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

In the Matter of	)	
Connect America Fund	)	WC Docket No. 10-90
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
High-Cost Universal Service Support	)	WC Docket No. 05-337
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Lifeline and Link-Up	)	WC Docket No. 03-109
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

FOURTH ORDER ON RECONSIDERATION

Adopted: July 18, 2012 **Released: July 18, 2012**

By the Commission:

1. In this Order, we reconsider and clarify certain aspects of the *USF/ICC Transformation Order* in response to various petitions for reconsideration and/or clarification.[1] The *USF/ICC Transformation Order* represents a careful balancing of policy goals, equities, and budgetary constraints. This balance was required in order to advance the fundamental goals of universal service and intercarrier compensation reform within a defined budget while simultaneously providing sufficient transitions for stakeholders to adapt.[2] As a preliminary matter, we observe that, under Commission rules, if a petition for reconsideration simply repeats arguments that were previously considered and rejected in the proceeding, it will not likely warrant reconsideration.[3]

[1] *See Connect America Fund*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*" or "*Order*"); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011); *Connect America Fund*, WC Docket No. 10-90 et al., Order on Reconsideration, 26 FCC Rcd 17633 (2011); *Connect America Fund*, WC Docket No. 10-90 et al., Second Order on Reconsideration, FCC 12-47 (rel. April 25, 2012) ("*Second Reconsideration Order*"); *Connect America Fund*, WC Docket No. 10-90 *et al.*, Third Order on Reconsideration, FCC 12-52 (rel. May 14, 2012) ("*Third Reconsideration Order*").

[2] *See* 47 C.F.R. § 1.429.

[3] *See id*.

2. With this standard in mind, we take several limited actions stemming from reconsideration petitions. Specifically, this Order:

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

I. MOBILITY FUND PHASE I

A. Use of Auction to Determine Awards of Support

3. The Blooston Rural Carriers ("Blooston") seek reconsideration of the Commission's decision to use a reverse auction format to distribute Mobility Fund Phase I support.[4] Blooston reiterates the position it took prior to adoption of the *USF/ICC Transformation Order*, alleging that reverse auctions could lead to construction and equipment quality short-cuts that ultimately could require larger disbursements of high-cost support.[5] Instead, Blooston urges the Commission to award support based on a qualitative analysis, to ensure that support is awarded to carriers that have a "legitimate" interest in building and maintaining high-quality services, such as rural carriers.[6] Blooston contends that the *USF/ICC Transformation Order* did not adequately address concerns raised by it and other carriers about the effects of the reverse auction format on small rural wireless carriers, and was therefore arbitrary and

[4] Petition for Partial Reconsideration of the Blooston Rural Carriers, WC Docket No. 10-90 *et al.*, filed December 29, 2011 ("Blooston Petition"). The Blooston Rural Carriers are a group of rural carriers represented by the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast LLP. The group consists of the following: Big Bend Telephone Company, Inc.; Butler-Bremer Communications; Clear Lake Independent Telephone Company; Custer Telephone Cooperative, Inc.; Gold Star Communications, LLC; Manti Telephone Company; Midstate Communications, Inc.; Northeast Louisiana Telephone Company, Inc.; NNTC Wireless, Inc.; Public Service Telephone Company; Penasco Valley Telephone Cooperative, Inc.; Sagebrush Cellular, Inc.; Smithville Telecom, LLC; Strata Networks; Walnut Telephone Company, Inc.; West Texas Rural Telephone Cooperative, Inc.; Wiggins Telephone Association; WUE, Inc.

[5] *See* Blooston Petition at 3-4 (citing Blooston Rural Carriers, Comments, WT Docket No. 10-208, filed December 16, 2010, at 2–3 ("Blooston Comments")).

[6] *Id.* at 4.

capricious.[7] Blooston argues that the reverse auction model is vulnerable to "gaming strategies" and "anti-competitive bidding practices" that would unfairly benefit larger carriers.[8]

4. The Commission addressed Blooston's arguments in the *USF/ICC Transformation Order*, and rejected the arguments by those, including Blooston, who claimed that a reverse auction format would allow larger carriers to bid more competitively than smaller providers.[9] The Commission determined that "both the auction design and natural advantages of carriers with existing investments in networks in rural areas should provide opportunities for smaller providers to compete effectively at auction."[10] The Commission rejected assertions that reverse auctions unduly harm small businesses, finding that the examples cited by commenters merely illustrated issues in implementing specific reverse auction programs, and did not demonstrate that reverse auctions are inherently biased against small businesses.[11]

5. We are unpersuaded by Blooston's claim that the only way to effectively encourage high-quality expansion into unserved areas is to ensure that Mobility Fund Phase I support is distributed based on a qualitative analysis of prospective carriers.[12] As the Commission concluded in the *USF/ICC Transformation Order*, for purposes of Mobility Fund Phase I, the difficulty in appropriately weighting differences in services provided outweigh the benefits that might be gained from such an approach.[13] The Commission decided that a reverse auction is the best available tool for awarding support to eligible areas quickly and effectively.[14] A well-designed system of competitive bidding will target support to those providers in an area that can meet the program requirements most cost-effectively. The bidding process will use competition among potential awardees to identify a support amount at which the bidder will commit to provide the required services, and below which no other competitor is willing to do so, thus minimizing the cost to the program. The qualitative proposal advanced by Blooston, in contrast, would require a subjective and time-consuming evaluation of a variety of factors that could result in delayed broadband deployment to unserved communities, would be much less likely to ensure that our limited support funds are disbursed as effectively as possible, and would require at least as much enforcement to ensure that consumers receive the desired broadband.

6. In response to Blooston's claim that the reverse auction format could lead to short-cuts in construction and equipment quality, the Commission emphasized that it would, and in fact did establish

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[7] *Id.* at 6.

[8] *Id.* at iii. The National Association of State Utility Consumer Advocates ("NASUCA") opposes the Blooston Petition and argues that this and several other issues should be addressed in the context of the Further Notice of Proposed Rulemaking that was part of the *USF/ICC Transformation Order*. The National Association of State Utility Consumer Advocates and The New Jersey Division of Rate Counsel, Comments on Request for Reconsiderations, WC Docket No. 10-90 *et al.*, filed February 9, 2012, at 6 ("NASUCA Opposition"). While it would be appropriate to resolve any issues concerning Phase II of the Mobility Fund and other portions of the Connect America Fund in the Further Notice of Proposed Rulemaking, this Order on Reconsideration is the appropriate vehicle to address the Blooston arguments with respect to Phase I of the Mobility Fund. NASUCA also contends that reconsideration is inappropriate because the issue is presently before the 10th Circuit Court of Appeals. *Id.* We disagree. The Commission has authority to decide issues raised on reconsideration irrespective of whether the matter is the subject of judicial appeal.

[9] *USF/ICC Transformation Order*, 26 FCC Rcd at 17782, paras. 325–26.

[10] *Id.* at para. 326.

[11] *Id.*

[12] Blooston Petition at 4.

[13] *USF/ICC Transformation Order*, 26 FCC Rcd at 17782, para. 327.

[14] *Id.* at 17781, para. 322.

clear performance standards, and would effectively enforce them.[15] Blooston's assertion that "no such standards" have been adopted is therefore incorrect.[16] The Commission in the *USF/ICC Transformation Order* adopted a series of rigorous performance metrics for recipients of Mobility Fund Phase I funding, requiring them to provide mobile supported services over a 3G or better network that has achieved particular data rates under particular conditions and required submission of drive test data to demonstrate support recipients' compliance with their public interest obligation to provide mobile broadband.[17] The Commission imposed a range of additional requirements on Mobility Fund Phase I recipients, including collocation and voice and data roaming, and established reporting requirements.[18] Moreover, our requirement that support recipients maintain a Letter of Credit, along with traditional enforcement tools, helps to protect the government's interests in the funds it disburses and to ensure that performance obligations are met.[19] In short, Blooston's petition contains no new arguments or data that would cause us to reconsider the adoption of the reverse auction format for the distribution of Mobility Fund Phase I support. Accordingly, we reject Blooston's claim that the Commission's adoption of the reverse auction format was arbitrary or capricious, and we affirm the Commission's conclusion that the auction mechanism adopted in the *USF-ICC Transformation Order*, coupled with eligibility and performance requirements, best ensures that mobile broadband is deployed quickly to unserved areas by well-qualified carriers.

B. Scope and Use of Mobility Fund Support

7. NTCH, Inc. ("NTCH") requests that the Commission link Phase I and Phase II funding to plan for the construction and ongoing operating costs of providing service in high cost areas.[20] NTCH notes that ongoing support may be necessary to sustain service in areas eligible for one-time assistance and that prospective bidders should know in advance whether they will receive Phase II support before competing in Phase I.[21] NTCH therefore proposes that applicants be permitted to apply for Phase I and Phase II in an integrated way or, alternatively, to consolidate funding into a single phase that covers both construction and operational financial needs.[22] NTCH concludes that this approach would allow the Commission to more meaningfully evaluate the real costs of providing service and performance.[23] NTCH also suggests that this approach will encourage new entrants who may be able to offer service for "significantly less" than the field of potential bidders who would otherwise qualify.[24] No parties commented on this aspect of NTCH's petition.

8. As the Commission noted in the *USF-ICC Transformation Order*, the goal in establishing the Mobility Fund Phase I is to provide the necessary "jump start" to immediately accelerate service to areas

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[15] *Id.* at 17782, para. 325.

[16] Blooston Petition at 4.

[17] *USF/ICC Transformation Order*, 26 FCC Rcd at 17791–93, paras. 359–74. We continue to use the terminology of the *USF/ICC Transformation Order* and use the terms "3G," "3G or better," "current generation," and "advanced" interchangeably to refer to mobile wireless services that provide voice telephony service on networks that also provide data services such as Internet access and email. *Id.* at 17773, para. 301 & n.497.

[18] *Id.* at 17793–96, paras. 369–82.

[19] *Id.* at 17810–12, paras. 444–51.

[20] NTCH, Inc., Petition for Reconsideration, WC Docket No. 10-90 *et al.*, filed December 29, 2011, at 10 ("NTCH Petition").

[21] *Id.* at 7.

[22] *Id.* at 10.

[23] *Id.*

[24] *Id.*

where it is cost effective to do so.[25] It is focused on identifying recipients that can extend coverage with one time support and is not intended to target areas where ongoing support is required, even if such areas technically might be eligible to seek Mobility Fund Phase I support.[26] By contrast, the Mobility Fund Phase II is intended to expand and sustain mobile voice and broadband services in communities in which service would be unavailable absent federal support.[27] It contemplates a larger budget, payable annually over a multi-year term, to bring service to areas that cannot be sustained with one-time support.[28] NTCH's petition does not persuade us that we should forgo the immediate benefits that could be provided by targeted support under Mobility Fund Phase I to integrate or consolidate it with Mobility Fund Phase II. In due course, Mobility Fund Phase II will be available for those areas that need support over the longer-term.

9. GCI requests that the Commission preclude use of Mobility Fund Phase I funding to construct middle mile facilities where adequate facilities are otherwise available.[29] GCI contends that the public interest would not be served by allowing support recipients to expend support on duplicative middle mile facilities, noting that the areas to be served by Mobility Fund Phase I are extremely "thin" and it is therefore important to aggregate demand to the extent possible.[30] No parties commented on this aspect of GCI's petition.

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

C. Eligibility for Mobility Fund Phase I Support

1. Eligibility of Tier I Carriers

11. Blooston asserts that permitting Tier I carriers to participate in the Mobility Fund Phase I constitutes corporate welfare, as the average annual net income of such carriers purportedly demonstrates that they have no need for support.[31] In addition, Blooston notes that the Commission previously concluded that a phase-down of the legacy Universal Service Fund support received by Verizon and Sprint was in the public interest and therefore contends that it would be contrary to the public interest for either of these entities to receive any new Mobility Fund Phase I support.[32] Finally, Blooston contends that the Commission erred when it noted that a party's relinquishment of legacy support to meet legacy

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[25] *USF-ICC Transformation Order*, 26 FCC Rcd at 17781, para. 324.

[26] *Id.* at 17781, para. 323 (rejecting arguments that Phase I will be inadequate to meet longer term needs).

[27] *Id.* at 17778–79, para. 314 (differentiating between the purposes of Phase I and Phase II).

[28] *Id.* at 17824, paras. 493–94. In the Further Notice of Proposed Rulemaking ("FNPRM") portion of the *USF/ICC Transformation Order*, the Commission proposed a fixed term of support of 10 years. *Id.* at 18074, para. 1138.

[29] General Communication, Inc., Petition for Reconsideration, WC Docket No. 10-90 *et al.*, filed December 23, 2011, at 21–22 ("GCI Petition").

[30] *Id.* at 21.

[31] Blooston Petition at 12.

[32] *Id.* at 10–11.

obligations should not be determinative of whether the party should be eligible for new support to meet new obligations.[33]

12. AT&T Inc. ("AT&T") and Verizon Wireless ("Verizon") both oppose Blooston's petition. AT&T contends that the "Commission must reject out-of-hand any requests [such as this one] for the Commission to use universal service funding to discriminate against certain providers."[34] Verizon further notes that the Mobility Fund program did not exist at the time Verizon and Sprint committed to relinquish high-cost support.[35]

13. We find Blooston's arguments unpersuasive. Phase I of the Mobility Fund targets one-time support to areas that current market-based incentives have left without 3G or better mobile networks—even by carriers with substantial resources. Thus, in these areas the apparent availability of resources has not, and will not, inevitably lead to speedy deployment of universal coverage. As AT&T notes in opposition to Blooston's petition, "market forces alone are insufficient to incent private investment by any provider—Tier 1 or otherwise—in those areas."[36] Our primary policy concern is with the consumers in those unserved areas who have been disadvantaged due to the lack of current generation mobile broadband networks. By permitting all qualified providers to participate in this reverse auction, we expect that our limited USF dollars will be used more efficiently and effectively to construct mobile broadband networks to cover more unserved areas.

14. Blooston's assertion that the phase-down commitments of Verizon and Sprint should make them ineligible for Mobility Fund Phase I support so as not to "undo the benefits reaped" from their withdrawal is also unpersuasive.[37] The Commission concluded that such limitations under past mechanisms should not carry over to the newly reformed support mechanisms, such as the Mobility Fund, and we will not disturb that conclusion.[38] A decision that a party should not continue to receive support available under the former identical support rule does not lead to a conclusion that the same party cannot be a recipient of more efficiently allocated targeted support under new mechanisms with additional public interest obligations.[39]

2. ETC Designation

15. NTCH states that the Commission should hold in abeyance applications for eligible telecommunications carrier ("ETC") status pending the completion of competitive bidding for Mobility Fund support and then automatically qualify any party that receives Mobility Fund support as an ETC in the areas for which it applied.[40] NTCH contends that such an approach is necessary in order to enable

[33] *Id.* at 10.

[34] AT&T, Inc., Comments, WC Docket No. 10-90 *et al.*, filed February 9, 2012, at 32 ("AT&T Comments").

[35] Verizon Wireless, Opposition, WC Docket No. 10-90 *et al.*, filed February 9, 2012, at 11 ("Verizon Opposition").

[36] AT&T Comments at 33.

[37] Blooston Petition at 11–12.

[38] *USF/ICC Transformation Order*, 26 FCC Rcd at 17802 para. 408.

[39] *See* Verizon Opposition at 11–12.

[40] NTCH Petition at 9. In connection with its "streamlining" argument, NTCH also asserts that "[r]eceipt of [Mobility Fund] Phase II funding should be related to, not independent of or even inconsistent with, Phase I funding." *Id.* at 10. We address this argument separately.

participation in the Mobility Fund.[41] Sprint comments favorably on this request, for the most part re-iterating NTCH's arguments.[42]

16. In the *USF/ICC Transformation Order*, the Commission considered suggestions that it circumvent the existing ETC regime for purposes of the Mobility Fund and declined to do so.[43] Most importantly, the Commission recognized that the existing ETC regime is built upon a statutory foundation that gives a significant role to the States as well as to the Commission.[44] The Commission concluded that the Mobility Fund should operate within the general structure of the Universal Service Fund with respect to ETC designation, rather than attempt to replace it. The Commission recognized the concern, echoed by NTCH and Sprint, that the obligations that accompany ETC status might make parties reluctant to become ETCs in advance of learning whether they would receive Mobility Fund support. The Commission addressed this concern by permitting parties to seek ETC designation on a conditional basis, that is subject to their becoming a winning bidder.[45]

17. NTCH does not persuade us to revise the Commission's original conclusion. As noted in the *USF/ICC Transformation Order*, "requiring that applicants be designated as ETCs prior to a Mobility Fund Phase I auction may help ensure that the pool of bidders is serious about seeking support and meeting the obligations that receipt of support would entail."[46] It may be true, as NTCH contends, that more parties might participate in the auction if the Commission simply accepted the applicants' asserted willingness to seek ETC status. However, that approach risks the possibility that parties might participate and win—or otherwise affect the outcome of the auction—and then be found unqualified to be ETCs. At a minimum, this would delay any use of funds that had been set aside for the winning bid. This would undermine our objective to extend mobile broadband networks as quickly as possible. Consequently, consumers living, traveling, and working in the unserved areas would suffer, contrary to our objectives for Mobility Fund Phase I. NTCH's further suggestion that any party qualifying to receive Mobility Fund support automatically should be designated as an ETC ignores the role given by statute to the states regarding the designation of many ETCs as well as the fact that ETC obligations themselves go beyond the requirements for participation in the Mobility Fund.[47] We, however, cannot ignore the obligations Congress requires for ETC designations, and deny NTCH's request for reconsideration.

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[41] *Id.* at 9.

[42] Sprint Nextel Corporation, Comments, WC Docket No. 10-90 *et al.*, filed February 9, 2012, at 7–8. In response to this and several other issues raised in NTCH's petition, NASUCA argues that the petition should be denied and the issue addressed in the context of the Further Notice of Proposed Rulemaking (FNPRM) that was part of the *USF/ICC Transformation Order*. NASUCA Opposition at 17–18. While that is true with respect to Phase II of the Mobility Fund and other portions of the Connect America Fund, it is appropriate to address NTCH's arguments now with respect to Phase I of the Mobility Fund. NTCH has made similar arguments in comments it filed in response to the FNPRM and we will consider its arguments as they apply to Mobility Fund Phase II in the context of the FNPRM. *See* NTCH Comments, WC Docket No. 10-90 *et al.*, filed January 18, 2012 at 3–4.

[43] *USF/ICC Transformation Order*, 26 FCC Rcd at 17798–99, paras. 389–92.

[44] *Id.* at 17798, para. 390.

[45] *See id.* at 17809, para. 439; 47 C.F.R. § 54.1003(a).

[46] *USF/ICC Transformation Order*, 26 FCC Rcd at 17799, para. 392.

[47] *See* 47 U.S.C. § 214(e)(1) (statutory requirements with respect to use of facilities, provision of all supported services, and advertising the availability of service); *see also* 47 C.F.R. § 54.405 (all ETCs must offer Lifeline service).

3. Forbearance from Service Area Conformance Requirement of Section 214(e)(5)

18. NTCH also asks that the Commission forbear from applying the service area requirements of section 214(e)(5) to applicants seeking to become ETCs for purposes of the Mobility Fund. Section 214(e)(5) requires that a party seeking ETC status in a service area overlapping a rural telephone company's study area be designated for the entire study area, unless the Commission and relevant State jointly redefine the underlying study area of the rural telephone company.[48] We considered NTCH's request for forbearance in the context of our separate Order forbearing from the application of section 214(e)(5) to petitions for conditional ETC designation for purposes of participating in the Mobility Fund Phase I auction.[49] Accordingly, we do not address that aspect of NTCH's petition here.

4. Lifeline-Only ETCs

19. NTCH seeks clarification that a party designated as a Lifeline-only ETC can satisfy on that basis the Mobility Fund eligibility requirement that a participant be an ETC.[50]

20. We deny NTCH's request. As an initial matter, when this Commission has designated parties as Lifeline-only ETCs, it has made clear that the designation is not effective for any other purpose.[51] Thus, it is clear, under the terms of those orders, that these parties are not to be deemed ETCs for the Mobility Fund on the basis of their Lifeline-only designations. Moreover, many carriers designated as Lifeline-only ETCs do not offer service over their own facilities, or over a combination of their own and a third-party's facilities.[52] It is not at all clear that these Lifeline-only ETCs will be in a position to undertake the materially different obligations that ETCs must satisfy in areas where they receive Mobility Fund Phase I support. We do not have a basis in this record to conclude that states that have designated Lifeline-only ETCs have evaluated the capability of such applicants to meet the obligations associated with the receipt of high-cost support. Consequently, we cannot draw a blanket conclusion that a party designated as a Lifeline-only ETC would be qualified to expand or deploy network facilities to meet a

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[48] NTCH Petition at 9. In response to this and several other issues raised in NTCH's petition, NASUCA argues that the petition should be denied and the issue addressed in the context of the Further Notice of Proposed Rulemaking that was part of the *USF/ICC Transformation Order*. NASUCA Opposition at 17–18. Although that is true with respect to Phase II of the Mobility Fund and other portions of the Connection America Fund, it is appropriate to address NTCH's arguments now with respect to Phase I of the Mobility Fund. NTCH has made similar arguments in comments it filed in response to the FNPRM and we will consider its arguments as they apply to Mobility Fund Phase II in the context of the FNPRM. *See* NTCH Comments, WC Docket No. 10-90 *et al.*, filed January 18, 2012, at 4–5.

[49] *Connect America Fund*, WC Docket No. 10-90 *et al.*, Second Report and Order, FCC 12-70 (rel. June 27, 2012), 77 FR 39435 (rel. July 3, 2012).

[50] NTCH Petition at 8, 12. In response to this and several other issues raised in the NTCH Petition, NASUCA argues that the petition should be denied and the issue addressed in the context of the Further Notice of Proposed Rulemaking that was part of the *USF/ICC Transformation Order*. NASUCA Opposition at 17–18. While it is true that the FNPRM provides a context to address any issues with respect to Phase II of the Mobility Fund and other portions of the Connect America Fund, it is appropriate to address NTCH's arguments now with respect to Phase I of the Mobility Fund.

[51] *See, e.g.*, *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15098, para. 6 (2005).

[52] *See* 47 U.S.C. § 214(e)(1)(A); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, paras. 361–83 (rel. February 6, 2012) (forbearing from applying section 214(e)(1)(A)'s facilities requirement to Lifeline-only ETCs).

Mobility Fund recipient's public interest obligations and thus we require designation as an ETC generally.[53]

5. Spectrum Access with Unlicensed Spectrum

21. Townes Telecommunications, Inc. ("Townes") requests that the Commission clarify that the Mobility Fund eligibility requirement of spectrum access can be satisfied with unlicensed spectrum used to meet or exceed the public interest requirements of the Mobility Fund. More specifically, Townes asserts that it has employed the xMax cognitive radio technology to provide the type of service that the Mobility Fund supports, and provides a link to a website describing the xMax technology. Townes also notes that the Commission has been supportive of the use of unlicensed spectrum in related contexts, such as the proposal for the Remote Areas Fund to provide fixed wireless service.[54]

22. Although we support the use of unlicensed spectrum for developing innovative approaches to bring new technologies to consumers,[55] we decline the request to clarify our rules regarding the use of unlicensed spectrum to meet the spectrum access eligibility requirement for Mobility Fund Phase I. The *USF/ICC Transformation Order* required that an applicant have access, through a license or lease in effect prior to the auction, to spectrum necessary to fulfill all obligations related to support.[56] The Commission concluded that a provider's access to spectrum must support mobile broadband services meeting our requirements and conditions for the required timeframe.[57] We note that the use of unlicensed spectrum to support mobility over large areas is not proven at this time.

23. Thus, we conclude that the use of unlicensed spectrum to meet the spectrum access eligibility requirement for Mobility Fund Phase I would entail a significant risk that the mobile services deployed on such spectrum will not meet performance requirements and other obligations under the rules. This does not close the door to the possibility that unlicensed spectrum may play a complementary part in the provision of services supported by the Mobility Fund Phase I.[58] Nor does it prevent carriers from receiving high cost universal service support in other contexts for services provided over unlicensed

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[53] This does not, of course, mean that such a party is necessarily unqualified to do so. However, nothing prevents such a party from seeking a full ETC designation in order to participate in the Mobility Fund.

[54] *See* Townes Telecommunications, Inc., Petition for Clarification or Partial Reconsideration, WC Docket No. 10-90 *et al.*, filed December 29, 2011 ("Townes Petition"). In response to this, NASUCA argues that the petition should be denied and the issue addressed in the context of the FNPRM that was part of the *USF/ICC Transformation Order*. NASUCA Opposition at 17–18. In reply, Townes notes that Phase I of the Mobility Fund is proceeding and the auction has been scheduled. Townes Telecommunications, Inc., Reply to Comments on Petition for Clarification or Partial Reconsideration, WC Docket No. 10-90 *et al.*, filed February 22, 2012, at 3. Although it is true that the FNPRM provides a context to address this issue with respect to Phase II of the Mobility Fund and other portions of the Connect America Fund, it is appropriate to address Townes's arguments now with respect to Phase I of the Mobility Fund because of the need to remove uncertainty about Phase I in advance of the application filing window.

[55] *See, e.g.*, *Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed DevicesBelow 900 MHz and in the 3 GHz Band*, ET Docket No. 04-186, ET Docket No. 02-380, Second Memorandum Opinion and Order, 25 FCC Rcd 18661 (2010) (revising rules to allow for operation of unlicensed wireless devices in unused broadcast TV spectrum to provide broadband data and other services for consumers and businesses).

[56] *USF/ICC Transformation Order*, 26 FCC Rcd at 17799, para. 394.

[57] These requirements include: (1) providing mobile supported services over a 3G or better network that has achieved particular data rates under specified conditions, (2) providing reasonable collocation on new towers owned or managed by Mobility Fund Phase I recipients, and (3) complying with the Commission's voice and data roaming requirements. *Id.* at 17791–96, paras. 359–68, 376–77, 379–82.

[58] For instance, this could occur where handsets access WiFi networks where available.

spectrum, e.g., for fixed wireless broadband services offered over unlicensed spectrum.[59] However, with respect to the Commission's current spectrum access requirement for Mobility Fund Phase I, we reject Townes' request to permit the use of unlicensed spectrum to meet this requirement.[60]

D. Bidding Preferences

1. Preferences for Small Businesses and Rural Carriers

24. Blooston argues that the Commission should have adopted a mechanism for Phase I of the Mobility Fund that "assures that a significant portion of the Mobility Fund" is awarded to small rural wireless carriers.[61] Blooston suggests that small and rural carriers have been successful at auction "only when adequate protections were implemented," such as "substantial bid credits," set asides, and the exclusion of large carriers.[62] Blooston notes that the Commission is obligated under section 309(j) of the Communications Act[63] to ensure that small businesses, rural telephone companies, and businesses owned by minorities and women are given the opportunity to participate in the provision of spectrum-based services and argues that the Commission should extend similar preferences to small and rural entities in the context of the Mobility Fund Phase I auction.[64]

25. AT&T opposes Blooston's suggestions. AT&T notes that this proceeding does not involve a spectrum auction and is not governed by the statutory provisions of section 309(j). AT&T argues that the Blooston proposals are inconsistent with section 254 of the Communications Act, which governs the universal service program.[65] AT&T contends Blooston's approach would limit competition in the Mobility Fund Phase I auction, which could violate section 254(b)(1) and (b)(5)'s sufficiency and affordability objectives.[66] AT&T disputes Blooston's contention that small wireless carriers are better suited to meet the needs of local communities because "[a]ll winning wireless carrier bidders, large or small, will have the same service obligations."[67]

26. Blooston replies that it is irrelevant that section 254 does not contain small business auction preference provisions that appear in section 309(j)(3) and (4).[68] Blooston maintains that the Commission's intention to draw upon established spectrum auction procedures for the Mobility Fund Phase I auction calls for adoption of similar preferences here.[69] Blooston cites the Universal Service

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[59] *See, e.g.*, *USF/ICC Transformation Order*, 26 FCC Rcd at 17698–99, para. 98.

[60] We note that the *Auction 901 Procedures Public Notice*, stated that "only assured access is sufficient, which means that the access must be to licensed spectrum subject to limited access." *Mobility Fund Phase I Auction Scheduled for September 27, 2012, Notice and Filing Requirements and Other Procedures For Auction 901*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 4725, 4754, para. 96 (2012) ("*Auction 901 Procedures Public Notice*").

[61] Blooston Petition at 5.

[62] *Id.* at 6.

[63] 47 U.S.C. § 309(j)(3), (4).

[64] Blooston Petition at 7.

[65] *Id.* at 32; *see also* 47 U.S.C. § 254.

[66] Blooston Petition at 32–33 & n.107.

[67] *Id.* at 33.

[68] Reply to Oppositions to the Petition for Partial Reconsideration of the Blooston Rural Carriers, filed February 21, 2012, at 4–5 ("Blooston Reply").

[69] *Id.*

principle of competitive neutrality, which it characterizes as "requir[ing] that the Commission treat no carrier 'unfairly,'" as authority for the provision of bidding credits and other assistance to small carriers.[70] Blooston asserts that only rural carriers would encourage the provision of service to rural communities not located near highways, claiming that larger carriers "are primarily interested in providing service to the interstate highways and major roads on which their customers travel."[71]

27. We reject Blooston's contentions that the Commission failed to examine the issues and concerns of small businesses and rural carriers as raised in the record in this proceeding.[72] The Commission's decision not to establish bidding preferences for small or rural entities in the auction of Mobility Fund Phase I support was neither arbitrary nor capricious, contrary to Blooston's assertion. The Commission fully considered the views of Blooston and other parties responding to questions raised in the *Notice of Proposed Rulemaking* about potential ways to encourage the participation of the widest possible range of qualified entities, including smaller entities.[73] As previously noted, the Commission determined in the *USF/ICC Transformation Order* that reverse auctions are not inherently unfair to smaller carriers and that it was confident that the reverse auction format would enable smaller providers to compete effectively.[74] Given the limited and targeted purpose of the one-time Mobility Fund Phase I support, we do not find persuasive Blooston's argument that our use of a reverse auction as a mechanism for distributing USF support requires us to adopt special provisions for small entities, such as the small business bidding credits the Commission awards to fulfill the statutory mandate in section 309(j)(3)(B) of the Act to disseminate spectrum licenses among a wide variety of applicants.[75]

2. Expansion of Tribal Lands Bidding Credits

28. GCI seeks reconsideration of the Commission's decision for the Mobility Fund Phase I auction to provide bidding credits to Tribally-owned or controlled providers seeking support to serve the Tribal lands with which they are associated.[76] GCI agrees with the Commission that service for Tribal lands should be prioritized, but maintains that bidding credits should be extended to all entities serving Tribal lands, not just those that are Tribally-owned or controlled.[77] GCI maintains that the *USF-ICC Transformation Order* does not explain why the credits should be limited to Tribally-owned or controlled entities. It asserts that because many qualifying Tribal lands are not served by a Tribally-owned or controlled entity, these lands will be unable to benefit from the bidding credits. GCI further asserts that

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[70] *Id.*

[71] *Id.* at 5-6.

[72] *Id.* at 6.

[73] *Universal Service Reform: Mobility Fund*, Notice of Proposed Rulemaking, WT Docket No. 10-208, FCC 10-182, 25 FCC Rcd 14716, 14733, para. 55 (2010) ("*Mobility Fund NPRM*").

[74] *See supra* para. 4 (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17782, para. 326 (stating that "both the auction design and natural advantages of carriers with existing investments in networks in rural areas should provide opportunities for smaller providers to compete effectively at auction" and rejecting assertions that reverse auctions unduly harm small businesses)). We note that a number of carriers of various sizes contributed to the record developed by the Bureaus in connection with their establishment of procedures for the upcoming Mobility Fund Phase I Auction, designated as Auction 901.

[75] *See* 47 U.S.C. § 309(j)(3)(B). In the FNPRM that was part of the *USF/ICC Transformation Order*, the Commission sought comment on the overall design for Phase II of the Mobility Fund, which will provide ongoing support for mobile broadband and high quality voice-grade services, and asked whether small businesses should be eligible for a bidding preference if competitive bidding is used to provide Mobility Fund Phase II support. *USF/ICC Transformation Order*, 26 FCC Rcd at 18077–78, paras. 1157–60. That issue remains under consideration.

[76] *USF/ICC Transformation Order*, 26 FCC Rcd at 17789–90, para. 355.

[77] GCI Petition at 20–21.

the exclusion of other entities from bidding credit eligibility could lead to inefficient operations and fragmented service, ultimately impairing broadband service.[78]

29. We are not persuaded that eligibility for the Tribal lands bidding credit should be extended to entities that are not Tribally-owned or controlled providers. In adopting the Tribal lands bidding credit, the Commission sought to facilitate the self-provisioning of wireless broadband service by Tribes themselves by providing a bidding credit to increase the likelihood that Tribally-owned or controlled entities will receive funding.[79] This is consistent with our belief that encouraging Tribal-centric solutions to the communications needs of Tribal lands can be particularly advantageous. The Commission has previously found that Tribal-centric business models, ones "that actively engage the Native Nation, its core community institutions, and members in deployment and adoption planning - have a greater chance of establishing sustainable services on Tribal lands."[80] A Tribal-centric approach has enabled a number of Native Nations to successfully establish service providers that have deployed critical communications infrastructure on Tribal lands.[81] Extending bidding credits to all participants in the Mobility Fund Phase I auction would dilute our ability to achieve this objective.

E. Performance Requirements

1. Upgradability of Systems Built with Mobility Fund Support to 4G Technology

30. The Blooston Petition urges the Commission to require that Mobility Fund participants choosing to build 3G mobile wireless broadband networks, rather than 4G networks, use equipment and facilities "capable of ready, efficient and economical conversion" to 4G networks.[82] Blooston argues that, with 4G service currently being rolled out in urban areas, it would be "unreasonably inefficient and wasteful" to use Mobility Fund support to deploy facilities and equipment that will soon be outmoded and need to be replaced in the immediately foreseeable future.[83] Blooston argues that it would be "far more efficient and less expensive" for the Mobility Fund if the Commission required facilities and equipment that can be readily and economically converted to 4G.[84]

31. We decline to adopt the Blooston suggestion to require carriers who plan to build 3G networks with Mobility Fund support to use equipment and facilities that can easily convert to 4G. Requiring upgradable 3G equipment and facilities would add an extra layer of regulatory review and approval. Carriers choosing to build 3G networks with Mobility Fund support likely already face an economic incentive to install equipment that can be easily converted to 4G. But there may be carriers whose business plans indicate that another path is more economical—for example, because they want to deploy the same equipment used in its adjacent system—and we believe that those carriers will be in the

[78] *Id.*

[79] *USF/ICC Transformation Order*, 26 FCC Rcd at 17807, para. 430

[80] *Improving Communications Services for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672, 2680, para. 12 (2011).

[81] *Id.*

[82] Blooston Petition at 15. Blooston notes that some 3G facilities and equipment can be readily and economically converted to 4G networks, while others cannot. Blooston asserts that "some of the non-convertible 3G facilities and equipment would have to be extensively reconfigured at great expense to provide 4G services." *Id*.

[83] *Id.* at 16–17.

[84] *Id.* at 17. Alternatively, Blooston proposes postponing the Mobility Fund for a year or two until 4G facilities and equipment become readily available. *Id*. Given our objective to reach as many unserved areas as quickly as possible for the benefit of consumers, we reject the notion of postponing Mobility Fund Phase I.

best position to determine what equipment to use to meet the goals of the Mobility Fund. Imposing an additional regulatory requirement could limit participation in the auction or elicit higher bids, thereby interfering with the process the Commission chose to determine support, without providing clear benefits, overall, relative to the existing approach. Finally, we note that Mobility Fund Phase I recipients that choose to install 4G networks have an additional year to meet the performance requirements.[85] This should encourage 4G build-out where reasonable. Therefore, we find it unnecessary to add such a requirement limiting the type of equipment and facilities used by Mobility Fund Phase I support recipients. This conclusion does not prejudge our consideration of similar issues for Mobility Fund Phase II.

2. Roaming Requirement and Roaming Rates

32. Blooston petitions the Commission to request an expansion of the roaming requirement that the Commission established in the *USF/ICC Transformation Order*,[86] in order to ensure that roaming is available to Mobility Fund recipients throughout the United States.[87] Blooston also urges adopting measures to ensure that roaming is not only available, but also practically affordable for small carriers.[88] Without such a mandate, Blooston argues, small carriers will likely suffer losses from roaming arrangements since their customers often spend more time roaming than in their home network.[89] AT&T opposes Blooston's call for additional roaming regulations, noting that the Commission already has voice and data roaming rules in place and arguing that further regulation would be not only unnecessary but also unrelated to the universal service objectives.[90]

33. NTCH also raises the issue of roaming on reconsideration, asking the Commission to adopt measures that will bring roaming rates down to "rational levels."[91] NTCH argues that, without any action on this issue, rural customers' ability to roam outside their home networks may be limited and rural carriers will need more support.[92] NTCH asks that all wireless carriers should have the right to roam on reasonable terms, which it defines as "rates that are not 700 or 800% higher than the rates offered by large carriers to their own customers, and rates that are not thousands of times higher than actual costs."[93] NTCH argues that if the Commission took action against unreasonable roaming rates, small carriers would spend less on roaming fees and therefore would need less support for high cost operations.[94]

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[85] *USF/ICC Transformation Order*, 26 FCC Rcd at 17792, para. 365.

[86] *Id.* at 17795–96, paras. 379–82.

[87] Blooston Petition at 8–9.

[88] *Id.* at 9. Blooston fails to details what these "steps" might be.

[89] *Id*. Blooston also notes that the customers of small carriers spend more time on other networks than other networks' customers spending roaming on networks of small carriers, resulting in higher roaming costs for small carriers relative to those of larger carriers. *Id*.

[90] AT&T, Inc. Reply Comments, WC Docket No. 10-90 *et al.*, filed February 17, 2012.

[91] NTCH Petition at 12.

[92] *Id.*

[93] *Id.* To determine what would be considered reasonable, NTCH advocates using the retail (or mobile virtual private network) rate offered by a carrier for a certain package of services as a cap on what can be charged as a roaming rate. *Id.* NTCH states that the package could, for example, consist of 1500 minutes of voice, 1200 text messages, and 500 Mbps of data. *Id*. NTCH asserts that a "carrier's roaming offering should be priced in a manner that . . . result[s] in a total cost that would yield that carrier the same return in a wholesale arrangement that they are accepting through either a [mobile virtual network operator] or retail arrangement." *Id*.

[94] *Id.*

34. We decline to expand the roaming requirements beyond those set forth in the *USF/ICC Transformation Order*. The *USF/ICC Transformation Order* required Mobility Fund recipients to comply with the Commission's current voice and data requirements on networks that are built through Mobility Fund support, and specifically made compliance with those rules a condition of receiving Mobility Fund support.[95] To add further measures regarding roaming access and affordability would be beyond the scope of the present proceeding. Moreover, the Commission engaged in an extensive rulemaking on roaming issues six months prior to adopting the *USF/ICC Transformation Order* and adopted specific rules that create a general mandate for data roaming.[96] The Commission noted in the *USF/ICC Transformation Order* that the Commission's existing processes would enable any interested party to file a formal or informal complaint if it believes that a Mobility Fund recipient has violated the roaming requirements.[97] Moreover, as described in the roaming proceeding, Accelerated Docket procedures, including pre-complaint mediation are among the various dispute resolution procedures available with respect to data roaming disputes.[98] Finally, the Commission observed in the *USF/ICC Transformation Order* that it has authority to initiate enforcement actions on its own motion.[99] Blooston and NTCH have not persuaded us to revisit the Commission's deliberations. Therefore, we deny Blooston's and NTCH's petitions with regard to their roaming requests.

3. Mobility Fund Recipients and Exclusive Handset Arrangements

35. In the Mobility Fund NPRM, we sought comment on other eligibility requirements for entities seeking to receive support from the Mobility Fund and specifically inquired whether are there any steps the Commission should take to encourage smaller eligible parties to participate in the bidding for support.[100] In its comments submitted in response to the *Mobility Fund NPRM*, Blooston suggested the Commission prohibit any carrier from participating in the Mobility Fund if it engages in exclusive arrangements for the design or procurement of handsets and other equipment.[101] In the *USF/ICC Transformation Order*, the Commission declined to "bar any particular class of parties out of concern that they might appear to be better positioned to win Mobility Fund support."[102] The Blooston Petition argues that the Commission's action was arbitrary and capricious in that it failed to specifically address the Blooston proposal to limit eligibility based on exclusive handset arrangements.[103] Blooston claims exclusivity arrangements for handsets and equipment "impair the service and competitive options of smaller carriers, deprive the customers of such smaller carriers of roaming capabilities and service features, and increase the cost of the mobile broadband services and equipment available to customers of smaller carriers."[104] AT&T opposes the Blooston proposal, arguing that such a prohibition is "nothing

[95] *USF/ICC Transformation Order*, 26 FCC Rcd at 17795–96, paras. 379–82.

[96] *See generally Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411 (2011).

[97] *USF/ICC Transformation Order*, 26 FCC Rcd at 17796, para. 382.

[98] *Id.* at n.649 (citing *Roaming Second Report and Order*, 26 FCC Rcd at 5449–50, para. 77 and 47 C.F.R. § 1.730).

[99] *USF/ICC Transformation Order*, 26 FCC Rcd at 17796, para. 382.

[100] *Mobility Fund NPRM*, 25 FCC Rcd at 14733, para. 55.

[101] Blooston Comments at 8–9.

[102] *USF/ICC Transformation Order*, 26 FCC Rcd at 17802, paras. 407–08.

[103] Blooston Petition at 15. Blooston also argues that the Commission failed to engage in reasoned rulemaking. *Id.*; *see also Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 462 US 29, 43 (1983).

[104] Blooston Petition at 14.

more than a thinly veiled effort to bar larger wireless providers from competing for Mobility Fund support."[105]

36. The rationale behind the Commission's decision not to bar any particular class of parties out of concern that they might appear to be better positioned to win Mobility Fund support, is that, in the Commission's view, such restrictions could impede our primary goals for USF reform and the Connect America Fund, generally, or the Mobility Fund.[106] Specifically, these goals include the deployment of mobile broadband networks in currently unserved areas in as cost effective a manner as practicable.[107] Blooston's argument to restrict parties who have entered into exclusive handset arrangements could similarly impede these goals of USF/ICC reform. Therefore, we deny the Blooston Petition's request that we prohibit recipients of Mobility Fund Phase I support from utilizing exclusive arrangements for handsets or other equipment.

4. Build-out Requirements for AWS-3 Licensees

37. In its Petition for Reconsideration of the *USF/ICC Transformation Order*, NTCH urges the Commission to amend the rules for Advanced Wireless Service in the 2155-2175 MHz band ("AWS-3") to explicitly link the use of that spectrum with the build-out of unserved areas.[108] As part of this, NTCH proposes "barring or severely handicapping companies who already own significant spectrum in a given market from acquiring even more."[109] NTCH asserts that current spectrum holders have spectrum but are not utilizing it, while other carriers cannot get more spectrum.[110] Therefore, NTCH urges the Commission to "skew[] the AWS-3 auction in the direction of competing carriers" and condition licensing AWS-3 on meeting the goals of Mobility Fund.[111]

38. CTIA opposes NTCH's proposal for AWS-3.[112] Noting that AWS-3 rules are the subject of other Commission proceedings, CTIA argues that any modifications of them in the present proceeding would be "procedurally improper," particularly given the absence of any notice that AWS-3 would be considered in the USF docket.[113] In addition to the procedural considerations, CTIA finds NTCH's proposal "unwise," noting that many parties have expressed interest in pairing the AWS-3 spectrum with 1.7 GHz spectrum, which NTIA is currently considering reallocating from the Federal government to

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[105] AT&T Comments at 32, 34.

[106] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17802, paras. 407–09.

[107] *Id.* at 17772–73, para. 298.

[108] NTCH Petition at 13–14.

[109] *Id.* at 13.

[110] *Id.*

[111] *Id.* at 14. NTCH provided further information about its AWS-3 proposal in its January 18, 2012, comments. *See generally* NTCH, Inc., Comments, WC Docket No. 10-90 *et al.*, filed January 18, 2012. NTCH argues that instead of paying carriers to provide the 3G or better service, the Commission could "essentially be paid for the same thing by offering the available spectrum at a discount determined by the market to offset the cost of providing the services." *Id*. at 5. NTCH claims this proposal would increase the number of potential providers, create a stronger incentive to avoid non-performance with the possible loss of license, relieve the Commission of short and long term distributions from USF, and streamline administrative processes by eliminating the Mobility Fund auctions and ETC designations for multiple applicants. *Id*. at 5–6. NTCH further advocates limiting the AWS-3 spectrum to entities that do not already hold spectrum in the area, requiring interoperability over the entire AWS band, and tying roaming rates to reasonable costs. *Id*. at 6–7.

[112] CTIA-The Wireless Association, Opposition and Comments, WC Docket No. 10-90 *et al.*, filed February 9, 2012 ("CTIA Opposition").

[113] *Id.* at 2–3, 13–14.

commercial use.[114] CTIA contends that such a pairing would be ideal for mobile broadband, which it argues would further the Commission's goals for the Mobility Fund and broadband generally.[115] Given its support for pairing AWS-3 and 1.7 GHz, CTIA therefore opposes what it terms NTCH's "designer allocation" of the AWS-3 spectrum.[116]

39. In response, NTCH acknowledges that "the parameters of AWS-3 are still in flux," but argues that, if the AWS-3 auction would occur in the second half of 2013, the six to nine month delay would be "well worth the savings to the public."[117] NTCH adds that conditioning AWS-3 licenses on meeting the Mobility Fund objectives would also eliminate the post-Mobility Fund auction application review envisioned in the *USF/ICC Transformation Order*.[118]

40. We decline to use this proceeding to adopt service and auction rules for AWS-3 as NTCH suggests. NTCH's proposal focuses on access to spectrum, not on USF reform.[119] We agree with CTIA that such rules are beyond the scope of this proceeding. Moreover, the goal of the Mobility Fund is to expand 3G or better service to unserved areas, and carriers are able to utilize various frequency bands so long as the spectrum will support the required services to meet the Mobility Fund performance requirements.[120] Focusing Mobility Fund deployment on one frequency band, as NTCH proposes, would likely reduce the participation in the program, increase the costs of providing service, and therefore, decrease the area and people that will benefit from new service.[121] Therefore, we deny NTCH's petition with regard to its proposal to condition AWS-3 spectrum on meeting the Mobility Fund requirements.

II. PROCEDURAL MATTERS

A. Paperwork Reduction Act

41. This Fourth Order on Reconsideration does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

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[114] *Id.* at 14 (citing National Telecommunications and Information Administration, Second Interim Progress Report on the Ten-Year Plan and Timetable, October 17, 2011).

[115] *Id.* at 14–15.

[116] *Id.* at 15.

[117] NTCH, Inc., Consolidated Reply to Oppositions to Petition for Reconsideration, WC Docket No. 19-90 *et al.*, filed February 21, 2012, at 4–5 ("NTCH Reply").

[118] *Id.* at 5.

[119] As NTCH and CTIA both note, the Commission is in the process of determining the best use of the AWS-3 spectrum. It does not appear that NTCH filed its Petition for Reconsideration or Reply in that docket.

[120] *USF/ICC Transformation Order*, 26 FCC Rcd at 17800–01, paras. 397–99.

[121] Moreover, as NTCH itself appears to acknowledge, were we to condition AWS-3 spectrum on meeting Mobility Fund performance requirements in unserved areas, we might not achieve the highest value of the spectrum. NTCH Reply at 4–5.

B. Congressional Review Act

42. The rules previously adopted in the *USF/ICC Transformation Order* were submitted to Congress and the Government Accountability Office pursuant to the Congressional Review Act[122] and remain unchanged by this Order.

III. ORDERING CLAUSES

43. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and sections 1.1 and 1.429 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.429, that this Fourth Order on Reconsideration IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register.

44. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.331 and 1.429 of the Commission's rules, 47 C.F.R. § 0.331 and 47 C.F.R. § 1.429, that the Petition for Partial Reconsideration filed by the Blooston Rural Carriers on December 29, 2011 IS DENIED.

45. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.331 and 1.429 of the Commission's rules, 47 C.F.R. § 0.331 and 47 C.F.R. § 1.429, that the Petition for Reconsideration filed by NTCH, Inc. on December 29, 2011 IS DENIED IN PART to the extent described herein.

46. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.331 and 1.429 of the Commission's rules, 47 C.F.R. § 0.331 and 47 C.F.R. § 1.429, that the Petition for Reconsideration filed by General Communications, Inc. on December 23, 2011 IS DENIED IN PART to the extent described herein.

47. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.331 and 1.429 of the Commission's rules, 47 C.F.R. § 0.331 and 47 C.F.R. § 1.429,, that the Petition for Clarification or Partial Reconsideration filed by Townes Telecommunications, Inc. on December 29, 2011 IS DENIED.

FEDERAL COMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[122] *See* 5 U.S.C. 801(a)(1)(A).