$20.6 Billion Rural Development Opportunity Fund Auctions Take Center Stage at the FCC

The agency looks to deliver on rural broadband promises.

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The Federal Communications Commission (FCC) has proposed that a $20.6 billion Rural Development Opportunity Fund (RDOF) be made available under two reverse auctions. The RDOF will support deployment of broadband networks and provide broadband and voice services to areas lacking fixed broadband at 25 Mbps/3 Mbps ("unserved census blocks").

Up to $16 billion ($1.6 billion per year for 10 years) will be available under the Phase I auction. During the Phase II auction, $4.4 billion ($440 million per year for 10 years), plus remaining funds from the Phase I auction, will be available. The FCC is looking to conduct the Phase I auction in late 2020 or early 2021 because the 2015 statewide model-based offers that provided approximately $1.7 billion annually to the price cap incumbent local exchange carriers (ILECs) will expire in 2021.

Relying on data from improved broadband reporting and mapping procedures that will be finalized in a related FCC proceeding, the FCC proposes focusing the Phase II auction on distributing funding to all remaining *unserved locations* (those not served with 25 Mbps/3 Mbps). The FCC has not set a tentative schedule for the Phase II auction.

PHASE I AUCTION PROCEDURES

The FCC plans to rely on the multiround descending clock auction procedures utilized in the CAF II auction. The bidding platform and procedures are in place. Under these procedures, all qualified bidders compete against all other bidders until the round in which the clearing price point is reached: the so-called clearing round, in which the bidding for available areas has driven the aggregate reserve price for the remaining areas to or below the $16.0 billion budget. During that round and in subsequent rounds, support is assigned to the sole bidder or lowest bidder for a given bidding area.

The FCC is retaining three of the CAF II performance tiers, deleting the 10 Mbps/1 Mbps performance tier and the high- and low-latency options, often referred to as the "T and L" combinations. The agency has requested comment on whether there should be a greater separation in the weights between the gigabit tier and the baseline tier of 25 Mbps/3 Mbps. Some parties may offer such proposals; others may offer a fourth intermediate performance tier.

The FCC proposes retaining the short-form application to qualify entities to participate in the Phase I auction. Minor modifications from the CAF II filing requirements are under consideration. The RDOF Notice of Proposed Rulemaking (NPRM) indicates the agency will retain the long-form application to confirm that winning bidders have a well-conceived network design and buildout plan to deploy a network that meets the performance tier and latency metric proposed in the short-form application. It also ensures the winning bidder will have a financial plan demonstrating, with the support won at auction and other funds available to it, the financial wherewithal to meet its buildout requirement and provide the services it committed to provide.

The RDOF NPRM requests comment on possibly changing the minimum bidding area from census block groups to either census block tracts or counties, replacing the letter of credit obligation with another form of financial assurance, establishing a tribal-area bidding credit, and imposing a subscription obligation that would require winning bidders to provide service to 70 percent of the locations for which it receives support. The obligation to obtain eligible telecommunications carrier (ETC) status continues to apply to winning bidders for areas won during the Phase I auction, consistent with the CAF II post-auction requirements.

A downside to the CAF II auction bidding procedures was that 25 percent – or $500 million – of the $1.98-billion CAF II budget was not assigned. This is because bidders continued to bid in rounds after the clearing round as the available support was declining and bidders stopped bidding on many areas. About 35 percent of the areas initially receiving bids were not assigned support. Unfortunately, the FCC looks favorably on this "competitive" process and expects that a substantial amount of the $16 billion Phase I budget will not be assigned for the same reason. These unassigned funds are proposed to be carried forward to the Phase II auction.

PHASE I RESERVE PRICES AND ELIGIBLE AREAS

The Phase I auction will have higher reserve prices and potentially more eligible areas than the CAF II auction. Apart from the $16.0 billion 10-year budget, as compared to the $1.98 billion 10-year CAF II budget, many bidding areas in the Phase I auction will have a noticeably higher reserve price because of either the number of eligible locations or the increase in the extremely high-cost cap used to calculate census block reserve prices. For the Phase I auction, the FCC proposes that the reserve price per census block should equal the difference between the high-cost threshold of $52.50 ($39.98 in tribal areas) and the Connect America Cost Model (CACM)–estimated cost of deployment for the census block up to a $200 cap ($212.52 in tribal areas).

> Compared with the CAF II auction, the Phase I RDOF auction, scheduled to begin in late 2020 or early 2021, will have noticeably higher reserve prices because of either the number of eligible locations or the increase in the extremely high-cost cap used to calculate census block reserve prices.

The most important categories of eligible areas proposed for the Phase I auction include

1. Areas in the 2015 price cap ILECs' statewide offers ("model-based support areas") in which neither the price cap ILEC nor any other entity offers service at the fixed benchmark of 25 Mbps/3 Mbps, based on data to be derived from the last set of Form 477 reports submitted prior to the Phase I auction
2. Areas eligible for the CAF II auction but not included in winning bids
3. Unserved locations in the model-based support areas in which the ILEC is the only entity offering 25 Mbps/3 Mbps service. The FCC relies on High Cost Universal Broadband (HUBB) Portal data filed by the price cap ILECs to identify served and unserved locations. This is a significant departure from the CAF II auction, which relied exclusively on data from recent FCC Form 477 reports. The Form 477 has been criticized as overstating the availability of broadband largely because the Form 477 instructions direct service providers to report a census block as "served" if one location is obtaining service at the current fixed broadband benchmark, currently 25 Mbps/3 Mbps.
4. Unserved census blocks whose average cost of service (under CACM) is *less* than the high-cost threshold of $52.50 ($39.98 in tribal areas). The FCC estimates there are 6.3 million unserved locations in these low-cost census blocks and is seeking comment on how to set the reserve price for these areas.

The date for filing comments regarding the proposals in the RDOF NPRM has passed, but interested parties are expected to present their interests and positions to FCC staff until the agency adopts a Report and Order sometime in 2020 with the Phase I auction to follow. The Phase I auction is generating broad interest because available funding has increased dramatically, many areas have higher reserve prices, and more areas and unserved locations have become available. ❖

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