* at 17,675.

⁷ *Id.* at 17,773 (emphasis added).

⁸ Auction 901 Fact Sheet, *supra*.

⁹ This amount was calculated based upon information released by the Commission in the following Public Notices: DA 13-888 (Apr. 25, 2013); DA 13-1412 (June 20, 2013); DA 13-1591 (July 18, 2013); DA 13-1662 (July 29, 2013); DA 13-1732 (Aug. 8, 2013); DA 13-1769 (Aug. 16, 2013); DA 13-1786 (Aug. 21, 2013); DA 13-1829 (Aug. 29, 2013); DA 13-1922 (Sept. 19, 2013); DA 13-2248 (Nov. 25, 2013); DA 13-2343 (Dec. 6, 2013); DA 13-2464 (Dec. 23, 2013) (collectively, the “*Auction 901 Public Notices*”) and the Commission’s MO&O in *Applications of AT&T Inc. and Atlantic Tele-Network, Inc., for Consent To Transfer Control of and Assign Licenses and Authorizations*, WT Docket No. 13-54, Memorandum Opinion and Order, DA 13-1940 (redacted), rel. Sept. 20, 2013.

¹⁰ A comparison of the number of winning bids reported by the Commission, accessed at http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=901, and the number of authorized winning bids and bids in default reported in the *Auction 901 Public Notices*, appears to indicate that not all winning bids have been awarded.

wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”¹¹ With respect to implementation, the Commission acted “as quickly as feasible,”¹² noting that “[m]illions of Americans live in communities where current-generation mobile service is unavailable, and millions more work in or travel through such areas[,]” and creating the Phase I mechanism to advance the “goal of swiftly extending current generation wireless coverage in areas where it is cost effective to do so with one-time support.”¹³

The *CAF Order* addressed the subject of returned funds:

Undisbursed Support Payments. We received no comments on the disposition of Mobility Fund support for which a winning bidder does not timely file a long-form application. We anticipate that when a winning bidder defaults on its bid or is disqualified for any reason after the close of the auction, the funds that would have been provided to such an applicant will be used in a manner consistent with the purposes of the Universal Service program.¹⁴

No subsequent order or public notice expanded this language.

The Commission directed USAC to “utilize \$300 million in the *Corr Wireless Order* reserve account to fund commitments that we anticipate will be made in 2012 to recipients of the Mobility Fund Phase I to accelerate advanced mobile services.”¹⁵

Uncertainty associated with determining the best manner in which to utilize more than \$68 million in Mobility Fund Phase I support has thus far delayed any re-allocation of these funds for a year and a half since the auction date. The Commission should therefore issue a Declaratory Ruling resolving this uncertainty regarding the best and most expeditious use of support unclaimed

¹¹ 47 U.S.C. § 151.

¹² *CAF Order, supra*, at 17,773.

¹³ *Id.* at 17,778 (emphasis added).

¹⁴ *Id.* at 17,815.

¹⁵ *Id.* at 17,848.

in Auction 901 due to bidder defaults, by determining that such support should be awarded to next-in-line bidders in Auction 901. Promptly awarding returned Mobility Fund monies to these next-in-line bidders will fulfill the goals of the Act and the *CAF Order* by ensuring the rapid deployment of broadband wireless services to unserved areas. No other course of action will deploy facilities as quickly.

III. THE BUREAUS ARE AUTHORIZED TO ACT UNDER DELEGATED AUTHORITY.

The Commission's Declaratory Ruling also should remove any possible uncertainty regarding the scope of the delegated authority granted in the *CAF Order*, by finding that the Bureaus currently possess delegated authority pursuant to the *CAF Order* empowering them to facilitate the award of unclaimed Auction 901 support to next-in-line Auction 901 bidders.

The Commission delegated broad authority to the Bureaus to fully implement the Mobility Fund:

Delegation of Authority. We also adopt our proposal to *delegate to the Bureaus authority to administer the policies, programs, rules and procedures to implement Mobility Fund Phase I* as established today.... In addition to the specific tasks noted elsewhere ... this delegation includes all authority necessary to conduct a Mobility Fund Phase I auction and conduct program administration and oversight consistent with the policies and rules we adopt in this Order.¹⁶

Given the complexities associated with modifying existing rules as well as other reforms adopted in this Order, we delegate authority to the Wireline Competition Bureau and Wireless Telecommunications Bureau, as appropriate, *to make any further rule revisions as necessary to ensure that the reforms adopted in this Order are properly reflected in the rules.* This includes ... addressing any omissions or

¹⁶ *Id.* at 17,783 (emphasis added). *See also id.* at 17,805 (“We delegate authority to the Bureaus to administer the policies, programs, rules and procedures we establish for Mobility Fund Phase I today and take all actions necessary to conduct a Phase I auction.”).

oversights. If any such rule changes are warranted, the Wireline Competition Bureau or Wireless Telecommunications Bureau, as appropriate, shall be responsible for such changes.¹⁷

WCB has used the authority delegated in the *CAF Order* to revise and clarify the rules. For example, in June 2012, WCB ruled on several requests for clarification.¹⁸ The Bureau did not put the letters out on public notice for comment, and noted that no party objected to the relief requested.¹⁹ The Bureau further noted that it “may release additional clarification orders in the future, consistent with its authority under the [*CAF Order*].”²⁰

In sum, the Commission should issue a Declaratory Ruling that resolves any uncertainty regarding the scope of the Bureaus’ delegated authority, and that finds that the Bureaus possess specific delegated authority to award unclaimed Auction 901 funds to next-in-line bidders, including the discretion to decide whether to issue a public notice requesting comment prior to acting to award such funds to next-in-line bidders.²¹

IV. AWARDING UNCLAIMED SUPPORT TO NEXT-IN-LINE BIDDERS IS FAIR TO THOSE WHO PARTICIPATED AND WILL MAINTAIN THE INTEGRITY OF THE AUCTION PROCESS.

The award of unclaimed Auction 901 funding to next-in-line bidders is the best and most expeditious use of unclaimed funds.

The next-in-line bidders have already completed the requisite Commission processes, they have participated in the auction, and they have affirmatively stated a readiness to deploy facilities

¹⁷ *Id.* at 18,149 (emphasis added).

¹⁸ In the Matter of Connect America Fund, et al., *Order*, DA 12-870, 27 FCC Rcd 5986 (Chief, Wireline Competition Bureau) (2012).

¹⁹ *Id.* at 5988, n.17.

²⁰ *Id.* at 5986, n.2.

²¹ 47 C.F.R. § 1.45. *See CAF Order* at 18,149 (finding that “any entity that disagrees with a rule change made on delegated authority will have the opportunity to file an Application for Review by the full Commission”).

pursuant to their plans filed with the Commission. In fact, the next-in-line bidders would have been awarded these funds in the first instance had the original bidders only bid on census blocks that they could commit to construct. Awarding support to next-in-line bidders distributes funds to those who have already submitted bids and are committed to performing.

While the Commission can change its auction procedures, it should do so judiciously, and not in this case. Holding a second auction or moving the funds to another place within the universal service mechanism sets a poor precedent that undermines confidence in the auction process. Chairman Wheeler recently noted that the Commission has allocated \$350 million to Mobility Fund Phase I and Tribal Mobility Fund Phase I to “deploy critical mobile broadband service.”²² Awarding all \$350 million to carriers that committed to the process will demonstrate a commitment to them, and to the areas that the FCC has identified as deserving of improved service.

From the perspective of rural consumers in states such as New Hampshire and Kansas, neither of which has seen any support in Auction 901 (and for the record, New Hampshire has seen negligible support since the 1996 Act), moving support to another auction greatly increases the likelihood that no party will step up and build mobile wireless service to these areas, ever. A Phase II auction for 4G support will have enormous rural areas available for bidding across the country. It is therefore highly likely that all available funding will be exhausted long before higher-cost areas available in Auction 901, areas that lack 3G service, will be reached. People living in these areas, who should have seen support provided in this auction, may never receive reliable mobile wireless service.

²² Prepared Remarks of Tom Wheeler to the National Congress of American Indians, Mar. 12, 2014, *accessed at* <http://www.fcc.gov/document/chairman-wheeler-remarks-national-congress-american-indians>.

Finally, holding a second auction is inefficient, and it opens the door to consequences that are both unintended and unknown today. For example, in a re-auction, every other bidder will know exactly what they need to bid to undercut the bids placed in the original Auction 901.

A Declaratory Ruling that determines that unclaimed Auction 901 support must be awarded to next-in-line bidders would “maximize the impact of the new [Mobility Fund Phase I] funding to speed deployment to the greatest number of unserved areas.”²³ To preserve the integrity of this auction, the Commission should determine in a Declaratory Ruling that all unclaimed funds must be awarded to those who came to the table when called, and are committed to delivering to consumers the benefits promised when this process began.

* * * * *

The possibility of bidders refusing to accept funds was considered, but not fully discussed in the *CAF Order*, understandably so in the context of attempting to reform the entire universal service and intercarrier compensation mechanisms. A Declaratory Ruling resolving uncertainty regarding the use of unclaimed Auction 901 funds, and requiring the award of such funds to next-in-line bidders who are ready to perform, will be consistent with the purposes of both the Act and the universal service program, and it will send the right signal to bidders who participated in the September 27, 2012, auction that their legitimate bids at the block will be honored. It is a simple solution that will serve rural citizens waiting to receive advanced 3G and 4G services.

²³ *Auction 901 Winners Announcement* at 2. The Commission has emphasized that “[t]he overall objective of the bidding in [Mobility Fund Phase I] is to maximize the number of units to be covered in unserved areas given [the Commission’s] overall budget for support.” *CAF Order, supra* at 17,805.

V. CONCLUSION: RULING REQUESTED.

On the basis of the foregoing, U.S. Cellular respectfully requests the Commission to issue a Declaratory Ruling that:

- (1) Resolves uncertainty regarding the use of support amounts in Mobility Fund Phase I Auction 901 that remain unclaimed because of defaults by winning bidders by declaring that such support shall be made available to next-in-line bidders based on the results of Auction 901;
- (2) Resolves uncertainty regarding whether authority has been delegated to the Wireless Telecommunications Bureau and the Wireline Competition Bureau that empowers the Bureaus to take expedited action to award Auction 901 defaulted support to bidders that are next-in-line to receive this support based on Auction 901 bidding results; and
- (3) Requires the Bureaus to take the following actions on an expedited basis:
 - (a) Issue a Public Notice announcing that (i) next-in-line bidders in Auction 901 intending to claim an award of returned funds must notify the Commission within ten business days via e-mail, using the Auction 901 e-mail address; (ii) specifies that applicants affirmatively seeking an award must take everything awarded, or decline to participate; and (iii) makes clear that this process will be one-time, and all subsequent funds will be added to increase the funds available in Mobility Fund Phase II;
 - (b) Calculate the amount of returned funds available (applying the same methodology used to award bids following the September 27, 2012, auction), and match those funds to the next-in-line bidders who have timely filed their notice of continued interest;

- (c) Issue another Public Notice announcing winning bidders, and repeat the process for filing and processing long-form applications; and
- (d) Promptly review the long-form applications, and proceed to distribute funding as soon as possible.

Respectfully submitted,

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