FCC Connect America Fund Advances Broadband Deployment

The FCC hopes to encourage broadband deployment in underserved areas by allowing competitive bidding for up to $1.8 billion of Universal Service Fund monies annually.

By Douglas Jarrett / *Keller and Heckman*

The next eight to 12 months may be the "best of times" for competitive providers to secure Universal Service Fund (USF) monies to support fiber-based broadband services in unserved rural areas of the United States.

Local governments, entrepreneurs, electric cooperatives and independent cable operators looking to deploy broadband services in their communities should have a working understanding of the FCC Connect America Fund.

FCC REDIRECTS USF TO SUPPORT BROADBAND

In response to criticisms of the growth and direction in its USF programs, the FCC adopted its USF/ICC Transformation Order in 2011. In May 2015, the Supreme Court declined to consider further appeals of the order, cutting off challenges to the FCC's authority to expend USF monies to support broadband infrastructure investment.

In that 2011 decision, the agency capped the high-cost component of the USF program at $4.5 billion annually and redirected it to "advance universal availability of modern networks capable of delivering broadband and voice services to homes, businesses and community anchor institutions" and to ensure that rates for voice and broadband service available in rural, insular and high-cost areas are "reasonably comparable" to the rates for these services in urban areas. Consistent with this new focus, the high-cost program was renamed the Connect America Fund (CAF).

The FCC divided CAF funding into several categories:

- a mobility fund, including a tribal mobility fund
- a fund for remote and extremely high-cost areas
- approximately $1.8 billion in annual support for wireline broadband and voice services in the high-cost areas that price-cap carriers serve
- approximately $2.0 billion annually for broadband and voice services for the high-cost areas that rural rate-of-return carriers serve.

To date, the FCC has set new rules and disbursed funds for the mobility fund and tribal mobility fund and is retargeting the $1.8 billion for rural areas served by the price-cap ILECs (the larger telephone companies) to support more robust, fixed wireline, rural broadband infrastructure. Long-term reform efforts for the USF support provided to rural rate-of-return carriers are just beginning.

HIGH-COST CENSUS BLOCKS IN PRICE-CAP TERRITORIES

The FCC is now implementing its long-term plan for the $1.8 billion in annual funding for price-cap carrier service areas, generally referred

to as "CAF Phase II" or simply "Phase II." If a price-cap carrier declines to accept funds available to it (based on aggregate "model-based support"), these funds will become available for competitive bidding.

A central element is the FCC's adoption of new minimum broadband service speeds of 10 Mbps downstream/1 Mbps upstream for CAF Phase II, subject to upward adjustments in the future. Recipients of CAF Phase II funds must satisfy these minimum speeds and meet standards for latency and minimum monthly usage levels (the "baseline broadband offering").

The annual disbursement of Phase II funds is grounded in the FCC's Connect America Fund Cost Model (CAM), which quantified the cost for deploying broadband-capable networks in high-cost areas and identified census blocks in which the unsubsidized cost of voice and broadband services exceeds $52.50 per month but is less than $207.81 per month. Census blocks in which the cost of service exceeds this upper boundary are referred to as "extremely high-cost areas."

The FCC established a rural broadband experiment (RBE) program to gain experience in shaping the CAF II competitive bidding procedures and to see how entities other than local exchange carriers might deploy broadband in rural areas. The FCC set aside $100 million for these experiments. Bids for these funds were tendered in 2014, and the FCC is finalizing the grants to the selected winning bidders.

STEP 1: MODEL-BASED OFFERS TO PRICE-CAP ILECS

On April 29, 2015, the FCC extended model-based offers, approximating $1.7 billion annually, on a state-by-state basis to each price-cap ILEC. Funds were offered for all high-cost areas in each carrier's service territories that were not served by unsubsidized competitors offering broadband service at speeds of at least 4 Mbps/1 Mpbs. Each price-cap carrier must accept or decline these model-based offers on or before August 27, 2015. The carriers may accept all, some or none of the offers. Most observers expect carriers to accept some offers and decline others. As of press time, Frontier Communications had accepted all its statewide offers for slightly more than $283 million in annual support.

> The reverse auction is open to a wide range of entities, not just those currently eligible for high-cost support. Electric co-ops, municipalities and others may bid.

Carriers that accept this support must build out broadband infrastructure capable of delivering broadband speeds of 10 Mbps/1Mbps (and of meeting the other components of the baseline broadband offering) to 40 percent of funded locations by the end of 2017, 60 percent by the end of 2018 and 100 percent by the end of 2020.

STEP 2: COMPETITIVE BIDDING

The competitive bidding process will be a reverse auction conducted in 2016. The FCC must finalize the bid procedures and establish a bidding platform for this reverse auction. As noted above, the funds available for the reverse auction will equal the model-based statewide offers that the price-cap ILECs decline.

In all likelihood, the reserve price per bidding area (census tract or census block) will be the CAM-determined amount for the number of eligible locations. Competitive providers will have the opportunity to bid on those census blocks for which the price-cap carriers decline statewide, model-based offers; competitive providers and price-cap ILECs will be able to bid on those high-cost areas that the FCC expressly excluded from the price-cap offers ("other high-cost areas").

These other high-cost areas include census blocks in which subsidized or unsubsidized providers currently offer broadband in excess of 4 Mbps/1 Mbps but less than 10 Mbps/1 Mbps as well as those in which RBE applicants applied for funding for broadband at 100 Mbps/25 Mbps and met the basic financial and technical requirements but were not selected. The number of these other high-cost areas is expected to be a small fraction of the areas subject to the statewide offers.

Potential bidders can bid on extremely high-cost areas as well as high-cost areas. The FCC believes bidders should be able to define their service territories so as to design the most efficient and scalable networks.

A final list of census blocks to be included in the reverse auction will be compiled after August 27, 2015, as the FCC determines the model-based offers accepted and rejected by the price-cap carriers.

ASSUMPTIONS UNDERLYING THE REVERSE AUCTION

The FCC assumes that:

- Price-cap carriers will decline enough offers so that sufficient funds are available for the reverse auction.
- Parties other than price-cap ILECs will bid.
- The cost to deploy modern networks capable of supporting voice service and broadband service that meets or exceeds the baseline broadband offering in high-cost areas and extremely high-cost areas will be substantially less than the CAM costs.
- Rules and procedures that are relatively straightforward and will encourage substantial participation can be devised for the reverse auction, and the auction platform can be designed, deployed, tested and ready for use in 2016.
- Entities will bid despite the possibility that not all "winning bids" will be funded.

The FCC recommends that CAF II recipients construct future-proof networks.

THE REVERSE AUCTION: EASIER SAID THAN DONE

Each bidder will be allowed to select the census blocks for its bidding package, and it is likely that each bidder will be able to submit one or more bidding packages. The reserve prices for the reverse auction will be the CAM-based prices for the census blocks bid. An open question is whether the minimum bidding unit will be a census block or census tract.

A fundamental policy decision for the FCC is whether bids should be keyed to the baseline broadband offering, with price being the determinative factor, or whether, as the FCC has indicated, greater value should be placed on bids that propose more robust broadband buildouts, such as 100 Mbps/25 Mbps. The FCC has also expressed a strong preference for multiround bidding.

Devising a multiround bidding procedure for variously defined bid packages for which geographic service areas will likely be different and in many cases will overlap may well be the most significant challenge in developing the bidding procedures.

WHO IS QUALIFIED?

The reverse auction is open to a wide range of entities, not only to those currently qualified to receive CAF funds. All CAF II recipients must qualify as eligible telecommunications carriers (ETCs) under Section 214 of the Communications Act. A selected bidder will be permitted to obtain its ETC certification after being selected as a winning bidder, either from its state public service commission or, if the state declines jurisdiction to grant ETC status, from the FCC.

Bidders must show minimum financial and technical competence. These showings will be patterned after the showings adopted under the rural broadband experiment program. A letter of credit from a qualified financial institution will be required. The FCC is currently evaluating proposals to expand the scope of qualified financial institutions and to adjust the amount of the letter of credit that must be maintained for the 10-year funding period.

PROGRESS REPORTS

Winning bidders will likely be subject to the same five-year broadband buildout schedule required for price-cap carriers that accept model-based support. Moreover, the evolving broadband speed standard will apply to all CAF II recipients. Because of this, the FCC strongly recommends that CAF II recipients construct "future-proof networks that are capable of meeting future demand."

All recipients of CAF II monies will be required to submit annual reports beginning the first year after receiving the initial disbursement. The reports will describe the extent to which the service provider is meeting its current deployment milestone, providing broadband at the speeds committed to in its winning bid (which are subject to potential upward adjustment by the FCC) and providing voice and broadband service at "reasonably comparable" rates. The failure to meet deployment milestones will subject the service provider to reductions in support that will not be restored until the milestone is met.

CAF II recipients are also obligated to bid on all posted bids for E-Rate funding issued by schools and libraries located within their service territories.

As the CAF II recipients must provide voice service, and as broadband Internet access is now regulated as a "telecommunications service" under the FCC's Open Internet Order, successful bidders in the reverse auction will be subject to the federal and state regulations, filing requirements, FCC fees and contribution obligations, such as contributing to the Universal Service Fund, applicable to telecommunications carriers. ❖

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