

with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

**FOR FURTHER INFORMATION CONTACT:**

Patricia Robbins, Wireless Telecommunications Bureau, Auctions and Spectrum Access Division at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 902 Petition for Reconsideration Public Notice* released on September 9, 2013. The complete text of the *Auction 902 Petition for Reconsideration Public Notice*, including 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 *Auction 902 Petition for Reconsideration Public Notice* 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, DA 13-1876 for the *Auction 902 Petition for Reconsideration Public Notice*. The *Auction 902 Petition for Reconsideration Public Notice* and related documents also are available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/902/>, or by using the search function for AU Docket No. 13-53 on the Commission's Electronic Comment Filing System (ECFS) Web page at <http://www.fcc.gov/cgb/ecfs/>. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.

Federal Communications Commission.

**Gary Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division, WTB.*

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**FEDERAL COMMUNICATIONS COMMISSION**

**[AU Docket No. 13-53; DA 13-1672]**

**Tribal Mobility Fund Phase I Auction Rescheduled for December 19, 2013; Notice and Filing Requirements and Other Procedures for Auction 902**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Wireless Telecommunications Bureau and the Wireline Competition Bureau (the Bureaus) announce the procedures and filing requirements for a reverse auction to award up to \$50 million in one-time Tribal Mobility Fund Phase I support and reschedule the auction to be held on December 19, 2013. The Bureaus also announce the availability of eligible area data in various formats.

**DATES:** Short-form applications, FCC Form 180, are due prior to 6:00 p.m. on October 9, 2013.

**FOR FURTHER INFORMATION CONTACT:**

*Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For Tribal Mobility Fund Phase I questions: Patricia Robbins at (202) 418-0660; for auction process questions: Lisa Stover at (717) 338-2868. *Wireline Competition Bureau, Telecommunications Access Policy Division:* For general universal service questions: Alex Minard at (202) 418-7400. *Consumer and Governmental Affairs Bureau, Office of Native Affairs and Policy:* For questions regarding Tribal lands and Tribal governments: Geoffrey Blackwell at (202) 418-3629 or Irene Flannery at (202) 418-1307.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 902 Procedures Public Notice* released on August 7, 2013. The complete text of the *Auction 902 Procedures Public Notice*, including attachments 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 *Auction 902 Procedures Public Notice* 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, DA 13-1672 for the *Auction 902 Procedures Public Notice*. The *Auction 902 Procedures Public Notice* and related documents also are available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/902/> or by using the search function for AU Docket No. 13-53 on the Commission's Electronic Comment Filing System (ECFS) Web page at <http://www.fcc.gov/cgb/ecfs/>

**I. Introduction and Summary**

1. The Bureaus establish the procedures that will apply to the reverse auction that will award up to \$50 million in one-time Tribal Mobility Fund Phase I support. This auction, which is designated as Auction 902, is rescheduled to be held on December 19, 2013. The *Auction 902 Procedures Public Notice* establishes the procedures, terms, and conditions governing Auction 902, including the pre- and post-auction application processes, and provides other important information for parties that wish to seek Tribal Mobility Fund Phase I support.

2. Auction 902 will award one-time support to carriers that commit to provide 3G or better mobile voice and broadband services to Tribal lands that lack such services. Support will be allocated to maximize the population covered by new mobile services without exceeding the budget of \$50 million. Winning bidders will be obligated to choose whether to deploy 3G service within two years or 4G service within three years after the award of support.

3. Auction 902 will award high-cost universal service support through reverse competitive bidding. The *USF/ICC Transformation Order*, 76 FR 73830, November 29, 2011 and 76 FR 81562, December 28, 2011, established the Mobility Fund as a universal service support mechanism dedicated expressly to mobile services and adopted rules for distribution of the \$50 million budget for Tribal Mobility Fund Phase I. The Commission concluded in the *USF/ICC Transformation Order* that a population-based metric is appropriate for the Tribal Mobility Fund Phase I auction. In the *USF/ICC Transformation Order*, the Commission delegated authority to the Bureaus to implement Tribal Mobility

Fund Phase I, including the authority to prepare for and conduct an auction and administer program details. On March 29, 2013, the Bureaus released the *Auction 902 Comment Public Notice*, 78 FR 21355, April 10, 2013, which provided a summary of census blocks potentially eligible for Tribal Mobility Fund Phase I support, announced the availability on the web of the complete list of potentially eligible census blocks, and sought comment on whether census blocks should be added to or removed from the list of potentially eligible blocks on Tribal lands, on the details of auction procedures, and on certain related program requirements for Auction 902.

4. After considering the record encompassing 44 separate filings in response to the *Auction 902 Comment Public Notice*, the Bureaus, among other things: (1) Provide an updated summary of census blocks eligible for Tribal Mobility Fund Phase I support in Auction 902, with the complete list available on the web; (2) conclude that the Bureaus will conduct Auction 902 as a single-round, sealed bid auction; (3) provide for bidding on predefined bidding areas consisting of eligible census blocks aggregated by Tribal lands and census tracts, and in some cases consisting of individual census blocks in Alaska; (4) establish bidding procedures, including stopping procedures to help assure that winning bids make cost-effective use of limited available funds and implement the Commission's commitment to fiscal responsibility; (5) permit winning bidders to demonstrate that they offer supported services at rates comparable to those in urban areas by offering one stand-alone voice and one data plan in supported areas that match plans in urban areas and cost no more than the matching plans; and (6) require that each winning bidder provide coverage, consistent with the performance requirements of the rules adopted in the *USF/ICC Transformation Order*, to 75 percent or more of the population associated with the eligible blocks in each bidding area for which it receives support and describe acceptable methods for demonstrating such coverage.

5. In addition, the *Auction 902 Procedures Public Notice* reviews important Tribal Mobility Fund Phase I program requirements, including eligibility requirements for participation in Auction 902 and the public interest obligations of winning bidders; describes in detail pre-auction procedures and auction application requirements; explains requirements and details related to the structure and

procedures for bidding; and provides an overview of the post-auction procedures, requirements, and deadlines, including information on the post-auction application and on default payment requirements that will be used to enforce carriers' obligations.

6. The Bureaus in the *Auction 902 Procedures Public Notice* announce a new auction date. The auction was originally scheduled to be held on October 24, 2013—the date announced in the *Auction 902 Comment Public Notice*. In order to provide interested parties ample time to analyze the updated lists of eligible census blocks released concurrently with the *Auction 902 Procedures Public Notice* and to take any further steps required to establish eligibility for participation in Auction 902, the Bureaus delay the auction date until December 19, 2013. The *Auction 902 Procedures Public Notice* provides additional information regarding other dates related to Auction 902, including the short-form application deadline.

7. Throughout the *Auction 902 Procedures Public Notice*, the term “per-pop” means per population (or per person) within a given geographic area. The term “3G” refers to third generation wireless networks, and “4G” refers to fourth generation wireless networks. The terms “3G,” “3G or better,” “current generation,” and “advanced” are used interchangeably to refer to mobile wireless services that provide voice telephony service on networks that also provide services such as Internet access and email. Areas without 3G or better services and the population within them are referred to as “unserved,” even though there may be existing service at a lower level. The *Auction 902 Procedures Public Notice* refers to “awarding” or “selecting awardees” by auction for simplicity of expression. Each party that becomes a winning bidder in the auction must file an application for support. Only after review of the application to confirm compliance with all the applicable requirements will a winning bidder become authorized to receive support.

## II. General Information

### A. Overview of Tribal Mobility Fund Phase I

#### i. Background

8. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost component of the Universal Service Fund (USF) to help ensure the universal availability of fixed and mobile communication networks capable of providing voice and

broadband services, and established a universal service support mechanism dedicated exclusively to mobile services—the Mobility Fund.

9. Tribal Mobility Fund Phase I will provide up to \$50 million in one-time support to address gaps in mobile services availability by supporting the buildout of current- and next-generation mobile networks on Tribal lands where these networks are unavailable. The support offered under Tribal Mobility Fund Phase I is in addition to any ongoing support provided under existing high-cost universal service program mechanisms.

10. The goal for Tribal Mobility Fund Phase I is to extend the availability of mobile voice and broadband service on networks that provide 3G or better performance and to accelerate the deployment of 4G wireless networks in areas where it is cost effective to do so with one-time support. To maximize the population covered in eligible areas on Tribal lands within the established budget of \$50 million, the *USF/ICC Transformation Order* established general rules for a reverse auction to identify those areas where additional investment can make as large a difference as possible in a transparent, simple, speedy, and effective way. In this reverse auction, bidders will indicate the amount of one-time support they require to deploy service meeting the defined performance standard in given eligible areas. Because the auction generally will award support based on the lowest per-pop bid amount irrespective of geographic area, bidders will compete not only against other carriers that may be seeking support in the same areas, but also against carriers bidding for support in other areas nationwide. Support will be awarded based on the lowest per-pop bid amounts submitted, but will not be awarded to more than one provider per area. In the *USF/ICC Transformation Order*, the Commission provided for a 25 percent bidding credit for Tribally-owned or -controlled providers that participate in Auction 902.

#### ii. Identification of Census Blocks Eligible for Tribal Mobility Fund Support

11. In the *Auction 902 Comment Public Notice*, the Bureaus sought comment on a list of census blocks identified as potentially eligible for Tribal Mobility Fund Phase I support. The Bureaus received numerous comments addressing census block eligibility.

12. In the *USF/ICC Transformation Order*, the Commission decided to target Mobility Fund Phase I support,

including Tribal Mobility Fund Phase I support, to census blocks without 3G or better service at the geometric center of the block, referred to as the centroid (i.e., the internal point latitude/longitude of a census block polygon), and concluded that Mosaik Solutions (Mosaik) data is the best available data source for determining the availability of such service. More specifically, the Commission concluded that it would consider any census block in the 2010 Census as unserved, and thus eligible for support, if an analysis of the Mosaik data indicated that the centroid is not covered by networks using EV-DO, EV-DO Rev A, or UMTS/HSPA or better. In the *Auction 902 Comment Public Notice*, the Bureaus concluded that January 2013 Mosaik data was the most recently available for the purpose of doing an analysis to identify eligible census blocks within Tribal lands and described the methodology for identifying potentially eligible blocks. "Tribal lands" include any federally recognized Indian Tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act, and Indian Allotments, as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, as amended.

13. The *USF/ICC Transformation Order* also concluded that population should be the basis for calculating the number of units in each eligible census block for purposes of comparing bids and measuring the performance of Tribal Mobility Fund Phase I support recipients. In particular, the Commission concluded, based on concerns raised by Tribes, that using a population-based metric would provide greater assurance that mobile deployment supported by Tribal Mobility Fund Phase I would focus more directly on population centers.

14. The Bureaus first identified census blocks within Tribal lands using 2010 Census data. The Bureaus proposed to identify Tribal lands in Alaska using Census data boundaries for the Annette Island Reserve and Alaska Native village statistical areas. Alaska Native village statistical areas represent the more densely settled portions of Alaska Native villages, which are the associations, bands, clans, communities, groups, Tribes, or villages recognized pursuant to the Alaska Native Claims Settlement Act.

15. The Bureaus used geographic information system (GIS) software to determine whether the Mosaik data showed 3G or better wireless coverage at

the centroid of each block. The Bureaus used ArcGIS software from Esri to determine whether the Mosaik data showed 3G or better coverage at each block's centroid. The following technologies were considered 3G or better: EV-DO, EV-DO Rev A, UMTS/HSPA, HSPA+, WiMAX, and LTE. If the Mosaik data did not show such coverage, the Bureaus determined the block to be potentially eligible. Because Tribal Mobility Fund Phase I support will be awarded based on the bid amounts that will maximize the population covered by new mobile services, the Bureaus excluded any of these census blocks without population. The Bureaus then excluded any blocks that, during the Auction 901 challenge process, they determined to be served or to be ineligible for Mobility Fund Phase I support because a provider had made a regulatory commitment to provide 3G or better wireless service or had received a funding commitment from a federal executive department or agency in response to the provider's commitment to provide 3G or better wireless service in that area. In addition, the Bureaus identified those census blocks that were the subject of winning bids in Auction 901. The Bureaus noted that any census block that was the subject of a winning bid in Auction 901 and for which support is authorized at the conclusion of the Auction 901 long-form application review will not be eligible for Tribal Mobility Fund Phase I support. If prior to Auction 902 the Bureaus determine that any of the identified winning bids from Auction 901 cannot be authorized, but would otherwise be eligible for Auction 902, then such eligible blocks will be included in Auction 902.

16. In the *Auction 902 Comment Public Notice*, the Bureaus sought comment on whether there were any additional census blocks not identified during the Auction 901 challenge process for which, notwithstanding the absence of 3G service, any provider had made a regulatory commitment to provide 3G or better wireless service, or had received a funding commitment from a federal executive department or agency in response to the provider's commitment to provide 3G or better wireless service. The Bureaus did not receive any comments addressing this issue.

17. In the *Auction 902 Comment Public Notice*, the Bureaus asked commenters identifying census blocks for removal and/or addition to the list of potentially eligible census blocks to provide detailed information in support of their views. The Bureaus noted that in making such determinations for

Auction 901, they found demonstrations of coverage to be more credible and convincing where they were supported by maps, discussions of drive tests, explanation of methodologies for determining coverage, and certifications by one or more individuals as to the veracity of the material provided. For Auction 901, the Bureaus did not make changes to potentially eligible areas based on submissions making assertions of coverage without any supporting evidence.

18. In response to the comments the Bureaus received regarding their list of potentially eligible census blocks, they add certain eligible census blocks, for purposes of Auction 902, based on the Commission's definition of "Tribal lands." Specifically, the Bureaus add populated, unserved census blocks in Alaska and in the Navajo Eastern Agency. The Bureaus conclude, however, that other areas that were ceded to the United States by treaty are not eligible for Tribal Mobility Fund Phase I support because they do not fall within the applicable definition of "Tribal lands." The Bureaus remove all state designated Tribal statistical areas (SDTSAs) from the list of eligible census blocks for purposes of Auction 902 because they do not qualify as "Tribal lands" under the Commission's definition. Separately, the Bureaus also remove certain Tribal designated statistical areas (TDSAs), as defined by the 2010 Census data, that do not qualify as "Tribal lands" under the Commission's definition. In addition, the bureaus add and remove census blocks based on credible and convincing demonstrations by commenters regarding service coverage, or the lack thereof.

19. The Bureaus add populated, unserved census blocks in the Alaska Native regions to the updated list of bidding areas and the corresponding list of eligible census blocks that are available on the Auction 902 Web site (<http://wireless.fcc.gov/auctions/902/>). The Bureaus identify the eligible Tribal lands in Alaska using the boundaries of the twelve geographic Alaska Native regional corporations and the Annette Island Reserve, which together cover the entire state of Alaska.

20. The Tribal bidding credit and special ETC provisions are available to entities that are owned or controlled by federally-recognized Alaska Native villages. Specifically, a Tribal entity that is owned or controlled by an Alaska Native village may receive these benefits in eligible areas that are within the boundaries of the Alaska Native village statistical area associated with that village, as well as in eligible areas that

are not within any Alaska Native village statistical area but are within the same Alaska Native region as that village. In addition, the Bureaus note that the Office of Native Affairs and Policy, in coordination with the Bureaus, has provided guidance on the Tribal engagement requirements that apply to providers serving Tribal lands, including Alaska. In order to facilitate engagement with appropriate Tribal government officials in Alaska, the Bureaus' list of eligible areas identifies the Alaska Native village statistical areas, which indicate where the Alaska Native villages are more densely settled. Appropriate Tribal government officials are elected or duly authorized government officials of federally recognized American Indian Tribes and Alaska Native Villages.

21. The Bureaus also add populated, unserved census blocks in the Navajo Eastern Agency. The Bureaus conclude that all of the populated, unserved census blocks in the Navajo Eastern Agency should be included in the Tribal Mobility Fund Phase I auction.

22. The Bureaus decline to include certain areas that Tribes previously ceded to the United States by treaty. These areas do not fall within the Commission's definition of "Tribal lands," and thus, such areas are not eligible for Tribal Mobility Fund Phase I support.

23. The Bureaus remove all SDTSAs from the updated list of eligible census blocks because they do not qualify as "Tribal lands" under the Commission's definition. Separately, the Bureaus also remove certain TDSAs, as defined by the 2010 Census data, that do not qualify as "Tribal lands" under the Commission's definition.

24. The Bureaus also received several challenges to their initial determination based on Mosaik data that certain census blocks are either served or unserved. The Bureaus find four of these demonstrations to be sufficiently credible and convincing to meet the requirements of the *USF/ICC Transformation Order* and incorporate the requested changes into the updated list of eligible census blocks. The Bureaus conclude that ten commenters that seek additions to the list of eligible blocks do not demonstrate actual lack of service, and therefore do not provide a basis for the Bureaus to depart from their initial determination of potentially eligible census blocks.

25. The list of census blocks on Tribal lands released concurrently with the *Auction 902 Procedures Public Notice* now includes all of the eligible census blocks that were identified by analyzing 2010 Census data, January 2013 Mosaik

data, and information submitted by third parties. The differences between this list and the list provided with the *Auction 902 Comment Public Notice* are as follows: (1) The Bureaus have added blocks based on comments received regarding their application of the definition of "Tribal lands" to Alaska and the Navajo Eastern Agency, (2) the Bureaus have removed all SDTSAs and certain TDSAs, (3) the Bureaus have added blocks based on the comments of one carrier that provided a sufficiently credible and convincing demonstration regarding the absence of 3G or better coverage, (4) the Bureaus have removed blocks based on the comments of three carriers that provided sufficiently credible and convincing demonstrations regarding the presence of 3G or better coverage, and (5) the Bureaus have removed blocks for which Auction 901 support has been authorized, and have added blocks (i.e., removed the asterisks next to blocks) for which Auction 901 defaults have been determined. In this list, the Bureaus continue to identify census blocks that were covered by winning bids in Auction 901 for which the relevant long-form applications remain pending. If the Bureaus determine prior to Auction 902 that any winning bids from Auction 901 cannot be authorized, and any of those bids cover census blocks that would otherwise be eligible for Auction 902, then such eligible blocks will be available in the auction. Similarly, if support is authorized prior to Auction 902 for any of the census blocks covered by Auction 901 winning bids, those census blocks will be excluded from Auction 902. The Bureaus will announce by public notice the removal of any census blocks for which support is authorized for Auction 901 winning bids.

26. The Bureaus are mindful of the Commission's goal of moving quickly to expand the availability of advanced mobile services by providing one-time support with the limited funds budgeted for this purpose. The Bureaus also heed the Commission's warning that more extended dialog and pre-auction review of these issues might risk undue delay in the award of this support. As was true for the list of eligible areas for Auction 901, the Bureaus recognize that no such list will be perfect or perfectly up-to-date. Accordingly, the list of census blocks on Tribal lands that the Bureaus released concurrently with the *Auction 902 Procedures Public Notice* on August 7, 2013, contains their determinations with respect to the areas eligible for Tribal Mobility Fund Phase I support, with the exception of census

blocks covered by Auction 901 winning bids, which may be removed from this list by public notice at the conclusion of the Auction 901 long-form application review. The eligible census blocks will, in most cases, be aggregated into predefined bidding areas by Tribal lands and census tracts. Eligible census blocks in Alaska will be aggregated by Alaska Native village statistical areas and census tracts, and where there are not Alaska Native village statistical areas, bidding will be conducted on a census block basis.

27. The Bureaus remind those interested in seeking Tribal Mobility Fund Phase I support that applicants for Auction 902 are required to certify that they will not seek support for any areas in which they made a public commitment to deploy 3G or better service by December 31, 2012.

28. Attachment A-1 released with the *Auction 902 Procedures Public Notice* provides a summary of the list of eligible census blocks. Attachment A-2 released with the *Auction 902 Procedures Public Notice* provides a list of the bidding areas. Due to the large number of eligible blocks, the complete list of the individual blocks is provided in electronic format only, available as a separate "Attachment A" file at <http://wireless.fcc.gov/auctions/902/>. In addition to these attachments and files, the Bureaus provide an interactive map for this information on the Commission Web site. The Bureaus note that the names assigned to the bidding areas listed in the Attachment A files have been changed since the release of the *Auction 902 Comment Public Notice* in order to conform to the requirements of the FCC Auction System. A crosswalk between the names used in the Attachment A files released with the *Auction 902 Procedures Public Notice* and the names used in the *Auction 902 Comment Public Notice* is available on the Commission Web site.

### iii. Establishing Eligible Units

29. The Bureaus conclude that they must use population to determine units in Auction 902, and that they cannot deviate from their proposal to use Census data to determine which census blocks are populated. The Bureaus lack delegated authority to revise this rule to use road miles, as some commenters suggest, or any other metric other than population.

30. The Bureaus conclude that the population-based metric for comparing bids and assessing coverage for Tribal Mobility Fund Phase I requires that the Bureaus must exclude census blocks without population from Auction 902 eligibility. The Bureaus recognize that

winning bidders may need to extend their networks to or through unpopulated blocks that are not eligible for Tribal Mobility Fund Phase I support in order to meet their Tribal Mobility Fund Phase I performance requirements. The Commission's rules with respect to how winning bidders can use Tribal Mobility Fund Phase I funds to meet their performance requirements do not preclude this. Therefore, the Bureaus decline to accept the suggestion that all census blocks should be scored with a minimum population of one.

31. The Bureaus further conclude that they should not deviate from their proposal to use Census data as the basis for limiting eligible blocks to those where there is a population greater than zero. Given the Commission's decision to use population as the bidding comparison unit, the Bureaus must use reliable data on population in order to conduct the Tribal Mobility Fund Phase I auction.

#### iv. Public Interest Obligations

32. *Voice and Broadband Service.* All Tribal Mobility Fund Phase I recipients must satisfy specified public interest obligations in exchange for the support they receive, as must all recipients of any Connect America Fund support. Specifically, all Connect America Fund recipients, including Tribal Mobility Fund Phase I recipients, must offer stand-alone voice service to the public. Tribal Mobility Fund Phase I recipients must offer voice service with coverage of at least 75 percent or more of the population within the area for which support is provided. If an awardee can prove coverage of at least 75 percent of the actual population associated with the eligible census blocks within a winning bid area, it may provide and prove coverage in any combination across eligible census blocks within that single bidding area, including providing coverage to more than 75 percent of the population in one eligible census block and less than 75 percent of the population in another eligible census block in the same bidding area. In the alternative, the Bureaus will also permit proof of coverage by relying on a geographic area safe harbor, by which an awardee may show that it is providing coverage to at least 75 percent of the geographic area in a census block as a proxy for providing service to at least 75 percent of the population within that census block. If a winning bidder relies on the geographic area safe harbor for a particular winning bid area, it must provide and prove coverage to at least 75 percent of the geographic area of each eligible census block within that winning bid area. Furthermore, receipt

of Tribal Mobility Fund Phase I support is conditioned upon the recipient providing service over a network that achieves particular data rates under particular conditions, which the Commission, for this purpose, refers to as 3G networks or better. The Commission expects that ETCs that offer standalone broadband service in any portion of their service territory will also offer such service in all areas that receive Connect America Fund support.

33. *Data Rates.* For purposes of Tribal Mobility Fund Phase I, the Commission refers to a network as a 3G network if it achieves outdoor minimum data transmission rates of 50 kilobits per second (kbps) uplink and 200 kbps downlink at vehicle speeds appropriate for the areas covered. Also for purposes of Tribal Mobility Fund Phase I, the Commission refers to a network as a 4G network if it achieves outdoor minimum data transmissions rates of 200 kbps uplink and 768 kbps downlink at vehicle speeds appropriate for the area covered. With respect to both 3G and 4G networks, transmission latency must be low enough to enable the use of real-time applications, such as Voice over Internet Protocol (VoIP).

34. *Performance Deadlines.* Winning bidders in Auction 902 will commit to provide service over either a 3G or a 4G network, as those terms are used with respect to Tribal Mobility Fund Phase I, in their post-auction long-form applications for support. Those parties committing to provide service over a 3G network must do so for at least 75 percent or more of the population within the winning bidding area within two years of being authorized to receive support. Winning bidders committing to provide service over a 4G network must do so for at least 75 percent or more of the population within the winning bidding area within three years of being authorized to receive support. To the extent that a recipient covers population in excess of the minimum, support will be available for up to 100 percent of the eligible population for which the recipient demonstrates coverage within the timeframe required for the technology deployed.

35. *Reasonably Comparable Rates.* Recipients of Tribal Mobility Fund Phase I support must certify annually that they offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas. This requirement extends for a period ending five years after the date of award of support.

36. *Collocation.* In exchange for the support provided, Tribal Mobility Fund

Phase I support recipients shall allow for reasonable collocation by other providers of services that would meet the voice and data requirements of Tribal Mobility Fund Phase I on newly-constructed towers that the recipient owns or manages in the area for which it receives support. Consistent with this requirement, a recipient may not enter into facilities access arrangements regarding relevant facilities that restrict any party to the arrangement from allowing others to collocate on the facilities.

37. *Voice and Data Roaming.* Recipients of Tribal Mobility Fund Phase I support must provide voice and data roaming on networks built with the support, consistent with the requirements of 47 CFR 20.12, as those rules were in effect on the date the Commission adopted the *USF/ICC Transformation Order*. This condition of support is independent of subsequent changes to the Commission's rules on voice and data roaming. In other words, even if 47 CFR 20.12 is amended, support recipients must continue to meet the requirements of 47 CFR 20.12 as that rule existed as of October 27, 2011. To the extent the Commission adopts any new rules regarding voice and data roaming that are generally applicable, recipients of Tribal Mobility Fund Phase I support may be subject to those new rules as well. As these requirements, and all of the other public interest obligations, are a condition of Tribal Mobility Fund Phase I support, violations may result in the withholding or clawing back, i.e., return, of universal service support in addition to any other applicable sanctions.

#### v. Tribal Mobility Fund Phase I Eligibility Requirements

38. In order to participate in Auction 902 and receive Tribal Mobility Fund Phase I support, an applicant must be designated as an eligible telecommunications carrier (ETC) for the areas on which it wishes to bid or, if it is a Tribally-owned or -controlled entity, have a pending application for ETC designation for the relevant areas within the boundaries of the Tribal land associated with the Tribe that owns or controls the entity. A Tribally-owned or -controlled entity must have its application for ETC designation pending at the relevant short-form application deadline. The ETC designation must cover a sufficient portion of the bidding area to allow the applicant to satisfy the applicable performance requirements. A Tribal entity that wins support in Auction 902 while its ETC petition is pending must receive an ETC designation prior to support being

authorized and disbursed. Allowing a Tribally-owned or -controlled entity to participate at auction while its ETC petition is pending in no way prejudices the ultimate decision on its pending ETC petition. Because of the lead time necessary to receive designation as an ETC, prospective applicants that need to do so are strongly encouraged to initiate the process as soon as possible in order to increase the likelihood that they will be eligible to participate in Auction 902. Carriers subject to the jurisdiction of a state in which they seek designation should petition that state's commission for designation as an ETC to provide voice service. Carriers not subject to the jurisdiction of the relevant state commission should petition the Commission for designation as an ETC. The Commission has established a framework for determining whether a state commission or the Commission itself has jurisdiction to designate ETCs on Tribal lands. First, a carrier serving Tribal lands must petition the Commission for a determination on whether the state has jurisdiction over the carrier. The Commission then determines whether the carrier is subject to the jurisdiction of a state commission or whether it is subject to a Tribal authority given the Tribal interests involved. In the latter case, the Commission has jurisdiction to designate the carrier as an ETC and will proceed to consider the merits of the carrier's petition for designation. The Bureaus have provided guidance on existing requirements for filing an ETC application with the Commission in a separate public notice: *Eligible Telecommunications Carrier Designation for Participation in Mobility Fund Phase I*, 77 FR 14012, March 8, 2012. Petitions for designation as an ETC should be filed in WC Docket No. 09–197 and WT Docket No. 10–208, and should not be filed in the docket for Auction 902, AU Docket No. 13–53. The Bureaus adopted a protective order limiting access to proprietary and confidential information that may be filed in WC Docket No. 09–197 and WT Docket No. 10–208 in connection with petitions filed for designation as an ETC for purposes of participation in any Mobility Fund auction.

39. An applicant for Auction 902 must also demonstrate that it has access to the spectrum necessary to satisfy the applicable performance requirements. The requirement that parties have access to spectrum applies equally to all parties, including Tribal entities. In addition, an applicant must certify that it is financially and technically capable of providing 3G or better service.

#### vi. Annual Reporting and Record Retention Requirements

40. Winning bidders that are authorized to receive Tribal Mobility Fund Phase I support are required to submit to the Commission an annual report each year for the five years after being so authorized. In addition, authorized winning bidders are required to submit certain reports before receiving disbursements of support. Tribal Mobility Fund Phase I support will be available for disbursement to authorized winning bidders in three stages, with the first disbursement made when the winning bidder is authorized to receive support. A winning bidder authorized to receive Tribal Mobility Fund Phase I support and all of its agents are required to retain any documentation prepared for, or in connection with, the award of Tribal Mobility Fund Phase I support for a period of not less than ten years after the date on which the winning bidder receives its final disbursement of Tribal Mobility Fund Phase I support.

#### B. Auction Specifics

##### i. Auction Start Date

41. Bidding in Auction 902 will be held on Thursday, December 19, 2013. Unless otherwise announced, bidding for all eligible census blocks will be offered at the same time.

42. The start and finish time of bidding will be announced by public notice approximately one week before the start of the auction.

##### ii. Bidding Methodology

43. The bidding methodology for Auction 902 will be a single-round reverse auction format. The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders must bid electronically via the Internet. Telephonic bidding will not be available for Auction 902 because it will not be feasible given the number of eligible geographic areas and the manner in which bids will be uploaded.

##### iii. Pre-Auction Dates and Deadlines

44. The following dates and deadlines apply to Auction 902: (1) An auction tutorial will be available (via Internet) by September 25, 2013; (2) the short-form application (FCC Form 180) filing window will open on September 25, 2013, at 12:00 noon ET; (3) the short-form application (FCC Form 180) filing window will close on October 9, 2013, at 6:00 p.m. ET; (4) a mock auction will be held on December 16, 2013; and (5) Auction 902 will be held on December 19, 2013.

#### iv. Requirements for Participation

45. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 180) electronically prior to 6:00 p.m. ET, October 9, 2013, following the electronic filing procedures described in Attachment D of the *Auction 902 Procedures Public Notice*; and (2) comply with all provisions outlined in the *Auction 902 Procedures Public Notice* and applicable Commission rules.

#### C. Rules and Disclaimers

##### i. Relevant Authority

46. Prospective applicants in Auction 902 must familiarize themselves with the Commission's general universal service rules, contained in 47 CFR Part 54, and the Mobility Fund specifically, 47 CFR 54.1001–54.1010. They should also familiarize themselves with the Commission's decision in the *USF/ICC Transformation Order* to implement the Mobility Fund Phase I, including Tribal Mobility Fund Phase I.

47. Prospective bidders in Auction 902 must be familiar with the specific competitive bidding rules for universal service support contained in 47 CFR 1.21000–1.21004, as well as the procedures, terms, and conditions contained in the *Auction 902 Procedures Public Notice* and all other public notices related to Auction 902 (AU Docket No. 13–53). Additionally, prospective Auction 902 bidders will find it helpful to familiarize themselves with the processes established for the Commission's first auction of Mobility Fund Phase I support (Auction 901) and with the Commission's general competitive bidding rules, including recent amendments and clarifications; and Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Information on Auction 901, including copies of all Auction 901 public notices and auction results, may be found on the Commission's Auction 901 Web page at <http://wireless.fcc.gov/auctions/901>.

48. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibited Communications and Compliance With Antitrust Laws

49. To ensure the competitiveness of the auction process, 47 CFR 1.21002 prohibits an applicant in a Mobility Fund auction from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support, unless such applicants are members of a joint bidding arrangement identified on the short-form application(s) pursuant to 47 CFR 1.21001(b)(3) and (b)(4).

50. 47 CFR 1.21002 is based on a similar rule used in competitive bidding for spectrum licenses, 47 CFR 1.2105(c). Potential bidders should familiarize themselves with 47 CFR 1.2105(c) and 1.21002, and with the judicial, Commission, and Wireless Bureau decisions addressing application of the rule prohibiting certain communications listed in Attachment E of the *Auction 902 Procedures Public Notice*. Because 47 CFR 1.21002 was adopted for Mobility Fund competitive bidding relatively recently, the Commission's prior experience in this area is in the context of 47 CFR 1.2105(c). Applicants should review information regarding the interpretation of 47 CFR 1.2105(c) to gain insight into the Commission's views on prohibited communications during competitive bidding for Mobility Fund support.

a. Entities Subject to Section 1.21002, the Rule Prohibiting Certain Communications

51. 47 CFR 1.21002's prohibition of certain communications will apply to any applicant that submits a short-form application to participate in Auction 902. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.21001(b)(3), applicants in Auction 902 must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.

52. All bidders will compete for support with all other bidders in Auction 902, regardless of the geographic areas they seek to serve with Tribal Mobility Fund Phase I support. Therefore, applicants will be prohibited from making certain communications with all other applicants in Auction 902 regardless of the eligible areas for which they seek support, unless the parties disclose agreements reached between them on their short-form applications.

53. For purposes of the prohibition of certain communications, 47 CFR 1.21002 defines "applicant" broadly to include the applicant, each party capable of controlling the applicant, including all officers and directors, and each party that may be controlled by the applicant or by a party capable of controlling the applicant.

54. Individuals and entities subject to 47 CFR 1.21002 should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any competing applicant's bids or bidding strategies. For example, the Wireless Bureau has found that when an individual serves as an officer for two or more applicants, the bids and bidding strategies of one applicant are conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of the rule prohibiting certain communications occurs. The Wireless Bureau has not addressed a situation where non-principals (i.e., those who are not officers or directors, and thus not considered to be the applicant) receive information regarding a competing applicant's bids or bidding strategies and whether that information should be presumed to be communicated to the applicant.

55. Moreover, the Bureaus encourage Auction 902 applicants not to use the same individual authorized bidder as is used by another applicant. A violation of 47 CFR 1.21002 could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., a law firm, engineering firm, or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and its bidders will comply with 47 CFR 1.21002.

b. Prohibition Applies Until Long-Form Application Deadline

56. The 47 CFR 1.21002 prohibition of certain communications begins at the short-form application filing deadline and ends at the long-form application deadline after the auction closes, which will be announced in a future public notice.

c. Prohibited Communications

57. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction. 47 CFR 1.21002 prohibits not only communication about an applicant's own bids or bidding strategy, but also communications about another applicant's bids or bidding strategy. While 47 CFR 1.21002 does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids or bidding strategies.

58. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place outside of the auction itself. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly." Moreover, the Commission has found a violation of the rule against prohibited communications where an applicant used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets," and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions." Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, an applicant's statement to the press that it intends to stop bidding in the auction could give rise to a finding of a 47 CFR 1.21002 violation. Similarly, an applicant's public statement of intent not to participate in Auction 902 bidding could also violate the rule. Applicants are hereby placed on notice



that public disclosure of information relating to bids, bidding strategies, or post-auction market structures may violate 47 CFR 1.21002.

d. Disclosure of Bidding Agreements and Arrangements

59. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreements in their short-form applications. Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the Tribal Mobility Fund Phase I support they seek, including any agreements relating to post-auction market structure.

60. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under 47 CFR 1.21001(b)(3), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiation, discussion or communication with any other applicants after the short-form application filing deadline.

61. 47 CFR 1.21002 does not prohibit non-auction-related business negotiations among auction applicants. However, certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, and other transactional agreements.

e. Section 1.21001(b)(4)–(5) Applicant Certifications

62. By electronically submitting a short-form application, each applicant in Auction 902 certifies its compliance with 47 CFR 1.21001(b)(3) and 1.21002. In particular, an applicant must certify under penalty of perjury that the application discloses all real parties in interest to any agreements involving the applicant's participation in the competitive bidding for Tribal Mobility Fund support. Also, the applicant must certify that it and all applicable parties have complied with and will continue to comply with 47 CFR 1.21002.

63. The Bureaus caution, however, that merely filing a certifying statement

as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it "intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring." Any applicant found to have violated 47 CFR 1.21001(b)(4) or (b)(5) may be subject to sanctions.

f. Duty To Report Prohibited Communications

64. 47 CFR 1.21002(c) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.21002 must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made. This reporting requirement applies even if the communication of bids or bidding strategies does not result in a bidding arrangement, agreement, or understanding.

65. In addition, 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application. Thus, 47 CFR 1.65 requires an Auction 902 applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. An applicant is therefore required by 47 CFR 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under 47 CFR 1.21001(b)(3) and (b)(4).

66. 47 CFR 1.65(a) and 1.21002 require each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment. These rules are intended to facilitate the auction process by making the information available promptly to all participants and to enable the Bureaus to act expeditiously on those changes when such action is necessary.

g. Procedure for Reporting Prohibited Communications

67. A party reporting any prohibited communication pursuant to 47 CFR 1.65, 1.21001(b), or 1.21002(c) must take care to ensure that any report of the prohibited communication does not itself give rise to a violation of 47 CFR 1.21002. For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

68. Parties must file only a single report concerning a prohibited communication and must file that report with Commission personnel expressly charged with administering the Commission's auctions. This process differs from filing procedures used in connection with other Commission rules and processes which may call for submission of filings to the Commission's Office of the Secretary or via the Commission's Electronic Comment Filing System (ECFS). Filing through the Office of the Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by 47 CFR 1.21002(c) must be filed consistent with the instructions set forth in the *Auction 902 Procedures Public Notice*. For Auction 902, such reports must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by email to the following email address: [auction902@fcc.gov](mailto:auction902@fcc.gov). If you choose instead to submit a report in hard copy, any such report must be delivered only to Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW., Room 6423, Washington, DC 20554.

69. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might



include a cover page stamped with "Request for Confidential Treatment Attached" or "Not for Public Inspection." Any such request must cover all of the material to which the request applies. The Bureaus encourage such parties to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.

h. Winning Bidders May Need To Disclose Terms of Agreements

70. Each applicant that is a winning bidder may be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement it has entered into. This may apply to any bidding consortium, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

i. Additional Information Concerning Rule Prohibiting Certain Communications

71. A summary listing of documents issued by the Commission and the Wireless Bureau addressing the application of the rule prohibiting certain communications may be found in Attachment E of the *Auction 902 Procedures Public Notice*. These documents are available on the Commission's auction Web page at [http://wireless.fcc.gov/auctions/prohibited\\_communications](http://wireless.fcc.gov/auctions/prohibited_communications).

j. Antitrust Laws

72. The Bureaus also remind applicants that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.21002 will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: For example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other. Similarly, the

Wireless Bureau previously reminded potential applicants and others that "[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws."

73. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to a forfeiture and may be prohibited from participating in future auctions, among other sanctions.

iii. Due Diligence

74. The Bureaus remind each potential bidder that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of Tribal Mobility Fund Phase I support it submits as a bid in Auction 902. Each bidder is responsible for assuring that, if it wins the support, it will be able to build and operate facilities in accordance with the Mobility Fund obligations and the Commission's rules generally.

75. Applicants should be aware that Auction 902 represents an opportunity to apply for Mobility Fund support, subject to certain conditions and regulations. Auction 902 does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does Mobility Fund support constitute a guarantee of business success.

76. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureaus strongly encourage each potential bidder to review all underlying Commission orders, including the *USF/ICC Transformation Order*. Each potential bidder should perform technical analyses or refresh its previous analyses to assure itself that, should it become a winning bidder for Tribal Mobility Fund Phase I support, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. The Bureaus strongly encourage each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to construct transmitters with

Mobility Fund support, to confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding environmental compliance.

77. The Bureaus strongly encourage each applicant to conduct its own research prior to Auction 902 in order to determine the existence of pending administrative or judicial proceedings that might affect its decision to participate in the auction. The due diligence considerations mentioned in the *Auction 902 Procedures Public Notice* do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

78. The Bureaus also remind each applicant that pending and future judicial proceedings, as well as certain pending and future proceedings before the Commission—including applications for modification, petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review—may relate to particular licensees or applicants for support in Auction 902. Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on Tribal Mobility Fund Phase I support available through this auction.

79. Each applicant is solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect its ability to bid on or otherwise receive Tribal Mobility Fund Phase I support. Each potential bidder is responsible for undertaking research to ensure that any support won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

80. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said

databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

#### iv. Use of FCC Auction System

81. Bidders will be able to participate in Auction 902 over the Internet using the FCC Auction System. The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

#### v. Environmental Review Requirements

82. Recipients of Mobility Fund support, like all licensees, must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility is a federal action, and any entity constructing a wireless antenna facility must comply with the Commission's environmental rules for each such facility. The Commission's environmental rules require, among other things, that the entity constructing the facility consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). If the facility will not be located on Tribal lands as defined in the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (NPA), the entity constructing the facility must follow the provisions of the NPA in assessing the effect of facilities construction on historic properties. However, if the facility will be located on Tribal lands as defined in the NPA, the entity must follow the procedures set forth in the rules of the Advisory Council on Historic Preservation. The NPA defines Tribal lands as "all lands

within the exterior boundaries of any Indian reservation and all dependent Indian communities," and does not include Native Hawaiian Home Lands. The entity must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The entity also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission, or that are over 450 feet in height. Facilities that require antenna registration will also be required to complete an environmental notification process.

### III. Short-Form Application Requirements

#### A. General Information Regarding Short-Form Applications

83. An application to participate in Auction 902, referred to as a short-form application or FCC Form 180, provides information used to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for universal service funding support. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, each party desiring to participate in the auction must file a streamlined, short-form application in which it certifies under penalty of perjury as to its qualifications. Each applicant must take seriously its duties and responsibilities and carefully determine before filing an application that it has the legal, technical, and financial resources to participate in the auction and to meet the public interest obligations associated with Tribal Mobility Fund Phase I support. Eligibility to participate in bidding is based on the applicant's short-form application and certifications. In the second phase of the process, each winning bidder must file a more comprehensive long-form application (FCC Form 680).

84. Every entity seeking support available in Auction 902 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on October 9, 2013, following the procedures prescribed in Attachment D to the *Auction 902 Procedures Public Notice*. The short-form application requires each applicant to establish its eligibility for bidding for Tribal Mobility Fund Phase I support.

Among other things, to establish eligibility at the short-form stage, an applicant must certify that it is a designated ETC in any geographic area for which it will seek support, or that it is a Tribally-owned or -controlled entity with a pending application for ETC designation, and provide the Study Area Codes (SACs) associated with its ETC designation and/or provide the names of its corresponding Tribal lands in lieu of SACs. Each applicant will also be required to provide a general narrative description of its access to the spectrum it plans to use to meet Mobility Fund obligations in the particular areas for which it plans to bid and certify that it will retain its access to the spectrum for at least five years from the date of award of support. If an applicant claims eligibility for a bidding credit as a Tribally-owned or -controlled entity, the information provided in its FCC Form 180 will be used in determining whether the applicant is eligible for the claimed bidding credit. Each applicant bears full responsibility for submitting an accurate, complete, and timely short-form application. Each applicant must certify on its short-form application under penalty of perjury that it is legally, technically, financially, and otherwise qualified to receive universal service support funding. Each applicant should read carefully the instructions set forth in Attachment D to the *Auction 902 Procedures Public Notice* and should consult the Commission's rules to ensure that all of the information required is included in its short-form application.

85. A party may not submit more than one short-form application for Auction 902. If a party submits multiple short-form applications, only one application may be accepted for filing.

86. Each applicant also should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. An applicant is not permitted to make major modifications to its application; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, the forfeiture of universal service support, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

### B. SAC Identification

87. An applicant will not be required to select the specific census blocks on which it wishes to bid when submitting its short-form application. Based on the SACs or Tribal lands information entered by an applicant, the FCC Auction System will identify during the application process bidding areas for which the applicant may be eligible. The FCC Auction System will identify the bidding areas on which the applicant is potentially eligible to bid based on information provided in the applicant's FCC Form 180. Applicants are reminded that this is not a determination of eligibility under the Commission's rules. The identification of an area as one in which the applicant is potentially eligible to bid does not mean that the applicant is actually eligible to bid for support in that area. Some of the areas may be outside the areas for which a bidder is actually eligible to bid pursuant to the Commission's rules—i.e., the areas in which it is designated as an ETC or, in the case of a Tribally-owned or -controlled entity, areas in its Tribal lands for which it has a pending petition for designation as an ETC.

### C. Disclosure of Bidding Arrangements

88. An applicant will be required to identify in its short-form application all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding for Tribal Mobility Fund support.

89. Each applicant will also be required to certify under penalty of perjury in its short-form application that it has disclosed all real parties in interest to any agreements involving the applicant's participation in the competitive bidding for Tribal Mobility Fund support. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any other applicant after the deadline.

90. Moreover, each applicant will also be required to certify under penalty of perjury in its short-form application that it and all applicable parties have complied with and will continue to comply with 47 CFR 1.21002, the rule prohibiting certain communications. While 47 CFR 1.21002 does not prohibit non-auction-related business negotiations among auction applicants, the Bureaus remind applicants that certain discussions or exchanges could touch upon impermissible subject matters because they may convey

pricing information and bidding strategies. Further, compliance with the disclosure requirements of 47 CFR 1.21002 will not insulate a party from enforcement of the antitrust laws.

### D. Ownership Disclosure Requirements

91. Each applicant must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 54.1005(a)(1) and 1.2112(a) (47 CFR 54.1005(a)(1) requires the disclosure on the short-form application of the applicant's ownership information as set forth in 47 CFR 1.2112(a)). Specifically, in completing the short-form application, an applicant will be required to fully disclose information on the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more, as prescribed in 47 CFR 1.2112(a). Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

92. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (such as information submitted in an FCC Form 602 or in an FCC Form 175 filed for a previous Commission spectrum license auction, or FCC Form 180 for a previous Mobility Fund auction using the FCC Auction System), will automatically be entered into the applicant's short-form application (FCC Form 180). Each applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application for Auction 902. Any information that needs to be corrected or updated must be changed directly in the short-form application.

### E. Specific Tribal Mobility Fund Phase I Eligibility Requirements and Certifications

#### i. ETC Designation Certification

93. In the *USF/ICC Transformation Order*, the Commission concluded that, in order to apply to participate in an auction offering Mobility Fund support, any entity first had to be designated as an ETC pursuant to section 214 of the Communications Act in any geographic area for which it seeks support, with one narrow exception for Tribally-owned or -controlled entities. An applicant must be the entity designated by a state or the Commission as an ETC in that geographic area. For example, if a designated ETC is a subsidiary of a

parent holding company, only the subsidiary that is designated an ETC, and not the holding company, would be eligible to participate in the auction. For purposes of participation in the Mobility Fund, a party's ETC designation may not be limited in any way. Accordingly, a party designated as an ETC solely for purposes of the Low Income Program cannot satisfy the ETC eligibility requirement for the Mobility Fund on that basis. Of course, nothing prohibits such a party from seeking a general designation as an ETC and then, if it receives such a designation, participating in the Mobility Fund.

94. ETC status carries with it certain obligations. So that a party might obtain the required ETC designation but not be subject to those obligations unless and until it wins any Mobility Fund support, the Commission further determined that a party might participate with an ETC designation conditioned upon the party winning support in the auction. The Bureaus note that prior to Auction 901, where the Commission granted a conditional designation, it did so contingent only on the applicant winning Mobility Fund Phase I support, thus requiring no additional substantive determinations post-auction. The Bureaus anticipate that the Commission will grant any request for conditional designation in the same manner for Auction 902, and they suggest that an applicant be mindful of this approach when requesting a similar determination from its state's designating authority. At the short-form application stage, an applicant will be required to state that it is designated as an ETC in any area for which it will seek support or is a Tribal entity with a pending application to become an ETC in any such area, and certify that the disclosure is accurate. A winning bidder will be required to provide proof of its ETC designation in all of the areas in which it will receive support before it may receive support.

95. The Commission further decided to permit participation by a Tribally-owned or -controlled entity that at the short-form application deadline has an application for ETC designation pending for the provision of service within the boundaries of the associated Tribal land. The Commission did so to afford Tribes an increased opportunity to participate at auction, in recognition of their interest in self-government and self-provisioning on their own lands. However, allowing such participation at auction in no way prejudices the ultimate decision on a Tribally-owned or -controlled entity's petition for ETC designation. Moreover, support will be disbursed only after an applicant receives such designation. A Tribally-

owned or -controlled entity that does not obtain and provide the required ETC designation will not be entitled to any support payments and may ultimately be in default in accordance with the rules. A Tribally-owned or -controlled entity whose application for ETC designation remains pending at the short-form application deadline should provide the date the application was filed, with whom (i.e., the Commission or relevant state regulatory agency), any file or case number associated with the application, and its current status. The following entities may be designated as qualifying Tribal entities: (1) Tribes, which are federally-recognized American Indian Tribes and Alaska Native Villages; (2) Tribal consortia; and (3) entities that are more than 50 percent owned and controlled by a Tribe or Tribes.

96. GRIC/GRTI supports the Commission's rule requiring an applicant to state on its short-form application that it is designated as an ETC in any area for which it will seek support or is a Tribal entity with a pending application to become an ETC in any such area, and to certify that the disclosure is accurate. Bad River Tribe, however, argues that the Commission should only impose this requirement as a post-auction condition of funding. NTUA notes with concern that the lengthy timeframe that can be associated with resolving ETC applications may create a chilling effect on Tribal participation in the auction.

97. The Commission adopted the requirement that, at the time of the short-form filing deadline, an Auction 902 applicant must be designated as an ETC for the areas on which it wishes to bid or, if it is a Tribally-owned or -controlled entity, have a pending application for ETC designation for the relevant areas within the boundaries of the Tribal land associated with the Tribe that owns or controls the entity. These ETC designation rules cannot be amended in the context of establishing procedures for Auction 902.

98. Pursuant to the rules, an applicant's ETC designation must cover a sufficient portion of the bidding area to allow it to satisfy the applicable performance requirements. Additionally, as explained in the *USF/ICC Transformation Order*, a Tribal entity that wins support in Auction 902 while its ETC petition is pending must receive an ETC designation prior to support being authorized. Although the Bureaus realize that in some limited situations the ETC designation process can be arduous, the Commission takes significant efforts to resolve pending

filings before it in an expeditious manner.

ii. Access to Spectrum Description and Certification

99. Pursuant to the rules that the Commission adopted in the *USF/ICC Transformation Order*, and as explained in the *Auction 902 Comment Public Notice*, any applicant for Auction 902 must have access to the necessary spectrum to fulfill any obligations related to support. In an application to participate in Auction 902, each applicant must describe its required spectrum access and certify that the description is accurate and that the applicant will retain such access for at least five years from the date on which it is authorized to receive support. Specifically, an applicant will be required to disclose whether it currently holds, leases, or has otherwise contracted for access to spectrum consistent with Commission rules and whether such spectrum access is contingent on obtaining support in Auction 902. For the described spectrum access to be sufficient as of the date of the short-form application, the applicant must obtain any necessary approvals from the Commission for the spectrum access prior to filing the application. A pending request for such an approval is not sufficient to satisfy this requirement. Furthermore, only assured access is sufficient, which means that the access must be to licensed spectrum subject to limited access.

100. Tribal entities responding to the *Auction 902 Comment Public Notice* reiterated policy concerns that have been raised in another rulemaking proceeding concerning the use of spectrum over Tribal lands and the difficulties Tribes face in acquiring spectrum in the secondary market. Several Tribal entities contend that requiring auction participants to have spectrum access as of the date they file their short-form applications for Auction 902 may preclude many Tribes from participating. Other Tribal entities urge the Commission to delay an applicant's certification regarding access to spectrum in the pre-auction phase of Auction 902, and to instead impose the rule on winning bidders as a condition of funding.

101. In the *USF/ICC Transformation Order*, the Commission rejected the suggestion of some commenters to apply a more relaxed standard that might allow entities to seek to acquire access to spectrum only after becoming a winning bidder. The Commission instead concluded that "failing to ensure spectrum access, on at least a

conditional basis, prior to entering a Mobility Fund Auction would be inconsistent with the serious undertaking implicit in bidding for support."

102. The requirement for an applicant to obtain access to spectrum as of the date of the short-form application was adopted by the Commission as a rule and cannot be amended in the context of establishing procedures for Auction 902. The Bureaus recognize the challenges all applicants may face in negotiating access to spectrum over Tribal lands. The Mobility Fund rules afford entities the flexibility to consider whatever spectrum arrangements might meet their individual needs, as long as those arrangements comply with all Mobility Fund Phase I and other regulatory requirements. Accordingly, an applicant for Auction 902 should identify the license applicable to the spectrum to be accessed, the licensee, and, if the licensee is a different party than the applicant, the relationship between the applicant and the licensee that provides the applicant with the required access sufficient to fulfill its obligations related to the support. With the exception of the certification, the terms of which are set forth in FCC Form 180, an applicant must provide all required information relating to spectrum access in an attachment to FCC Form 180, designated as a "Spectrum Access" attachment.

iii. Financial and Technical Capability Certification

103. The Commission requires that an applicant certify in the pre-auction short-form application that it is financially and technically capable of providing 3G or better service within the specified timeframe in the geographic areas for which it seeks support. This certification indicates that an applicant for Tribal Mobility Fund Phase I funds can provide the requisite service without any assurance of ongoing support for the areas in question after Tribal Mobility Fund Phase I support has been exhausted. An applicant should be aware that in making a certification to the Commission it exposes itself to liability for a false certification. An applicant should take care to review its resources and its plans before making the required certification and be prepared to document its review, if necessary.

iv. Certification That Applicant Will Not Seek Support for Areas in Which It Has Made a Public Commitment To Deploy 3G or Better Service by December 31, 2012

104. The Commission requires each applicant for Tribal Mobility Fund Phase I support to certify that the applicant will not seek support for any areas for which it made a public commitment to deploy 3G or better wireless service by December 31, 2012. In determining whether an applicant made such a public commitment, the Bureaus would consider any public statement made with some specificity as to geographic area, time period, and level of service. This requirement helps to assure that Tribal Mobility Fund Phase I support will not go to finance coverage that carriers would have provided in the near term without any subsidy. Furthermore, the requirement may conserve funds and avoid displacing private investment by making a carrier that made such a commitment ineligible for Tribal Mobility Fund Phase I support with respect to the relevant geographic area. Because circumstances are more likely to change over a longer term, the Bureaus do not hold providers to any statements for any time period beyond December 31, 2012. Applicants should note that this restriction does not prevent a party from seeking and receiving support for an eligible geographic area where another provider has announced such a commitment to deploy 3G or better wireless service.

#### *F. Tribally-Owned or -Controlled Providers—25% Reverse Bidding Credit*

105. The Commission adopted a 25 percent “reverse” bidding credit for Tribally-owned or -controlled providers seeking either general or Tribal Mobility Fund Phase I support. In order to be eligible for the bidding credit, a qualifying Tribally-owned or -controlled provider must certify in its short-form application that it is qualified and identify the applicable Tribe and Tribal lands.

106. The bidding credit will effectively reduce the Tribal entity’s bid amount by 25 percent for the purpose of comparing it to other bids, thus increasing the likelihood that Tribally-owned and -controlled entities will receive funding. If the Tribally-owned or -controlled entity were to win, support would be calculated at the full, undiscounted bid amount. The preference is available with respect to the eligible census blocks located within the geographic area defined by the boundaries of the Tribal land associated

with the Tribally-owned or -controlled provider seeking support.

107. The bidding credit adopted by the Commission applies only to Tribally-owned or -controlled entities with respect to bids for support within the boundaries of associated Tribal lands. In the *USF/ICC Transformation Order*, the Commission declined to adopt other types of bidding credits or prioritization mechanisms. The rule cannot be amended in the context of establishing procedures for Auction 902, and thus cannot be extended to apply to any entities that are not in fact owned or controlled by the Tribe or to areas outside of the Tribe’s own Tribal lands.

108. The Bureaus note that although the bidding credit applies to Tribally-owned or -controlled entities, it was adopted in recognition of Tribes’ interest in self-government and self-provisioning on their own lands, and with the Commission’s unique government-to-government relationship with Tribes in mind. As such, the Bureaus retain discretion to look behind assertions of Tribal ownership and assertions of Tribal control to ensure that the Tribe is the true beneficiary of the bidding credit. This standard would be satisfied by the following entities: (1) Tribes (federally-recognized American Indian Tribes and Alaska Native Villages); (2) Tribal consortia; and (3) entities that are more than 50 percent owned and controlled by a Tribe or Tribes.

#### *G. Commission Red Light Rules*

109. Applications to participate in Auction 902 are subject to the Commission’s rules regarding an applicant with delinquent debts, often referred to as the Commission’s Red Light Rules. Parties familiar with spectrum license auctions should note that the stricter spectrum license application rules supersede the Commission’s Red Light Rules in the context of a spectrum license auction. No corresponding provision applies with respect to Auction 902, however. Accordingly, the Commission’s standard Red Light Rules will apply. Pursuant to the Red Light Rules, unless otherwise expressly provided for, the Commission will withhold action on an application by any entity found to be delinquent in its debt to the Commission for purposes of the Red Light Rule. Accordingly, parties interested in filing applications to participate in Auction 902 should review the status of any debts that they owe the Commission before submitting their application and resolve any delinquent debts. The Commission maintains a Red Light Display System (RLD) to enable entities doing business

with the FCC to determine if they have any outstanding delinquent debt. The RLD enables a party to check the status of its account by individual FCC Registration Numbers (FRNs), and links other FRNs sharing the same Tax Identification Number (TIN) when determining whether there are outstanding delinquent debts. The RLD is available at <http://www.fcc.gov/redlight/>. Additional information is available at [http://transition.fcc.gov/debt\\_collection/](http://transition.fcc.gov/debt_collection/).

#### *H. USF Debarment*

110. The Commission’s rules provide for the debarment of those convicted of or found civilly liable for defrauding the high-cost support program. Applicants are reminded that those rules apply with equal force to the Tribal Mobility Fund Phase I.

#### *I. Minor Modifications to Short-Form Applications*

111. After the deadline for filing short-form applications, an Auction 902 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of the addresses and telephone numbers of the applicant and its contact person. An applicant is not permitted to make a major modification to its application (e.g., change in control of the applicant or change of the certifying official) after the initial application filing deadline. Thus, any change in control of an applicant, resulting from a merger, for example, will be considered a major modification, and the application will consequently be dismissed. The Bureaus reiterate that even if an applicant’s short-form application is dismissed, the applicant would remain subject to the communication prohibitions of 47 CFR 1.21002 until the long-form application deadline after the auction closes.

112. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button. After the revised application has been submitted, a confirmation page will be displayed that states the submission time, submission date, and a unique file number. The Bureaus advise applicants to print and retain a copy of this confirmation page.

113. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to

make changes to its short-form application other than administrative changes (e.g., changing certain contact information or the name of an authorized bidder). If permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the FCC Auction System once it is available. Moreover, after the filing window has closed, the system will not permit applicants to make certain changes, such as the applicant's legal classification.

114. Any letter describing changes to an applicant's short-form application must be submitted by email to [auction902@fcc.gov](mailto:auction902@fcc.gov). The email summarizing the changes must include a subject or caption referring to Auction 902 and the name of the applicant, for example, "RE: Changes to Auction 902 Short-Form Application of ABC Corp." The Bureaus request that parties format any attachments to email as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

115. Any application amendment and related statements of fact must be certified by an appropriate party. Appropriate parties include one of the partners if the applicant is a partnership; an officer, director, or duly authorized employee, if the applicant is a corporation; or a member who is an officer, if the applicant is an unincorporated association.

116. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS), which was used for submitting comments regarding Auction 902. Further, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate 47 CFR 1.21002 or the limited information procedures adopted for Auction 902. A party seeking to submit information that might reflect non-public information should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to 47 CFR 1.21002.

#### *J. Maintaining Current Information in Short-Form Applications*

117. 47 CFR 1.65 requires an applicant to maintain the accuracy and

completeness of information furnished in its pending application. If an amendment reporting changes is a "major amendment," as defined by 47 CFR 1.21001(d)(4), the major amendment will not be accepted and may result in the dismissal of the application. After the application filing deadline, applicants may make only minor changes to their applications.

#### **IV. Pre-Auction Procedures**

##### *A. Online Auction Tutorial—Available September 25, 2013*

118. No later than Wednesday, September 25, 2013, the Commission will post an educational auction tutorial on the Auction 902 Web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction System, auction rules, and Mobility Fund rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

119. This interactive, online tutorial should provide an efficient and effective way for interested parties to further their understanding of the auction process. The Auction 902 online tutorial will allow viewers to navigate the presentation outline, review written notes, listen to audio of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission staff, and a timeline with deadlines for auction preparation. The online tutorial will be accessible through a web browser with Adobe Flash Player. As always, Commission staff will be available to promptly answer questions posed by telephone and email throughout the auction process.

120. The auction tutorial will be accessible from the FCC's Auction 902 Web page at <http://wireless.fcc.gov/auctions/902/> through an "Auction Tutorial" link. Once posted, this tutorial will remain available for reference in connection with the procedures outlined in this Public Notice and accessible anytime.

##### *B. Short-Form Applications—Due Prior to 6:00 p.m. ET on October 9, 2013*

121. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment D to the *Auction 902 Procedures Public Notice* to submit a short-form

application (FCC Form 180) electronically via the FCC Auction System. This short-form application must be submitted prior to 6:00 p.m. ET on October 9, 2013. Late applications will not be accepted. No application fee is required.

122. Applications may generally be filed at any time beginning at noon ET on September 25, 2013, until the filing window closes at 6:00 p.m. ET on October 9, 2013. The Bureaus strongly encourage applicants to file early and allow for adequate time for the filing process. Applications can be updated or amended multiple times until the filing deadline on October 9, 2013.

123. An applicant must always click on the SUBMIT button on the "Certify & Submit" screen to successfully submit its FCC Form 180 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 180 is included in Attachment D of the *Auctions 902 Procedures Public Notice*. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

##### *C. Application Processing and Minor Corrections*

124. After the deadline for filing FCC Form 180 applications, Commission staff will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those that are complete; (2) those that are rejected; and (3) those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

125. After the application filing deadline on October 9, 2013, applicants can make only minor corrections to their applications. They will not be permitted to make major modifications (e.g., change control of the applicant or change of the certifying official).

126. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent

by email to [auction902@fcc.gov](mailto:auction902@fcc.gov). In no event, however, will the Commission send auction registration materials to anyone other than the contact person listed on the applicant's FCC Form 180 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 180.

#### D. Auction Registration

127. Approximately ten days before the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted FCC Form 180 applications that are deemed timely-filed, accurate, and complete.

128. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 180 and will include the SecurID® tokens that will be required to place bids, the "FCC Auction System Bidder's Guide," and the Auction Bidder Line telephone number for bidding questions.

129. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Wednesday, December 11, 2013, should call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

130. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

#### E. Remote Electronic Bidding

131. The Commission will conduct this auction over the Internet. Only qualified bidders are permitted to bid. Each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. Bidders cannot bid without their SecurID tokens. For security purposes, the SecurID® tokens,

a telephone number for bidding questions, and the "FCC Auction System Bidder's Guide" are only mailed to the contact person at the contact address listed on the FCC Form 180. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 902.

132. The SecurID® tokens can be recycled and the Bureaus encourage bidders to return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once the auction has ended.

#### F. Mock Auction—December 16, 2013

133. All qualified bidders will be eligible to participate in a mock auction on Monday, December 16, 2013. The mock auction will enable qualified bidders to become familiar with the FCC Auction System and to practice submitting bids prior to the auction. The Bureaus strongly recommend that all qualified bidders participate to gain experience with the bidding procedures. Details will be announced by public notice.

### V. Auction Event

#### A. Auction Structure—Reverse Auction Mechanism

134. Auction 902 will be held on Thursday, December 19, 2013. The start and finish time of the bidding round will be announced in a public notice listing the qualified bidders, which will be released approximately 10 days before the start of the auction. The Bureaus' choice of auction design for Auction 902—a single-round format with other design characteristics—is specific to the particular context of the Tribal Mobility Fund Phase I auction. The choices the Bureaus make here do not prejudice their future auction design choices for other phases of the Mobility Fund or other competitive bidding mechanisms related to the USF.

##### i. Single-Round Sealed-Bid Reverse Auction Format

135. The Bureaus will conduct Auction 902 using a single round of bidding. The Bureaus conclude that a multiple-round auction would not be appropriate in the context of the Tribal Mobility Fund Phase I auction.

##### ii. Aggregation Method—Predefined Aggregation

136. The Commission determined that the census block should be the minimum geographic building block for which support is provided, but left to the Bureaus the task of deciding how to facilitate bidding on aggregations of

eligible census blocks. The Commission recognized that some aggregation of census blocks may be necessary because census blocks are numerous and can be quite small, but encouraged the Bureaus to consider permitting bidding on individual census blocks in Alaska because they are so much larger on average than census blocks elsewhere.

137. *Aggregation of census blocks by Tribal lands and census tracts.* In the *Auction 902 Comment Public Notice*, the Bureaus proposed aggregating eligible census blocks by Tribal land, and subdividing the aggregation by census tract where applicable. That is, for any Tribal land covering more than one census tract, the eligible census blocks would be aggregated into one bidding area for each tract. Aggregating by Tribal lands may also create—for any census tract with more than one Tribal land—more than one bidding area for the tract. A bidder would bid on these bidding areas, not on individual census blocks. The Bureaus proposed that while census blocks in Alaska are larger than those in other parts of the country, aggregations by Tribal land and census tract—due to many instances of census tracts in Alaska covering multiple Tribal lands—would result in Alaska aggregations being closer in size to the aggregations in other parts of the country.

138. In all eligible areas other than in Alaska, the Bureaus adopt their original proposal to establish bidding areas consisting of predefined aggregations of eligible census blocks. Under this approach, eligible census blocks will be grouped by the Tribal land in which they are located, and bidders will be able to bid for support for these bidding areas. Bidders will not bid on individual blocks, except for some blocks in Alaska. If a single Tribal land includes more than one census tract, then the Tribal land will be subdivided by tract for bidding area purposes; there will be one bidding area for each tract in the Tribal land. For each bidding area on which a bidder bids, the bidder will indicate a per-pop price to cover the population in the bidding area. The auction will assign support to an awardee equal to the per-pop rate of its bid multiplied by the population associated with the eligible census blocks within the bidding area as shown in the files provided by the Bureaus. A bidder may bid on multiple bidding areas and win support for any or all of them. This approach requires separate bids on individual bidding areas. An awardee will be required to cover a given percentage of the total population of the eligible census blocks in the bidding area.



139. For Alaska the eligible Tribal lands will be identified using not only the Alaska Native village statistical areas (ANVSAs) that were originally proposed for inclusion in Auction 902, but also the boundaries of the twelve geographic Alaska Native regional corporations and the Annette Island Reserve, which together cover the entire state of Alaska. This requires that the Bureaus establish bidding areas that are different from those originally proposed for Alaska. The eligible census blocks in ANVSAs will be aggregated as proposed. That is, eligible census blocks will be aggregated by Alaska Native village statistical areas, and if an ANVSA covers more than one tract, there will be a bidding area for each tract in that ANVSA.

140. For eligible census blocks in Alaska outside of ANVSAs, each block will be a single bidding area. As with other bidding areas, bidders will indicate a per-pop price to cover the population in the block. The auction will assign support to an awardee equal to the per-pop rate of its bid multiplied by the population associated with the eligible census block, as shown in the files provided by the Bureaus. A bidder may bid on multiple bidding areas—be they individual blocks and/or predefined aggregations of blocks—and may win support for any or all of them.

141. *Coverage requirement.* Each awardee will be required to provide voice and broadband service meeting the established minimum standards over at least 75 percent of the population associated with each bidding area for which it receives support—that is, at least 75 percent of the total population of the eligible blocks that comprise the bidding area. If a winning bidder covers more than 75 percent of the population within the required timeframe, it may collect support for up to 100 percent of the population in the bidding area. The required minimum standards for service will depend on whether a winning bidder elects to deploy 3G or 4G service. Pursuant to the *USF/ICC Transformation Order*, awardees meeting the minimum coverage requirement could receive their winning bid amount for that population and for any additional population covered in excess of the 75 percent minimum, up to 100 percent of the population associated with the eligible blocks, subject to the rules on disbursement of support.

### iii. Winner Selection Process

142. Under the auction format that the Bureaus adopt, during the single bidding round, bidders will be able to submit bids that indicate a per-pop

support price at which they are willing to meet the Bureaus' requirements to cover the population in the eligible census blocks of the bidding areas covered by the bids. The population of each bidding area can be found in Attachment A, which is available on the Auction 902 Web page.

143. After the single bidding round closes, the FCC Auction System will rank bids from lowest to highest per-pop bid amount and assign support first to the lowest per-pop bid. An amount equal to the per-pop bid times the population in the bidding area will be deducted from the total available funds. The auction system will continue to assign support to the next lowest per-pop bid in turn, as long as support has not already been assigned for that geographic area, deducting assigned support funds from the remaining available funds. The auction system will stop assigning support when the next ranked per-pop bid implies a support amount exceeding the remaining funds available. A bidder will be eligible to receive support for each of its winning bids equal to the per-pop rate of the bid multiplied by the population in the eligible census blocks covered by the bid, subject to meeting the obligations associated with receiving support. For bidders claiming eligibility for a Tribal entity bidding credit, the auction system will reduce those bid amounts by 25 percent for the purpose of comparing them to other bids, thus increasing the likelihood that Tribally-owned and -controlled entities will receive funding.

144. To ensure that the finite resource of universal service support is used to extend mobile voice and broadband services to as many people on Tribal lands as possible, the Bureaus may, in their sole discretion, stop assigning support in the rank order of per-pop bids immediately prior to a bid even though funds remain available. In determining when to exercise this authority, the Bureaus will carefully consider the costs and benefits given the unique challenges associated with deploying mobile broadband on Tribal lands, as well as whether dedication of the funds to other programs for eligible Tribal lands could help bring broadband to a greater number of people in those lands. The Bureaus conclude that these steps will reduce incentives to submit extremely high per-pop bids in an attempt to take advantage of the potential for reduced competition relative to Auction 901 and help assure that winning bids will make cost-effective use of the limited funds.

145. Bids will be assigned a random selection number that will be used to determine the ranking of tied bids. If

there are any identical bids—in the same per-pop amounts to cover the same block, submitted by different bidders—only the bid with the highest random selection number will be considered in the ranking. Tied bids for different areas, submitted by the same or different bidders, will be considered for support in the order of the random number. Bidders that submit multiple bids for the same per-pop amount for different areas, but that have a preference for the order in which the Bureaus consider such bids, may wish to vary the per-pop bid by some small amount in order to indicate a preferential ranking of the tied bids that otherwise will be ranked randomly.

### iv. Limited Information Disclosure Procedures: Information Available to Bidders Before and During the Auction

146. The Bureaus will conduct Auction 902 using procedures for limited information disclosure. That is, for Auction 902, the Bureaus will withhold, until after the close of bidding and announcement of auction results, the public release of (1) information from applicants' short-form applications regarding their interests in bidding areas in particular Tribal lands and (2) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. Because the Bureaus will conduct Auction 902 using a single round of bidding, they do not anticipate a need to release bidding-related actions during the auction as they would in a multiple-round auction. If such circumstances arise prior to the release of non-public information and auction results, however, the Bureaus will not indicate the identity of any bidders taking such actions. After the close of bidding, information regarding applicants' interests in eligible areas in particular Tribal lands, their bids, and any other bidding-related actions and information will be made publicly available.

### v. Auction Delay, Suspension, or Cancellation

147. In the *Auction 902 Comment Public Notice*, the Bureaus proposed that, by public notice or by announcement during the auction, they may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureaus received no comments on this issue.

148. Because this approach has proven effective in resolving exigent

circumstances in previous auctions, the Bureaus adopt these proposals regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the point at which the auction was suspended, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that they will exercise this authority solely at their discretion.

#### B. Bidding Procedures

##### i. Bidding

149. All bidding will take place through the web-based FCC Auction System. To place bids a bidder will upload a text file that includes, for each bid, the bidding area name and the bid amount, expressed in a dollars per-pop price to cover the population in the eligible census blocks of that bidding area. When a bidder uploads a bid file, the FCC Auction System will provide a verification that includes the bidding area names, the dollars per-pop bid for each bidding area, the population in each bidding area, the total bid amount for each bidding area, and the county, state, and Tribal land for each bidding area. The bidder then submits the bids, or the bidder can cancel the bids if it wishes to make changes.

150. Bidders must submit their bids before the finish time of the bidding round, which will be announced in a public notice listing the qualified bidders, and which will be released approximately 10 days before the start of the auction.

##### ii. Reserve Prices

151. The Bureaus conclude that a reserve price is not needed to ensure the commitment to fiscal responsibility made in the *USF/ICC Transformation Order*. The Bureaus will stop assigning support at the point at which remaining funds are insufficient to satisfy the next ranked per-pop bid. Thus, in Auction 902, the Bureaus will not award support at higher per-pop bid amounts but for lower total support amounts in order to use as much of the budget as possible. In addition, the Bureaus retain the authority to stop the assignment of

support to unreasonably high per-pop bids.

##### iii. Bid Removal

152. For Auction 902, before the end of the single round of bidding, a bidder will have the option of removing any bid it has placed. By removing a selected bid, a bidder may effectively “undo” a bid placed within the single round of bidding. Once the single round of bidding ends, a bidder may no longer remove any of its bids.

153. To remove bids a bidder will upload a text file that includes the bidding area name for each bid it wants to remove. When a bidder uploads such a file, the FCC Auction System will provide a verification that includes the bidding area names, and the county, state, and Tribal land for each bidding area.

##### iv. Auction Announcements

154. The Bureaus will use auction announcements to report necessary information. All auction announcements will be available by clicking a link in the FCC Auction System.

##### v. Auction Results

155. The Bureaus will determine the winning bids based on the lowest per-pop bids, as described in the *Auction 902 Procedures Public Notice*. After the Bureaus announce the auction results, the Bureaus will provide downloadable files of the bidding and results data.

## VI. Post-Auction Procedures

### A. General Information Regarding Long-Form Applications

156. After the conclusion of Auction 902, each winning bidder will be required to file a long-form application to demonstrate that it qualifies for Tribal Mobility Fund Phase I support. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadline for the long-form application. Winning bidders will use FCC Form 680 and the FCC Auction System to submit the long-form application. The public notice announcing the close of the auction will provide details regarding the submission and processing of the long-form application. Unless otherwise provided by public notice, as was the case for Auction 901, a winning bidder must file its long-form application no later than 10 business days after being identified by public notice as such a winning bidder. The Bureaus note that in Auction 901, winning bidders initially had 21 business days to file

long-form applications, and this deadline was later extended to 23 business days. The Bureaus anticipate that they will provide at least a similar time period before the long-form application deadline for Auction 902.

157. In addition to the long-form application process described in the *Auction 902 Procedures Public Notice*, any bidder winning support in Auction 902 must notify the relevant Tribal government(s) no later than five business days after being identified by public notice as such a winning bidder. The Office of Native Affairs and Policy (ONAP), in coordination with the Bureaus, has provided guidance regarding the appropriate points of contact for Tribal governments.

### B. Long-Form Application: Disclosures and Certifications

158. By the due date specified in the auction closing public notice, a winning bidder must electronically submit a properly-completed long-form application (FCC Form 680) for the bidding areas of its winning bids. A Tribally-owned or -controlled provider claiming eligibility for a Tribal entity bidding credit must certify as to its eligibility for the bidding credit. Further filing instructions will be provided to winning bidders in the auction closing public notice.

#### i. Ownership Disclosure

159. In the *USF/ICC Transformation Order*, the Commission adopted for Mobility Fund Phase I auctions the existing Part 1 ownership disclosure requirements that already apply to short-form applicants to participate in spectrum license auctions and long-form applicants for licenses in wireless services. Under these requirements, an applicant for Mobility Fund support must fully disclose its ownership structure as well as information regarding the real party- or parties-in-interest of the applicant or application.

160. As the Commission has previously noted, wireless providers that have participated in spectrum license auctions will already have ownership disclosure reports (in the short-form application) on file with the Commission, which may simply need to be updated. To minimize the reporting burden on winning bidders, the Bureaus will allow them to use ownership information stored in existing Commission databases and update that information as necessary.

#### ii. Documentation of ETC Designation

161. A winning bidder must submit with its long-form application appropriate documentation of its ETC

designation in all of the areas for which it will receive support and certify that its proof is accurate. Although a Tribally-owned or -controlled entity may participate in Auction 902 so long as it has an application to be designated as an ETC pending at the relevant short-form application deadline, a Tribally-owned or -controlled entity may receive Tribal Mobility Fund support only after it has become an ETC and has provided the appropriate documentation. Appropriate documentation should include the original designation orders, any relevant modifications, e.g., expansion of service area or inclusion of wireless services, and any relevant name-change orders. Any ETC designation documentation provided as an attachment to the long-form application must be designated as an "Eligible Telecommunications Carrier" attachment.

162. Each winning bidder should connect the designated areas (e.g., wire centers, exchanges, and study areas) to its winning bid areas so that it is clear that the applicant has ETC status in each winning bid area. This obligation may be satisfied by providing maps of the recipient's ETC designation area, map overlays of the winning bid areas, charts listing designated areas and associated winning bid areas, and narrative descriptions explaining the connections between the ETC designations and the winning bid areas. An applicant must demonstrate that it has been designated as an ETC throughout a sufficient portion of each winning bid area to satisfy the applicable performance requirements.

#### iii. Financial and Technical Capability Certification

163. As in the pre-auction short-form application stage, a long-form applicant must certify that it is financially and technically capable of providing 3G or better service within the specified timeframe in the geographic areas in which it seeks support. This certification indicates that an applicant for Tribal Mobility Fund Phase I funds can provide the requisite service without any assurance of ongoing support for the areas in question after Tribal Mobility Fund Phase I support has been exhausted. An applicant should be aware that in making a certification to the Commission it exposes itself to liability for a false certification. An applicant should take care to review its resources and its plans before making the required certification and be prepared to document its review, if necessary.

#### iv. Project Construction Schedule/ Specifications

164. Applicants are required to provide in their long-form application a "Project Description" attachment for each winning bid with a detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the complete project budget, and describes each specific phase of the project, e.g., network design, construction, deployment, and maintenance, as those details pertain to each winning bid. Applicants are urged to include an initial summary paragraph in layman's terms that describes the project for each winning bid. A complete project schedule, including timelines, milestones, and costs, also must be provided in detail for each winning bid. Milestones should include the start and end date for network design, start and end date for drafting and posting requests for proposal (RFPs), start and end date for selecting vendors and negotiating contracts, start date for commencing construction and end date for completing construction, and the dates by which the applicant will meet applicable requirements to receive the installments of Mobility Fund support. To the extent an applicant has one project description for multiple winning bids, it still must provide all of the specific details described herein as those details correspond to each winning bid. Additionally, applicants need to ensure that each winning bid's project description corresponds with the applicant's access to spectrum certification for each winning bid, and that all prior Commission approvals have been obtained. In order to demonstrate eligibility for Auction 902, applicants relying on Cellular Geographic Service Area (CGSA) expansion to demonstrate spectrum access must have prior approvals in place or alternative access to spectrum until such approvals are obtained.

165. Applicants will indicate for each winning bid whether the supported network will provide 3G mobile service within the period prescribed by 47 CFR 54.1006(a) or 4G mobile service within the period prescribed by 47 CFR 54.1006(b). The description of the proposed technology should include information on whether the network will qualify as either a 3G or 4G network.

#### v. Spectrum Access

166. Applicants are required to provide a description of the spectrum access that the applicant will use to

meet its obligations in areas for which it is the winning bidder, including whether the applicant currently holds a license for, leases, or otherwise has contracted for access to the spectrum consistent with Commission rules. The description should identify the license applicable to the spectrum to be accessed. The description of the license must include the type of service (e.g., AWS, 700 MHz, BRS, PCS), the particular frequency bands, and the call sign. If the licensee is a different party than the applicant, the licensee name and the relationship and type of agreement between the applicant and the licensee that provides the applicant with the required access should be described. If the applicant is leasing spectrum, the lease number should be provided along with the license information. An applicant must provide this required information relating to spectrum access in an attachment to the long-form application that is designated as a "Spectrum Access" attachment.

167. Applicants must also certify that the description of the spectrum access is accurate and that the applicant will retain such access for at least five years after the date on which it is authorized to receive support. Applications will be reviewed to assess the reasonableness of the certification.

#### vi. Letter of Credit Commitment Letter

168. A winning bidder must submit with its long-form application either a Letter of Credit (LOC) for each winning bid or a written commitment letter from an acceptable bank to issue such an LOC. If the applicant submits a commitment letter, the letter must at a minimum provide the dollar amount of the LOC and the issuing bank's agreement to follow the terms and conditions of the Commission's model LOC, set forth in Appendix N of the *USF/ICC Transformation Order*. The commitment letter must be from an acceptable bank, as defined in 47 CFR 54.1007(a)(1). The Bureau waived 47 CFR 54.1007(a)(1) on their own motion to allow Auction 901 winning bidders seeking authorization for Mobility Fund Phase I support to use CoBank, ACB as an issuing bank for the required LOC, in addition to the acceptable banks described in 47 CFR 54.1007(a)(1).

#### vii. Letter of Credit and Bankruptcy Code Opinion Letter

169. After receipt and review of the long-form applications, the Commission will issue a public notice identifying each winning bidder and bid that may be authorized to receive Tribal Mobility Fund Phase I support. Upon notice from the Commission, a winning bidder for

Tribal Mobility Fund Phase I support must submit an irrevocable stand-by LOC, issued in substantially the same form as set forth in the model LOC provided in Appendix N of the *USF/ICC Transformation Order*, by a bank that is acceptable to the Commission. An LOC must be submitted for each winning bid in an amount equal to one-third of the winning bid amount plus an additional 10 percent of the winning bid amount which shall serve as a performance default payment. The Commission's rules provide specific requirements, as defined in 47 CFR 54.1007(a)(1), for a bank to be acceptable to the Commission to issue the LOC. Those requirements vary for U.S. banks and non-U.S. banks.

170. In addition, a winning bidder will be required to provide with the LOC an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the LOC or proceeds of the LOC as property of the winning bidder's bankruptcy estate, or the bankruptcy estate of any other bidder-related entity requesting issuance of the LOC, under section 541 of the Bankruptcy Code.

#### viii. Certification as to Program Requirements

171. The long-form application contains certifications that the applicant has available funds for all project costs that exceed the amount of support to be received and will comply with all program requirements. The program requirements include the public interest obligations contained in the Commission's rules and set forth in the *Auction 902 Procedures Public Notice*. Also, an applicant must certify that it will meet the applicable deadline for construction of a network meeting the coverage and performance requirements set forth in the rules, that it will comply with the Mobility Fund collocation obligations specified in the rules, and that it will comply with the voice and data roaming obligations that the Commission has established with respect to Phase I of the Mobility Fund.

#### ix. Reasonably Comparable Rate Certification

172. The Commission's rules require a recipient of Mobility Fund Phase I support—including Tribal Mobility Fund Phase I support—to certify on its long-form application that it will offer service in supported areas at consumer rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban

areas. Recipients will be subject to this requirement for five years after the date of the award of support. Recipients must offer service plans in supported areas that meet the public interest obligations specified in the Commission's Mobility Fund rules and that include a stand-alone voice service plan.

173. In the *Auction 902 Comment Public Notice*, the Bureaus proposed to permit a recipient of Tribal Mobility Fund Phase I support to demonstrate compliance with the reasonably comparable rates requirement in the same manner as recipients of general Mobility Fund Phase I support. This would require a supported provider to demonstrate that its required stand-alone voice plan, and one service plan that offers data services, if it offers such plans, are (1) substantially similar to a service plan offered by at least one mobile wireless service provider in an urban area, and (2) offered for the same or a lower rate than the matching urban service plan. The Bureaus note that any provider that itself offers the same service plan for the same rate in a supported area and in an urban area would be able to meet this requirement. For purposes of Tribal Mobility Fund Phase I, the Bureaus proposed to treat any rate equal to or less than the highest rate for a matching service charged in an urban area as reasonably comparable to, i.e., within a reasonable range of, rates for similar service in urban areas. For purposes of this requirement, the Bureaus proposed to define "urban area" as one of the 100 most populated CMAs in the United States. (A list of the top 100 CMAs is available in Attachment B to the *Auction 902 Procedures Public Notice*). The Bureaus also proposed to retain discretion to consider whether and how variable rate structures should be taken into account, and further proposed to address such issues on a case-by-case basis. To provide recipients with flexibility to tailor their offerings to consumer demand while complying with the rule, the Bureaus proposed to deem a Tribal Mobility Fund Phase I support recipient compliant with the terms of the required certification if it can demonstrate that its rates for services satisfy the requirements, and if it provides supporting documentation. Under this approach, the supported party must offer services at rates within the range but that do not exceed one particular rate that is presumed to be a part of that range.

174. The Bureaus proposed to make a limited exception for supported parties serving Alaska in light of the distinct character of Alaska and the related costs of providing service, and in line with

the approach adopted for Auction 901. Specifically, the Bureaus proposed that supported parties in Alaska may demonstrate comparability by comparison with rates offered in the CMA for Anchorage, Alaska.

175. The Bureaus adopt the proposals in the *Auction 902 Comment Public Notice* for Tribal Mobility Fund Phase I, including the proposed limited exception for supported providers serving Alaska.

#### x. Tribal Engagement Requirements: Certification and Summary of Engagement

176. Beginning at the long-form application stage, and continuing throughout the term of support, Tribal Mobility Fund Phase I winning bidders are required to comply with the Tribal engagement obligations applicable to all ETCs. As the Commission discussed in the *USF/ICC Transformation Order*, these obligations are designed to ensure that Tribal governments have been formally and effectively engaged in the planning process and that the services to be provided will advance the goals established by the Tribal government. Thus, the Bureaus encourage applicants seeking to serve Tribal lands to begin engaging with the appropriate Tribal governments as soon as possible. The Bureaus note that any such engagement must be done consistent with the rules prohibiting certain communications during the competitive bidding process.

177. Any bidder winning support in Auction 902 must notify the appropriate Tribal government(s) of its winning bid no later than five business days after being identified by public notice as such a winning bidder. A winning bidder's engagement with the appropriate Tribal government(s) must consist, at a minimum, of discussion regarding: (i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions; (ii) feasibility and sustainability planning; (iii) marketing services in a culturally sensitive manner; (iv) rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (v) compliance with Tribal business and licensing requirements. Thereafter, at the long-form application stage and in annual reports, a bidder winning support in Auction 902 will be required to certify that it has substantively engaged appropriate Tribal government officials regarding the minimum discussion topics, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary must be sent

to the appropriate Tribal officials when it is sent to the Commission. Appropriate Tribal government officials are elected or duly authorized government officials of federally recognized American Indian Tribes and Alaska Native Villages. In the instance of the Hawaiian Home Lands, this engagement must occur with the State of Hawaii Department of Hawaiian Home Lands and Office of Hawaiian Affairs. The Bureaus remind carriers that failure to satisfy the Tribal government engagement obligations could subject them to financial consequences including potential reduction in support should they fail to fulfill their obligations.

178. The Tribal engagement obligations established by the Commission will apply to Auction 902. The Bureaus note that there are three pending petitions for reconsideration of certain aspects of 47 CFR 54.313(a)(9), which mandates that annual reports on the Tribal government engagement requirements be filed by carriers receiving high-cost universal service support other than or in addition to any mobility fund support. In addition, there is a pending petition for reconsideration and clarification of the *Tribal Engagement Further Guidance*.

### C. Coverage Requirements, Reporting Obligations, and Payment Disbursements

#### i. Coverage Requirements

179. Support recipients will be required to provide voice and broadband service meeting the established minimum standards over at least 75 percent of the population associated with the eligible blocks in each bidding area for which they receive support. Because Census data does not specify how population is distributed within a census block, the Bureaus sought comment on how to determine whether this coverage requirement is met. If a provider demonstrates new coverage over the entirety of an eligible census block, the Bureaus can assume coverage of the entire population of that census block. However, the Bureaus sought input on how to evaluate the population served by new coverage where a provider demonstrates new coverage over part of an eligible census block. In particular, the Bureaus asked whether they should assume that census block population is evenly distributed and assess coverage on the proportion of the geographic area covered, and they also sought comment on alternatives.

180. The Bureaus conclude that support recipients will be able to prove coverage as follows. If an awardee can

prove coverage of at least 75 percent of the actual population associated with the eligible census blocks within a winning bid area, it may provide and prove coverage in any combination across eligible census blocks within that single bidding area, including providing coverage to more than 75 percent of the population in one eligible census block and less than 75 percent of the population in another eligible census block in the same bidding area. In response to comments, in the alternative the Bureaus will also permit proof of coverage by relying on a geographic area safe harbor, by which an awardee may show that it is providing coverage to at least 75 percent of the geographic area in a census block as a proxy for providing service to at least 75 percent of the population within that census block. Because using a geographic proxy is a safe harbor, geographic coverage must be shown on a census-block by census-block basis, rather than within the winning bid area as a whole. In other words, if a winning bidder relies on the geographic area safe harbor for a particular winning bid area, it must provide and prove coverage to at least 75 percent of the geographic area of each eligible census block within that winning bid area. With respect to demonstrating compliance with the coverage requirements, the Commission's rules set forth the standards for applicable drive test data and scattered site testing.

181. The Commission recognized the unique challenges of Tribal lands, which may have sparse roads and isolated populations for which a winning bidder would be required to prove coverage. In particular, given that the Commission adopted a population-based coverage metric for Tribal Mobility Fund Phase I, the Commission explained that providers may demonstrate coverage of an area with scattered site tests—i.e., a statistically significant number of tests in the vicinity of residences being covered. The Commission also noted that equipment to conduct such testing could be transported by off-road vehicles, such as snow-mobiles or other vehicles appropriate to local conditions.

#### ii. Annual Reporting and Record Retention Requirements

182. Winning bidders that are authorized to receive Tribal Mobility Fund Phase I support are required to submit to the Commission an annual report each year for the five years after being so authorized. Each annual report covers the preceding calendar year. As a result, any Auction 902 winning bidder that is first authorized to receive

Tribal Mobility Fund Phase I support in 2014 will not be required to file an annual report regarding such support until the applicable deadline in 2015. The information and certifications required to be included in the annual report are described in 47 CFR 54.1009. As explained in the *USF/ICC Transformation Order*, if a recipient of Mobility Fund support is a carrier subject to other existing or new annual reporting requirements under 47 CFR 54.313 of the rules based on their receipt of universal service support under another high cost mechanism, it will be permitted to satisfy its Mobility Fund Phase I reporting requirements by filing a separate Mobility Fund annual report or by including this additional information in a separate section of its other annual report filed with the Commission. Mobility Fund recipients choosing to fulfill their Mobility Fund reporting requirements in an annual report filed under 47 CFR 54.313 must, at a minimum, file a separate Mobility Fund annual report notifying the Commission that the required information is included in the other annual report. In addition, authorized winning bidders are required to submit certain reports before receiving disbursements of support. A winning bidder authorized to receive Tribal Mobility Fund Phase I support and all of its agents are required to retain any documentation prepared for, or in connection with, the award of Tribal Mobility Fund Phase I support for a period of not less than ten years after the date on which the winning bidder receives its final disbursement of Tribal Mobility Fund Phase I support.

#### iii. Disbursement of Payments

183. Tribal Mobility Fund Phase I support will be available for disbursement to authorized winning bidders in three stages, with the first disbursement made when the winning bidder is authorized to receive support. A recipient will be eligible to receive the second disbursement when it submits a report demonstrating coverage of 50 percent of the applicable coverage requirements of 47 CFR 54.1006. The report a recipient files for this purpose will be subject to review and verification before support is disbursed. A recipient will be eligible to receive the final disbursement when it submits a report demonstrating coverage meeting the applicable requirements of 47 CFR 54.1006. A party's final payment will be the difference between the total amount of support based on the population covered—i.e., a figure between the required 75 percent and 100 percent of

the population—and any support previously received.

#### D. Default Payment Requirements

184. In the *USF/ICC Transformation Order*, the Commission determined that it would impose two types of default payment obligations on winning bidders: a default payment owed by Mobility Fund winning bidders that default on their winning bids prior to approval for receiving support, and a default payment owed by Mobility Fund winning bidders that apply for and are approved to receive support but subsequently fail to meet their public interest obligations or other terms and conditions of Mobility Fund support. Under the competitive bidding rules adopted in the *USF/ICC Transformation Order*, bidders selected by the auction process to receive USF support have a binding obligation to file a post-auction long-form application—by the applicable deadline and consistent with other requirements of the long-form application process—and failure to do so constitutes an auction default. In addition, a performance default occurs when a winning bidder that the Commission has authorized to receive support fails to meet its minimum coverage requirement or adequately comply with quality of service or any other requirements upon which support was granted.

#### i. Auction Default Payment

185. Any winning bidder that fails to timely file a long-form application, is found ineligible or unqualified to receive Mobility Fund support, has its long-form application dismissed, or otherwise defaults on its bid or is disqualified for any reason after the close of the auction and prior to the authorization of support for each winning bid will be subject to an auction default payment. Agreeing to such payment in event of a default is a condition for participating in bidding. In the event of an auction default, the Bureaus will assess a default payment of five percent of the total defaulted bid. Liability for the auction default payment will be imposed without regard to the intentions or fault of any specific defaulting bidder.

186. The Bureaus' experience in Auction 901 has demonstrated that this amount, which is well below the maximum allowable percentage, provides bidders sufficient incentive to fully inform themselves of the obligations associated with participation in the Tribal Mobility Fund Phase I auction and to commit to fulfilling those obligations, and yet is not unduly punitive. The Bureaus anticipate that

such a requirement here should serve to deter failures to fulfill auction obligations that might undermine the stability and predictability of the auction process and impose costs on the Commission as well as higher support costs for USF. The Bureaus therefore adopt their proposal.

187. The Bureaus did not receive any comments on whether there should be an alternative methodology for calculation of an auction default payment, or whether an applicant should be required to furnish a bond or place funds on deposit prior to bidding. The Bureaus conclude that their adoption of an auction default payment calculated as five percent of the total defaulted bid will provide adequate protection against costs to the Commission and the USF, and therefore they find that establishing a bond or deposit requirement is unnecessary.

#### ii. Performance Default Payment

188. A winning bidder that has received notice from the Commission that it is authorized to receive Mobility Fund support will be subject to a performance default payment if it fails or is unable to meet its minimum coverage requirement, other service requirements, or fails to fulfill any other term or condition of Tribal Mobility Fund Phase I support. The Bureaus conclude that in the event of a performance default, they will assess a default payment of ten percent of the total defaulted bid. The LOC that a winning bidder will be required to provide for each winning bid must include an additional ten percent based on the total amount of support for which the winning bidder is eligible.

189. The Commission recognized in the *USF/ICC Transformation Order* that a Mobility Fund recipient's failure to fulfill its obligations may impose significant costs on the Commission and higher support costs for the USF and concluded that it was necessary to adopt a default payment obligation for performance defaults. In addition to being liable for a performance default payment, the recipient will be required to repay the Mobility Fund all of the support it has received, and depending on circumstances, could be disqualified from receiving any additional Mobility Fund or other USF support.

Federal Communications Commission.

**Gary Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division, WTB.*

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**BILLING CODE 6712-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Proposed Collection Renewal; Comment Request Re: Federal Deposit Insurance Act Section 19 Application

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the FDIC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC hereby gives notice that it is seeking comment on renewal of its information collection, entitled *Federal Deposit Insurance Act Section 19 Applications* (OMB No. 3064-0018). At the end of the comment period, any comments and recommendations received will be analyzed to determine the extent to which the collections should be modified prior to submission to OMB for review and approval.

**DATES:** Comments must be submitted on or before November 15, 2013.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- <http://www.FDIC.gov/regulations/laws/federal/notices.html>
- *Email:* [comments@fdic.gov](mailto:comments@fdic.gov) Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202-898-3719), Counsel, Room NY-5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Leneta Gregorie, at the FDIC address above.

#### SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information: