

8300 Greensboro Dr.  
Suite 1200  
McLean, VA 22102

(703) 584-8666  
WWW.FCCLAW.COM



September 23, 2013

Ruth Milkman, Chief  
Wireless Telecommunications Bureau

Julie Veach, Chief  
Wireline Competition Bureau

Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Auction 901 – Funds Returned by Winning Bidders  
Dockets No. AU 12-25, WC 10-90 and WT 10-208

Dear Ms. Milkman and Ms. Veach:

United States Cellular Corporation (“U.S. Cellular”), by counsel, respectfully requests that the Wireless Telecommunications Bureau and the Wireline Competition Bureau (the “Bureaus”), acting on delegated authority, expeditiously award returned Auction 901 funds to the next-in-line bidders.<sup>1</sup>

As we approach the one year anniversary of Auction 901, at least \$66 million of the \$300 million originally made available for funding mobile broadband investments in unserved areas remains unclaimed due to winning bidders defaulting on their bids. These defaulted amounts can and should be awarded to the next in line bidders who remain ready, willing and able, to meet the goals of the program and expand the reach of mobile broadband into areas that remain unserved and which were eligible for funding under the rules of Auction 901.

As set forth below, the Commission should promptly award those funds, consistent with its obligation to use available funds to accelerate mobile broadband deployment.

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<sup>1</sup> U.S. Cellular first suggested this course of action shortly following the close of Auction 901. *See, e.g.*, Letter from David A. LaFuria, Counsel for U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 12-25, GN Docket No. 09-51, WC Docket Nos. 05-337 and 10-90, WT Docket No. 10-208, filed Dec. 18, 2012, at 1 (“urging the Commission to distribute [defaulted Mobility Fund Phase I] funds . . . to fulfill bids in Auction 901 that were not awarded”).

## I. Background

“Ubiquitous mobile coverage must be a national priority. To increase the availability of current generation mobile broadband, as well as mobile voice, across the country, universal service funding for mobile networks must be deployed in a more targeted and efficient fashion than it is today.”<sup>2</sup> The Commission determined that “[t]he CAF [Connect America Fund] will rely on incentive-based, market-driven policies, including competitive bidding, to distribute universal service funds as efficiently and effectively as possible[,]”<sup>3</sup> and found that “a reverse auction format . . . is the best available tool for identifying . . . areas [where it is cost effective to extend deployment of 3G networks and accelerate deployment of 4G networks with one-time support]—and associated support amounts—in a transparent, simple, speedy, and effective way.”<sup>4</sup>

The Commission budgeted \$300 million for the first phase of the Mobility Fund, “to immediately accelerate deployment of networks for mobile voice and broadband services in unserved areas.”<sup>5</sup> Emphasizing the importance of moving forward expeditiously, the Commission stated, “[w]e expect to distribute this support as quickly as feasible, with the goal of holding an auction in 2012, with support beginning to flow no later than 2013.”<sup>6</sup>

To its substantial credit, the Commission has met this tight time frame. The auction occurred on September 27, 2012, and to date, the Commission has authorized the award of \$264,908,275 to 387 winning bids, conditioned on the successful completion of performance conditions.<sup>7</sup>

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<sup>2</sup> *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 an 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, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17771 - 72 (2011) (“CAF Order”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

<sup>3</sup> *Id.* at 17,673.

<sup>4</sup> *Id.* at 17,781.

<sup>5</sup> *Id.* at 17,675.

<sup>6</sup> *Id.* at 17,773 (emphasis added).

<sup>7</sup> Factsheet for Auction 901, Mobility Fund Phase I, [http://wireless.fcc.gov/auctions/default.htm?job=auCTION\\_factsheet&id=901](http://wireless.fcc.gov/auctions/default.htm?job=auCTION_factsheet&id=901), last accessed Aug. 21, 2013.

Significantly, not all of the \$300 million of funds awarded to winning bidders in Auction 901 will be distributed. For a variety of reasons, some winning bidders have not claimed \$66,346,707 in funds awarded,<sup>8</sup> which amount includes \$45,853,493 in winning bids that Atlantic Tele-Network, Inc. announced it would default on.<sup>9</sup> We believe that there remain approximately 408 bids yet to be awarded,<sup>10</sup> so the amount of unclaimed funds may go higher.

## II. The Act and the *CAF Order* Support the Prompt Award of Returned Funds to the Next-in-Line Bidders

In establishing the Mobility Fund, the Commission was fulfilling one of its central missions, to make “available ... to all the people of the United States ... a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”<sup>11</sup> With respect to implementation, the Commission acted “as quickly as feasible,”<sup>12</sup> noting that “[m]illions of Americans live in communities where current-generation mobile service is unavailable, and millions more work in or travel through such areas[,]” and creating the Phase I mechanism to advance the “goal of swiftly extending current generation wireless coverage in areas where it is cost effective to do so with one-time support.”<sup>13</sup>

The FCC’s *USF/ICC Reform Order* addressed the subject of returned funds:

Undisbursed Support Payments. We received no comments on the disposition of Mobility Fund support for which a winning bidder does not timely file a long-

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<sup>8</sup> This amount was calculated based upon information released by the Commission in the following Public Notices: DA 13-888 (Apr. 25, 2013); DA 13-1412 (June 20, 2013); DA 13-1591 (July 18, 2013); DA 13-1662 (July 29, 2013); DA 13-1732 (Aug. 8, 2013); DA 13-1769 (Aug. 16, 2013); DA 13-1786 (Aug. 21, 2013); DA 13-1829 (Aug. 29, 2013); and DA 13-1922 (Sept. 19, 2013) (collectively, the “*Auction 901 Public Notices*”) and last Friday’s AT&T/ATNI transaction order. See, Applications of AT&T Inc. and Atlantic Tele-Network, Inc. for Consent to Transfer of Control of and Assign Licenses and Authorizations, WT Docket No. 13-54, *Memorandum Opinion and Order*, DA 13-1940, (rel. Sept. 20, 2013) (“*ATNI Order*”). The total default amount does not include the 5 or 10 percent auction default payments that must be made by defaulting bidders.

<sup>9</sup> *ATNI Order*, *supra*, at ¶ 99, n. 298.

<sup>10</sup> This estimate is derived from a comparison of the number of winning bids reported by the Commission, accessed at [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_summary&id=901](http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=901), and the number of authorized winning bids and bids in default reported in the *Auction 901 Public Notices*.

<sup>11</sup> 47 U.S.C. § 151.

<sup>12</sup> *CAF Order*, *supra*, at 17,773.

<sup>13</sup> *Id.* at 17,778 (emphasis added).

form application. We anticipate that when a winning bidder defaults on its bid or is disqualified for any reason after the close of the auction, the funds that would have been provided to such an applicant will be used in a manner consistent with the purposes of the Universal Service program.<sup>14</sup>

No subsequent order or public notice expanded this language.

The Commission directed USAC to “utilize \$300 million in the *Corr Wireless* reserve account to fund commitments that we anticipate will be made in 2012 to recipients of the Mobility Fund Phase I to accelerate advanced mobile services.<sup>15</sup>

Promptly awarding returned Mobility Fund monies to the next-in-line bidders will fulfill the goals of the Act and the *CAF Order* by ensuring the rapid deployment of broadband wireless services to unserved areas. No other course of action will deploy facilities as quickly.

### **III. The Bureaus Are Authorized to Act under Delegated Authority**

The Commission delegated broad authority to the Bureaus to fully implement the Mobility Fund:

*Delegation of Authority. We also adopt our proposal to delegate to the Bureaus authority to administer the policies, programs, rules and procedures to implement Mobility Fund Phase I as established today.... In addition to the specific tasks noted elsewhere ... this delegation includes all authority necessary to conduct a Mobility Fund Phase I auction and conduct program administration and oversight consistent with the policies and rules we adopt in this Order.*<sup>16</sup>

Given the complexities associated with modifying existing rules as well as other reforms adopted in this Order, we delegate authority to the Wireline Competition Bureau and Wireless Telecommunications Bureau, as appropriate, *to make any further rule revisions as necessary to ensure that the reforms adopted in this Order are properly reflected in the rules.* This includes ... addressing any omissions or oversights. If any such rule changes are warranted,

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<sup>14</sup> *Id.* at 17,815.

<sup>15</sup> *Id.* at 17,848.

<sup>16</sup> *CAF Order* at 17,783 (emphasis added). See also *id.* at 17,805 (“We delegate authority to the Bureaus to administer the policies, programs, rules and procedures we establish for Mobility Fund Phase I today and take all actions necessary to conduct a Phase I auction.”)

the Wireline Competition Bureau or Wireless Telecommunications Bureau, as appropriate, shall be responsible for such changes.<sup>17</sup>

The Wireline Competition Bureau has used the authority delegated in the *CAF Order* to revise and clarify the rules. For example, in June 2012, the Wireline Competition Bureau ruled on several requests for clarification.<sup>18</sup> The Bureau did not put the letters out on public notice for comment, and noted that no party objected to the relief requested.<sup>19</sup> The Bureau further noted that it “may release additional clarification orders in the future, consistent with its authority under the [*CAF Order*].”<sup>20</sup>

In sum, the Bureaus possess specific delegated authority to grant this request, including the discretion to decide whether to place it on public notice if no party opposes this request within ten days.<sup>21</sup> “[A]ny entity that disagrees with a rule change made on delegated authority will have the opportunity to file an Application for Review by the full Commission.”<sup>22</sup>

#### **IV. Awarding Returned Mobility Funds to the Next-in-Line Bidders Is Fair to Those Who Participated and Will Maintain the Integrity of the Auction Process**

The next-in-line bidders have already completed the requisite Commission processes, they have participated in the auction, and they have affirmatively stated a readiness to deploy facilities pursuant to their plans filed with the Commission. In fact, the next-in-line bidders would have been awarded these funds in the first instance had the original bidders only bid on census blocks that they could commit to construct. Awarding support to next-in-line bidders distributes funds to those who have already submitted bids and are committed to performing.

Holding a second auction or moving the funds to another place within the universal service mechanism sets a poor precedent that undermines confidence in the auction process. While the Commission can change its auction procedures, it should do so judiciously. After committing \$300 million to Mobility Fund Phase I, taking all reasonable measures to award all

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<sup>17</sup> *Id.* at 18,149 (emphasis added).

<sup>18</sup> In the Matter of Connect America Fund, et al., *Order*, DA 12-870, 27 FCC Rcd 5986 (Chief, Wireline Competition Bureau)( 2012) (“*June 2012 Clarification Order*”).

<sup>19</sup> *June 2012 Clarification Order* at 5988, n. 17.

<sup>20</sup> *Id.* at 5986, n. 2.

<sup>21</sup> 47 C.F.R. § 1.45.

<sup>22</sup> *CAF Order* at 18,149.

of the funds to those who committed to the process will cement in the minds of future auction bidders that the Commission will also keep its commitments to them. That said, awarding support to next-in-line bidders does not prevent the Commission from taking a different action in another auction, especially if the Commission explains as a part of its future pre-auction notices that it is not bound by what it does here and intends to take a different path.

From the perspective of rural consumers in states such as New Hampshire and Kansas, neither of which has seen any support in Auction 901 (and for the record, New Hampshire has seen negligible support since the 1996 Act), moving support to another auction greatly increases the likelihood that no party will step up and build these areas, ever. A Phase II auction for 4G support will have enormous rural areas available for bidding across the country. It is therefore highly likely that all available funding will be exhausted long before higher-cost areas available here will be reached. People living in these areas, who should have seen support provided in this auction, may never receive mobile wireless service.

Finally, holding a second auction is inefficient, and it opens the door to consequences that are both unintended and unknown today. For example, in a reauction, one likely problem is that every other bidder will know exactly what they need to bid to undercut the bids placed in the original Auction 901.

U.S. Cellular's approach "maximize[s] the impact of the new [Mobility Fund Phase I] funding to speed deployment to the greatest number of unserved areas."<sup>23</sup> To preserve the integrity of this auction, the Commission should award all funds to those who came to the table when called, and are committed to delivering to consumers the benefits promised when this process began.

## **V. Specific Proposal for Re-Assigning the Returned Funds**

U.S. Cellular proposes the following simple procedure for re-assigning returned Mobility Fund monies to the next-in-line bidders:

- Issue a Public Notice announcing that next-in-line bidders in Auction 901 interested in claiming an award of returned funds must notify the Commission within ten business days via e-mail, using the Auction 901 e-mail address.

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<sup>23</sup> *Auction 901 Winners Announcement* at 2. The Commission has emphasized that "[t]he overall objective of the bidding in [Mobility Fund Phase I] is to maximize the number of units to be covered in unserved areas given [the Commission's] overall budget for support." *CAF Order*, supra at 17,805.

- Applicants affirmatively seeking an award must take everything awarded, or decline to participate. The Public Notice should make clear that this process will be one-time and all subsequent funds will be added to increase the funds available in Mobility Fund Phase II.
- Applying the same methodology used to award bids following the September 27, 2012 auction, the Bureaus will calculate the amount of returned funds available, and match those funds to the next-in-line bidders who have timely filed their notice of continued interest.
- Issue another Public Notice announcing winning bidders, and repeat the process for filing and processing long-form applications.
- Promptly review the long-form applications, and proceed to distribute funding as soon as possible.

## VI. Conclusion

The possibility of bidders refusing to accept funds was considered, but not fully discussed in the *CAF Order*, understandably so in the context of attempting to reform the entire universal service and intercarrier compensation mechanisms. Awarding the returned funds to next-in-line bidders who are ready to perform will be consistent with the purposes of both the Act and the universal service program, and it will send the right signal to bidders who participated in the September 27, 2012 auction that their legitimate bids at the block will be honored. It is a simple solution that will serve rural citizens waiting to receive advanced 3G and 4G services.

Respectfully submitted,



David LaFuria  
Robert S. Koppel

*Counsel for United States Cellular Corporation*

cc: Margaret Weiner  
Gary Michaels  
Jane Jackson  
Rebekah Goodheart

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Trent Harkrader  
Kimberly Scardino  
John Gockley  
Grant Spellmeyer