

referenced above. Once NHTSA and EPA learn how many people have registered to speak at each public hearing, we will allocate an appropriate amount of time to each participant, allowing time for necessary breaks. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony. For planning purposes, each speaker should anticipate speaking for approximately ten minutes, although we may need to shorten that time if there is a large turnout. We request that you bring three copies of your statement or other material for the EPA and NHTSA panels. To accommodate as many speakers as possible, we prefer that speakers not use technological aids (e.g., audio-visuials, computer slideshows). However, if you plan to do so, you must notify the contact persons in the **FOR FURTHER INFORMATION CONTACT** section above. You also must make arrangements to provide your presentation or any other aids to NHTSA and EPA in advance of the hearing in order to facilitate set-up.

NHTSA and EPA will conduct the hearings informally, and technical rules of evidence will not apply. We will arrange for a written transcript of each hearing and keep the official record of each hearing open for 30 days to allow speakers to submit supplementary information. Panel members may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. You may make arrangements for copies of the transcripts directly with the court reporter. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearings. Written comments on the proposal must be postmarked by 60 days after the date of publication of the proposal in the **Federal Register**.

Dated: October 26, 2010.

**Ronald Medford,**

*Deputy Administrator, National Highway Traffic Safety Administration.*

Dated: October 25, 2010.

**Margo T. Oge,**

*Director, Office of Transportation and Air Quality Environmental Protection Agency.*

[FR Doc. 2010-27510 Filed 10-29-10; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[WT Docket No. 10-208; FCC 10-182]

### Universal Service Reform Mobility Fund

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Federal Communication Commission proposes the creation of a new Mobility Fund to make available one-time support to significantly improve coverage of current-generation or better mobile voice and Internet service for consumers in areas where such coverage is currently missing. The Commission seeks comment on creating the Mobility Fund using reserves accumulated in the Universal Service Fund and on the use of a reverse auction to make one-time support available to service providers to cost-effectively extend mobile coverage in specified unserved areas.

**DATES:** Comments are due on or before December 16, 2010; reply comments are due on or before January 18, 2011.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 10-208, by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Federal Communications Commission's Web site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

*Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes 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.

*People with Disabilities:* Contact the FCC to request reasonable

accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or telephone: 202-418-0530 or TTY: 202-418-0432.

In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to [nfraser@omb.eop.gov](mailto:nfraser@omb.eop.gov) or fax at 202-395-5167.

**FOR FURTHER INFORMATION CONTACT:** *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* Scott Mackoul at (202) 418-0660. For additional information concerning the information collection requirements contained in this document, send e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Judith B. Herman at 202-418-0214.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Mobility Fund Notice of Proposed Rulemaking* in WT Docket No. 10-208, adopted October 14, 2010, and released on October 14, 2010. The complete text of the *Mobility Fund Notice of Proposed Rulemaking* is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 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 *Mobility Fund Notice of Proposed Rulemaking* may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, fax 202-488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 10-182. The *Mobility Fund Notice of Proposed Rulemaking* is also available on the Internet at the Commission's Web site or by using the search function for WT Docket No. 10-208 on the ECFS Web page at <http://www.fcc.gov/cgb/ecfs/>.

### Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in the

document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility and clarity of the information collected, and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

## I. Notice of Proposed Rulemaking

### A. Introduction

1. Millions of Americans live in communities where current-generation mobile service is unavailable, and millions more work in or travel through such areas. To accelerate the Commission's nation's ongoing effort to close this mobility gap in a fiscally responsible manner, the *Mobility Fund Notice of Proposed Rulemaking* seeks comment on using reserves accumulated in the Universal Service Fund (USF) to create a new Mobility Fund. The purpose of the Mobility Fund is to significantly improve coverage of current-generation or better mobile voice and Internet service for consumers in areas where such coverage is currently missing, and to do so by supporting private investment. The Mobility Fund would use market mechanisms—specifically, a reverse auction—to make one-time support available to service providers to cost-effectively extend mobile coverage in specified unserved areas.

2. In the three decades since the Commission issued the first cellular telephone licenses, the wireless industry has continually expanded and upgraded its networks to the point where third generation (called advanced or 3G) mobile wireless services are now widely available. Despite these advances, mobility gaps remain a problem for residents, public safety first responders, businesses, public institutions, and travelers, particularly in rural areas. Such gaps impose significant disadvantages on those who live, work, and travel in these areas.

Moreover, without existing modern wireless infrastructure, they are at risk of much-delayed access to the coming generations of high-speed wireless broadband services. For this reason, the *National Broadband Plan* recommended providing universal service support to promote the national build-out of 3G services as part of a comprehensive set of recommendations to reform the universal service program. See Federal Communications Commission, Connecting America: The National Broadband Plan, 146–48 (rel. Mar. 16, 2010) (*National Broadband Plan*). The proposals in the *Mobility Fund Notice of Proposed Rulemaking* build on that recommendation. In the *Mobility Fund Notice of Proposed Rulemaking*, the Commission uses “current generation,” “3G,” and “advanced” interchangeably to refer to mobile wireless services that include voice telecommunications service as well as email and Internet access.

3. The Commission recently undertook steps for fiscally responsible USF reform when, in the *Corr Wireless Order*, the Commission provided instructions for implementing the commitments of both Verizon Wireless and Sprint Nextel to surrender their high-cost universal service support over five years. High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC, WC Docket No. 05–337, CC Docket No. 96–45, *Order and Notice of Proposed Rulemaking*, FCC 10–155 (rel. Aug. 31, 2010) (*Corr Wireless Order*). The Commission directed that the surrendered support be reserved as a potential down payment on proposed broadband universal service reforms as recommended by the *National Broadband Plan*, including creation of a Mobility Fund to provide wireless broadband service in areas that lack coverage. Thus, the Mobility Fund considered in the *Mobility Fund Notice of Proposed Rulemaking* is one of a set of initiatives to promote deployment of broadband and mobile services in the United States through a financially sensible transformation of USF, using market-based and incentive mechanisms.

### B. Background

4. The *National Broadband Plan* recommended a Mobility Fund in connection with broader reforms of the USF. The plan recommended providing targeted, one-time support for deployment of 3G infrastructure in order to bring all states to a minimum level of mobile service availability,

without increasing the size of the USF. The *National Broadband Plan* observed that supporting 3G build-out in states with 3G coverage lagging the national average would enable those states to catch up with the rest of the nation and improve the business case for 4G rollout in harder-to-serve areas.

### C. Overall Design of the Mobility Fund

5. Drawing on some of the USF support voluntarily relinquished by Verizon Wireless and Sprint Nextel and reserved by the Commission, the Mobility Fund would make available non-recurring support to providers to deploy 3G or better networks where these services are not currently available. In order to maximize the reach of available funds, the Commission proposes to provide Mobility Fund support to at most one provider in any given unserved area. The Commission proposes to utilize a reverse auction mechanism to compare all offers to provide service across the unserved areas eligible for participation in the Mobility Fund program, which should give providers incentives to seek the least support needed and enable identification of the providers that will achieve the greatest additional coverage with the limited funding available. The Commission proposes to specify unserved areas eligible for support on a census block basis, using industry data compiled by American Roamer, and to conduct competitive bidding to offer support in unserved census blocks grouped by census tracts. The Commission noted that, because American Roamer reports *advertised* coverage as reported by many carriers who all use different definitions of coverage, the data from American Roamer may overstate the coverage actually experienced by consumers.

6. The Commission also seeks comment in the *Mobility Fund Notice of Proposed Rulemaking* on a number of alternative methods the Commission could use to distribute Mobility Fund support, including distributing support to any of the identified census tracts nationwide or targeting it to those identified census tracts in any county nationwide or in states where 3G deployment most significantly lags behind the percentage of nationwide population with 3G access. The Commission proposes to support only wireless networks performing as well as or better than 3G networks currently operating in the United States, for example networks using HSPA or EV–DO. The Commission proposes that parties receiving support be required to demonstrate the deployment and offering of service in previously

uncovered areas within a specified period of time. The Commission seeks comment on ways to structure the program so that it directs funding to those places where deployment of advanced mobile wireless service is otherwise not likely to happen.

#### 1. Legal Authority

7. The Commission proposes to distribute Mobility Fund support through the universal service program. Accordingly, the Commission's legal authority to create the Mobility Fund is based upon and delimited by its legal authority to distribute universal service funds. The Commission has authority to use universal service funds to support an evolving level of telecommunications services, taking into account advances in telecommunications and information technologies and services. *See* 47 U.S.C. 254(c). In addition, various statutory and regulatory requirements apply to the use of these funds. *See* 47 U.S.C. 214, 254; 47 CFR 54.101. The Commission requests comment on its authority to implement the proposals contained in the *Mobility Fund Notice of Proposed Rulemaking*. The Commission also seeks comment on whether these proposals require any revisions to its existing regulations or to its existing authority. The Commission further asks that commenters address, to whatever extent necessary, whether any alternative proposals that they suggest are within its current legal authority or require any expansion of that authority.

#### 2. Size of the Mobility Fund

8. The Commission proposes to use \$100 million to \$300 million in USF high-cost universal service support to fund, on a one-time basis, the expansion of current-generation mobile wireless services through a new Mobility Fund. Prior voluntary agreements by Verizon Wireless and Sprint Nextel to surrender USF high-cost support will likely make several hundred million dollars available annually that can be used for other USF purposes without increasing the overall size of the high-cost fund. The *National Broadband Plan* recommended using these foregone funds to implement its recommendations, including the creation of the Mobility Fund, and subsequently the Commission adopted the *Corr Wireless Order* implementing the voluntary commitments.

9. The ultimate impact of any amount of support would depend upon a variety of factors, including the extent to which non-recurring funding makes it possible to offer service profitably in areas previously uneconomic to serve, what percentage of the support must fund

new facilities as opposed to upgrades to pre-existing facilities, the percentage of total capital costs that support must provide, and the extent to which new customers adopt services newly made available. The Commission seeks comment on the level of support to be provided through the Mobility Fund. Specifically, the Commission asks commenters to consider whether there is an optimal size for the Mobility Fund. For instance, is there an amount that would exceed what is needed to target those areas where non-recurring support could be used most effectively to expand coverage within a relatively short timeframe? What amount would be too small to effectively jump-start deployment so as to provide service in the places where it might not otherwise become available?

#### 3. One Provider per Area

10. Given the Commission's objective of using the Mobility Fund to support the provision of expanded advanced mobile wireless services to as much of the currently unserved population in identified areas as possible, the Commission proposes that only one entity in a given geographic area receive Mobility Fund support. The Commission recognizes that mobile wireless providers have expressed competitive concerns, especially given that 3G services may use either CDMA or GSM technology, about the possibility of limiting support to one provider. In light of these concerns, the Commission proposes certain terms and conditions of support to encourage possibilities for competition. The Commission seeks comment on its proposal to make Mobility Fund support available to only one provider per area.

#### 4. Auction To Determine Awards of Support

11. The Commission proposes to use a competitive bidding mechanism to determine the entities that will receive support under the Mobility Fund and the amount of support they will receive—that is, the Commission proposes to award support based on the lowest bid amounts submitted in a reverse auction. Such a mechanism should allow the market to reveal the costs of providing expanded access to advanced mobile services in unserved areas. This should allow the Commission to select the providers that require the least support without requiring onerous cost showings by applicants and without guaranteeing that support payments will cover all, or any specific percentage of, the providers' actual costs.

12. In this reverse auction, which the Commission proposes to conduct using a single round of bidding, applicants formulating their bids would have to evaluate carefully the amount of support they need to provide the required services. In general, bidders would not want to overstate the support they require since they would be competing against other providers for limited support funds and a higher bid would reduce their chances of winning. At the same time, they would not want to understate the support they require, since they might be awarded such support based on a bid amount that does not cover their costs and then be expected to provide services to meet the performance requirements. As a result, the submitted bids should present a good estimate of the actual costs to the bidders of providing advanced mobile services in the areas on which they bid to expand service. The Commission seeks comment generally on the use of a competitive bidding mechanism to determine recipients of Mobility Fund support and support amounts, and particularly, on the use of a single round reverse auction format.

13. More specifically, the Commission proposes to determine winning bidders for Mobility Fund support based on the lowest per-unit bids, using the population of unserved areas (and perhaps other characteristics, such as road miles) as units and taking into account the requirement that there be no more than one Mobility Fund recipient in any particular area. The auction mechanism would compare all per-unit bids across all areas (that is, compare all bids against all other bids, rather than compare all bids for a single area), and order all the submitted bids from lowest per-unit amount to highest. The bidder making the lowest per-unit bid would first be assigned support in an amount equal to the amount needed to cover the population (or units based on other characteristics) deemed unserved in the specific area at the per-unit rate that was bid. For example, if the lowest per-unit bid were \$100 per person, the bidder placing that bid would be awarded support in the amount of \$100 times the population of the area on which it bid. Support would continue to be assigned to the bidders with the next lowest per-unit bids in turn, as long as support had not already been assigned for that geographic area, until the running sum of support funds requested by the winning bidders was such that no further winning bids could be financed by the money available in the Mobility Fund.

14. By awarding support to those bidders that are able to cover units in

unserved areas at the least cost to the Mobility Fund, the greatest amount of population in the identified unserved areas can be covered with the available funds. The Commission seeks comment on this method of determining recipients of Mobility Fund support. The Commission also seeks comment on determining payment amounts as proposed—by multiplying the winning per-unit bid amounts by the units deemed unserved.

#### 5. Identifying Unserved Areas Eligible for Support

15. The Commission proposes to identify unserved areas on a census block basis and, because individual census blocks are so small, the Commission proposes to conduct bidding to offer Mobility Fund support in unserved census blocks grouped by census tracts. The Commission further seeks comment on alternative ways to distribute support to these unserved areas.

##### a. Identifying Unserved Areas by Census Block

16. As a first step in identifying those areas for which applicants can bid for Mobility Fund support, the Commission proposes to determine the availability of service at the census block level, using a widely available dataset. Census blocks are the smallest geographic unit for which the Census Bureau collects and tabulates decennial census data, so determining coverage by census block should provide a detailed picture of the availability of 3G mobile services. By the end of the first quarter of 2011, census data from the 2010 decennial census should be available on a census block level. The Commission proposes to use that data when it becomes available and seeks comment on the proposal. Until that data becomes available, the Commission will use in its discussion the projected census block data from Geolytics Block Estimates and Block Estimates Professional databases (2009).

17. Specifically, the Commission proposes to use American Roamer data identifying the geographic coverage of networks using EV-DO, EV-DO Rev A, and UMTS/HSPA as a measure of availability of current-generation mobile wireless services. For each census block, the Commission would observe whether the data indicates that the geometric center of the block—referred to as the centroid—is covered by such mobile wireless services. If the data indicates that the centroid is not covered by such services, the Commission proposes to consider that census block as unserved. Alternatively, the Commission could

use the data to obtain the geographic proportion of the block that is uncovered—the proportional method. The Commission could then consider unserved any census block where the data indicates that more than 50 percent of the area is unserved. Or, the Commission could consider unserved that fraction of the census block's population (or other units).

18. The Commission seeks comment on its proposed use of American Roamer data to determine areas unserved by current-generation mobile wireless services. Are there distinctions in the way carriers report coverage to American Roamer that the Commission should consider when using the data? Are there alternative available datasets the Commission can use instead of, or in addition to, American Roamer data that would be more reliable or better suited for identifying unserved areas? The Commission seeks comment also on the proposed centroid method of determining unserved census blocks and on the proportional coverage alternative. Is the centroid method likely to identify areas that are good candidates for support consistent with the objectives of the Mobility Fund? Are there other transparent and workable methods for using the available data to define unserved areas? In addition, the Commission seeks comment on the extent to which the availability in unserved census blocks of other supported services using non-mobile wireless technologies should be a factor in determining whether those census blocks should be eligible for Mobility Fund support.

19. The Commission recognizes that data on mobile services coverage may change over a relatively short timeframe. Therefore, the Commission proposes to delegate to the Wireless Telecommunications Bureau (Wireless Bureau) the authority to identify unserved census blocks prior to announcing a Mobility Fund auction, using the method the Commission adopts and the most recent data available for that purpose.

##### b. Offering Support by Census Tract

20. While proposing to identify unserved areas at the census block level, the Commission proposes to group unserved census blocks by larger areas—census tracts—as a basis for competitive bidding, since individual census blocks may be too small to serve as a viable basis for providing support. More specifically, the Commission proposes to accept bids for support to expand coverage to all the unserved census blocks within a particular census tract.

21. The Commission seeks comment on whether census tracts are the most appropriate basic geographic unit for providing support to expand coverage. Are there other geographic units by which the Commission might group unserved census blocks that might better balance the need to identify discrete unserved areas for which the Commission proposes to require coverage under the Mobility Fund with business plan requirements of wireless providers?

##### c. Establishing Unserved Units

22. The Commission proposes at a minimum to establish the number of units in each unserved census block based on population. The Commission also seeks comment on whether it should take into account characteristics such as road miles, traffic density, and/or community anchor institutions in determining the number of units in each unserved census block to be used for assigning support under the Mobility Fund. For example, should the Commission utilize data compiled by the Department of Transportation (such as Traffic Analysis Zones) or data on community anchor institutions to establish the number of units in the census block that will be considered unserved? A traffic analysis zone (TAZ) is a special area delineated by state and/or local transportation officials for tabulating traffic-related data, especially journey-to-work and place-of-work statistics. Using such additional factors in determining the units in each unserved area may better represent the public benefits of providing new access to mobile services. Are there other factors that the Commission should take into account when assessing coverage of unserved areas, such as work or recreation sites; anchor institutions such as schools, libraries, and hospitals; or accessibility to a road system? The Commission asks that commenters address how it should measure the factors on which it seeks comment as well as any other factors they advocate, and how coverage for one type of unit, such as a work site, should compare with coverage for other units, such as resident population, or whether such comparisons would be appropriate.

##### d. Distributing Mobility Fund Support Among Unserved Areas

23. The *National Broadband Plan* recommended creation of a Mobility Fund as a means of bringing all states to a minimum level of 3G (or better) mobile service availability. Here, the Commission seeks comment on various methods it could use to distribute Mobility Fund support among unserved

areas, including ways to target support to places that significantly lag behind the level of 3G coverage generally available nationwide.

24. The Commission could make eligible for Mobility Fund support any area nationwide that the Commission deems to be unserved, including territories. Thus, the Commission seeks comment on whether, if it were to adopt its proposal for identifying census tracts with at least one unserved census block, the Commission should make available for bids all such identified census tracts across the country.

25. The Commission also seeks comment on alternative ways of limiting Mobility Fund support to places that lag significantly behind the level of 3G coverage nationwide. Based on May 2010 American Roamer data and November 2009 population estimates, 98.5 percent of the population nationwide resides in areas with access to 3G services. The Commission notes that, as proposed, it would be using updated coverage and population data to determine areas unserved by 3G prior to any Mobility Fund auction, so it is possible that the level of nationwide coverage could change. Therefore, the Commission seeks comment on various ways to identify places that lag significantly behind that level of coverage based on more updated data.

26. For instance, the Commission seeks comment on making Mobility Fund support available for unserved census blocks in census tracts in any county nationwide where the countywide percentage of population with access to 3G services is more than three percentage points below the level of 3G deployment nationwide, as determined prior to an auction based on updated data. The Commission also seeks comment on targeting Mobility Fund support to unserved blocks in census tracts in those states where the statewide percentage of population with access to 3G services is more than three percentage points less than the percentage of the national population with such access. Alternatively, the Commission seeks comment on whether it should target an expanded list of counties or states, for example, those with 3G coverage levels that are more than two percentage points below the nationwide level. The Commission also invites suggestions of other means for identifying the counties or states that the Mobility Fund should target.

27. The Commission invites comment on all of the alternatives—distributing support among unserved areas nationwide and various methods for targeting support to a subset of unserved areas. The Commission seeks comment

on the relative merits and drawbacks of these alternative approaches. In particular, the Commission welcomes any insights commenters can provide regarding which of these alternatives would most effectively utilize Mobility Fund support to benefit consumers through expanded 3G coverage. The Commission also seeks commenters' views on which of these ways of distributing Mobility Fund support would best help ensure that places with the lowest levels of 3G coverage will not fall even farther behind as the industry begins to deploy the next generation of 4G mobile broadband service. Finally, the Commission notes that some areas that it identifies as lacking 3G coverage will have some level of mobile voice service, while other identified areas will have no mobile wireless service at all. The Commission seeks comment on whether and how the Commission might prioritize support toward unserved areas that currently lack any mobile wireless service.

#### e. Targeting Tribal Areas

28. The Commission seeks comment on whether the Commission should reserve funds for developing a Mobility Fund support program targeted separately to Tribal lands that trail national 3G coverage rates. For these purposes, Tribal lands are defined as any federally recognized Indian tribes' reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlements Act (85 Stat. 688), and Indian Allotments. 47 CFR 54.400(e). Communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population. Available data illustrates that less than ten percent of residents on Tribal lands have access to broadband. Also, Tribal lands are often in rural, high-cost areas, and present distinct connectivity challenges. The *National Broadband Plan* observed that many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high build-out costs, limited financial resources that deter investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning. As a result, the *National Broadband Plan* noted that Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband will require increased funding. The Commission has recognized that Tribes are inherently sovereign governments

that enjoy a unique relationship with the federal government. In turn, the Commission has reaffirmed its policy to promote a government-to-government relationship between the FCC and federally-recognized Indian tribes. Because this relationship warrants a tailored approach that takes into consideration the unique characteristics of Tribal lands, the Commission believes addressing Mobility Fund support for Tribal lands on a separate track will be beneficial in providing adequate time to coordinate with American Indian Tribes and Alaska Native Village governments and seeks their input.

#### 6. Performance Requirements

##### a. Coverage Requirement

29. The Commission proposes to establish a coverage requirement that will ensure that Mobility Fund support is put to the purpose for which it is intended—to expand coverage in unserved areas. The Commission seeks comment on the percentage of resident population in the census blocks deemed unserved the Commission should require be covered by any party receiving support for a particular census tract. Should the Commission require 100 percent coverage? Or would it be appropriate to require a level of coverage of between 95 and 100 percent of the resident population of census blocks deemed unserved in order to balance its goal of expanding service with concern that excessively high costs to serve a few residents in an area might deter providers from bidding to cover areas otherwise well suited for Mobility Fund support? The Commission notes that should it decide to require less than 100 percent coverage, recipients would receive support based on the percentage of coverage actually achieved, provided that they cover at least the required percentage.

30. Is a performance requirement appropriate, given the Commission's proposed method of determining unserved areas, its proposed use of per-unit bids to determine the set of winning bidders, and its proposal that the Commission will determine support amounts based on the units deemed unserved in the census blocks within the tract? The Commission asks commenters to consider how it should monitor compliance with any coverage requirement, and to address the ways in which monitoring may create incentives for support recipients to further the goals of the Mobility Fund program. The Commission invites commenters describing any alternatives to its proposal to explain with specificity why

such alternatives would be preferable. To ensure that the Mobility Fund supports service where it is actually needed, should the Commission require winning bidders to actively market their service in the area(s) for which they bid, and/or to provide service to a specified number or percentage of consumers in such areas by certain milestone dates?

31. The Commission also makes proposals to encourage possibilities for competition in the market for 3G or better services in the geographic areas in which it provides support. First, the Commission proposes that any new tower constructed to satisfy Mobility Fund performance obligations provide the opportunity for collocation. The Commission seeks comment on this proposal. Should the Commission require any minimum number of spaces for collocation on any new towers and/or specify terms for collocation? In addition, the Commission proposes that the use of Mobility Fund support be conditioned on providing data roaming on reasonable and not unreasonably discriminatory terms and conditions on 3G and subsequent generations of mobile broadband networks that are built through Mobility Fund support. The Commission seeks comment on this proposal and asks that commenters provide specific information on the impact and/or the importance of such requirements in promoting the availability of advanced mobile services.

#### b. Service Quality and Rates

32. The Commission proposes that Mobility Fund support be used to expand the availability of advanced mobile communications services comparable or superior to those provided by networks using HSPA or EV-DO, which are commonly available 3G technologies. Universal service support may be provided for services based on widely available current generation technologies—or superior next generation technologies available at the same or lower costs—even though supported services could be based on earlier technologies. Technologies used to provide the services supported by universal service funds need not be technologies that are strictly limited to providing the particular services designated for support. As detailed in connection with proof of deployment requirements, supported networks would demonstrate their quality of service by proving that they have achieved particular data rates under particular conditions. The Commission proposes that these data rates be comparable to those provided by networks using the basic functionality of HSPA or EV-DO. The Commission

would not, however, require that supported parties use any particular technology to provide service. Instead, the Commission proposes to use widely deployed technologies to define a baseline of performance that any supported network must meet or exceed. The Commission seeks comment on this proposal. Should supported networks be required to provide data rates comparable to 4G networks? Alternatively, should supported networks be required to present a path to 4G service?

33. The Commission also seeks comment on how to implement, in the context of the Mobility Fund, the statutory principle that supported services should be made available to consumers in rural, insular, and high-cost areas at rates that are reasonably comparable to rates charged for similar services in urban areas. Given the absence of affirmative regulation of rates charged for commercial mobile services, as well as the rate practices and structures used by providers of such services, how can parties demonstrate that the rates they charge in areas where they receive support are reasonably comparable to rates charged in urban areas? What should the Commission use as a standard for reasonably comparable and urban areas in this context? What should be the consequence of failing to make the required showing?

#### c. Deployment Schedule

34. The Commission proposes that recipients be required to meet certain milestones for the provision of service in each unserved census block in a tract in order to remain qualified for the full amount of any Mobility Fund award. For example, the Commission could require that recipients achieve fifty percent of the coverage requirement within one year after qualifying for support. The Commission seeks comment on this proposal and on appropriate coverage percentages and time periods for such a milestone. Are there critical factors that should be taken into account in establishing timetables for rollout in different areas, such as weather conditions or limited construction seasons? The Commission notes that service providers will have to comply with the Commission's rules implementing the National Environmental Policy Act and other federal environmental statutes, as well as all local requirements for construction. Are there areas where those requirements would make it appropriate to adopt alternative schedules?

#### d. Proof of Deployment

35. Parties supported by the Mobility Fund must provide 3G or better mobile coverage in specific areas previously deemed unserved by 3G. The Commission proposes that parties satisfy their performance requirement by proving that they have deployed a network covering the relevant area and capable of meeting certain minimum standards. The Commission proposes that data from the drive tests conducted after construction and optimization of the network be used to determine whether these requirements have been met. By drive tests, the Commission refers to tests service providers normally conduct to analyze network coverage for mobile services in a particular area, that is, measurements taken from vehicles traveling on roads in the area. More specifically, the Commission proposes that recipients of Mobility Fund support would provide data from their drive tests showing mobile transmissions to and from the network meeting or exceeding the following minimum standards: Outdoor minimum of 200 kbps uplink and 768 kbps downlink to handheld mobile devices at vehicle speeds up to 70 MPH. These data rates should be achieved with 90 percent coverage area probability at a sector loading of 70 percent. The transmissions would be required to support mobile voice and data. The Commission proposes that the drive test would be conducted over all Interstate, U.S., and State routes in the area, as well as any other roads that the applicable State Agency regulating the provision of telecommunications services deems essential to service. The Commission proposes that drive test data satisfying the foregoing requirements should be submitted within two months of a site providing service or two years of the date support is first provided, whichever comes earlier. The Commission seeks comment on these proposals.

36. The Commission's proposal would not require that providers employ any particular type of technology in expanding coverage. Nevertheless, the Commission seeks comment on whether there are reasons to adopt technology-specific minimum standards. Is there any risk that providers will deploy particular technologies in inefficient ways or ways that limit their capacity for future growth in order to meet the minimum standards? Or should the Commission require superior performance from certain technologies that are capable of far exceeding the minimum requirements? For example, should the Commission require that 4G

technologies deployed with support satisfy minimum standards greater than 3G technologies deployed with support?

37. The Commission seeks comment on how to determine the roads that must be included in any drive tests subject to review. Would it be sufficient to cover Interstates, U.S. Routes, and State Routes? Do circumstances vary sufficiently from state to state or region to region such that different approaches should be adopted for different states? What parties are likely to have the best available information regarding what roads are most important for mobile coverage? Should those parties be involved in the process of determining the roads that must be included in the drive tests?

38. To demonstrate coverage of the population within an unserved area, the Commission proposes that bidders submit in electronic Shapefiles site coverage plots from a standard RF prediction tool that utilizes high resolution terrain data and has been calibrated to match the results of drive tests to the extent possible. The Environmental Systems Research Institute (ESRI) Shapefile format is a commonly used GIS (Geographic Information System) file format representing vector data. These plots would be submitted along with the drive test data, preferably on the same plot, and each will display the same coverage threshold parameter, with adjustments to account for drive test configuration specified as necessary. The coverage threshold selected would be one that is (a) sufficient to initiate and hold a voice call, and (b) is mathematically capable using standard link budget calculations of supporting the minimum data rate requirements. These link budget calculations showing derivation of the threshold would also be provided. The scale of the plots would be at least 1:240,000 such that reasonable coverage resolution is evident. In addition, the plots would be accompanied by all relevant site data, including site coordinates, antenna type(s), radiation centers (AGL), Effective Isotropic Radiated Powers (EIRPs), antenna azimuths, and antenna tilts. These plots would also include major roadways, census tract boundaries, and county (or its equivalent) and state boundaries, as well as the boundaries between served and unserved census blocks, as previously determined by the Commission, so that the site's coverage can easily be compared to areas previously deemed unserved. The specific census blocks may be identified on the plot or listed in accompanying data. Lastly, the plots would show the

population previously deemed unserved of each block and the percentage of these that are now served.

39. The Commission proposes that parties receiving support be required to file annual reports with the Commission demonstrating the coverage provided with support from the Mobility Fund for five years after qualifying for support. The Commission proposes that the reports include maps illustrating the scope of the area reached by new services, the population residing in those areas (based on Census Bureau data and estimates), and information regarding efforts to market the service to promote adoption among the population in those areas. In addition, the Commission proposes that each party receiving support be required to include in its annual reports all drive test data that the party receives or makes use of, whether the tests were conducted pursuant to Commission requirements or any other reason. The Commission seeks comment on this proposal and discussion of any alternatives regarding the collection of information about supported services newly offered in previously unserved areas.

#### *D. Mobility Fund Eligibility Requirements*

40. In compliance with statutory requirements and to help ensure the commitment of applicants, the Commission proposes certain minimum requirements for those entities wishing to receive support from the Mobility Fund. Specifically, the Commission proposes that a provider be required to (1) Be designated (or have applied for designation) as a wireless Eligible Telecommunications Carrier (ETC) pursuant to 47 U.S.C. 214(e), by the state public utilities commission (PUC) (or the Commission, where the state PUC does not designate ETCs) in any area that it seeks to serve; (2) have access to spectrum capable of 3G or better service in the geographic area to be served; and (3) certify that it is financially and technically capable of providing service within the specified timeframe. The Commission proposes to require that, subject to these requirements, applicants be eligible to submit bids seeking support to deploy service in multiple unserved areas. The Commission seeks comment on these minimum requirements, inquires whether other minimum standards are desirable, and solicits comment on other provider eligibility issues.

41. The Commission proposes a two-stage application process similar to the one it uses in spectrum license auctions. Based on the eligibility requirements for Mobility Fund support, the Commission

would require a pre-auction short-form application to establish eligibility to participate in the auction, relying primarily on disclosures as to identity and ownership and applicant certifications, and perform a more extensive, post-auction review of the winning bidders' qualifications based on required long-form applications. Such an approach should provide an appropriate screen to ensure serious participation without being unduly burdensome. This would allow the Commission to move forward quickly with the auction, which would speed the distribution of funding and ultimately the provision of advanced mobile wireless services to currently unserved areas. The Commission seeks comment on the use of this application process to ensure compliance with its eligibility requirements.

#### *1. ETC Designation*

42. All USF recipients must be designated as ETCs by the relevant state (or by the Commission in cases of states that have determined they have no jurisdiction over a wireless ETC designation request) before receiving high-cost support pursuant to 47 U.S.C. 214 and 254. Therefore, the Commission proposes to require that applicants for Mobility Fund support be designated as wireless ETCs covering the relevant geographic area prior to participating in a Mobility Fund auction. The Commission seeks comment on the proposal.

43. Alternatively, the Commission seeks comment on allowing entities that have applied for designation as ETCs in the relevant area to participate in a Mobility Fund auction. Pursuant to 47 U.S.C. 214(e)(1) and 47 CFR 54.101(b), an ETC is obligated to provide all of the supported services defined in 47 CFR 54.101(a) throughout the area for which it has been designated an ETC. Therefore, an ETC must be designated (or have applied for designation) with respect to an area that includes area(s) on which it wishes to receive Mobility Fund support. Moreover, a recipient of Mobility Fund support will remain obligated to provide supported services throughout the area for which it is designated an ETC if that area is larger than the areas for which it receives Mobility Fund support. Commenting parties should discuss whether the potential gain by allowing a larger pool of applicants offsets any potential abuse and delay that could result if a non-ETC were to bid and win the auction, but then be deemed ineligible for support.

44. In addition, the Commission seeks comment on the ETC designation requirements of 47 U.S.C. 214(e). For



example, ETCs must offer supported services throughout the service area for which the designation is received. The statute also provides that when states handle the ETC designation, the states also designate the service areas. Section 214 permits this Commission, with respect to interstate services, to designate ETCs and service areas if no common carrier will provide the services that are supported by Federal universal service support mechanisms under 47 U.S.C. 254(c) to an unserved community or any portion thereof that requests such service. The statute also provides that in states where the state commission lacks jurisdiction over the carrier seeking ETC status, which is sometimes the case for wireless carriers, this Commission designates the ETC and the service area. How can the Commission best interpret these and all the interrelated requirements of 47 U.S.C. 214(e) to achieve the purposes of the Mobility Fund?

## 2. Access to Spectrum To Provide Required Services

45. In order to participate in a Mobility Fund auction and receive support, the Commission proposes that an entity be required to hold, or otherwise have access to, a Commission authorization to provide service in a frequency band that can support 3G or better services. The Commission seeks comment on both the access to, and the type of, spectrum required for Mobility Fund eligibility.

46. As an initial matter, the Commission proposes that entities currently licensed to operate in identified unserved blocks should be deemed to meet this requirement. The Commission also seeks comment on whether entities other than current licensees should be eligible to participate if they have either applied for a Commission license or have entered into an agreement to acquire a license through an assignment or transfer of control. Therefore, the Commission seeks comment on whether a binding agreement to acquire the necessary authorization to use spectrum should be sufficient for Mobility Fund eligibility.

47. The Commission also seeks comment on using leased spectrum to provide the service that would meet the parameters of the Mobility Fund. Commenters supporting Mobility Fund eligibility for entities using leased spectrum should indicate whether the Commission should impose requirements regarding the terms of spectrum leasing arrangements that will confer eligibility, such as the minimum duration of the arrangement, the amount

of spectrum, etc. Moreover, the Commission asks whether the entity must currently be leasing the spectrum at the time of the Mobility Fund's short-form or long-form application deadline or whether a signed agreement is sufficient.

48. The Commission proposes further that entities seeking to receive support from the Mobility Fund have access to spectrum (and sufficient bandwidth) capable of supporting the required services, such as spectrum for use in Advanced Wireless Services, the 700 MHz Band, Broadband Radio Services, broadband PCS or cellular bands. Should the Commission limit eligibility based on access to specific spectrum suitable for providing the required services? If so, what spectrum should the Commission consider appropriate? Do the technical rules and configuration for Specialized Mobile Radio frequencies permit 3G service? The Commission also seeks comment on whether, with or without regard to requiring access to particular frequencies, the Commission should require that parties seeking support have access to a minimum amount of bandwidth and whether only paired blocks of bandwidth should be deemed sufficient.

## 3. Certification of Financial and Technical Capability

49. The Commission also proposes that each party seeking to receive support from the Mobility Fund be required to certify 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. The Commission seeks comment on how best to determine if an entity has sufficient resources to satisfy the Mobility Fund obligations. The Commission likewise seeks comment on certification regarding an entity's technical capacity. Does the Commission need to be specific as to the minimum showing required to make the certification? Or can the Commission rely on its post-auction review and performance requirements?

## 4. Other Qualifications

50. In addition to the three minimum qualifications (ETC designation, access to spectrum for 3G or better services, and certifications regarding financial and technical capabilities), the Commission seeks comment on other eligibility requirements for entities seeking to receive support from the Mobility Fund. Parties providing suggestions should be specific and explain how the eligibility requirements

would serve the ultimate goals of the Mobility Fund. At the same time that the Commission establishes minimum qualifications consistent with the goals of the Mobility Fund, are there ways the Commission can encourage participation by the widest possible range of qualified parties? For example, are there any steps the Commission should take to encourage smaller eligible parties to participate in the bidding for support?

## E. Reverse Auction Mechanism

51. At this stage in the development of the Mobility Fund, the Commission proposes rules for and seeks comment on certain auction design elements that will establish a general framework for the proposed reverse auction mechanism. Accordingly, as detailed in Appendix A of the Mobility Fund Notice of Proposed Rulemaking, the Commission proposes rules that will provide the Commission, the Wireless Bureau, and the Wireline Competition Bureau (Wireline Bureau) with some flexibility to choose among various methods of conducting the bidding and procedures to use during the bidding. These rules are generally modeled on the Commission rules that govern the design and conduct of its spectrum license auctions.

52. While the rules the Commission proposes establish the framework for conducting a Mobility Fund auction, they do not necessarily by themselves establish the specific detailed procedures that will govern any auction process. The Commission envisions that it will develop and provide notice to potential bidders of detailed auction procedures prior to conducting a Mobility Fund auction. This will promote the use of specific procedures for an auction that take into account the particular program requirements and auction rules established in this proceeding. Specifically, the Commission proposes that, after establishing program and auction rules for the Mobility Fund in this proceeding, it will release a Public Notice announcing an auction date, identifying areas eligible for support through the auction, and seeking comment on specific detailed auction procedures to be used, consistent with those rules. The Commission further proposes that it will release a subsequent Public Notice specifying the auction procedures, including dates, deadlines, and other details of the application and bidding process. Consistent with the Commission's existing practice for spectrum auctions, the Commission delegates authority jointly to the Wireless and Wireline



Bureaus to establish as outlined here, through public notices, the necessary detailed auction procedures prior to a Mobility Fund auction, and to take all other actions needed to conduct any such auction. The Commission seeks comment on this proposal.

#### 1. Basic Auction Design

53. A reverse auction, in which potential providers or sellers of a defined service or other benefit compete to provide it at the lowest price, can be a relatively quick, simple, and transparent method of selecting parties that will provide a benefit at the lowest price and of setting the price those parties should be paid. Here, the Commission proposes general rules for a Mobility Fund reverse auction including some other aspects of the auction design and process that must be considered before actually conducting an auction. As a threshold matter, although there are a number of formats that could be used for reverse auctions, including both multiple-round and single-round formats, the Commission proposes to use a single-round reverse auction to award Mobility Fund support. The Commission proposes a single-round auction because it is simple and because the Commission expects bidders for Mobility Fund support to be well acquainted with the costs associated with providing access to advanced mobile wireless services in the areas they proposes to cover, and to bid accordingly.

#### 2. Application Process

54. The Commission proposes to use a two-stage application process similar to the one the Commission uses in spectrum license auctions. Under this proposal, the Commission would require a pre-auction short-form application from entities interested in participating in a Mobility Fund auction. After the auction, the Commission would conduct a more extensive review of the winning bidders' qualifications through long-form applications. The Commission envisions that both applications would be filed electronically, in a process similar to that used for spectrum license auctions.

55. The Commission proposes that, in the short-form application, potential bidders provide basic ownership information and certify as to their compliance with the eligibility requirements for obtaining Mobility Fund support. Specifically, the Commission proposes that an applicant would need to provide information about its ownership similar to the Part 1 competitive bidding ownership rule

for spectrum auctions, 47 CFR 1.2112. This information will establish the identity of applicants and provide information that will aid in ensuring compliance with and enforcement of Mobility Fund auction and program rules. Also, a potential bidder would need to certify its qualifications to receive Mobility Fund support, including providing its ETC designation status and information regarding its access to adequate and appropriate spectrum. Finally, the Commission proposes that applicants be required to certify that they have and will comply with all rules for Mobility Fund competitive bidding. The Commission seeks comment on these proposed short-form application requirements.

56. In addition, the Commission seeks comment on whether the Commission should require applicants to identify in their short-form applications the specific census tracts with unserved blocks on which they may wish to bid and provide service. As in the Commission's spectrum auctions, the Commission would not necessarily require a bid on each census tract selected in an applicant's short-form application. However, the availability of this information could be helpful in ensuring compliance with the Commission's auction rules. The Commission seeks comment on this and on any other information that the Commission should require of applicants in the pre-auction stage that would help ensure a quick and reliable application process.

57. The Commission proposes that applications to participate in a Mobility Fund auction should be subject to review for completeness and compliance with its rules, and envisions a process similar to that used in spectrum license auctions. Specifically, after the application deadline, Commission staff would review the short-form applications, and once review is complete, the Commission would release a public notice indicating which short-form applications are deemed acceptable and which are deemed incomplete. Applicants whose short-form applications were deemed incomplete would be given a limited opportunity to cure defects and to resubmit correct applications. As with spectrum license auctions, applicants would only be able to make minor modifications to their short-form applications. Major amendments would make the applicant ineligible to bid. Once the Commission staff reviews the resubmitted applications, the Commission would release a second public notice designating the applicants that have qualified to participate in the

Mobility Fund auction. The Commission seeks comment on adopting this application process in order to qualify entities to participate in a Mobility Fund auction.

#### 3. Bidding Process

58. The Commission proposes to conduct a single-round reverse auction to identify those applicants that will receive Mobility Fund support and the amount of support they will receive, subject to post-auction processing requirements applicable to winning bidders. The Commission seeks comment on aspects of the bidding process for any Mobility Fund auction, so that potential bidders will understand how bids may be submitted, what bids will be acceptable, and how the auction mechanism will determine winning bidders.

59. Based on the Commission's proposal to award support to bidders that will deploy service in unserved census blocks at the least per-unit cost to the Mobility Fund, the Commission proposes that bids for Mobility Fund support would state the dollar amount of support sought per each unit associated with the unserved area(s) in those census tracts covered by the specific bid submitted. In addition, based on its proposal to award support to only one provider per area, the Commission proposes that a Mobility Fund auction would select at most one winning bidder per census tract. The Commission proposes that after bidding closes, in order to select winning bidders, the auction mechanism will rank bids based on the per-unit bids from lowest to highest and calculate the running sum represented by those bids and the number of units in the unserved areas covered by those bids. The Commission also proposes that if there are any identical bids—in the same per-unit amounts to cover the same tract or tracts, submitted by different bidders—that only one such bid, chosen randomly, be considered in the ranking.

60. Under these proposals, the auction would identify winning bidders starting with the bidder making the lowest per-unit bid and continue to the bidders with the next lowest per-unit bids in turn, provided that support had not already been assigned for that census tract, so long as the running sum based on the units in the identified unserved areas covered by the bids does not exceed the available monies.

61. *Maximum bids and reserve prices.* The Commission proposes a rule to provide the Commission with discretion to establish maximum acceptable per-unit bid amounts for a Mobility Fund auction. The Commission also proposes

that it may, prior to the auction, establish reserve amounts, separate and apart from any maximum opening bids, and may elect whether or not to disclose those reserves.

62. *Aggregating service areas and package bidding.* The Commission proposes a rule to provide generally that the Commission shall have discretion to establish bidding procedures for any Mobility Fund auction that permit bidders to submit bids on packages of tracts, so that their bids may take into account scale and other essential efficiencies that tract-by-tract bidding may not permit. If a bidder were awarded support based on a package bid, it would still be required to meet the performance requirements for each census tract in the package.

63. The Commission seeks comment generally on the use of package bidding. The Commission proposes that specific procedures for package bidding be among those determined as part of the process of establishing the detailed procedures for a Mobility Fund auction. The Commission expects that proposals for such procedures would consider how to implement package bidding consistent with its proposal to award support to at most one provider in a census tract, without allowing geographic overlaps among packages to disqualify desirable bids. For this purpose, proposals might include limited package bidding, *e.g.*, permitting only predefined non-overlapping packages, permitting bidders to submit package bids on geographically adjacent census tracts, and/or the possibility of requiring that bidders submitting package bids also submit separate bids on the component tracts.

64. *Refinements to the selection mechanism to address limited available funds.* The auction would identify winning bidders so long as the running sum of support represented by the winning bids does not exceed the monies to be made available in a Mobility Fund auction. However, there would likely be monies remaining after identifying the last lowest per-unit bid that does not exceed the funds available. The Commission proposes that the Commission's rules should provide it with discretion to establish procedures in the pre-auction process by which to identify winning bidder(s) for such remaining funds, *e.g.*, by continuing to consider bids in order of per-unit bid amount while skipping bids that would require more support than is available, or by not identifying winning bidder(s) for the remaining funds and offering such funds in a subsequent auction. In exercising this discretion, the Commission must balance the

advantages of assigning Mobility Fund support quickly and transparently with any disadvantages from supporting less cost-effective per-unit bids.

65. The Commission also proposes that, in the pre-auction process, it will determine procedures to address a situation where there are two or more bids for the same per-unit amount but for different areas (tied bids) and remaining funds are insufficient to satisfy all of the tied bids. Specifically, the Commission proposes a rule that would give it the discretion to identify winning bidders among such tied bids by awarding support to that combination of tied bids that would most nearly exhaust the available funds, by ranking the tied bids to establish an order in which they would be awarded based on remaining available funds, or by declining to select winning bidder(s) for the remaining funds and offering such funds in a subsequent auction.

66. The Commission seeks comment on these proposals for developing procedures to address the possibility that funds will remain after the auction has identified the last lowest per-unit bid that does not exceed the funds available through the auction. The Commission asks commenters to address the relative advantages of any suggested approaches and on other options that may later be considered when the Commission develops specific auction procedures for a Mobility Fund auction.

67. *Withdrawn bids.* The Commission has discretion, in developing procedures for its spectrum license auctions, to provide bidders limited ability to withdraw provisionally winning bids before the close of an auction. While here the Commission proposes that the Wireless and Wireline Bureaus be delegated authority to determine any such procedures in the pre-auction process, the Commission would not expect that the Bureaus would consider permitting any bids to be withdrawn or removed from consideration after the close of bidding in a single-round Mobility Fund auction.

68. In spectrum license auctions, the Commission permits bid withdrawals in certain circumstances so that bidders can better manage their license aggregation strategies. The Commission does not believe that aggregation issues are of comparable importance under the Mobility Fund, which targets support to particular hard-to-reach areas. Further, the Commission believes that permitting bids to be withdrawn after the mechanism has selected winning bidders would unduly disrupt the

prompt and smooth distribution of support.

69. The Commission expects that bidders will consider carefully expected costs and the characteristics of the geographic areas they propose to serve if offered Mobility Fund support and bid accordingly, so that if offered support, they can proceed expeditiously to file their long form applications and comply with post-auction procedures.

#### Information and Competition

70. In the interests of fairness and maximizing competition in the auction process, the Commission proposes to prohibit applicants competing for support in the auction from communicating with one another regarding the substance of their bids or bidding strategies. Information available in short-form applications or in the auction process itself might also be used to attempt to reduce competition. Accordingly, for spectrum auctions, the Commission adopted rules providing it with discretion to limit public disclosure of auction-related information, for example by keeping non-public during the auction process certain information from applications and/or the bidding. The Commission proposes to adopt similar rules for a Mobility Fund reverse auction and seeks comment on this proposal.

#### 5. Auction Cancellation

71. As with the Commission's spectrum license auctions, the Commission proposes that the Commission's rules provide it with the discretion to delay, suspend, or cancel bidding before or after a reverse auction begins under a variety of circumstances, including natural disasters, technical failures, administrative necessity, or any other reason that affects the fair and efficient conduct of the bidding. The Commission seeks comment on this proposal.

#### F. Post-Auction Process, Administration, Management, and Oversight of the Mobility Fund

##### 1. Administration of the Mobility Fund

72. The Universal Service Administrative Company (USAC), a subsidiary of the National Exchange Carrier Association (NECA), is the private not-for-profit corporation created to serve as the Administrator of the USF under the Commission's direction. The Commission appointed USAC the permanent Administrator of all of the federal universal service support mechanisms. USAC is responsible for performing numerous functions including, but not limited to,

billing USF contributors, collecting USF contributions, disbursing funds, recovering improperly disbursed funds, processing appeals of funding decisions, submitting periodic reports to the Commission, maintaining accounting records, conducting audits of contributors and beneficiaries, and providing outreach to interested parties. See 47 CFR 54.702(b) through (m), 54.711, 54.715. USAC administers the USF in accordance with the Commission's rules and orders. The Commission provides USAC with oral and written guidance, as well as regulation through its rulemaking process. Because the Mobility Fund will be a part of the USF high cost support program, the Commission proposes to direct USAC to administer the Mobility Fund in accordance with the applicable terms of its current appointment as administrator, and subject to all existing Commission rules and orders applicable to the USF Administrator. The Commission seeks comment on whether there are any specific rules or orders currently applicable to USAC's administration of the USF that should not apply specifically to USAC's administration of the Mobility Fund, and whether there are new or different requirements the Commission should apply to USAC's administration of the Mobility Fund.

73. In 2008, the Commission entered into a Memorandum of Understanding (MOU) with USAC to facilitate efficient management and oversight of the Commission's federal universal service program. If the Commission establishes a Mobility Fund, the Commission anticipates that Commission staff would work with USAC outside the context of this rulemaking proceeding to revise the MOU as necessary for efficient administration of the Mobility Fund. The Commission nevertheless solicits input from interested parties on whether there are specific aspects of the MOU that the Commission should consider revising based on the specific purpose and goals of the Mobility Fund. For example, under the MOU, the Commission's Wireline Bureau is the USF Administrator's primary point of contact regarding USF policy questions, including without limitation, questions regarding the applicability of the Commission's USF rules, orders, and directives, unless otherwise specified in such requirements. Because the Mobility Fund would be established to distribute support for the deployment of terrestrial mobile wireless networks providing 3G service, the Commission seeks comment on whether it would be appropriate to add the Wireless Bureau

as a point of contact for the USF Administrator for policy questions pertaining to the Mobility Fund.

## 2. Post-Auction Application Process

74. The Commission proposes a two-stage application process. An applicant for Mobility Fund support would file a short-form application to participate in bidding, and the information on that application would be reviewed as part of the Commission's initial screening process to determine the applicant's eligibility for support based on its ETC status and its other qualifications under the Mobility Fund auction rules. After the conclusion of the auction, winning bidders would file long-form applications to qualify for and receive Mobility Fund support. Those applications would be subject to an in-depth review of the applicants' eligibility and qualifications to receive USF support. The Commission seeks comment on each step of the post-auction application process. To the extent a commenter disagrees with a particular aspect of the proposed process, the Commission asks them to identify that with specificity and propose an alternative.

### a. Post-Auction Application

75. The Commission proposes that, after bidding has ended, the Commission will identify and notify the winning bidders and declare the bidding closed. Unless otherwise specified by public notice, within 10 business days after being notified that it is a winning bidder for Mobility Fund support, a winning bidder would be required to submit a long-form application pursuant to the program requirements governing the Mobility Fund. The Commission seeks comment on the specific information and showings that should be required of winning bidders on the long-form application before they can be certified to receive support from the Mobility Fund and before actual disbursements from the Mobility Fund can be made to them. The Commission proposes that a winning bidder would be required to provide detailed information showing that it is legally, technically and financially qualified to receive support from the Mobility Fund. The Commission also proposes that, if the Commission were to adopt a rule allowing an applicant to participate in the auction while its ETC designation status is pending, the applicant would be required in its long-form application to demonstrate its ETC status by, for example, providing a copy of its ETC designation order from the relevant state PUC. The Commission seeks comment

on these proposals and on the specific information that winning bidders should be required to provide to make the required showings.

76. The Commission also seeks comment on the procedures that it should apply to a winning bidder that fails to submit a long-form application by the established deadline. Imposition of some deterrent measure, in addition to dismissal of the late-filed application, could deter auction participants from submitting insincere bids and serve as an incentive for winning bidders to timely submit their long-form applications, enabling prompt application review and allowing expeditious distribution of support. With respect to the disposition of the Mobility Fund support for which a winning bidder does not timely file a long-form application, the Commission proposes that the funds that would have been provided to such an applicant be offered in a subsequent auction. The Commission seeks comment on this proposal.

### b. Ownership Disclosure

77. The Commission discusses a proposed requirement for auction participants to disclose certain ownership information as an aid to bidders by providing them with information about their auction competitors and alerting them to the entities that are subject to its rules concerning prohibited communications. The Commission proposes that in the post-auction application phase, an applicant would also be required to provide additional detailed information about its ownership and control. The Commission seeks comment on what ownership information should be required of applicants for Mobility Fund support. Given that wireless providers often create subsidiaries or related entities for specific licenses or other purposes, detailed ownership information may be necessary to ensure that applicants claiming ETC status in fact qualify for such status. In addition to providing information on an applicant's officers and directors, should the Commission require disclosure of an applicant's controlling interests that is, those individuals and entities with either de jure or de facto control of the applicant? Applicants for authorizations to provide wireless services are required to disclose ownership interests in the applicant of ten percent or more. What threshold level of ownership interest in an applicant for Mobility Fund support should be required to be reported on the applicant's long-form application?

78. The Commission also seeks comment on the extent to which the Commission can minimize the reporting burden on winning bidders by allowing them to use ownership information stored in existing Commission databases and either update the ownership information in the database or certify that there have been no changes in the ownership information since it was last submitted to the Commission.

c. Project Construction

79. The Commission seeks comment on the level of information an applicant for Mobility Fund support should be required to provide regarding the network it will deploy with that support. The Commission proposes that an applicant be required to include in its long-form application a detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, and describes each specific development phase of the project (e.g., network design phase, construction period, deployment and maintenance period). To ensure that projects proceed to completion, the Commission proposes that a participant be required to submit a project schedule that identifies the following project milestones: 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. The Commission also proposes that a participant's project schedule identify the dates by which it will meet applicable requirements to receive the installments of Mobility Fund support for which it subsequently qualifies.

d. Guarantee of Performance

80. The Commission also seeks comment on whether a winning bidder should be required to post financial security as a condition to receiving Mobility Fund support to ensure that it has committed sufficient financial resources to meeting the program obligations associated with such support under the Commission's rules. In particular, the Commission seeks comment on whether all winning bidders should be required to obtain an irrevocable standby letter of credit (LOC) no later than the date on which their long-form applications are submitted to the Commission. The Commission also seeks comment on whether alternatively, only certain applicants that do not meet specified criteria should be subject to this

requirement, and if so, what those criteria should be. For example, should the Commission establish criteria, based on bond rating, market capitalization, or debt/equity ratios (combined with minimum levels of available capital) that, if not met, would make an LOC necessary? Would such a requirement unnecessarily preclude providers that otherwise might be able to satisfy the obligations of the Mobility Fund from seeking to participate?

81. The Commission seeks comment on how to determine the amount of the LOC necessary to ensure uninterrupted construction of a network, as well as the length of time that the LOC should remain in place. For example, the amount of the LOC could be determined on the basis of an estimated annual budget that could accompany the build-out schedule required as part of the long-form applications, or the Commission could simply require a specific dollar figure for the LOC in an amount that would ensure that construction could proceed for a given amount of time. Should the amount of an initial LOC, or a subsequent LOC, also ensure the continuing maintenance and operation of the network? Under what circumstances should the participant be required to replenish the LOC?

82. The Commission also seeks comment on what events would constitute a default by the recipient of Mobility Fund support that would allow a draw on the entire remaining amount of the LOC. Further, in the event of bankruptcy, the LOC should be insulated from claims other than the draws authorized for the construction and operation of the network. The Commission seeks comment on provisions it might adopt to provide safeguards to this effect. For example, the Commission could require as a condition of receiving Mobility Fund support, that a winning bidder first provide the Commission with a legal opinion letter that would state, subject only to customary assumptions, limitations and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 *et seq.* (the Bankruptcy Code), in which the winning bidder is the debtor, 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 the issuance of the LOC) under 11 U.S.C. 541.

83. As an alternative to an LOC, the Commission seeks comment on whether the Commission should require a winning bidder to guarantee completion

of construction by obtaining a performance bond covering the cost of network construction and operation. Such a requirement would be similar to that which the Commission has imposed as a condition on satellite licenses. The Commission also seeks comment on the types of requirements that bond issuers might impose and whether such requirements would be so unduly burdensome as to restrict the number of carriers that might be able to bid for Mobility Fund support. The Commission also seeks comment on the relative merits of performance bonds and LOCs and the extent to which performance bonds, in the event of the bankruptcy of the recipient of Mobility Fund support, might frustrate the Commission's goal of ensuring timely build-out of the network. The Commission also seeks comment on whether there are other protections that the Commission should reasonably seek to ascertain the financial viability of the winning bidder, and ensure construction of the network and its subsequent operation. For instance, are there ways that the Commission can facilitate timely build-out of the network in areas where recipients of Mobility Fund support enter bankruptcy before completing construction? Are there steps the Commission could take to facilitate completion of the network by another service provider?

e. Other Funding Restrictions

84. The Commission seeks comment on whether participants who receive support from the Mobility Fund should be barred from receiving funds for the same activity under any other federal program, including, for example, federal grants, awards, or loans.

f. Certifications

85. Finally, the Commission seeks comment on the certifications that should be required of a winning bidder to receive Mobility Fund support. The Commission proposes that prior to receiving Mobility Fund support, an applicant be required to certify to the availability of funds for all project costs that exceed the amount of support to be received from the Mobility Fund and certify that they will comply with all program requirements. Should the Commission also require certifications regarding the provision of service at rates reasonably comparable to those offered in urban areas? The Commission has sought comment on the definition of these terms for these purposes in its discussion of performance requirements.

### 3. Disbursing Support

#### a. Support Payments

86. The Commission seeks comment on the following proposal to provide Mobility Fund support in installments, and on whether this proposal strikes the appropriate balance between advancing funds to expand service and assuring that service is expanded.

87. The Commission proposes that Mobility Fund support be provided in three installments. Each party receiving support would be eligible for  $\frac{1}{3}$  of the amount of support associated with any specific census tract once its application for support is granted. A party would receive the second third of its total support when it files a report demonstrating coverage of 50 percent of the population associated with the census block(s) deemed unserved that are within that census tract. A party would receive the final third of the support upon filing a report that demonstrates coverage of 100 percent of the resident population in the unserved census block(s) within the census tract. Alternatively, if the Commission establishes a coverage requirement of less than 100 percent, the Commission proposes that a party may file a report that certifies that, although less than 100 percent of the originally unserved resident population is now covered, at least the required percent of that population is covered and no further coverage expansion is intended. In that case, the party's final payment would be the difference between the total amount of support based on the population of unserved census blocks actually covered, i.e., a figure between the required percentage and 100 percent of the resident population, and any support previously received. The Commission seeks comment on this proposal.

88. 47 U.S.C. 254(e) requires that a carrier shall use support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. How should the Commission ensure that support from the Mobility Fund is used for the purposes in which it was intended as required by 47 U.S.C. 254(e)? The Commission seeks comment on requiring additional information from the recipients concerning how the funds were used and specifically what information should be submitted.

#### b. Support Liabilities

89. The Commission seeks comment on the extent to which parties qualifying to receive support should be liable in the event that they are unable to expand service pursuant to the goals of the

Mobility Fund. The Commission proposes that applicants qualifying for support be able to receive initial payments in advance of providing service in order to finance the expansion of service. Parties receiving such support should be liable to repay the support if they fail to provide the intended service. Should they be subject to additional liabilities and/or security requirements (such as letters of credit or performance bonds) in order to provide them with proper incentives to perform and to protect the Mobility Fund in case they fail to perform as required? Should the Commission require affiliates, such as parent corporations or entities within the same larger enterprise, to be responsible if the recipient fails to meet its obligations? Is there a level of service short of the full service sought that ought to offset the supported parties' liabilities? Are any special provisions needed in the Commission's rules to address the possibility that a party qualifying for support from the Mobility Fund might enter bankruptcy prior to providing all the coverage necessary to receive support? Are there measures the Commission can take to limit the possibility that Mobility Fund support becomes an asset in such party's bankruptcy estate for an extended period of time instead of being used promptly to further the goals of the Mobility Fund? The Commission seeks comment on these issues.

### 4. Audits and Record Retention

90. The Commission seeks comment on the rules that the Commission should establish to impose certain internal control requirements on program participants to facilitate program oversight. The Commission has taken action in previous proceedings to detect and deter waste, fraud, and abuse of the USF.

#### a. Audits

91. Audits are an important tool for the Commission and the USF Administrator to ensure program integrity and to detect and deter waste, fraud, and abuse. Commission rules authorize the Administrator to conduct audits of contributors to the universal service support mechanisms. The 2008 FCC-USAC MOU requires the USF Administrator to conduct audits, including audits of USF beneficiaries, in accordance with generally accepted government auditing standards, as required by 47 CFR 54.702(n). USAC's audit program consists of audits by USAC's internal audit division staff as well as audits by independent auditors under contract with USAC.

92. The Commission proposes that Mobility Fund beneficiaries, like beneficiaries of other USF programs, be subject to assessments as required under the Improper Payments Information Act of 2002 and random compliance audits to ensure compliance with program rules and orders. The Commission seeks comment on whether random compliance audits of Mobility Fund beneficiaries would provide adequate audit oversight of that program. Are there other or additional oversight measures, including scheduled compliance audits that would be appropriate and effective in detecting and deterring waste, fraud, and abuse?

#### b. Record Retention

93. The Commission adopted rules establishing rigorous document retention requirements for USF program participants. The rules create additional penalties for bad actors—specifically, the Commission can now debar from continued participation in all USF programs, any party that defrauds any of the four USF disbursement programs. Consistent with the rules governing the Commission's existing high-cost support program, the Commission proposes to require recipients of Mobility Fund support to retain all records that they may require to demonstrate to auditors that the support they received was consistent with the Act and the Commission's rules.

94. The Commission seeks comment on what records should at a minimum be included in this requirement. As an initial matter, the Commission proposes that the record retention requirements apply to all agents of the recipient, and any documentation prepared for or in connection with the recipient's Mobility Fund support. The Commission further proposes that beneficiaries be required to make all such documents and records that pertain to them, contractors, and consultants working on behalf of the beneficiaries, available to the Commission's Office of Managing Director, Wireless Bureau, Wireline Bureau, Office of Inspector General, and the USF Administrator, and their auditors.

95. The Commission proposes that a five-year period for record retention, consistent with the rules the Commission adopted for those receiving other universal service high cost support, is a reasonable standard that will serve the public interest. To the extent other rules or any other law require or necessitate documents be kept for longer periods of time, the Commission does not alter, amend, or supplant such rule or law. High cost program recipients would be required to

keep documents for such longer periods of time as required or necessary under such other rules or law and make such documents available to the Commission and USAC. The Commission seeks comment on this proposal.

#### 5. Delegation of Authority

96. In order to implement the various requirements the Commission adopts for applicants for and recipients of Mobility Fund support, the Commission proposes to delegate jointly to the Wireless Bureau and Wireline Bureau the authority to determine the method and procedures for applicants and recipients to submit the appropriate and relevant documents and information. This delegation of authority to both bureaus would authorize modification, as necessary, of existing FCC forms and the creation, if necessary, of new FCC forms to implement the rules the Commission adopt in this proceeding.

## II. Procedural Matters

### A. Filing Requirements

97. *Ex Parte Rules.* The *Mobility Fund Notice of Proposed Rulemaking* will be treated as a permit-but-disclose proceeding subject to the permit-but-disclose requirements under 47 CFR 1.1206(b). *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

### B. Initial Regulatory Flexibility Analysis

98. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *Mobility Fund Notice of Proposed Rulemaking*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments set forth in this **Federal Register** summary—that is, the same dates as the comment and reply deadlines for the *Mobility Fund Notice of Proposed Rulemaking*. The Commission will send a copy of the

*Mobility Fund Notice of Proposed Rulemaking*, including the IRFA to the Chief Counsel for Advocacy of the Small Business Administration.

#### 1. Need for, and Objectives of, the Proposed Rules

99. The *Mobility Fund Notice of Proposed Rulemaking* seeks comment on creation of a new Mobility Fund within the high-cost mechanism of the federal universal service program. The purpose of this Mobility Fund is to significantly improve coverage of current-generation or better mobile voice and Internet service for consumers in areas where such coverage is currently missing, and to do so by supporting private investment.

100. The Mobility Fund is one of a set of initiatives to promote deployment of broadband and mobile services in the United States. In the *Mobility Fund Notice of Proposed Rulemaking*, the Commission seeks comment on the creation of the Mobility Fund to provide an initial infusion of funds toward solving persistent gaps in mobile services through targeted, one-time support for the build-out of current- and next-generation wireless infrastructure in areas where these services are unavailable. This proposal represents a critical step in modernizing the USF.

#### 2. Legal Basis

101. The legal basis for the proposed rules and the *Mobility Fund Notice of Proposed Rulemaking* is contained in 47 U.S.C. 154(i), 301, 303(c), 303(f), 303(r), 303(y), and 310, and 47 CFR 1.411.

#### 3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

102. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

103. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.

104. *Small Organizations.* Nationwide, as of 2002, there are

approximately 1.6 million small organizations. A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”

105. *Small Governmental Jurisdictions.* The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were “small governmental jurisdictions.” Thus, the Commission estimates that most governmental jurisdictions are small.

106. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.” Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, the Commission estimates that the majority of wireless firms are small.

107. *Auctions.* Initially, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

108. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio

broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

109. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a “small business” as an entity with attributable average annual gross revenues of not more than \$40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a “very small business” as an entity with attributable average annual gross revenues of not more than \$15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

110. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. The Commission has estimated that 222 of these are small under the SBA small business size standard.

111. *Broadband Personal Communications Services.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for the C and F Blocks as an entity that has average gross revenues of less than \$40 million

in the three previous calendar years. For the F Block, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in the A and B Blocks. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for the D, E, and F Blocks. In 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

112. In 2001, the Commission completed the auction of 422 C and F Block broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

113. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard. A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three

preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001, with five bidders winning 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these bidders claimed status as a small or very small entity and won a total of 311 licenses.

114. *Advanced Wireless Services.* In 2006, the Commission conducted its first auction of Advanced Wireless Services licenses in the 1710–1755 MHz and 2110–2155 MHz bands (AWS–1), designated as Auction 66. The Commission defined “small business” as an entity with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years. A small business received a 15 percent discount on its winning bid. A “very small business is defined as an entity with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years. A very small business received a 25 percent discount on its winning bid. In Auction 66, thirty-one winning bidders identified themselves as very small businesses and won 142 licenses. Twenty-six of the winning bidders identified themselves as small businesses and won 73 licenses. In 2008, the Commission conducted an auction of AWS–1 licenses, designated as Auction 78, in which it offered 35 AWS–1 licenses for which there were no winning bids in Auction 66. Four winning bidders that identified themselves as very small businesses won 17 AWS–1 licenses; three of the winning bidders that identified themselves as a small business won five AWS–1 licenses.

115. *700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses,



identified as “entrepreneur” and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

116. In 2007, the Commission revised the band plan for the commercial (including Guard Band) and public safety 700 MHz Band spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission conducted Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission’s standard simultaneous multiple-round (SMR) auction format for the A, B, D, and E Block licenses and an SMR auction design with hierarchical package bidding (HPB) for the C Block licenses. For Auction 73, a bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded \$15 million, but did not exceed \$40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. At the conclusion of Auction 73, 36 winning bidders identifying themselves as very small businesses won 330 of the 1,090 licenses, and 20 winning bidders

identifying themselves as a small business won 49 of the 1,090 licenses. The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.

117. *700 MHz Guard Band Licenses.* For 700 MHz Guard Band licenses, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. SBA approval of these definitions is not required. In 2000, the Commission conducted an auction of 52 Major Economic Area (MEA) 700 MHz Guard Band licenses. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders, of which five identified themselves as small businesses and won a total of 26 licenses. A second auction of eight 700 MHz Guard Band licenses commenced and closed in 2001. Of three bidders, one was a small business that won two of the eight licenses.

118. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area

licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

119. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

120. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, the Commission does not know how many of these firms have 1500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

121. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling \$25,002.

122. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee’s

primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission uses the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission notes that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

123. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. The Commission notes that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

124. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). In the present context, the Commission will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

125. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the

Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

126. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 1,932

licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Thus, the majority of these firms can be considered small.

127. *Internet Service Providers (ISPs).* The 2007 Economic Census places ISPs, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (*e.g.*, cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.*, dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of \$25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of \$21 million or less in annual receipts, which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, the Commission

estimates that the majority of ISP firms are small entities.

128. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that our action might affect, the Commission discusses in turn several different types of entities that might be providing Internet access service.

129. The Commission notes that, although the Commission has no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, it includes these entities in the IRFA.

#### 4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

130. The *Mobility Fund Notice of Proposed Rulemaking* seeks public comment on creation of a new Mobility Fund within the high-cost mechanism of the federal universal service program. The Mobility fund would make available non-recurring support to providers to deploy 3G or better networks where these services are not currently available. The proposed Mobility Fund would use market mechanisms—specifically, a reverse-auction—to compare all offers to provide service across the unserved areas eligible for participation in the Mobility Fund program.

131. In proposing the Mobility Fund, the Commission seeks comment on various reporting, record-keeping, and other compliance requirements for the parties that will be applying for and receiving support from the Mobility Fund. The *Mobility Fund Notice of Proposed Rulemaking* proposes, for example, that parties interested in participating in a Mobility Fund auction must disclose certain information, such as their ownership, before participating in the auction. The *Mobility Fund Notice of Proposed Rulemaking* proposes that auction winners be required to provide more detailed information, including project descriptions and timetables. The parties receiving support would be subject to certain reporting requirements demonstrating a certain level of network quality of service and reasonably comparable rates, and would need to provide, in annual reports, data from drive tests showing mobile transmissions to and from the network meeting or exceeding certain minimum standards. The *Mobility Fund Notice of*

*Proposed Rulemaking* also proposes a five-year record retention period, consistent with the record retention period for other universal service high-cost support.

132. Because the overall design and scope of the Mobility Fund have not been finalized, the Commission does not have a more specific estimate of potential reporting, recordkeeping, and compliance burdens on small businesses. The Commission anticipates that commenters will address the reporting, recordkeeping, and other compliance proposals made in the *Mobility Fund Notice of Proposed Rulemaking*, and will provide reliable information on any costs and burdens on small businesses for inclusion in the record of this proceeding.

#### 5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

133. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

134. The reporting, recordkeeping, and other compliance requirements in this *Mobility Fund Notice of Proposed Rulemaking* could have an impact on both small and large entities. However, even though the impact may be more financially burdensome for smaller entities, the Commission believes the impact of such requirements is outweighed by the benefit of providing the additional USF support necessary to make advanced wireless services available to areas of the nation that are currently unserved. Further, these requirements are necessary to ensure that the statutory goals of 47 U.S.C. 254 are met without waste, fraud, or abuse.

135. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *Mobility Fund Notice of Proposed Rulemaking*, in reaching its final conclusions and taking action in this proceeding.

#### 6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

136. None.

#### List of Subjects in 47 CFR Parts 1 and 54

Administrative practice and procedure, Competitive bidding, Telecommunications, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010-27458 Filed 10-29-10; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 10-2000; MB Docket No. 08-194; RM-11488]

#### Television Broadcasting Services; Huntsville, AL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has before it a petition for rulemaking filed by Local TV Alabama License, LLC (“Local TV”), the licensee of WHNT-TV, channel 46, Huntsville, Alabama. Local TV requests the substitution of channel 46 for channel 19 at Huntsville.

**DATES:** Comments must be filed on or before December 1, 2010, and reply comments on or before December 16, 2010.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Scott S. Patrick, Esq., Dow Lohnes PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036-6802.

**FOR FURTHER INFORMATION CONTACT:** David Brown, [david.brown@fcc.gov](mailto:david.brown@fcc.gov), Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission’s Notice of Proposed Rule Making, MB Docket No. 08-194, adopted October 18, 2010, and released October 19, 2010. The full text of this document is available for public inspection and copying during normal business hours in the FCC’s Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document