element that is below the comparable interstate rate for that element, the Rate-of-Return Carrier shall:

(i) Increase any intrastate rate element that is below the comparable interstate rate to the interstate rate by July 1, 2013; and

(ii) Include any increases made pursuant to paragraph (c)(2)(i) of this section in the calculation of its eligible recovery for 2013.

* * * * *

■ 4. In § 51.911 revise paragraphs (b) introductory text and (b)(6), and add paragraph (b)(7) to read as follows:

§ 51.911 Access reciprocal compensation rates for competitive LECs.

* * * * *

(b) Except as provided in paragraph (b)(7) of this section, beginning July 3, 2012, notwithstanding any other provision of the Commission's rules, each Competitive LEC that has tariffs on file with state regulatory authorities shall file intrastate access tariff provisions, in accordance with § 51.505(b)(2), that set forth the rates applicable to Transitional Intrastate Access Service in each state in which it provides Transitional Intrastate Access Service. Each Competitive Local Exchange Carrier shall establish the rates for Transitional Intrastate Access Service using the following methodology.

* * * * *

(6) Except as provided in paragraph (b)(7) of this section, nothing in this section obligates or allows a Competitive LEC that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(7) If a Competitive LEC must make an intrastate switched access rate reduction pursuant to paragraph (b) of this section, and that Competitive LEC has an intrastate rate for a rate element that is below the comparable interstate rate for that element, the Competitive LEC may increase the rate for any intrastate rate element that is below the comparable interstate rate for that element to the interstate rate no later than July 1, 2013;

* * * * *

5. In § 51.915 revise paragraphs (d)(1)(i)(C)(*2*)(*i*), (d)(1)(ii)(C)(*2*)(*i*), (d)(1)(iii)(E)(*2*)(*i*), (d)(1)(iv)(E)(*2*)(*i*), (d)(1)(v)(E)(*2*)(*i*), (d)(1)(vi)(F)(*2*)(*i*), and (d)(1)(vii)(G)(*2*)(*i*), to read as follows:

§ 51.915 Recovery mechanism for price cap carriers.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(C) * * *

(*2*) * * *

(*i*) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by its respective Fiscal Year 2011 demand excluding demand for traffic exchanged pursuant to a bill-and-keep arrangement;

* * * * *

(ii) * * *

(C) * * *

(*2*) * * *

(*i*) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by its respective Fiscal Year 2011 demand excluding demand for traffic exchanged pursuant to a bill-and-keep arrangement;

* * * * *

(iii) * * *

(E) * * *

(*2*) * * *

(*i*) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by its respective Fiscal Year 2011 demand excluding demand for traffic exchanged pursuant to a bill-and-keep arrangement;

* * * * *

(iv) * * *

(E) * * *

(*2*) * * *

(*i*) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by its respective Fiscal Year 2011 demand excluding demand for traffic exchanged pursuant to a bill-and-keep arrangement;

* * * * *

(v) * * *

(E) * * *

(*2*) * * *

(*i*) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by its respective Fiscal Year 2011 demand excluding demand for traffic exchanged pursuant to a bill-and-keep arrangement;

* * * * *

(vi) * * *

(F) * * *

(*2*) * * *

(*i*) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by its respective Fiscal Year 2011 demand excluding demand for traffic exchanged pursuant to a bill-and-keep arrangement;

* * * * *

(vii) * * *

(G) * * *

(*2*) * * *

(*i*) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by its respective Fiscal Year 2011 demand excluding demand for traffic exchanged pursuant to a bill-and-keep arrangement;

* * * * *

[FR Doc. 2012–19810 Filed 8–13–12; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 03–109, 05–337, 07–135, 10–90; CC Docket Nos. 96–45, 01–92; GN Docket No. 09–51; WT Docket No. 10–208; FCC 12–82]

Connect America Fund; High-Cost Universal Service Support; Universal Service Reform—Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Federal Communications Commission (Commission) reconsiders certain aspects of the *USF/ICC Transformation Order* in response to various petitions for reconsideration and/or clarification.

DATES: Effective September 13, 2012.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau,* *Auctions and Spectrum Access Division:* call Sayuri Rajapakse at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Order on Reconsideration (*USF–ICC Fourth Order on Reconsideration) in WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 12–82,* released on July 18, 2012. The complete text of *this document,* including an attachment and related Commission documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The *USF–ICC Fourth Order on Reconsideration* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 12–82. The *USF–ICC Fourth Order on Reconsideration* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov,* or by using the search function for Dockets: WC 03–109, 05–337, 07–135, 10–90; CC 96–45, 01–92; GN 09–51; WT 10–208 on the Commission's Electronic Comment Filing System (ECFS) web page at *http://www.fcc.gov/cgb/ecfs/.*

1. In the *USF–ICC Fourth Order on Reconsideration,* the Federal Communications Commission (Commission) reconsiders and clarifies certain aspects of the *USF/ICC Transformation Order* 76 FR 73830, November 29, 2011 and 76 FR 81562, December 28, 2011, in response to various petitions for reconsideration and/or clarification. The *USF/ICC Transformation Order* represents a careful balancing of policy goals, equities, and budgetary constraints. This balance was required in order to advance the fundamental goals of universal service and intercarrier compensation reform within a defined budget while simultaneously providing sufficient transitions for stakeholders to adapt. As a preliminary matter, the Commission observes that, under its rules, if a petition for reconsideration simply repeats arguments that were previously considered and rejected in the proceeding, it will not likely warrant reconsideration.

2. With this standard in mind, the Commission takes several limited actions stemming from reconsideration petitions. Specifically, the Order: (1) Affirms the Commission's adoption of a reverse auction mechanism; (2) Denies requests to link funding from Mobility Fund Phase I and Phase II and to condition the use of funds by precluding the use of Mobility Fund Phase I funding for the construction of middle mile facilities in certain cases; (3) Denies requests seeking changes to the eligibility requirements for Mobility Fund Phase I, including proposals to: (i) restrict or prohibit Tier I carriers from receiving Mobility Fund Phase I support, (ii) hold applications for eligible telecommunications carrier (ETC) status in abeyance pending completion of the auction and then automatically qualify any winning bidder as an ETC, (iii) deem an entity designated solely as a Lifeline-only ETC to be eligible to participate in the Mobility Fund without first obtaining general ETC status, and (iv) clarify that unlicensed spectrum may be used to meet the spectrum access requirements for Mobility Fund Phase I; (4) Rejects, for purposes of the auction of Mobility Fund Phase I support, arguments that the Commission provide for bidding preferences to small or rural entities and extend eligibility for the Tribal lands bidding credit to entities that are not Tribally-owned or controlled; and (5) Declines to adopt a series of performance requirements concerning the upgradability of systems, roaming requirements and rates, and exclusive handset arrangements and to use this proceeding to amend the service rules for Advanced Wireless Service in the 2155–2175 MHz band.

I. Mobility Fund Phase I

A. Use of Auction To Determine Awards of Support

3. The Blooston Rural Carriers (Blooston) seek reconsideration of the Commission's decision to use a reverse auction format to distribute Mobility Fund Phase I support. Blooston reiterates the position it took prior to adoption of the *USF/ICC Transformation Order,* alleging that reverse auctions could lead to construction and equipment quality short-cuts that ultimately could require larger disbursements of high-cost support. Instead, Blooston urges the Commission to award support based on a qualitative analysis, to ensure that support is awarded to carriers that have a legitimate interest in building and maintaining high-quality services, such as rural carriers. Blooston contends that the *USF/ICC Transformation Order* did not adequately address concerns raised by it and other carriers about the effects of the reverse auction format on small rural wireless carriers, and was therefore arbitrary and capricious. Blooston argues that the reverse auction model is vulnerable to gaming strategies and anti-competitive bidding practices that would unfairly benefit larger carriers.

4. The Commission addressed Blooston's arguments in the *USF/ICC Transformation Order,* and rejected the arguments by those, including Blooston, who claimed that a reverse auction format would allow larger carriers to bid more competitively than smaller providers. The Commission determined that both the auction design and natural advantages of carriers with existing investments in networks in rural areas should provide opportunities for smaller providers to compete effectively at auction. The Commission rejected assertions that reverse auctions unduly harm small businesses, finding that the examples cited by commenters merely illustrated issues in implementing specific reverse auction programs, and did not demonstrate that reverse auctions are inherently biased against small businesses.

5. The Commission is unpersuaded by Blooston's claim that the only way to effectively encourage high-quality expansion into unserved areas is to ensure that Mobility Fund Phase I support is distributed based on a qualitative analysis of prospective carriers. As the Commission concluded in the *USF/ICC Transformation Order,* for purposes of Mobility Fund Phase I, the difficulty in appropriately weighting differences in services provided outweigh the benefits that might be gained from such an approach. The Commission decided that a reverse auction is the best available tool for awarding support to eligible areas quickly and effectively. A well-designed system of competitive bidding will target support to those providers in an area that can meet the program requirements most cost-effectively. The bidding process will use competition among potential awardees to identify a support amount at which the bidder will commit to provide the required services, and below which no other competitor is willing to do so, thus minimizing the cost to the program. The qualitative proposal advanced by Blooston, in contrast, would require a subjective and time-consuming evaluation of a variety of factors that could result in delayed broadband

deployment to unserved communities, would be much less likely to ensure that the Commission's limited support funds are disbursed as effectively as possible, and would require at least as much enforcement to ensure that consumers receive the desired broadband.

6. In response to Blooston's claim that the reverse auction format could lead to short-cuts in construction and equipment quality, the Commission emphasized that it would, and in fact did establish clear performance standards, and would effectively enforce them. Blooston's assertion that no such standards have been adopted is therefore incorrect. The Commission in the *USF/ICC Transformation Order* adopted a series of rigorous performance metrics for recipients of Mobility Fund Phase I funding, requiring them to provide mobile supported services over a 3G or better network that has achieved particular data rates under particular conditions and required submission of drive test data to demonstrate support recipients' compliance with their public interest obligation to provide mobile broadband. The Commission imposed a range of additional requirements on Mobility Fund Phase I recipients, including collocation and voice and data roaming, and established reporting requirements. Moreover, the Commission's requirement that support recipients maintain a Letter of Credit, along with traditional enforcement tools, helps to protect the government's interests in the funds it disburses and to ensure that performance obligations are met. In short, Blooston's petition contains no new arguments or data that would cause the Commission to reconsider the adoption of the reverse auction format for the distribution of Mobility Fund Phase I support. Accordingly, the Commission rejects Blooston's claim that adoption of the reverse auction format was arbitrary or capricious, and the Commission affirms its conclusion that the auction mechanism adopted in the *USF/ICC Transformation Order,* coupled with eligibility and performance requirements, best ensures that mobile broadband is deployed quickly to unserved areas by well-qualified carriers.

B. Scope and Use of Mobility Fund Support

7. NTCH, Inc. (NTCH) requests that the Commission link Phase I and Phase II funding to plan for the construction and ongoing operating costs of providing service in high cost areas. NTCH notes that ongoing support may be necessary to sustain service in areas eligible for one-time assistance and that prospective bidders should know in advance whether they will receive Phase II support before competing in Phase I. NTCH therefore proposes that applicants be permitted to apply for Phase I and Phase II in an integrated way or, alternatively, to consolidate funding into a single phase that covers both construction and operational financial needs. NTCH concludes that this approach would allow the Commission to more meaningfully evaluate the real costs of providing service and performance. NTCH also suggests that this approach will encourage new entrants who may be able to offer service for significantly less than the field of potential bidders who would otherwise qualify. No parties commented on this aspect of NTCH's petition.

8. As the Commission noted in the *USF/ICC Transformation Order,* the goal in establishing the Mobility Fund Phase I is to provide the necessary ''jump start'' to immediately accelerate service to areas where it is cost effective to do so. It is focused on identifying recipients that can extend coverage with one time support and is not intended to target areas where ongoing support is required, even if such areas technically might be eligible to seek Mobility Fund Phase I support. By contrast, the Mobility Fund Phase II is intended to expand and sustain mobile voice and broadband services in communities in which service would be unavailable absent federal support. It contemplates a larger budget, payable annually over a multi-year term, to bring service to areas that cannot be sustained with one-time support. NTCH's petition does not persuade the Commission that it should forgo the immediate benefits that could be provided by targeted support under Mobility Fund Phase I to integrate or consolidate it with Mobility Fund Phase II. In due course, Mobility Fund Phase II will be available for those areas that need support over the longer-term.

9. GCI requests that the Commission preclude use of Mobility Fund Phase I funding to construct middle mile facilities where adequate facilities are otherwise available. GCI contends that the public interest would not be served by allowing support recipients to expend support on duplicative middle mile facilities, noting that the areas to be served by Mobility Fund Phase I are extremely thin and it is therefore important to aggregate demand to the extent possible. No parties commented on this aspect of GCI's petition.

10. Consistent with the Commission's overall market-based approach to awarding support it declines to condition Mobility Fund support in the manner GCI requests. The Commission notes that, as a general matter, the competitive bidding process adopted in the *USF/ICC Transformation Order* was designed to provide qualified recipients with an incentive to extend advanced mobile services in an efficient and cost effective manner, without prescribing any particular solution or limitations. The Commission anticipates that, where middle mile facilities are adequate and available at reasonable rates, Mobility Fund participants will have a strong economic incentive to use existing facilities to offer services, especially given the specific build out obligations required in Mobility Fund Phase I.

C. Eligibility for Mobility Fund Phase I Support

i. Eligibility of Tier I Carriers

11. Blooston asserts that permitting Tier I carriers to participate in the Mobility Fund Phase I constitutes corporate welfare, as the average annual net income of such carriers purportedly demonstrates that they have no need for support. In addition, Blooston notes that the Commission previously concluded that a phase-down of the legacy Universal Service Fund support received by Verizon and Sprint was in the public interest and therefore contends that it would be contrary to the public interest for either of these entities to receive any new Mobility Fund Phase I support. Finally, Blooston contends that the Commission erred when it noted that a party's relinquishment of legacy support to meet legacy obligations should not be determinative of whether the party should be eligible for new support to meet new obligations.

12. AT&T Inc. (AT&T) and Verizon Wireless (Verizon) both oppose Blooston's petition. AT&T contends that the Commission must reject out-of-hand any requests such as this one for the Commission to use universal service funding to discriminate against certain providers. Verizon further notes that the Mobility Fund program did not exist at the time Verizon and Sprint committed to relinquish high-cost support.

13. The Commission finds Blooston's arguments unpersuasive. Phase I of the Mobility Fund targets one-time support to areas that current market-based incentives have left without 3G or better mobile networks—even by carriers with substantial resources. Thus, in these areas the apparent availability of resources has not, and will not, inevitably lead to speedy deployment of universal coverage. As AT&T notes in opposition to Blooston's petition, market forces alone are insufficient to

incent private investment by any provider—Tier 1 or otherwise—in those areas. The Commission's primary policy concern is with the consumers in those unserved areas who have been disadvantaged due to the lack of current generation mobile broadband networks. By permitting all qualified providers to participate in this reverse auction, the Commission expects that its limited USF dollars will be used more efficiently and effectively to construct mobile broadband networks to cover more unserved areas.

14. Blooston's assertion that the phase-down commitments of Verizon and Sprint should make them ineligible for Mobility Fund Phase I support so as not to undo the benefits reaped from their withdrawal is also unpersuasive. The Commission concluded that such limitations under past mechanisms should not carry over to the newly reformed support mechanisms, such as the Mobility Fund, and the Commission will not disturb that conclusion. A decision that a party should not continue to receive support available under the former identical support rule does not lead to a conclusion that the same party cannot be a recipient of more efficiently allocated targeted support under new mechanisms with additional public interest obligations.

ii. ETC Designation

15. NTCH states that the Commission should hold in abeyance applications for eligible telecommunications carrier (ETC) status pending the completion of competitive bidding for Mobility Fund support and then automatically qualify any party that receives Mobility Fund support as an ETC in the areas for which it applied. NTCH contends that such an approach is necessary in order to enable participation in the Mobility Fund. Sprint comments favorably on this request, for the most part re-iterating NTCH's arguments.

16. In the *USF/ICC Transformation Order,* the Commission considered suggestions that it circumvent the existing ETC regime for purposes of the Mobility Fund and declined to do so. Most importantly, the Commission recognized that the existing ETC regime is built upon a statutory foundation that gives a significant role to the States as well as to the Commission. The Commission concluded that the Mobility Fund should operate within the general structure of the Universal Service Fund with respect to ETC designation, rather than attempt to replace it. The Commission recognized the concern, echoed by NTCH and Sprint, that the obligations that accompany ETC status might make parties reluctant to become ETCs in advance of learning whether they would receive Mobility Fund support. The Commission addressed this concern by permitting parties to seek ETC designation on a conditional basis, that is subject to their becoming a winning bidder.

17. NTCH does not persuade the Commission to revise its original conclusion. As noted in the *USF/ICC Transformation Order,* requiring that applicants be designated as ETCs prior to a Mobility Fund Phase I auction may help ensure that the pool of bidders is serious about seeking support and meeting the obligations that receipt of support would entail. It may be true, as NTCH contends, that more parties might participate in the auction if the Commission simply accepted the applicants' asserted willingness to seek ETC status. However, that approach risks the possibility that parties might participate and win—or otherwise affect the outcome of the auction—and then be found unqualified to be ETCs. At a minimum, this would delay any use of funds that had been set aside for the winning bid. This would undermine the Commission's objective to extend mobile broadband networks as quickly as possible. Consequently, consumers living, traveling, and working in the unserved areas would suffer, contrary to the Commission's objectives for Mobility Fund Phase I. NTCH's further suggestion that any party qualifying to receive Mobility Fund support automatically should be designated as an ETC ignores the role given by statute to the states regarding the designation of many ETCs as well as the fact that ETC obligations themselves go beyond the requirements for participation in the Mobility Fund. The Commission, however, cannot ignore the obligations Congress requires for ETC designations, and denies NTCH's request for reconsideration.

iii. Forbearance From Service Area Conformance Requirement of Section 214(e)(5)

18. NTCH also asks that the Commission forbear from applying the service area requirements of 47 U.S.C. 214(e)(5) to applicants seeking to become ETCs for purposes of the Mobility Fund. 47 U.S.C. 214(e)(5) requires that a party seeking ETC status in a service area overlapping a rural telephone company's study area be designated for the entire study area, unless the Commission and relevant State jointly redefine the underlying study area of the rural telephone company. The Commission considered NTCH's request for forbearance in the context of a separate Order forbearing from the application of 47 U.S.C. 214(e)(5) to petitions for conditional ETC designation for purposes of participating in the Mobility Fund Phase I auction. Accordingly, the Commission will not address that aspect of NTCH's petition here.

iv. Lifeline-Only ETCs

19. NTCH seeks clarification that a party designated as a Lifeline-only ETC can satisfy on that basis the Mobility Fund eligibility requirement that a participant be an ETC.

20. The Commission denies NTCH's request. As an initial matter, when this Commission has designated parties as Lifeline-only ETCs, it has made clear that the designation is not effective for any other purpose. Thus, it is clear, under the terms of those orders, that these parties are not to be deemed ETCs for the Mobility Fund on the basis of their Lifeline-only designations. Moreover, many carriers designated as Lifeline-only ETCs do not offer service over their own facilities, or over a combination of their own and a third-party's facilities. It is not at all clear that these Lifeline-only ETCs will be in a position to undertake the materially different obligations that ETCs must satisfy in areas where they receive Mobility Fund Phase I support. The Commission does not have a basis in this record to conclude that states that have designated Lifeline-only ETCs have evaluated the capability of such applicants to meet the obligations associated with the receipt of high-cost support. Consequently, the Commission cannot draw a blanket conclusion that a party designated as a Lifeline-only ETC would be qualified to expand or deploy network facilities to meet a Mobility Fund recipient's public interest obligations and thus the Commission requires designation as an ETC generally.

v. Spectrum Access With Unlicensed Spectrum

21. Townes Telecommunications, Inc. (Townes) requests that the Commission clarify that the Mobility Fund eligibility requirement of spectrum access can be satisfied with unlicensed spectrum used to meet or exceed the public interest requirements of the Mobility Fund. More specifically, Townes asserts that it has employed the xMax cognitive radio technology to provide the type of service that the Mobility Fund supports, and provides a link to a Web site describing the xMax technology. Townes also notes that the Commission has been supportive of the use of unlicensed spectrum in related contexts,

such as the proposal for the Remote Areas Fund to provide fixed wireless service.

22. Although the Commission supports the use of unlicensed spectrum for developing innovative approaches to bring new technologies to consumers, the Commission declines the request to clarify its rules regarding the use of unlicensed spectrum to meet the spectrum access eligibility requirement for Mobility Fund Phase I. The *USF/ICC Transformation Order* required that an applicant have access, through a license or lease in effect prior to the auction, to spectrum necessary to fulfill all obligations related to support. The Commission concluded that a provider's access to spectrum must support mobile broadband services meeting its requirements and conditions for the required timeframe. The Commission notes that the use of unlicensed spectrum to support mobility over large areas is not proven at this time.

23. Thus, the Commission concludes that the use of unlicensed spectrum to meet the spectrum access eligibility requirement for Mobility Fund Phase I would entail a significant risk that the mobile services deployed on such spectrum will not meet performance requirements and other obligations under the rules. This does not close the door to the possibility that unlicensed spectrum may play a complementary part in the provision of services supported by the Mobility Fund Phase I. Nor does it prevent carriers from receiving high cost universal service support in other contexts for services provided over unlicensed spectrum, e.g., for fixed wireless broadband services offered over unlicensed spectrum. However, with respect to the Commission's current spectrum access requirement for Mobility Fund Phase I, the Commission rejects Townes' request to permit the use of unlicensed spectrum to meet this requirement.

D. Bidding Preferences

i. Preferences for Small Businesses and Rural Carriers

24. Blooston argues that the Commission should have adopted a mechanism for Phase I of the Mobility Fund that assures that a significant portion of the Mobility Fund is awarded to small rural wireless carriers. Blooston suggests that small and rural carriers have been successful at auction only when adequate protections were implemented, such as substantial bid credits, set asides, and the exclusion of large carriers. Blooston notes that the Commission is obligated under 47 U.S.C. 309(j) to ensure that small businesses, rural telephone companies, and businesses owned by minorities and women are given the opportunity to participate in the provision of spectrum-based services and argues that the Commission should extend similar preferences to small and rural entities in the context of the Mobility Fund Phase I auction.

25. AT&T opposes Blooston's suggestions. AT&T notes that this proceeding does not involve a spectrum auction and is not governed by the statutory provisions of 47 U.S.C. 309(j). AT&T argues that the Blooston proposals are inconsistent with section 254 of the Communications Act, which governs the universal service program. AT&T contends Blooston's approach would limit competition in the Mobility Fund Phase I auction, which could violate 47 U.S.C. 254(b)(1) and (b)(5)'s sufficiency and affordability objectives. AT&T disputes Blooston's contention that small wireless carriers are better suited to meet the needs of local communities because, according to Blooston, all winning wireless carrier bidders, large or small, will have the same service obligations.

26. Blooston replies that it is irrelevant that 47 U.S.C. 254 does not contain small business auction preference provisions that appear in 47 U.S.C. 309(j)(3) and (4). Blooston maintains that the Commission's intention to draw upon established spectrum auction procedures for the Mobility Fund Phase I auction calls for adoption of similar preferences here. Blooston cites the Universal Service principle of competitive neutrality, which it characterizes as requiring that the Commission treat no carrier 'unfairly, as authority for the provision of bidding credits and other assistance to small carriers. Blooston asserts that only rural carriers would encourage the provision of service to rural communities not located near highways, claiming that larger carriers are primarily interested in providing service to the interstate highways and major roads on which their customers travel.

27. The Commission rejects Blooston's contentions that it failed to examine the issues and concerns of small businesses and rural carriers as raised in the record in this proceeding. The Commission's decision not to establish bidding preferences for small or rural entities in the auction of Mobility Fund Phase I support was neither arbitrary nor capricious, contrary to Blooston's assertion. The Commission fully considered the views of Blooston and other parties responding to questions raised in the Mobility Fund *Notice of Proposed Rulemaking (Mobility Fund NPRM), 75 FR 67060, November 1, 2010,* about potential ways to encourage the participation of the widest possible range of qualified entities, including smaller entities. The Commission determined in the *USF/ICC Transformation Order* that reverse auctions are not inherently unfair to smaller carriers and that it was confident that the reverse auction format would enable smaller providers to compete effectively. Given the limited and targeted purpose of the one-time Mobility Fund Phase I support, the Commission does not find persuasive Blooston's argument that its use of a reverse auction as a mechanism for distributing USF support requires the Commission to adopt special provisions for small entities, such as the small business bidding credits the Commission awards to fulfill the statutory mandate in 47 U.S.C. 309(j)(3)(B) to disseminate spectrum licenses among a wide variety of applicants.

ii. Expansion of Tribal Lands Bidding Credits

28. GCI seeks reconsideration of the Commission's decision for the Mobility Fund Phase I auction to provide bidding credits to Tribally-owned or controlled providers seeking support to serve the Tribal lands with which they are associated. GCI agrees with the Commission that service for Tribal lands should be prioritized, but maintains that bidding credits should be extended to all entities serving Tribal lands, not just those that are Tribally-owned or controlled. GCI maintains that the *USF–ICC Transformation Order* does not explain why the credits should be limited to Tribally-owned or controlled entities. It asserts that because many qualifying Tribal lands are not served by a Tribally-owned or controlled entity, these lands will be unable to benefit from the bidding credits. GCI further asserts that the exclusion of other entities from bidding credit eligibility could lead to inefficient operations and fragmented service, ultimately impairing broadband service.

29. The Commission is not persuaded that eligibility for the Tribal lands bidding credit should be extended to entities that are not Tribally-owned or controlled providers. In adopting the Tribal lands bidding credit, the Commission sought to facilitate the self-provisioning of wireless broadband service by Tribes themselves by providing a bidding credit to increase the likelihood that Tribally-owned or controlled entities will receive funding. This is consistent with the

Commission's belief that encouraging Tribal-centric solutions to the communications needs of Tribal lands can be particularly advantageous. The Commission has previously found that Tribal-centric business models, ones that actively engage the Native Nation, its core community institutions, and members in deployment and adoption planning—have a greater chance of establishing sustainable services on Tribal lands. A Tribal-centric approach has enabled a number of Native Nations to successfully establish service providers that have deployed critical communications infrastructure on Tribal lands. Extending bidding credits to all participants in the Mobility Fund Phase I auction would dilute the Commission's ability to achieve this objective.

E. Performance Requirements

i. Upgradability of Systems Built With Mobility Fund Support to 4G Technology

30. The Blooston Petition urges the Commission to require that Mobility Fund participants choosing to build 3G mobile wireless broadband networks, rather than 4G networks, use equipment and facilities capable of ready, efficient and economical conversion to 4G networks. Blooston argues that, with 4G service currently being rolled out in urban areas, it would be unreasonably inefficient and wasteful to use Mobility Fund support to deploy facilities and equipment that will soon be outmoded and need to be replaced in the immediately foreseeable future. Blooston argues that it would be far more efficient and less expensive for the Mobility Fund if the Commission required facilities and equipment that can be readily and economically converted to 4G.

31. The Commission declines to adopt the Blooston suggestion to require carriers who plan to build 3G networks with Mobility Fund support to use equipment and facilities that can easily convert to 4G. Requiring upgradable 3G equipment and facilities would add an extra layer of regulatory review and approval. Carriers choosing to build 3G networks with Mobility Fund support likely already face an economic incentive to install equipment that can be easily converted to 4G. But there may be carriers whose business plans indicate that another path is more economical—for example, because they want to deploy the same equipment used in its adjacent system—and the Commission believes that those carriers will be in the best position to determine what equipment to use to meet the goals of the Mobility Fund. Imposing an additional regulatory requirement could limit participation in the auction or elicit higher bids, thereby interfering with the process the Commission chose to determine support, without providing clear benefits, overall, relative to the existing approach. Finally, the Commission notes that Mobility Fund Phase I recipients that choose to install 4G networks have an additional year to meet the performance requirements. This should encourage 4G build-out where reasonable. Therefore, the Commission finds it unnecessary to add such a requirement limiting the type of equipment and facilities used by Mobility Fund Phase I support recipients. This conclusion does not prejudge the Commission's consideration of similar issues for Mobility Fund Phase II.

ii. Roaming Requirement and Roaming Rates

32. Blooston petitions the Commission to request an expansion of the roaming requirement that the Commission established in the *USF/ICC Transformation Order,* in order to ensure that roaming is available to Mobility Fund recipients throughout the United States. Blooston also urges adopting measures to ensure that roaming is not only available, but also practically affordable for small carriers. Without such a mandate, Blooston argues, small carriers will likely suffer losses from roaming arrangements since their customers often spend more time roaming than in their home network. AT&T opposes Blooston's call for additional roaming regulations, noting that the Commission already has voice and data roaming rules in place and arguing that further regulation would be not only unnecessary but also unrelated to the universal service objectives.

33. NTCH also raises the issue of roaming on reconsideration, asking the Commission to adopt measures that will bring roaming rates down to rational levels. NTCH argues that, without any action on this issue, rural customers' ability to roam outside their home networks may be limited and rural carriers will need more support. NTCH asks that all wireless carriers should have the right to roam on reasonable terms, which it defines as rates that are not 700 or 800% higher than the rates offered by large carriers to their own customers, and rates that are not thousands of times higher than actual costs. NTCH argues that if the Commission took action against unreasonable roaming rates, small carriers would spend less on roaming fees and therefore would need less support for high cost operations.

34. The Commission declines to expand the roaming requirements beyond those set forth in the *USF/ICC Transformation Order.* The *USF/ICC Transformation Order* required Mobility Fund recipients to comply with the Commission's current voice and data requirements on networks that are built through Mobility Fund support, and specifically made compliance with those rules a condition of receiving Mobility Fund support. To add further measures regarding roaming access and affordability would be beyond the scope of the present proceeding. Moreover, the Commission engaged in an extensive rulemaking on roaming issues six months prior to adopting the *USF/ICC Transformation Order* and adopted specific rules that create a general mandate for data roaming. The Commission noted in the *USF/ICC Transformation Order* that the Commission's existing processes would enable any interested party to file a formal or informal complaint if it believes that a Mobility Fund recipient has violated the roaming requirements. Moreover, as described in the roaming proceeding, Accelerated Docket procedures, including pre-complaint mediation, are among the various dispute resolution procedures available with respect to data roaming disputes. Finally, the Commission observed in the *USF/ICC Transformation Order* that it has authority to initiate enforcement actions on its own motion. Blooston and NTCH have not persuaded the Commission to revisit its deliberations. Therefore, The Commission denies Blooston's and NTCH's petitions with regard to their roaming requests.

iii. Mobility Fund Recipients and Exclusive Handset Arrangements

35. In the *Mobility Fund NPRM,* the Commission sought comment on other eligibility requirements for entities seeking to receive support from the Mobility Fund and specifically inquired whether are there any steps the Commission should take to encourage smaller eligible parties to participate in the bidding for support. In its comments submitted in response to the *Mobility Fund NPRM,* Blooston suggested the Commission prohibit any carrier from participating in the Mobility Fund if it engages in exclusive arrangements for the design or procurement of handsets and other equipment. In the *USF/ICC Transformation Order,* the Commission declined to bar any particular class of parties out of concern that they might appear to be better positioned to win Mobility Fund support. The Blooston

Petition argues that the Commission's action was arbitrary and capricious in that it failed to specifically address the Blooston proposal to limit eligibility based on exclusive handset arrangements. Blooston claims exclusivity arrangements for handsets and equipment impair the service and competitive options of smaller carriers, deprive the customers of such smaller carriers of roaming capabilities and service features, and increase the cost of the mobile broadband services and equipment available to customers of smaller carriers. AT&T opposes the Blooston proposal, arguing that such a prohibition is nothing more than a thinly veiled effort to bar larger wireless providers from competing for Mobility Fund support.

36. The rationale behind the Commission's decision not to bar any particular class of parties out of concern that they might appear to be better positioned to win Mobility Fund support, is that, in the Commission's view, such restrictions could impede its primary goals for USF reform and the Connect America Fund, generally, or the Mobility Fund. Specifically, these goals include the deployment of mobile broadband networks in currently unserved areas in as cost effective a manner as practicable. Blooston's argument to restrict parties who have entered into exclusive handset arrangements could similarly impede these goals of USF/ICC reform. Therefore, the Commission denies Blooston Petition's request that the Commission prohibit recipients of Mobility Fund Phase I support from utilizing exclusive arrangements for handsets or other equipment.

iv. Build-Out Requirements for AWS–3 Licensees

37. In its Petition for Reconsideration of the *USF/ICC Transformation Order,* NTCH urges the Commission to amend the rules for Advanced Wireless Service in the 2155–2175 MHz band (AWS–3) to explicitly link the use of that spectrum with the build-out of unserved areas. As part of this, NTCH proposes barring or severely handicapping companies who already own significant spectrum in a given market from acquiring even more. NTCH asserts that current spectrum holders have spectrum but are not utilizing it, while other carriers cannot get more spectrum. Therefore, NTCH urges the Commission to skew the AWS–3 auction in the direction of competing carriers and condition licensing AWS–3 on meeting the goals of Mobility Fund.

38. CTIA opposes NTCH's proposal for AWS–3. Noting that AWS–3 rules are the subject of other Commission proceedings, CTIA argues that any modifications of them in the present proceeding would be procedurally improper, particularly given the absence of any notice that AWS–3 would be considered in the USF docket. In addition to the procedural considerations, CTIA finds NTCH's proposal unwise, noting that many parties have expressed interest in pairing the AWS–3 spectrum with 1.7 GHz spectrum, which NTIA is currently considering reallocating from the Federal government to commercial use. CTIA contends that such a pairing would be ideal for mobile broadband, which it argues would further the Commission's goals for the Mobility Fund and broadband generally. Given its support for pairing AWS–3 and 1.7 GHz, CTIA therefore opposes what it terms NTCH's ''designer allocation'' of the AWS–3 spectrum.

39. In response, NTCH acknowledges that the parameters of AWS–3 are still in flux, but argues that, if the AWS–3 auction would occur in the second half of 2013, the six to nine month delay would be ''well worth the savings to the public.'' NTCH adds that conditioning AWS–3 licenses on meeting the Mobility Fund objectives would also eliminate the post-Mobility Fund auction application review envisioned in the *USF/ICC Transformation Order.*

40. The Commission declines to use this proceeding to adopt service and auction rules for AWS–3 as NTCH suggests. NTCH's proposal focuses on access to spectrum, not on USF reform. The Commission agrees with CTIA that such rules are beyond the scope of this proceeding. Moreover, the goal of the Mobility Fund is to expand 3G or better service to unserved areas, and carriers are able to utilize various frequency bands so long as the spectrum will support the required services to meet the Mobility Fund performance requirements. Focusing Mobility Fund deployment on one frequency band, as NTCH proposes, would likely reduce the participation in the program, increase the costs of providing service, and therefore, decrease the area and people that will benefit from new service. Therefore, the Commission denies NTCH's petition with regard to its proposal to condition AWS–3 spectrum on meeting the Mobility Fund requirements.

II. Procedural Matters

A. Paperwork Reduction Act

41. The USF–ICC Fourth Order on Reconsideration does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

B. Congressional Review Act

42. The rules previously adopted in the *USF/ICC Transformation Order* were submitted to Congress and the Government Accountability Office pursuant to the Congressional Review Act and remain unchanged by this Order.

III. Ordering Clauses

43. Accordingly, *it is ordered,* pursuant to the authority contained in 47 U.S.C. 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 1302, and 47 CFR 1.1 and 1.429 that this Fourth Order on Reconsideration *is adopted,* effective thirty (30) days after publication in the **Federal Register**.

44. *It is further* ordered that, pursuant to the authority contained in 47 U.S.C. 405 and 47 CFR 0.331 and 1.429, that the Petition for Partial Reconsideration filed by the Blooston Rural Carriers on December 29, 2011 *is denied.*

45. It is further ordered that, pursuant to the authority contained in 47 U.S.C. 405, and 47 CFR 0.331 and 1.429, that the Petition for Reconsideration filed by NTCH, Inc. on December 29, 2011 *is denied in part* to the extent described herein.

46. *It is further ordered* that, pursuant to the authority contained in 47 U.S.C. 405, and 47 CFR 0.331 and 1.429, that the Petition for Reconsideration filed by General Communications, Inc. on December 23, 2011 *is denied in* part to the extent described herein.

47. *It is further ordered* that, pursuant to the authority contained in 47 U.S.C. 405, and 47 CFR 0.331 and 1.429, that the Petition for Clarification or Partial Reconsideration filed by Townes Telecommunications, Inc. on December 29, 2011 *is denied.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–19761 Filed 8–13–12; 8:45 am]

BILLING CODE 6712–01–P