

Universal Service Fund Reforms—Mobility Fund

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By John C. Dodge

Mobility Fund: We first reported in 2010 that the Commission was considering a new fund to distribute support for wireless infrastructure in under-served and unserved areas. The Commission now has adopted what it calls the “Mobility Fund Phase I,” which will use a reverse auction to distribute \$300 million for 3G or better mobile broadband to areas where such services are completely unavailable. The Mobility Fund Phase I will work like this:

1. The FCC will establish a list of unserved areas eligible for infrastructure support.
2. The FCC will oversee a sealed-bid, single round reverse auction to allocate areas to different bidders.
3. **Only** designated wireless ETCs will be allowed to bid on unserved areas.
4. USAC will distribute funds incrementally, **after** build-out and coverage targets are met by successful bidders.

Parties interested in participating in the Mobility Fund Phase I auction should be aware of several significant FCC requirements and expectations, including QOS standards and penalties.

The new “Mobility Fund Phase I” will distribute \$300 million starting in 2012 for 3G or better mobile broadband to areas where such services are unavailable. For purposes of the fund, 3G is defined as 200 kbps/50 kbps minimum at the cell edge, and 4G is defined as 768 kbps/200 kbps minimum at the cell edge.

Current ETC rules allow multiple wireless providers to draw from the USF to serve the same area. The Mobility Fund Phase I will support a single provider per area, unless overlapping proposals would increase coverage (measured by number of “units served” or “road miles”). Overlapping infrastructure proposals will face significant (if not insurmountable) obstacles to funding, as will providers claiming to need ongoing support.

Areas Eligible for Support

The basic geographic unit for determining unserved areas will be the “census block,” which is a geographical unit formed by streets, roads, railroads, streams and other bodies of water, other visible physical and cultural features, and the legal boundaries shown on Census Bureau maps. There are more than 7 million census blocks in the United States, many of which are uninhabited. The FCC is confident that using census blocks will provide a sufficiently granular view for purposes of identifying unserved areas.

The FCC also will rely on American Roamer data to identify the geographic coverage of 3G or better networks using EV-DO, EV-DO Rev A, and UMTS/HSPA mobile broadband standards. American Roamer, while not perfect, offers better data than the still-evolving National Broadband Map or Form 477 data. A census block will be considered unserved, i.e., eligible for support, if the **geometric center** of the block (also known as the “centroid”) is not covered by networks using EV-DO, EV-DO Rev A, and UMTS/HSPA or better.

As part of a pre-auction process, the FCC will publish a tentative list of unserved areas. The FCC will not consider whether census blocks are served by any existing wireless broadband provider or whether they have no wireless service availability. That said, the FCC will give parties a chance to show that “specific areas identified as unserved are actually served and/or that additional unserved areas should be included.” This will be the **only** opportunity to challenge the determination of which areas are unserved.

An area will not be considered “unserved” if any provider has either already made, or by Dec. 31, 2012 makes, a regulatory commitment to provide 3G or better wireless service to the area, or if any provider has received a funding commitment from a federal executive department or agency (e.g., NTIA or RUS) to serve the area with 3G or better wireless service. Current wireless ETCs and potential bidders must review the eligible area list and identify areas for which they have made a regulatory commitment for 3G or better service.

“Under-served” vs. “Unserved”

While the Order posits benefits to “under-served” areas as well as “unserved” areas, the FCC’s focus is on truly unserved areas. The FCC may have learned from the RUS broadband loan experience that “under-served” is too loose a standard. Thus, potential bidders should focus their analysis on census blocks with no current mobile broadband access, rather than areas where mobile broadband may be available from only one or two carriers.

Carriers Eligible for Support

With a limited exception for certain Tribally-owned entities, only wireless ETCs may participate in Mobility Fund Phase I. Potential bidders that are not ETCs should apply for ETC certification promptly, because the Mobility Fund monies will be distributed beginning in 2012, and the FCC called for quick state action on pending or newly submitted wireless ETC applications. All wireless ETCs are eligible, including large wireless companies affiliated with landline carriers.

Applicants must have “access to” qualifying spectrum prior to the auction, which means either an FCC license or a 5-year lease (including renewals) with an FCC licensee. The spectrum must be capable of supporting mobile broadband. Advanced Wireless Services, the 700 MHz Band, Broadband Radio Services, broadband PCS, or cellular bands qualify. For other bands, the bidder must show the FCC that the alternate spectrum is appropriate.

Carriers must also certify that they have the financial and technical capability to provide 3G or better service within the specified timeframe in the geographic area for which they seek non-recurring support. Applicants need not deploy any fixed percentage of any build-out with non-Mobility Fund funds, but since Mobility Fund Phase I is non-recurring, the successful bidder must complete the build-out without additional USF money.

Reverse Auction

The FCC will employ a single-round, sealed bid auction to award Mobility Fund Phase I funds. Bidders will be able to submit maximum acceptable per-area bids and reserve prices, with the latter subject to bidder choice of disclosure. The FCC did not adopt specific rules for packaging bids for multiple areas, delegating that chore to its Bureaus in the pre-auction process, during which bidders can comment on package bidding.

Parties interested in bidding will submit a short form of qualifications before the auction, and a long form application if they win. The short form will include ownership disclosures (consistent with the FCC rules on spectrum awards), ETC status, spectrum source (license or lease) and spectrum term (5-year minimum). The long form will be developed by FCC staff under delegated authority, but will include expanded information on construction, finances, and technical capabilities. Bidders will not be allowed to rely on other federal funds as part of their financing packages.

Parties who cancel their bids may be subject to a cancellation fee. Parties who default on their bids will be subject to a default payment. FCC staff will develop guidelines for both types of payments, which are likely to vary by size of bid or size of bidding area.

Fund Administration and Dispersal

USAC will distribute one-third of the support for a given area upon approval of an applicant's long-form application. The second third will be dispersed when the carrier files a report verifying that it has met 50% of its minimum coverage requirement using a “drive test.” The final disbursement will equal the difference between the percent of road miles actually covered by the new network in the previously unserved area, and any support previously received. In no case does it appear that a bidder can serve less than 75% of road miles in unserved census blocks and still be compliant with Mobility Fund Phase I expectations.

Tribal Areas

Tribal areas will be subject to the same rules as for Mobility Fund Phase I, except that tribes can form non-ETC entities to bid so long as those entities' ETC applications are pending at auction. Tribally-owned entities will receive a bidding credit, and such areas will be funded separately, with a \$50 million initial budget (another \$100 million will be made available to tribal areas through the Tribal Mobility Fund Phase II). Potential bidders are also expected to comply with individual tribal engagement processes.

Further Notice regarding Mobile Reporting: The FCC notes that Mobility Fund support differs from the support under the other high-cost mechanisms, and thus recipients of Mobility Fund support must file separate annual reports. In the Further Notice, the FCC seeks comments on what type of information comparable to the five-year broadband build-out plan should be required of mobile service providers; and how mobile service providers should report network outages (e.g., by number of affected customers or average number of customers served by towers that are out of service during an outage).

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