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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

REPORT AND ORDER, DECLARATORY RULING, ORDER, MEMORANDUM OPINION AND ORDER, SEVENTH ORDER ON RECONSIDERATION, AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: April 23, 2014 **Released: June 10, 2014**

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By the Commission: Chairman Wheeler and Commissioners Clyburn and Rosenworcel issuing separate statements; Commissioner O'Rielly approving in part, concurring in part and issuing a statement; Commissioner Pai approving in part, dissenting in part, and issuing a statement.

TABLE OF CONTENTS

I. INTRODUCTION

1. With this Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking (FNPRM), the Commission takes significant steps to continue the implementation of the landmark reforms unanimously adopted by the Commission in 2011 to modernize universal service for the 21st century.[1] We build on the solid foundation created in 2011, taking into account what we have learned to date and new marketplace developments, to fulfill our statutory mission to ensure that all consumers "have access to . . . advanced telecommunications and information services."[2]

2. A core component of the 2011 reforms was the creation of the Connect America Fund to preserve and advance voice and robust broadband services, both fixed and mobile, in high-cost areas of the nation that the marketplace would not otherwise serve. Today, we adopt rules that build on the framework established by the Commission in the *USF/ICC Transformation Order*, while proposing targeted adjustments that we believe are necessary to ensure that we are best utilizing the funds that consumers and businesses pay into the universal service system. In particular, we are mindful that technological innovation is occurring at a rapid pace, and the marketplace has continued to evolve in the intervening years. We must ensure that the reforms we implement now are not predicated on outdated assumptions.

3. Meeting the infrastructure challenge of the 21st century will be a multi-year journey. It took the nation almost 50 years to bring electricity to 99 percent of rural farms;[3] decades later, it took 35 years to complete the original portion of the interstate highway system.[4] In just two years, the Commission's reforms have set the nation on a path that will bring new fixed broadband services to more than 1.6 million Americans, new mobile services to historically unserved Tribal lands, and improved mobile coverage along our nation's roads. Achieving universal access to broadband will not occur overnight. Today, we take further steps to bring broadband service to every corner of the country.

4. The Report and Order adopts several rules to establish the foundation for the award of support in price cap areas where the price cap carrier declines the offer of model-based support. Specifically, we conclude that all areas where the average cost per location equals or exceeds a specified cost benchmark are eligible for Phase II support in the competitive bidding process. We set a support term of 10 years for support awarded through the competitive bidding process. We permit price cap

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[1] *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and/or FNPRM*); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. argued Nov. 19, 2013).

[2] 47 U.S.C. § 254(b)(3).

[3] Anne Mayberry, Rural Utilities Service, United States Department of Agriculture Rural Development, *Out of Darkness*, RURAL COOPERATIVES, May/June 2010, *available at* http://www.rurdev.usda.gov/rbs/pub/may10/out.htm. *See also* United States Department of Agriculture, Rural Electrification Administration, A Brief History of the Rural Electric and Telephone Programs c-2 (1982), http://www.rurdev.usda.gov/rd/70th/rea-history.pdf.

[4] Karen Stufflebeam Row et. al, *Glenwood Canyon 12 Years Later*, ROADS, Mar./Apr. 2004, *available at* http://www.fhwa.dot.gov/publications/publicroads/04mar/04.cfm (stating that the Glenwood Canyon project, opened in 1992, connected the "final leg of Interstate 70" and "symbolized the completion of the original U.S. interstate highway system").

carriers that decline model-based support to participate in the competitive bidding process that we expect to be prepared to conduct by the end of 2015.

5. We also address more generally provider eligibility for support through the competitive bidding process and the Remote Areas Fund. We permit entities to seek designation as eligible telecommunications carriers (ETCs) after notification they are winning bidders for the offer of Phase II Connect America funding. We conclude that recipients of support through the competitive bidding process or the Remote Areas Fund must certify as to their financial and technical capabilities to provide the required services within the specified timeframe in the geographic area for which they seek support.

6. We issue a declaratory ruling to provide rate-of-return carriers greater clarity regarding their obligations to extend broadband service upon reasonable request.

7. In the Order, we phase in support reductions associated with the 2014 rate floor of $20.46 over a multi-year period to provide time for incumbent carriers and state commissions to make any adjustments they deem necessary. In particular, we defer any support reductions for lines that have rates of $14 or greater until January 2, 2015. Between January 2, 2015, and June 30, 2016, we implement support reductions only to the extent rates are below $16; between July 1, 2016 and June 30, 2017, we implement support reductions only for lines with rates under $18 or the rate floor established by the 2016 rate survey, whichever is lower; and between July 1, 2017 and June 30, 2018, we implement support reductions only for lines with rates under $20 or the 2017 rate floor, whichever is lower. Thus, the impact of this rule is phased in over a four-year period.

8. We also reconsider certain aspects of the *USF/ICC Transformation Order* in response to petitions from a variety of stakeholders. These modifications reflect our continuing commitment in the universal service reforms to efficiency and creating the appropriate incentives to invest and operate modern voice and broadband-capable networks. First, to provide a more measured transition for rate-of-return carriers that would have qualified under the prior rules for certain support known as Safety Net Additive (SNA) based on their significant network investment, we permit such carriers to receive SNA for such investments made in 2010 and 2011. Second, we eliminate the high-cost loop support (HCLS) benchmarking rule so that rate-of-return carriers' support will no longer by limited by benchmarks calculated using quantile regression analysis (QRA).

9. In addition, we waive certain application fees that deter companies from rationalizing their service territory boundaries, deny a petition for reconsideration of the Commission's decision to impose broadband public interest obligations on recipients of high-cost support, while affirming that these conditions do not constitute common carrier regulation, and dismiss or deny two applications for review of the Wireline Competition Bureau's (Bureau) *Phase II Service Obligations Order*.[5]

10. In the FNPRM, we propose measures to update and implement further the framework adopted by the Commission in 2011. We strive to adapt our universal service reforms to ensure those living in high-cost areas have access to services that are reasonably comparable to services offered in urban areas. Consistent with that goal, in the FNPRM we propose to revise our current broadband performance obligations to require minimum speeds of 10 Mbps downstream to ensure that the services delivered using Connect America funds are reasonably comparable to the services enjoyed by consumers in urban areas of the country. The FNPRM also proposes to apply uniformly the same performance obligations to all recipients of Phase II support and to rate-of-return carriers.[6] In addition, we seek to further develop the record on the ability of Phase II recipients to satisfy their obligations using any

[5] *See Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060 (Wireline Comp. Bur. 2013) (*Phase II Service Obligations Order*).

[6] We use the term "Phase II" to refer to Connect America Fund Phase II, and distinguish it from Mobility Fund Phase II.

technology or a combination thereof – whether wireline or wireless, fixed or mobile, terrestrial or satellite – that meets the performance standards for Phase II. The FNPRM also proposes to provide financial incentives for recipients of Phase II support to accelerate their network deployment.

11. To target our finite universal service funds most effectively, the FNPRM proposes to exclude from eligibility for Phase II support those areas that are served by *any* provider that offers voice and broadband services meeting the Commission's service obligations – whether those providers are subsidized or unsubsidized. The FNPRM seeks comment on the amount of frozen support to provide to incumbents that decline the offer of model-based support where no other provider wishes to serve, and on the obligations associated with such support. The FNPRM also proposes to define the public interest obligations that would apply to recipients of frozen support in the non-contiguous areas of the United States. We also propose several minor changes and clarifications regarding the implementation of the transition to model-based support to ease the administration of Connect America Phase II.

12. In addition, the FNPRM seeks comment on several proposals regarding ETC designation. It proposes to require entities that are winning bidders for the offer of Phase II support in the competitive bidding process to apply for ETC designation within 30 days of public announcement of winning bidders. It also proposes to adopt a rebuttable presumption that a state commission lacks jurisdiction over an entity seeking ETC designation if it fails to initiate a proceeding within 60 days.

13. The FNPRM seeks comment on specific proposals for the design of the Phase II competitive bidding process that will occur in areas where price cap carriers decline model-based support. Through this public input, and what we learn from the expressions of interest already submitted for rural broadband experiments,[7] we should be prepared to make further decisions by the end of the year on the design of the competitive bidding process that will be used for Phase II in price cap territories where the price cap carrier declines the state-level commitment.

14. The FNPRM also addresses significant developments that have occurred since the adoption of the *USF/ICC Transformation Order* in the marketplace for mobile wireless services. Given the commercial deployment of 4G Long Term Evolution (LTE), we propose to retarget the focus of Mobility Fund Phase II. We seek comment on targeted measures that would address those areas of the country where LTE is not and, to the best of our knowledge, will not be available in the foreseeable future and would preserve existing mobile voice and broadband service where it would not otherwise exist without government support. The FNPRM also proposes to maintain existing support levels (i.e., 60 percent of baseline support) for wireless competitive ETCs for whom competitive ETC support exceeds one percent of their wireless revenues until a date certain after winning bidders are announced for the offer of Mobility Fund Phase II support, and to accelerate the phase-down for wireless competitive ETCs for whom high-cost support is one percent or less of their wireless revenues. The FNPRM seeks comment on whether to take a different approach for wireline competitive ETCs and asks whether their phase-down in support should be determined by the timing of the Phase II competitive bidding process. The FNPRM also proposes to freeze support for carriers serving remote areas in Alaska, as of December 31, 2014, and to begin their phase-down in support on a date certain after the Mobility Fund Phase II auction or Tribal Mobility Fund Phase II auction.

15. In the FNPRM, we also focus on developing and implementing a "Connect America Fund" for rate-of-return carriers. Specifically, we seek comment on reform proposals that would address a number of the identified shortcomings in the current support mechanisms that provide support to rate-of-return carriers. As a short term measure, we propose to apply the effect of the annual rebasing of the cap on support known as HCLS equally on all recipients of HCLS, to address the problematic incentives

[7] This Report and Order does not make any changes to the rural broadband experiments adopted in the January *Tech Transitions Order*. *See Technology Transitions et al.*, GN Docket No. 13-15 et al., Order et al., 29 FCC Rcd 1433, 1463-79, paras. 86-136 (2014) (*Tech Transitions Order or Tech Transitions FNPRM*).

of the current rule. As another near term reform, we also propose to prohibit recovery of new investment occurring on or after January 1, 2015, through either HCLS or interstate common line support (ICLS) in areas that are served by a qualifying competitor that offers voice and broadband service meeting the Commission's standards. As a longer term measure, we seek comment on limiting recovery of new investment through HCLS or ICLS as of a date certain, in conjunction with implementation of a Connect America Fund for rate-of-return carriers. We propose to adopt a stand-alone broadband support mechanism that meets defined parameters and seek to develop further the record on various industry proposals. Building on a proposal recently submitted by the Independent Telephone & Telecommunications Alliance (ITTA), we propose to provide rate-of-return carriers the option of participating in a two-step transition to Phase II model-based support and seek comment on alternative rate regulation measures and specific implementation issues. We also seek comment in the FNPRM on providing one-time funding for middle mile projects on Tribal lands in 2015. Such an approach could serve as a template for further implementation on a broader scale in subsequent years.

16. In today's decision, we also revisit some fundamental assumptions regarding implementation of the Remote Areas Fund. Part of ensuring that we use our universal service funding wisely is developing effective and targeted mechanisms to address the challenges of serving the most remote, high-cost areas. Rather than prejudging which areas are appropriately served through the Remote Areas Fund, we conclude that participants in the Phase II competitive bidding process should be permitted to bid on any area where the estimated cost is at or above the funding benchmark adopted for the offer of model-based support to price cap carriers in Phase II of the Connect America Fund. We conclude it would be prudent to defer full implementation of the Remote Areas Fund until 2016, after completion of the Phase II competitive bidding process. Only then will we be in a position to identify which specific areas are appropriately served by alternative technologies, potentially with relaxed performance standards.

17. Finally, the FNPRM proposes to codify a broadband certification requirement for recipients of funding that are subject to broadband performance obligations, seeks comment on specific levels of support reduction for non-compliance with service obligations, and proposes to modify our rules regarding reductions in support when parties miss filing deadlines in order to better calibrate the support reduction to coincide with the period of noncompliance.

18. With the actions we take today and those planned for later this year, we expect to move forward to implement the offer of Phase II model-based support by the end of the year, as we noted in January.[8] We also expect to take further action to implement the rural broadband experiments we adopted in our January *Tech Transitions Order*.[9] Through these coordinated actions, we expect to create incentives for both existing and new providers to extend robust, scalable next-generation voice and broadband networks that provide high-quality performance, whether through fiber, wireless, or other technology, as deep into high-cost areas as is feasible given the existing Connect America budget.

II. BACKGROUND

19. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost program within the universal service fund and the intercarrier compensation system to focus support on networks capable of providing voice and broadband services.[10] The Commission created the Connect America Fund and for the first time established an overall budget for the high-cost program.[11] Additionally, the Commission established new public interest obligations for

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[8] *Id.* at 1467-68, para. 98.

[9] *See id.* at 1463-79, paras. 86-136.

[10] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd 17663.

[11] *Id.* at 17710, para. 123.

recipients of high-cost support, including the requirement that recipients, in their supported areas, provide voice telephony services and offer broadband service that meets certain performance metrics (e.g., speed, latency, and data usage limits).[12] The Commission also established a "uniform national framework for accountability" by adopting several reforms to harmonize and update annual ETC reporting and certification requirements.[13]

20. Recognizing that over 80 percent of the unserved locations in the nation at that time were in areas where the incumbent provider was a price cap carrier, the Commission provided for up to $1.8 billion of the Connect America budget to be spent annually to make broadband-capable infrastructure available to as many unserved locations as possible within these areas served by price cap carriers, while sustaining voice and broadband-capable infrastructure in high-cost areas that would not be served absent support.[14] The Commission concluded that support in price cap areas would be provided through a combination of "a new forward-looking model of the cost of constructing modern multi-purpose networks" and a competitive bidding process.[15] The forward-looking cost model would be used to estimate the support necessary to serve price cap areas where costs are above a specified funding benchmark but below a second "extremely high-cost" threshold.[16] Each price cap carrier would be offered a model-derived support amount in exchange for a commitment to serve locations in its service territory in a state that, based on the model, fall within the high-cost range and are not served by a competing, unsubsidized provider.[17] In areas where the price cap carrier declines the state-level commitment, support would be determined through a competitive bidding process.[18]

21. For rate-of-return carriers, the Commission implemented a number of reforms to eliminate waste and inefficiency and improve incentives for rational investment and operation. Noting that rate-of-return carriers serve fewer than five percent of the access lines in the country, but operate in many of the country's most difficult-to-serve areas, the Commission set an annual budget of up to $2 billion in Connect America support for rate-of-return carriers.[19] It largely maintained the existing legacy universal support mechanisms for rate-of-return carriers and required that they provide broadband meeting the Commission's public service obligations upon reasonable request.[20]

22. The Commission also established the Mobility Fund to advance the ubiquitous availability of mobile services.[21] For Mobility Fund Phase I, the Commission concluded it would award up to $300 million in one-time Connect America support to mobile service providers through a reverse auction, as well as up to $50 million in one-time Connect America support to mobile service providers serving Tribal lands through a Tribal Mobility Fund reverse auction.[22] For Mobility Fund Phase II, the

[12] *Id.* at 17691-708, paras. 74-114.

[13] *Id.* at 17848-67, paras. 568-635. The framework replaces the various data and certification filing deadlines that carriers were required to meet previously, imposes document retention requirements, subjects Connect America support recipients to audits, and establishes consequences for non-compliance with Connect America rules. *Id.* at 17850, para. 573.

[14] *See id*. at 17725, para. 158.

[15] *Id.* at 17725, para. 156.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id.* at 17674, 17711, paras. 26, 126.

[20] *Id.* at 17740, para. 206.

[21] *Id.* at 17773, para. 299.

[22] *Id.* at 17773-824, paras. 301-492.

Commission established a budget of $500 million per year of the Connect America budget to provide ongoing support to mobile service providers through a competitive bidding process.[23]

23. Noting that some areas may be too costly to serve with traditional wireline or terrestrial wireless broadband technologies, the Commission also established the Remote Areas Fund to provide support for such "extremely high-cost" areas.[24] The Commission set a budget of "at least" $100 million of Connect America funds for the Remote Areas Fund.[25]

24. While establishing the overall framework for reforms, the Commission sought comment on numerous issues in the *USF/ICC Transformation FNPRM*, including how to implement the competitive bidding process for Phase II,[26] Mobility Fund Phase II,[27] and the Remote Areas Fund.[28]

25. Over the past two and one-half years, significant progress has been made in implementing the reforms established in the *USF/ICC Transformation Order*. Under its delegated authority, the Wireline Competition Bureau adopted the forward-looking Connect America Cost Model that will be used to determine the offer of model-based support to price cap carriers.[29] In May 2013, the Bureau adopted procedures for price cap carriers to accept Phase II support via the state-level commitment and certain procedural requirements, including presumptions, to be used in determining which areas are served by unsubsidized competitors.[30] In October 2013, the Bureau adopted the *Phase II Service Obligations Order*, which specified the latency, usage allowance, and pricing requirements for deployments by price cap carriers that accept Connect America Phase II model-based support through the state-level commitment process.[31]

26. Concurrently, the Commission implemented targeted Connect America Phase I (Phase I) funding to advance deployment of broadband-capable infrastructure.[32] More than $438 million in funding has been authorized for price cap carriers, which will bring new broadband service to more than 1.6

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[23] *Id.* at 17824-25, paras. 493-97.

[24] *Id.* at 17837-39, paras. 533-38.

[25] *Id.* at 17838, para. 534.

[26] *Id.* at 18085-92, paras. 1189-1222.

[27] *Id.* at 18069-85, paras. 1121-88. The Wireless Telecommunications Bureau and Wireline Competition Bureau sought to further develop the record on a limited number of specific issues related to Mobility Fund Phase II in November 2012. *Further Inquiry Into Issues Related to Mobility Fund Phase II*, WC Docket No. 10-90, WT Docket No. 10-208, Public Notice, 27 FCC Rcd 14798 (Wireline Comp. Bur./Wireless Tel. Bur. 2012) (*Further Inquiry Public Notice*).

[28] *USF/ICC Transformation Order*, 26 FCC Rcd at 18092-108, paras. 1223-95. The Bureau sought to further develop the record on discrete issues relating to the design for the Remote Areas Fund in January 2013. *Wireline Competition Bureau Seeks Further Comment on Issues Regarding the Design of the Remote Areas Fund*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 265 (Wireline Comp. Bur. 2013) (*RAF Public Notice*).

[29] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 28 FCC Rcd 5301 (Wireline Comp. Bur. 2013) (*CAM Platform Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 3964 (Wireline Comp. Bur. 2014) (*CAM Inputs Order*).

[30] *Connect America Fund*, WC Docket No. 10-90, Order, 28 FCC Rcd 7211, 7221-22, paras. 23-29 (Wireline Comp. Bur. 2013) (*Phase II Challenge Process Order*).

[31] *Phase II Service Obligations Order*.

[32] *USF/ICC Transformation Order,* 26 FCC Rcd at 17715-17, paras. 133-38.

million unserved Americans in the next several years.[33] The Wireless Telecommunications Bureau completed the auction for Mobility Fund Phase I on September 27, 2012 with 33 winning bidders eligible to receive a total of up to $299,998,632 in one-time support to provide 3G or better mobile voice and broadband services.[34] The Wireless Telecommunications Bureau began authorizing Phase I disbursements in April 2013 and anticipates disbursements will continue through 2016 as carriers complete their deployments.[35] It also recently completed the Tribal Mobility Fund Phase I auction, with five winning bidders eligible to receive a total of up to $49,806,874 in one-time support to provide 3G or better mobile voice and broadband services to Tribal lands.[36]

27. In January 2014, the Commission invited expressions of interest for parties to participate in an experiment that is testing, on a limited scale, the use of an application-based competitive bidding process with objective selection criteria to award Connect America Fund support to entities willing to extend robust broadband in high-cost areas.[37] A wide range of entities have submitted more than 1,000 expressions of interest to date.[38] We expect to adopt a budget and announce selection criteria before soliciting formal proposals,[39] and we sought comment on these issues in the accompanying FNPRM in January.[40]

III. REPORT AND ORDER

A. Connect America Phase II Competitive Bidding Process

28. In the *USF/ICC Transformation Order*, the Commission decided that, in areas where the price cap ETC refuses model-based support, support will be provided through a competitive bidding process.[41] It adopted general rules to govern competitive bidding processes to award universal service support, codified in Subpart AA of Part 1 of the Commission's rules.[42] The Commission sought comment in the *USF/ICC Transformation FNPRM* on a number of issues related to the design of the competitive bidding process, including which areas should be eligible, the term of support, and whether price cap

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[33] Wireline Competition Bureau, Universal Service Implementation Progress Report, WC Docket No. 10-90 (Wireline Comp. Bur. rel. Mar. 24, 2014), http://www.fcc.gov/document/universal-service-implementation-progress-report (*Universal Service Implementation Progress Report*).

[34] *Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 12031 (Wireless Tel. Bur. 2012) (*Auction 901 Closing Public Notice*).

[35] *Mobility Fund Phase I Support for 126 Winning Bids Ready to be Authorized*, AU Docket No. 12-25, Public Notice, 28 FCC Rcd 8479 (Wireless Tel. Bur./Wireline Comp. Bur. 2013). The Universal Service Administrative Company (USAC) has made initial disbursements associated with winning bids totaling approximately $224 million. *See* Federal Communications Commission, Auction 901: Mobility Fund Phase I, http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=901 (last visited Apr. 24, 2014); USAC Funding Disbursement Search, http://www.usac.org/hc/tools/disbursements/ (last visited Apr. 24, 2014).

[36] *Tribal Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 902*, Public Notice, 29 FCC Rcd 1974 (Wireless Tel. Bur. 2014).

[37] *Tech Transitions Order*, 29 FCC Rcd 1468-79, paras. 99-136.

[38] *See* List of Expressions of Interest, http://www.fcc.gov/encyclopedia/rural-broadband-experiments (last visited Apr. 25, 2014).

[39] *Tech Transitions Order*, 29 FCC Rcd at 1470-71, paras. 105, 109.

[40] *Id.* at 1498-1503, paras. 202-23.

[41] *USF/ICC Transformation Order*, 26 FCC Rcd at 17725, para. 156.

[42] 47 C.F.R. pt. 1, subpt. AA.

carriers that decline model-based support should be permitted to participate in the competitive bidding process.[43]

1. Eligible Areas

29. *Background*. In the *USF/ICC Transformation Order*, the Commission proposed that price cap census blocks would be eligible for award in the Phase II competitive bidding process as long as the average cost per location falls between the funding benchmark and the extremely high-cost threshold and the blocks are not served by an unsubsidized competitor. It proposed that price cap census blocks where the average cost is above the extremely high-cost threshold would be served through the Remote Areas Fund.[44] As an alternative, however, the Commission sought comment on whether to do a combined competitive bidding process in areas where the price cap carrier declines the state-level commitment such that the competitive bidding process would include both high-cost areas and extremely high-cost areas.[45]

30. *Discussion*. After reviewing the record before us, and based on what we have learned over the last two years, we now conclude that we should provide more flexibility to parties in Phase II to design effective bids for areas where the average cost is equal to or above the Connect America Phase II funding benchmark. The work on the Connect America Cost Model has shown us that extremely high-cost areas are actually interspersed among high-cost areas.[46] Indeed, many of the census tracts containing census blocks potentially eligible for the offer of model-based support (i.e., those census blocks where the average cost per location is equal to or exceeds the funding benchmark but is lower than the extremely high-cost threshold) also contain one or more census blocks where the average cost per location, as determined by the model, exceeds the extremely high-cost threshold. We conclude that including both high-cost and extremely high-cost areas in the competitive bidding process will enable parties to build integrated networks that span both types of areas in adjacent census blocks as appropriate.[47] In other words, this approach allows potential providers to decide how best to upgrade or extend networks to serve these areas rather than having the Commission artificially pre-determining which areas should be served through one mechanism and which should be served through a separate mechanism.

31. Moreover, we recognize that the actual cost for a provider to serve census blocks that are above the extremely high-cost threshold may, in fact, be less than is predicted by the cost model.[48] Potential service providers that have done the appropriate due diligence are in a better position to know local conditions on the ground and thus determine whether the support potentially available will enable them to meet the associated obligations. We believe it would be the most efficient use of Phase II funding

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[43] *USF/ICC Transformation FNPRM,* 26 FCC Rcd at 18085-92, paras. 1189-1222.

[44] *See id.* at 18085-86, para. 1191 n.2277.

[45] *See id.* at 18103, para. 1276.

[46] *See* Letter from Michael J. Jacobs, Legal Advisor to the Chief, Wireline Competition Bureau, Federal Communications Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Apr. 21, 2014).

[47] The Commission similarly recognized the benefits of providing greater flexibility to allow carriers to determine how best to deploy networks in high-cost areas when it modified the rules in order to provide for a second round of Phase I incremental support. *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7766, 7771-74, paras. 14-21 (2013).

[48] *See* Comments of Frontier Communications Corp., WC Docket No. 10-90 et al., at 14-15 (filed Jan. 18, 2012) (noting that a provider could "pinpoint those areas that it feels the model may have misidentified the correct level of support"). The decision to allow providers the flexibility to choose to serve extremely high-cost census blocks is also consistent with the Commission's recent decision in the *Tech Transitions Order*. *Tech Transitions Order*, 29 FCC Rcd at 1472, para. 111.

to provide support to areas above the specified funding threshold and then target the discrete budget for the Remote Areas Fund to those areas that remain unserved after the competitive bidding process.

32. A price cap carrier that elects to make the state-level commitment is already free to deploy to locations that would be above the extremely high-cost threshold to satisfy a portion of its build out obligation.[49] By making extremely high-cost areas eligible for support in the competitive bidding process, we effectively provide participants in the competitive bidding process the same choice: they may elect or not elect to serve those areas that the model has determined to be extremely high-cost.[50]

33. We do not decide at this time whether to use census blocks, or aggregations of census blocks such as census tracts, as the minimum size geographic unit eligible in the Phase II competitive bidding process.[51] We concluded we would entertain proposals in the rural broadband experiments in price cap territories at the census tract level,[52] and we currently are reviewing the expressions of interest received to date. The lessons learned from our review of the expressions of interest in the rural broadband experiments will give us better data and allow us to make a more informed decision on this issue later this year.

2. Term of Support

34. *Background*. In the *USF/ICC Transformation FNPRM*, the Commission sought comment on the term of support for service providers receiving support pursuant to the competitive bidding process.[53] Specifically, the Commission asked whether support should be available for a period of five years, or for a longer period such as ten years.[54]

35. *Discussion*. We conclude that Connect America Phase II support awarded through the competitive bidding process should be available for ten years, subject to existing requirements and the availability of funds. In the recent *Tech Transitions Order*, we adopted a framework for rural broadband experiments and concluded that we would provide support for any approved experiments for periods of up to ten years.[55] While acknowledging the marketplace may change over time, we recognized that "some entities may be unwilling to make the necessary long-term investments to build robust future-proof networks in areas that are uneconomic to serve absent continued support beyond a five-year term."[56] We similarly find that, for the competitive bidding process for Connect America Phase II, providing support

[49] *USF/ICC Transformation Order*, 26 FCC Rcd at 17729, para. 171 n.279 ("In meeting its obligation to serve a particular number of locations in a state, an incumbent that has accepted the state-level commitment may choose to serve some census blocks with costs above the highest cost threshold instead of eligible census blocks (i.e., census blocks with lower costs), provided that it meets the public interest obligations in those census blocks, and provided that the total number of unserved locations and the total number of locations covered is greater than or equal to the number of locations in the eligible census blocks.").

[50] Some parties in the record mentioned that we should exclude areas above the extremely high-cost threshold; however, it appears these statements were made in passing rather than in advocacy for a particular decision. *See, e.g.*, Comments of the American Cable Association, WC Docket No. 10-90 et al., at 8-9 (filed Jan. 18, 2012) (ACA Jan. 18, 2012 Comments). We conclude that there is no reason to prohibit providers from receiving funding to build to these higher cost areas, as the competitive bidding process provides sufficient flexibility for a provider to choose what areas it will deploy to.

[51] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18086, para. 1192.

[52] *Tech Transitions Order*, 29 FCC Rcd at 1472, para. 111.

[53] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18087, para. 1197.

[54] *Id.*

[55] *Tech Transitions Order*, 29 FCC Rcd at 1476-77, paras. 123-26.

[56] *Id.* at 1476, para. 125.

for a period of ten years may stimulate greater interest in the competitive bidding process, especially given the increased investment participants may need to bring to the table to meet the higher speed benchmark we propose below.[57] Increased participation in the competitive bidding process will help ensure that funding is targeted efficiently to expand broadband-capable infrastructure throughout the country.

36. We do not find any compelling reason to limit the term of support awarded through a competitive bidding process to five years, as initially suggested by some commenters.[58] Specifically, we are not persuaded by the American Cable Association's (ACA) arguments that the flexibility to re-evaluate the need for support after five years outweighs the benefits of a longer term that we rely on above.[59] While we acknowledge that marketplace forces may bring new competitors to high-cost areas where Phase II support is provided, we make the predictive judgment that such an outcome is unlikely to occur due to the high-cost nature of these areas; if those areas could be cost-effectively served without government support, we believe competitors would already be serving them. Nor are we persuaded that the term of support should be the same for providers accepting Connect America Phase II support pursuant to the state-level commitment as for those subject to competitive bidding.[60] As we concluded in the *Tech Transitions Order*, there is no inherent reason why the terms associated with a competitive offer must be identical to the terms associated with the offer of model-based support.[61] One reason why the Commission established a five-year term of support for areas subject to model-based support was to move to competitive bidding processes in a timely manner in those areas where support initially would be awarded through the acceptance of state-level commitments.[62] As noted by Windstream, this reason for limiting the duration of the support term is inapplicable when support is awarded in the first instance through a competitive bidding process.[63]

3. Eligibility of Price Cap Carriers to Participate in Phase II Competitive Bidding

37. We conclude that a price cap carrier's decision not to accept model-based support should not preclude it from participating in the competitive bidding process. We find that maximizing the number of qualified eligible participants is likely to improve the quality of the competitive bids and the results of the process.[64] Moreover, we do not find persuasive the arguments made by several commenters that permitting price cap carriers to participate in the competitive bidding process would give them the

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[57] *See* Comments of Windstream Communications, Inc. (Windstream) on Section XVII.A-K, WC Docket No. 10-90 et al., at 22-25 (filed Jan. 18, 2012) (Windstream Jan. 18, 2012 Comments); Comments of ADTRAN, Inc., WC Docket No. 10-90 et al., at 18-19 (filed Jan. 18, 2012) (ADTRAN Jan. 18, 2012 Comments).

[58] ACA Jan. 18, 2012 Comments at 13; Reply Comments of the American Cable Association, WC Docket No. 10-90 et al., at 22-23 (filed Feb. 17, 2012) (ACA Feb. 17, 2012 Reply Comments).

[59] ACA Feb. 17, 2012 Reply Comments at 22-23.

[60] Comments of the Independent Telephone & Telecommunications Alliance, WC Docket No. 10-90 et al., at 15 (filed Jan. 18, 2012) (ITTA Jan. 18, 2012 Comments).

[61] *Tech Transitions Order*, 29 FCC Rcd at 1476-77, para. 126.

[62] *USF/ICC Transformation Order*, 26 FCC Rcd at 17732, para. 178.

[63] Windstream Jan. 18, 2012 Comments at 24.

[64] *See* ACA Jan. 18, 2012 Comments at 18; Comments of the United States Telecom Association, WC Docket No. 10-90 et al., at 22-23 (filed Jan. 18, 2012); ITTA Jan. 18, 2012 Comments at 15; Comments of CenturyLink, WC Docket No. 10-90 et al., at 15 (filed Jan. 18, 2012) (CenturyLink Jan. 18, 2012 Comments); Windstream Jan. 18, 2012 Comments at 25-26; Comments of AT&T, WC Docket No. 10-90 et al., at 35 (filed Jan. 18, 2012). *See also* Comments of Verizon, WC Docket No. 10-90 et al., at 23-24 (filed Jan. 18, 2012) (in favor of maximizing participation).

ability to "cherry pick" the most desirable service areas.[65] We expect that a price cap carrier will determine whether to accept the offer of model-based support primarily based on its own analysis of whether the support offered for the state justifies undertaking the associated obligations. It is not unreasonable that a carrier might conclude that the total amount of state-level support would not meet the obligations in the carrier's specific circumstances, while also concluding that many or even all parts of the state are worth serving at some other support level. In addition, though a carrier could strategically decline the model-based support in the hope of favorably selecting only the most desirable service areas, that strategy would have risks. Indeed, the very desirability of certain service areas creates the possibility that the carrier might not be awarded those areas through the competitive bidding process or that the support amount for those areas will be bid down to a level that is less than what the model would have provided. In our predictive judgment, the costs of excluding price cap carriers that decline model-based support exceed the possible benefits. We therefore decline to exclude price cap carriers from the competitive bidding process.

B. Provider Eligibility Requirements

38. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission proposed to require applicants for support to be designated an ETC at the time they applied to participate in the Phase II competitive bidding process, with a limited exception for Tribally-owned or controlled entities.[66] It proposed that all applicants seek support through an auction be required to certify that they are financially and technically capable of providing the required service within the relevant geographic area.[67] It proposed similar requirements for recipients of support from the Remote Areas Fund.[68] The Commission indicated that it anticipated that price cap ETCs that decline model-determined support would be eligible to participate in the competitive process, and it sought comment on the advantages and disadvantages of

[65] *See* Comments of the National Association of State Utility Consumer Advocates et al., WC Docket No. 10-90 et al., at 79 (filed Jan. 18, 2012); Comments of Massachusetts Department of Telecommunications and Cable, WC Docket No. 10-90 et al., at 11-12 (filed Jan. 18, 2012). We are also not persuaded that permitting price cap carriers to participate in the Phase II competitive process as wireless providers would be "inconsistent" with the Commission's objectives of promoting competition and the efficient use of Connect America support. *See* Letter from Steven K. Berry, President & CEO, Competitive Carriers Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al., at 2 (filed Apr. 15, 2014). The Competitive Carriers Association claims that awarding support to price cap carriers based on the costs of building a wireline network, but permitting price cap carriers to use such support to offer wireless services "effectively put[s] the identical support rule on steroids." *Id.* As we discuss below in more detail, the Commission eliminated the identical support rule after finding that it failed to efficiently target support where it was needed. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17827, para. 502; *see also infra* Section VIII.I. Assuming the Commission adopts the proposal to use the Connect America Cost Model (CAM) to set reserve prices for the Phase II competitive bidding process, price cap carriers will only win model-calculated support if no other provider participating in the competitive bidding process bids to serve those areas for less support. *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18090, para. 1212; *infra* Section VIII.G (seeking comment on using the cost model to determine reserve prices). We expect the Phase II competitive bidding process will involve vigorous competition that will drive down support amounts to efficient levels for providers that will offer the services meeting the Commission's requirements for speed, usage, latency, and pricing.

[66] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18087, para. 1199 & n.2278 (proposing to require that applicants for support be designated as ETCs covering the relevant geographic area prior to participating in competitive bidding process, but permitting a Tribally-owned or controlled entity that has an application for ETC designation pending at relevant application deadline to participate).

[67] *Id.* at 18087, para. 1200.

[68] *Id*. at 18095, para. 1234 (proposing that applicants for support from the Remote Areas Fund be designated as an ETC covering the relevant geographic area); *id.* at 18095, para. 1236 (proposing to require recipients of Remote Areas Fund support to certify they are technically and financially qualified).

such an approach.[69] It also asked whether there were other steps the Commission should take to encourage smaller entities to participate in the Phase II competitive bidding process.[70]

39. In response to the proposals in the FNRPM, a number of parties raised concerns that requiring ETC designation before participating in the Phase II competitive bidding process was a barrier to participating in the auction, urging the Commission to allow providers to obtain ETC designation later in the process.[71] Similarly, a number of parties urged the Commission to remove barriers to participation in the Remote Areas Fund.[72]

40. *Discussion.* Under the statute, only ETCs designated pursuant to section 214(e) of the Communications Act of 1934, as amended (Act) "shall be eligible to receive specific Federal universal service support."[73] Section 214(e)(2) gives states the primary responsibility for ETC designation.[74] However, section 214(e)(6) provides that this Commission is responsible for processing requests for ETC designation when the service provider is not subject to the jurisdiction of the state public utility commission.[75] Support is disbursed only after the provider receives an ETC designation.

41. We seek to encourage as many different types of providers as possible to participate in the competitive bidding process that will award support to serve high-cost and extremely high-cost areas. Likewise, we seek to encourage participation in the Remote Areas Fund. Recognizing that there may be areas of the country that the incumbent price cap carriers do not wish to serve, it is time to take steps to establish a framework that will enable other providers to become ETCs.[76]

42. We reaffirm that entities selected to receive support from Connect America Phase II or the Remote Areas Fund must obtain ETC designation from either a state public utility commission pursuant to section 214(e)(2), or the Commission pursuant to section 214(e)(6), of the Act.[77] We decline at this time to adopt the suggestion of certain parties that we either forbear from ETC designation requirements, or that we preempt states from issuing ETC designations.[78] Rather, to address concerns in the record and to encourage participation in the competitive process as well as the Remote Areas Fund, we adopt a more liberal process for the timing of ETC designation.

43. After consideration of the record, we conclude that potential applicants in the Phase II competitive bidding process need not be ETCs at the time they initially *apply* for funding at the Commission. Rather, we are persuaded that we should permit entities to obtain ETC designation *after* the announcement of winning bidders for the offer of Phase II Connect America funding, which we believe

[69] *Id.* at 18087-88, paras. 1198-1201.

[70] *Id*. at 18088, para. 1202.

[71] *See, e.g.*, ACA Jan. 18, 2012 Comments at 20; Reply Comments of AT&T, WC Docket No. 10-90 et al., at 7 (filed Feb. 17, 2012) (AT&T Feb. 17, 2012 Reply Comments).

[72] *See, e.g.*, Comments of the Wireless Internet Service Providers Association, WC Docket No. 10-90 et al., at 11-15 (filed Jan. 18, 2012); Reply Comments of the Satellite Broadband Providers, WC Docket No. 10-90 et al., at 20 (filed Feb. 17, 2012) (SBP Feb. 17, 2012 Reply Comments).

[73] 47 U.S.C. § 254(e).

[74] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6397, para. 61 (2005) (*ETC Designation Process Order*).

[75] 47 U.S.C. § 214(e)(6).

[76] 47 U.S.C. § 254(b)(3).

[77] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18062, paras. 1089-90.

[78] ACA Feb. 17, 2012 Reply Comments at 15-16; AT&T Feb. 17, 2012 Reply Comments at 6; Reply Comments of Verizon, WC Docket No. 10-90 et al., at 4-7 (filed Feb. 17, 2012); ACA Jan. 18, 2012 Comments at 21.

will encourage greater participation in the competitive process by a wider range of entities.[79] ETC status must be confirmed before funding awarded through the competitive process is disbursed. We find that maximizing the number of qualified participants in the competitive bidding process is likely to improve the overall quality of the process.[80] Some qualified potential bidders may be hesitant to invest resources to apply for an ETC designation absent any sense of whether they are likely to be awarded Phase II support. Other potential bidders may have concerns about triggering obligations as an ETC pending the result of the competitive bidding process or for areas for which they are not ultimately awarded support.[81] Moreover, unlike entities that are already ETCs, entities that do not yet have ETC designation would risk making public their bidding strategy if required to seek ETC designation in the states where they intend to bid. On balance, we conclude that the benefits of encouraging greater participation in the Phase II competitive bidding process outweigh any potential risk that winning bidders do not meet the necessary requirements to be designated an ETC.

44. We acknowledge that the Commission declined to take that approach for the Mobility Fund Phase I and Tribal Mobility Fund Phase I. There, the Commission adopted the general requirement for those auctions that parties obtain ETC designation prior to filing the short-form application in part to ensure that applicants filing to participate in the auction were serious bidders.[82] Based on our experience with the Mobility Fund Phase I and our review of the record, however, we now conclude that a different approach is warranted for the Connect America Phase II competitive bidding process. We are not persuaded by arguments that the ETC designation must be received prior to the competitive bidding process in order to ensure that only financially and technically qualified providers participate in the competitive bidding process.[83] While we acknowledge the possibility that in some cases a winning bidder may not meet the requirements for designation as an ETC, we presume that prospective bidders will have the appropriate incentives to undertake the necessary due diligence in advance of the competitive bidding process to understand the requirements for ETC designation from the relevant state, or this Commission, should the state lack jurisdiction. We note that if a winning bidder fails to receive an ETC designation, it will be ineligible to receive any payments of support and will be considered in default of its obligations, with the penalties that entails.[84] This risk should be an adequate deterrent for prospective bidders to ensure, in advance of bidding, that they meet the necessary requirements and have sufficient resources to meet their obligations. Moreover, nothing we decide today precludes any prospective bidder from filing an ETC application in advance of the competitive bidding process, should it choose to do so.

45. In the Mobility Fund Phase I, the Commission expressly permitted potential bidders to obtain conditional ETC designation prior to filing the short-form application.[85] Given our decision to permit entities to seek ETC designation after public notice of the winning bidders for the offer of Phase II support, we do not anticipate many parties would seek conditional ETC designation prior to applying for

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[79] *See*, *e.g*., ACA Jan. 18, 2012 Comments at 20; AT&T Feb. 17, 2012 Reply Comments at 7; Comments of Clearwire Corporation, WC Docket No. 10-90, at 8 (filed Jan. 18, 2012) (Clearwire Jan. 18, 2012 Comments); Comments of NTCH, Inc., WC Docket No. 10-90, at 2-5 (filed Jan. 18, 2012); Comments of AT&T, WC Docket No. 10-90 et al., at 101-02 (filed Apr. 18, 2011).

[80] *See* AT&T Feb. 17, 2012 Reply Comments at 7; ACA Jan. 18, 2012 Comments at 18-21.

[81] *See* AT&T Feb. 17, 2012 Reply Comments at 7.

[82] *USF/ICC Transformation Order*, 26 FCC Rcd at 17799, 17809, paras. 392, 439.

[83] *See* CenturyLink Jan. 18, 2012 Comments at 14); Reply Comments of ITTA, WC Docket No. 10-90 et al., at 3-5 (filed Feb. 17, 2012).

[84] 47 C.F.R. § 1.21004 (specifying that defaulting bidders may be liable for up to 20 percent of the defaulted bid amount).

[85] *USF/ICC Transformation Order*, 26 FCC Rcd at 17799, para. 391 n.665; 47 C.F.R. §§ 54.1003(a), 54.1005(a)(3).

funding. To the extent a party chooses to do so, however, and a state or this Commission issues a conditional ETC designation prior to the auction, we expect that the ETC designation in such situations will be finalized quickly as a pro forma matter after announcement of the winning bidders for Phase II support.

46. We seek comment in the FNPRM below on implementation issues relating to ETC designation, including the timeframe in which a winning bidder must seek ETC designation before being deemed in default.

47. *Financial and Technical Qualifications*. We adopt the FNPRM proposal that recipients of support through the Phase II competitive bidding process and the Remote Areas Fund certify as to their financial and technical capabilities to provide the required services within the specified timeframe in the geographic area for which they seek support.[86] The Commission implemented such a requirement for Mobility Fund Phase I and Tribal Mobility Fund Phase I,[87] and we conclude it is equally appropriate for recipients of support through the Phase II competitive bidding process and the Remote Areas Fund. It would not be administratively efficient to conduct a competitive bidding process with participation from entities that are not prepared to make such commitments. Likewise, while we do not determine the details of the Remote Areas Fund at this time, we conclude that entities receiving support through that mechanism should similarly be financially and technically qualified to provide the required services.

C. Transition into Phase II

48. In this section, we address issues relating to the transition from existing support to Connect America Phase II.

1. Transition Where Model-Based Support is Less Than Connect America Phase I Support

49. *Background*. In the *USF/ICC Transformation Order*, the Commission concluded that it would be "premature to specify the length" of the transition for carriers that would receive less support from Connect America Phase II than frozen high-cost support, but "there will be an appropriate multi-year transition to the lower amount," which would be addressed in conjunction with the finalization of the cost model.[88] In a Public Notice released on December 3, 2013, the Bureau sought to develop more fully the record on the appropriate phase-down period for a carrier accepting model-based support that is less than the frozen high-cost support that it currently receives.[89]

50. *Discussion*. We conclude that, where a carrier chooses to accept model-based support that is less than its Connect America Phase I frozen support, the transition shall occur over a three-year period of time. Any carrier exercising its right to make a state-level commitment will effectively be making a decision that the model-based support is sufficient to meet its obligations in the areas for which

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[86] Commenters generally supported this proposal. *See* CenturyLink Jan. 18, 2012 Comments at 14-15; ACA Jan. 18, 2012 Comments at 19-20; *but cf.* ADTRAN Jan. 18, 2012 Comments at 22 (arguing that a certification requirement would be duplicative to an ETC designation, if ETC designation was required prior to the competitive bidding process).

[87] *See* 47 C.F.R. § 1005(a)(2).

[88] *USF/ICC Transformation Order*, 26 FCC Rcd at 17733, para. 180 n.294.

[89] *Wireline Competition Bureau Seeks Comment on Additional Connect America Fund Phase II Issues*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 16403, 16404 (Wireline Comp. Bur. 2013) (*Additional Phase II Issues Public Notice*). We note that the *USF/ICC Transformation Order* includes both frozen high-cost support and incremental support in the context of the transition where model-based support is more than Connect America Phase I support. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17733, para. 180. Resolving this tension is one reason why we propose to clarify that the base amount includes only frozen high-cost support. *See infra* Section VIII.E.4.c.

it is making a commitment. However, the Commission generally prefers to avoid flash cuts in support that would dramatically affect consumers.[90] According to our estimates, some carriers in some states will receive significantly less support than they receive today under Connect America Phase I.[91] It appears that seven carriers would face reductions in their current support in 30 states if they accept the offer of model-based support.[92] Because some states have more than one carrier with a reduction, there could be 52 discrete situations in which a carrier's frozen support in a particular state would be less than its Phase I frozen support if all price cap carriers accepted model-based support. Of these 52 situations, there are 12 situations where there would be reductions greater than $5 million per year.[93] While the specific figures for individual carriers may change after completion of the Phase II challenge process, we are persuaded of the need for an appropriate transition to lower support levels.

51. The Commission's desire to avoid flash cuts has led it to adopt transitions of varying lengths for various reforms adopted in the *USF/ICC Transformation Order*, including a four-year period for the phase-down of identical support for competitive ETCs and a three-year phase-down of support in rate-of-return areas where there is a 100 percent overlap with an unsubsidized competitor.[94] Given that carriers accepting model-based support have made a business decision that such support is adequate to meet their obligations, we do not agree that a transition comparable to the phase-down in support for competitive ETCs is required.[95] To take that approach would effectively mean the price cap carrier would not be receiving model-based support until the last year of the five-year term. Rather, we are persuaded that a transition occurring over three years for carriers accepting state-level Connect America Phase II support that is less than the frozen high-cost support is sufficient.

52. Accordingly, we adopt the following transition: In all years, a carrier accepting state-level support pursuant to Connect America Phase II that is less than the Connect America Phase I frozen high-cost support will receive the full amount of Connect America Phase II support. Assuming we adopt the proposal in the FNPRM below to make the funding term for Connect America Phase II coincide with

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[90] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17752, 17936, paras. 242, 802 (discussing the Commission's desire to avoid flash-cuts).

[91] This is true for several reasons. In some states, the model-determined amount will be significantly lower than frozen support due to the Commission's decision to target support to areas where there are no unsubsidized competitors. Moreover, in other states, the prior high-cost support mechanisms that formed the basis of Connect America Phase I frozen support may have been more generous to some carriers than the Connect America Phase II state-level support. For example, the high-cost model support mechanism used state-wide average costs and a funding benchmark based on nationwide average costs, neither of which are used in the Connect America Phase II state-level support, and the prior cost model estimated the costs associated with a different network topology than the CAM. These changes may negatively affect a state like Mississippi, which received a significant amount of support under the former high-cost model support. Similarly, rate-of-return affiliates of price cap carriers and recent converts to price cap regulation have frozen support based on support mechanisms which used actual costs, rather than model estimates of costs.

[92] *See* Letter from Michael J. Jacobs, Legal Advisor to the Chief, Wireline Competition Bureau, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Mar. 28, 2014) (submitting into the record illustrative model results and default inputs for CAM v4.1, including estimated offer of support for each price cap study area) (WCB Mar. 28, 2014 Submission Letter); Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for Second Quarter 2014, at App. HC08 (showing monthly frozen high-cost support for price cap study areas) (USAC Second Quarter 2014 Projected Demand Filing).

[93] *See* WCB Mar. 28, 2014 Submission Letter; USAC Second Quarter 2014 Projected Demand Filing, at App. HC08.

[94] *USF/ICC Transformation Order,* 26 FCC Rcd at 11768, 17830, paras. 284, 513.

[95] Comments of ITTA, WC Docket No. 10-90, at 3 (Jan. 7, 2014).

calendar years,[96] in 2015 the carrier would receive, in addition to its Phase II support, 75 percent of the difference between the annualized amount of Connect America Phase II support that it accepted and the amount of Connect America Phase I frozen high-cost support that it received in 2014. In 2016, it would receive 50 percent of the difference; in 2017, it would receive 25 percent of the difference; in 2018 and in 2019, it would receive only Connect America Phase II state-level support. For administrative convenience, this phase-down will apply to all carriers accepting a lower amount of state-level support, even if the absolute or relative size of the reduction is small.

2. Transition Where Competitive Eligible Telecommunications Carrier Receives Support Based on Competitive Bidding Process

53. We conclude that competitive ETCs awarded Connect America Phase II support through the competitive bidding process will cease to receive legacy phase-down support for those specific areas upon commencement of Connect America Phase II support. The Commission previously concluded that, with respect to any price cap carrier that declines the offer of model-based support, the carrier's Phase I support will terminate when support is provided to another provider for that area through the competitive bidding process.[97] Similarly, the Commission also determined that a competitive ETC's legacy phase-down support would be terminated in any area for which it is awarded Mobility Fund Phase II support upon commencement of support.[98] For similar reasons, we find that any competitive ETC that is authorized to receive Phase II support through a competitive bidding process will no longer receive frozen legacy support for the area in question. Given the carrier's explicit endorsement of the support amount in its bid, we see no need for additional support to ease the transition to Connect America Phase II.

D. Elimination of Support in Areas with 100 Percent Overlap

54. In the *USF/ICC Transformation Order*, the Commission adopted a rule to eliminate support in incumbent local exchange carrier (LEC) study areas where an unsubsidized competitor or combination of unsubsidized competitors offers voice and broadband that meet our service obligations throughout the service area.[99] We hereby codify that rule and the three-year phase-down of support adopted therein.[100]

55. The Commission sought comment on the methodology used for determining whether an incumbent LEC is 100 percent overlapped by an unsubsidized competitor,[101] and it directed the Bureau "to publish a finalized methodology for determining areas of overlap and a list of companies for which there is a 100 percent overlap."[102] Now that the study area boundary data collection has been completed,[103] we expect the Bureau will implement that directive in the months ahead.

[96] *See infra* Section VIII.E.4.a.

[97] *USF/ICC Transformation Order*, 26 FCC Rcd at 17733, para. 180.

[98] *Id*. at 17831, para. 517.

[99] *Id.* at 17766–68, paras. 280–84. The Bureau's process to collect incumbent LEC study area boundaries was a critical prerequisite to implementation of this rule.

[100] The Commission concluded that the baseline for support reductions would be a carrier's 2010 support, reducing that amount by one third in the first year, two thirds in the second year, and no support in the third year.

[101] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18056–59, paras. 1061–78.

[102] *Id*. at 17768, para. 284.

[103] *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, 29 FCC Rcd 171 (Wireline Comp. Bur. 2014) (extending the deadline for parties to reconcile and file revised study area boundary data to March 17, 2014).

56. We propose in the FNPRM below that the Bureau should review the study area boundary data in conjunction with data collected on the FCC Form 477 and the National Broadband Map every other year to determine whether and where 100 percent overlaps exist. We also propose to adjust the baseline for support reductions to be the amount of support received in the year immediately preceding the determination of 100 percent overlap, rather than 2010 support amounts.

E. Rule Amendments

57. Sections 54.313 and 54.314 of the Commission's rules require that all reports and certifications filed pursuant to these sections be filed with the Commission's Office of the Secretary in WC Docket No. 10-90.[104] We take this opportunity to amend the Code of Federal Regulations to direct all section 54.313 and 54.314 filers to file their reports and certifications with the Office of the Secretary in the newly-opened WC Docket No. 14-58.[105]

58. We also take this opportunity to make several rule amendments. First, we move the rules regarding HCLS and safety net additive, which currently are located in subpart F of Part 36, into a new subpart M in Part 54 in order to consolidate all high-cost rules in Part 54, and make conforming changes throughout Part 54. In the course of moving those rules, we also delete those portions that are no longer applicable due to the passage of time and other changes previously implemented in the *USF/ICC Transformation Order*. We note that section 1.1105 of the Commission's rules requires a filing fee in connection with petitions for waiver of rules contained in Part 36.[106] While consolidation of the high-cost rules into one part may constitute a substantive rule change requiring notice and comment because of the required filing fee, we utilize the good cause exemption for when notice and comment are "impracticable, unnecessary, or contrary to the public interest."[107] Previously, the Commission issued a blanket waiver of the filing fee for carriers seeking a waiver of the HCLS benchmark rule contained in Part 36, but did not do so for the remainder of the universal service rules in Part 36 because that issue was not before it.[108] However, we find today that parties seeking waiver of any of the universal service rules included in subpart F of Part 36 similarly should not be subject to a filing fee, because parties seeking a waiver of other high-cost universal service rules in Part 54 are not subject to any filing fee. In moving subpart F of Part 36 to Part 54, we note that parties seeking waiver of the moved rules will no longer be subject to a filing fee. We find that it is in the public interest to consolidate all high-cost universal service rules into one part and to maintain consistency regarding filing fees throughout all of Part 54 of the Commission's rules and, therefore, that it is unnecessary, under the circumstances, to seek comment on otherwise non-substantive change to the Commission's rules. Second, we delete other codified universal service rules

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[104] 47 C.F.R. §§ 54.313(i), 54.314(c).

[105] Because these rule changes are procedural in nature, the Administrative Procedure Act (APA) does not require that we provide notice and an opportunity for comment before changing the docket number. *See* 5 U.S.C. § 553(b)(A) (excepting "rules of agency organization, procedure, or practice" from the APA's notice and comment requirement). We note that this rule change applies to all recipients of high-cost support, including competitive ETCs.

[106] 47 C.F.R. § 1.1105. Section 1.1105 specifies fees for waivers of some rules applicable to common carriers, such as waivers of Part 32 (accounting), Part 36 (separations), and Part 64 (cost allocation), but does not require a fee for waivers of other rules applicable to common carriers, such as Part 51 (interconnection), Part 52 (numbering), and Part 54 (universal service).

[107] 5 U.S.C. § 553(b)(B).

[108] *See Connect America Fund et al.,* WC Docket No. 10-90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549, 14558-59, para. 24 (2012) (*Fifth Order on Reconsideration*); Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al., at 2 (filed June 25, 2012).

that no longer are applicable because they govern time periods or support mechanisms that no longer are in existence.[109]

IV. DECLARATORY RULING

59. *Background*. In the *USF/ICC Transformation Order*, the Commission adopted differing approaches for the areas of the country served by rate-of-return carriers than it did for those areas served by price cap carriers. It concluded that rate-of-return carriers would continue to receive support under existing universal service support mechanisms, subject to some modifications.[110] It expressly declined to establish a mandatory requirement to deploy broadband-capable facilities to all locations within the service territory of a rate-of-return carrier. Instead, as a condition on the continued receipt of HCLS, ICLS, and Connect America intercarrier compensation (CAF-ICC) support, the Commission required rate-of-return carriers to provide broadband service meeting the specified performance requirements upon "reasonable request" for service and within a reasonable amount of time.[111] The Commission subsequently clarified in the *Third Order on Reconsideration* that the "rules provide sufficient flexibility to take into account any unique circumstances that may impact the ability of rate-of-return companies to extend broadband to their customers, including backhaul costs."[112]

60. In contrast, in the areas served by price cap carriers the Commission concluded it would target support to high-cost areas, and support would be disbursed through a combination of a forward-looking model and a competitive bidding mechanism. Price cap carriers accepting model-based support must deploy voice and broadband-capable networks to all supported locations that are deemed "high-cost" and not served by an unsubsidized competitor, but they are not required to extend broadband in extremely high-cost areas as determined by the forward-looking cost model.[113]

61. The Commission expressly recognized that there are some areas of the country where it is cost prohibitive to extend broadband using terrestrial wireline technology and, that in some areas, satellite or fixed wireless technologies may be more cost-effective options to extend service.[114] It established a Remote Areas Fund with a budget of at least $100 million annually to address those areas that are not served. It envisioned that this dedicated funding would not be available in those remote areas in rural America that already have broadband meeting the Commission's performance requirements that it sought comment on in the FNPRM.[115] The Commission stated in the FNRPM that it intended "to use a forward-looking cost model – once finalized – to identify a small number of extremely high-cost areas in both

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[109] *See* Appendix A. We note that the Commission previously delegated to the Wireline Competition Bureau and Wireless Telecommunications Bureau authority to make adjustments as necessary to ensure that adopted reforms are properly reflected in the codified rules. *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18149, para. 1404. This includes correcting any conflicts between the new or revised rules and existing rules as well as addressing any omissions or oversights.

[110] *USF/ICC Transformation Order*, 26 FCC Rcd at 17738, para. 194.

[111] *Id.* at 17740-41, paras. 206-08. The Commission stated that it would monitor ETCs' progress in deploying broadband-capable networks in part through the annual reporting process. *See id.* at para. 206; 47 C.F.R. § 54.313(a)(3). Rate-of-return carriers are required to certify annually in their section 54.313 reports that they are taking reasonable steps to offer broadband service in their service area(s), and that requests for broadband service are met within a reasonable amount of time. 47 C.F.R. § 54.313(f)(1)(i).

[112] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622, 5638-39, para 46 (2012) (*Third Order on Reconsideration*).

[113] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17728-29, paras. 167-70.

[114] *See id.* at 18092, paras. 1223-24.

[115] *Id.* at 17838, para. 535.

rate-of-return and price cap areas that should receive support from the Remote Areas Fund."[116] It sought comment in the FNPRM on various issues relating to the Remote Areas Fund, including performance requirements, eligibility standards, which areas would be eligible for support, and measures to combat waste and improve accountability.[117] It noted that "pending development of the record and resolution of these issues, rate-of-return carriers are simply required to extend broadband upon reasonable request."[118]

62. Since the issuance of the *USF/ICC Transformation Order*, a number of rate-of-return carriers have informally sought guidance from Commission staff as to what they are required to do under the "reasonable request" standard and what should be addressed in their five-year service improvement plans. Commenters recognize that it is not reasonable to extend service in extremely high-cost areas,[119] but the question remains how that standard might be applied in particular situations. Some carriers have informally expressed concern that state commissions might conclude that high-cost support is not being used for its intended purpose, as required by section 54.7 of the Commission's rules, if a carrier fails to extend broadband service upon request in particular situations or fails to meet deployment targets contained in their five-year service improvement plans.[120] Concerns also have been expressed that support could be withheld, or recovery of support previously disbursed could be sought, for failure to meet this standard. Moreover, certain state commissions have informally indicated to Commission staff that they feel they do not have jurisdiction over broadband services and thus cannot determine where or whether it is appropriate for a carrier to extend broadband service upon reasonable request.

63. *Discussion*. We now conclude it would be appropriate to issue a declaratory ruling regarding which requests should be deemed unreasonable under our current rules and policies to provide greater clarity to all affected stakeholders.[121]

64. We acknowledge there is some ambiguity in the *USF/ICC Transformation Order* on this topic. The Commission suggested that to the extent states retain jurisdiction over voice service, they would have jurisdiction to monitor the responsiveness of rate-of-return carriers to requests for service over a broadband-capable voice network.[122] The Commission did not address, however, what standards might apply in those states where the public service commission lacks jurisdiction to address such matters, nor did it provide any guidance as a matter of federal policy as to what factors might be relevant to the extent a state does have jurisdiction. Moreover, when the Commission stated its expectation that rate-of-return carriers would "follow pre-existing state requirements, if any, regarding service line

[116] *Id*. at 18093-94, para. 1229. In the Order, the Commission stated that "we have excluded from carriers' broadband service obligations in price-cap territories all areas where the model-estimated cost to serve a location is above an 'extremely high cost' threshold. *For rate-of-return areas, we may adopt a similar approach once the CAF model is finalized*." *USF/ICC Transformation Order*, 26 FCC Rcd at 17838, para. 533 n.893 (emphasis added).

[117] The Wireline Competition Bureau subsequently issued a Public Notice to develop a more complete record on the issues raised in the FNPRM. *See generally RAF Public Notice*, 28 FCC Rcd 265.

[118] *USF/ICC Transformation Order*, 26 FCC Rcd at 17741, para. 209.

[119] *See, e.g.*, Comments of the National Exchange Carrier Association et al., WC Docket No. 10-90, at 9 (filed Feb. 19, 2013) ("Areas that are extremely costly to serve are, almost by definition, areas where existing carriers cannot be expected to provide service on 'reasonable request.'").

[120] 47 C.F.R. § 54.7. Pursuant to section 54.314 of the Commission's rules, state commissions are required annually to certify that support is being used for its intended purpose, and high-cost support may only be provided to the extent the state has filed the requisite certification. 47 C.F.R. § 54.314.

[121] The Commission may issue a declaratory ruling "terminating a controversy or removing uncertainty." 47 C.F.R. § 1.2.

[122] *USF/ICC Transformation Order*, 26 FCC Rcd at 17740-41, paras. 206-09.

extensions in their highest-cost areas,"[123] it did not distinguish the situation in which a carrier is extending new facilities to serve a location in the first instance (such as extending a line to a newly built home in a high-cost area) from the situation in which the carrier has existing facilities in place to provide voice service (i.e., a copper line) to a particular location and the customer is requesting that line be upgraded to provide broadband service as well as voice service. We therefore conclude that it would be beneficial to enunciate more clearly our requirements for the extension of broadband services where the rate-of-return carrier already has a facility in place to provide voice service.

65. Rate-of-return carriers evaluating a request to extend broadband service should consider whether it would be reasonable to make the necessary upgrades in light of anticipated end-user revenues from the retail provision of broadband service and other sources of revenues, including but not limited to federal or state universal service funding projected to be available under current rules.[124] In considering end-user revenues, carriers should take into account the reasonable comparability benchmark for broadband services. If the incremental cost of undertaking the necessary upgrades to a particular location exceed the revenues that could be expected from that upgraded line, a request would not be reasonable.

66. A request to upgrade an existing voice line to provide broadband service would not be reasonable if it would require new investments that would cause total high-cost support, excluding CAF-ICC, to exceed $250 per line per month in a given study area. The Commission determined in the *USF/ICC Transformation Order* that "support drawn from limited public funds in excess of $250 per-line monthly (not including any new CAF support resulting from ICC reform) should not be provided without further justification."[125] The Commission subsequently determined in the *Third Order on Reconsideration* that ETCs may take into account backhaul costs or other unique circumstances that may make it cost-prohibitive to extend service to particular customers.[126] Finally, in the *Fifth Order on Reconsideration*, the Commission clarified that when reviewing petitions for waiver of the $250 per month cap, it would "consider the impact of reforms not only on voice service alone, but also on continued operation of a broadband-capable network and the effect on consumer rates."[127] In particular, the Commission stated that it envisioned "granting relief to incumbent telephone companies only in those circumstances in which the petitioner can demonstrate that consumers served by such carriers face a significant risk of *losing access* to a broadband-capable network that provides both voice *as well as broadband today*, at reasonably comparable rates, in areas where there are no alternative providers of voice or broadband. To the extent carriers have *already* made the investment in such broadband-capable networks, reductions in support that would threaten their ability to continue to maintain and operate those *existing* networks offering service at reasonably comparable rates in areas where consumers have no alternatives would be a public policy concern."[128]

[123] *Id*. at 17741, para. 209.

[124] We agree with NTCA that when considering whether a request for service should be deemed reasonable, a carrier may consider both universal service and intercarrier compensation support available at the time a request is made, including the potential effect of pending reforms that could reduce future support essential to make necessary upgrades. *See* Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al., at 2 (filed Apr. 16, 2014).

[125] *USF/ICC Transformation Order*, 26 FCC Rcd at 17765, para. 274.

[126] *Third Order on Reconsideration*, 27 FCC Rcd at 5638-39, para. 46. It further noted in that decision that it intended "to carefully monitor developments in this regard and will consider making further clarifications or revisions if necessary." *Id*.

[127] *Fifth Order on Reconsideration*, 27 FCC Rcd at 14557, para. 20.

[128] *Id*. at 14557-58, para. 21 (emphasis added) (footnote omitted).

67. Thus, under these prior determinations, we declare that a request is not reasonable if it would require a carrier to undertake new network upgrades to install new backhaul facilities or to replace existing copper lines to the home with fiber merely for the purpose of newly providing broadband service in study areas where total support already is subject to the $250 per line monthly cap. Moreover, we declare that a request is not reasonable if it would require a carrier to undertake new network upgrades to newly provide broadband service to requesting customers if that would cause total monthly support that presently is under the $250 cap to exceed the cap, under our existing rules.[129]

68. We also declare that a rate-of-return carrier has no obligation to extend broadband-capable infrastructure in any census block that is served by an unsubsidized competitor that meets the Commission's current performance standards. Indeed, to do so would be inconsistent with the Commission's general policy – which is not limited to price cap territories – that "all broadband build out obligations for fixed broadband are conditioned on not spending the funds to serve customers in areas already served by an 'unsubsidized competitor.'"[130] We cannot and will not condone new investment subsidized by universal service funds to occur in areas that are already served by marketplace forces, and thus interpret our broadband public interest obligation consistent with that policy.

69. For purposes of determining whether a census block is served by an unsubsidized competitor, we provide flexibility to rate-of-return carriers to make that determination in one of several ways. They are free to, but not required to, rely upon the treatment of a particular census block in the forward-looking cost model recently adopted by the Wireline Competition Bureau for the offer of support to price cap carriers.[131] They are free to, but not required to, rely upon published coverage maps or online tools provided by competitors to enable prospective customers to determine whether service is available at particular addresses. There may be other ways a rate-of-return carrier may determine whether a particular location already is served by another provider; we do not intend to suggest these are the only means of making such a determination. We propose in the FNPRM below to preclude rate-of-return carriers going forward, as of a date certain, from including in cost studies used for the determination of HCLS and ICLS the costs associated with new investment in areas that are already served by a qualifying provider that provides voice and broadband meeting the Commission's Phase II performance requirements. We seek comment in the FNPRM below on a rule to preclude new investment from being recovered through HCLS and ICLS as of a date certain and instead to develop a new Connect America

[129] This presumes that the existing copper line is adequate to provide voice service to the customer. In issuing this Declaratory Ruling, we do not intend to suggest that it would be inappropriate under our universal service rules for a carrier to replace any existing copper line, that has deteriorated to the point it no longer provides adequate voice service, with fiber in the ordinary course of network maintenance, subject to any applicable regulatory requirements.

[130] *USF/ICC Transformation Order*, 26 FCC Rcd at 17701, para. 103.

[131] The model adopted by the Bureau utilizes National Broadband Map data in the first instance to classify a particular census block as served by cable or fixed wireless technologies. *See, e.g.*, *CAM Inputs Order*, 29 FCC Rcd at 3971, para. 15. We acknowledge concerns expressed in the record regarding the accuracy of the National Broadband Map. *See, e.g.*, Reply Comments of the Nebraska Rural Independent Companies in Response to Sections A through K of the Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., at 22-23 (filed Feb. 17, 2012) (claiming that "[w]ireline coverage is grossly understated on the [National Broadband] Map due to the manner in which data was requested and reported to NTIA"); Comments of Satellite Broadband Providers, WC Docket No. 10-90, at 2-3 (filed Jan. 18, 2012) (SBP Jan. 18, 2012 Comments) ("Although providers often claim to serve a given area in its entirety, inevitably some individual households within that area will not receive service – even though this fact may not be reflected in the [National Broadband Map] data."). Because in this instance the classification of an area in the model as "served" would provide the carrier the basis to conclude there is no obligation to extend service, rather than impose a new obligation, however, concerns about the accuracy of the map are not relevant. To the extent the model overstates the extent of actual coverage by other competitors, it thus narrows the universe of locations where a request to extend broadband may be reasonable. And in any event, use of the model to identify areas served by competitors is entirely voluntary on the part of any rate-of-return carrier.

Fund that will support voice and broadband-capable networks in rural America within the existing Connect America Fund budget.[132]

70. While we do not decide now as a general matter whether and if so how a forward-looking cost model could be used to identify areas that would be eligible for funding from the Remote Areas Fund, we believe the Connect America Cost Model developed by the Bureau potentially could be a useful tool for rate-of-return carriers to consider where it might be reasonable to extend broadband-capable infrastructure and for other purposes.[133] We recognize that some parties have suggested that further work would be required before the Connect America Cost Model could be used for any purpose in rate-of-return territories.[134] At a minimum, we conclude it should be updated to incorporate the new study area boundaries data that the Bureau recently collected before it can be used for regulatory purposes in rate-of-return territories.[135] We therefore direct the Bureau to undertake further work to update the Connect America Cost Model to incorporate study boundary data, and such other adjustments as may be appropriate.

71. In this regard, we recognize that a larger percentage of locations in rate-of-return areas lie above the likely extremely high-cost threshold identified by the Bureau in its recent order adopting inputs for the forward-looking cost model for the offer of support to price cap carriers.[136] Commenters expressing concern about the use of the model for determining rate-of-return areas that would be served by the Remote Areas Fund appear to assume that such extremely high-cost areas would only be served by the Remote Areas Fund, and that existing support for those areas would be eliminated.[137] We emphasize that we have made no decisions regarding how the Remote Areas Fund might be implemented in those areas of the country where the incumbent provider is a rate-of-return carrier. Classification of a rate-of-return area as extremely high-cost under the forward-looking model does not mean that support would only be available from the Remote Areas Fund.

[132] *See infra* Section VIII.J.2.

[133] We recognize that the Bureau has made clear that its adoption of the model for the offer of support to price cap carriers does not prejudge any decisions regarding the model for any other purpose. *See, e.g.*, *CAM Inputs Order*, 29 FCC Rcd at 3997, 4012, paras. 66 n.227, 107. By allowing, but not requiring, rate-of-return carriers to consult the model to determine whether the census block is deemed "extremely high-cost," we do not suggest that determination is conclusive. Even if the model classifies an area as "high-cost" but not "extremely high-cost," it may be appropriate in a particular instance for a rate-of-return carrier to conclude that a request to extend new broadband service to a particular location is unreasonable. That would be the case, for instance, if the rate-of-return carrier were to determine, based on its particular circumstances, that the cost to extend service to the requesting customer in a particular instance is, in fact, higher than calculated by the model.

[134] *See, e.g.*, Letter from Genevieve Morelli, President, ITTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at 2 (filed Feb. 27, 2014) (ITTA Feb. 27, 2014 Ex Parte).

[135] We seek comment in the FNPRM on ITTA's proposal for a two-step voluntary path to model-based support for rate-of-return carriers. *See infra* Section VIII.J.3.

[136] In particular, 0.37 percent of locations in price cap areas lie above the likely extremely high-cost threshold identified by the Bureau in the *CAM Inputs Order*. *See CAM Inputs Order*, 29 FCC Rcd at 4040, para. 181. In contrast, approximately 5.51 percent of locations in rate-of-return areas lie above that same threshold. This is not surprising, as historically many of the cooperatives came into existence many decades ago to serve those high-cost areas that AT&T did not serve.

[137] For instance, the Alaska Rural Coalition (ARC) states that Remote Areas Fund support that interrupts rate-of-return funding would "devastate" that market. Reply Comments of the Alaska Rural Coalition, WC Docket No. 10-90, at 10 (filed Mar. 18, 2013). Others expressed concern about providing support to "competitive providers to serve part of the study area of a rural ROR LEC." Reply Comments of the Blooston Rural Carriers, WC Docket No. 10-90, at 2 (filed Mar. 18, 2013).

72. Finally, we note that our decision today does not change support under the existing support mechanisms for rate-of-return carriers, nor does it impact existing broadband service in extremely high-cost areas. Rather, we issue this declaratory ruling so that carriers can make efficient and prudent investments going forward in the near term, while the Commission considers the issues raised in the FNPRM. As parties have recognized, rate-of-return carriers are free today to deploy alternative technologies, or resell satellite service, in areas determined to be beyond a reasonable request for the extension of fiber, in order to meet customer demand.[138]

V. ORDER

A. Delayed Implementation of Section 54.318(b)

73. *Background*. In the *USF/ICC Transformation Order*, the Commission adopted a rate floor "to ensure that states are contributing to support and advance universal service and that consumers are not contributing to the Fund to support customers whose rates are below a reasonable level."[139] To implement this requirement, the Wireline Competition Bureau and the Wireless Telecommunications Bureau adopted an Order setting the form and content for a survey of urban rates for fixed voice and fixed broadband residential services.[140] That Order concluded that survey respondents would be selected using FCC Form 477 data to create a statistically valid sample of all fixed terrestrial providers that serve urban census tracts in Metropolitan Statistical Areas (MSAs) across the country.[141] The Order concluded that the average for the rate floor would be computed based on the non-promotional rate for stand-alone voice service. The survey instrument was attached to the Order as an Appendix. No party sought reconsideration of the *Rate Floor Order*. The Bureau initiated the survey in December 2013 and collected the rates offered by a statistically valid sample of providers of fixed services identified using FCC Form 477 data in 500 urban census tracts.[142]

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[138] *See* Comments of General Communication, Inc., WC Docket No. 10-90, at 5 (filed Feb. 19, 2013). We also understand anecdotally that partnerships between rate-of-return carriers and alternative technology service providers to resell broadband service exist in some areas. *See, e.g.*, Reply Comments of Big Bend Telephone Company, Inc., WC Docket No. 10-90 et al., at 4 (filed Mar. 29, 2012).

[139] *USF/ICC Transformation Order*, 26 FCC Rcd at 17751, para. 238 (emphasis omitted).

[140] *Connect America Fund*, WC Docket No. 10-90, Order, 28 FCC Rcd 4242 (Wireline Comp. Bur./Wireless Tel. Bur. 2013) (*Rate Floor Order*). Prior to adopting the form and content of the urban rate survey, the Bureau solicited comment on how to conduct the survey and calculate the average urban rate. *Wireline Competition Bureau Seeks Comment on Proposed Urban Rates Survey and Issues Relating to Reasonable Comparability Benchmarks and the Local Rate Floor*, WC Docket No. 10-90, Public Notice, 27 FCC Rcd 8332, 8333-34, paras. 4, 11 (Wireline Comp. Bur. 2012)

[141] The *Rate Floor Order* defined "urban" for purposes of the survey as all 2010 Census urban areas and urban clusters that sit within an MSA. *Rate Floor Order*, 28 FCC Rcd at 4244-45, para. 10.

[142] *Wireline Competition Bureau Announces Timeline for Completion of Urban Rates Survey*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 16753 (Wireline Comp. Bur. 2013). The sample was drawn from those facilities-based, terrestrial providers that report on FCC Form 477 and provide fixed (not mobile) residential voice service, such as incumbent LECs, cable companies, and fixed wireless providers. The Bureau calculated the rate floor based on the survey data from incumbent providers. Had the Bureau established the rate floor based on the average for the full sample of those providing unlimited flat-rate local voice service, the rate floor would have been significantly higher, \$26.85 instead of \$20.46. *Universal Service Implementation Progress Report* at Figure 7. Of the 20 incumbent LECs that were surveyed, three indicated they do not offer flat rate local service in the census tracts surveyed for those carriers, so the average was computed using the reported data of the 17 incumbents that indicated they do provide this service in 135 different urban census tracts. The average was computed as a weighted average. *See* Urban Rate Survey Data, http://www.fcc.gov/encyclopedia/urban-rate-survey-data (last visited Apr. 24, 2014). The Bureau has posted on the Commission's website the full data set for voice rates collected pursuant to the survey.

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74. On March 20, 2014, the Bureau announced that the average local end-user rate plus state regulated fees of the surveyed incumbent LECs in urban areas is $20.46.[143] In addition, the Bureau requested comment on a petition filed by the Eastern Rural Telecom Association (ERTA), ITTA, NTCA, the National Exchange Carrier Association (NECA), the United States Telecom Association (USTelecom), and WTA – Advocates for Rural Broadband requesting that the deadline for compliance with the 2014 local service rate floor be extended from July 1, 2014 to January 2, 2015, and that subsequent adjustments to the rate floor should then be made annually on January 2.[144]

75. Under section 54.313(h), the $20.46 rate floor goes into effect on July 1, 2014, and all incumbent ETCs are required to report their rates to USAC for the number of lines for which "the sum of those rates and fees are below the rate floor."[145] Pursuant to section 54.318(b), any incumbent ETC whose rate for local service plus state regulated fees is below the rate floor shall have its "high-cost support reduced by an amount equal to the extent to which its rates for residential local service plus state regulated fees are below the local urban rate floor, multiplied by the number of lines for which it is receiving support."[146]

76. No parties opposed the Associations' Petition. On reply, commenters overwhelmingly supported an extension of the deadline to comply with the 2014 local service rate floor.[147] In support of the extension, commenters note that there would be roughly sixty days for incumbent LECs currently at the $14 benchmark to take steps to adjust rates to be consistent with the 2014 local service rate floor, which may require a full local rate proceeding before state regulators.[148] Commenters also suggest that carriers will need sufficient time to minimize the impact of the rate increase on consumers and complete other necessary modifications.[149] In addition to overwhelmingly supporting a delay in the implementation of the rule, commenters suggest that a phase-in of the 2014 local service rate floor is appropriate and

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See Wireline Competition Bureau Announces Posting of Voice Data from Urban Rate Survey, and Explanatory Notes, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 3892 (Wireline Comp. Bur. 2014).

143 *Wireline Competition Bureau Announces Results of Urban Rate Survey for Voice Services; Seeks Comment on Petition for Extension of Time To Comply with New Rate Floor*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 2967 (Wireline Comp. Bur. 2014) (*Rate Survey Results Public Notice*).

144 *Id*. at 2-3; *see also* Petition for Extension of Time by ERTA, ITTA, NECA, NTCA, USTelecom and WTA, WC Docket No. 10-90 (filed Mar. 11, 2014) (Associations' Mar. 11, 2014 Petition).

145 47 C.F.R. § 54.313(h).

146 47 C.F.R. § 54.318(b).

147 *See* Reply Comments of ITTA and USTelecom, WC Docket No. 10-90, at 2-3 (filed Mar. 31, 2014) (ITTA & USTelecom Mar. 31, 2014 Reply Comments); Reply Comments of the Montana Independent Telecommunications Association, WC Docket No. 10-90, at 2-4 (filed Mar. 31, 2014) (MITA Mar. 31, 2014 Reply Comments); Reply Comments of GVNW Consulting, Inc., WC Docket No. 10-90, at 5-6 (filed Mar. 31, 2014) (GVNW Mar. 31, 2014 Reply Comments); Reply Comments of Alaska Communications Systems, WC Docket No. 10-90, at 2-4 (filed Mar. 31, 2014) (ACS Mar. 31, 2014 Reply Comments); Reply Comments of NTCA; The National Exchange Carrier Association, Inc.; The Eastern Rural Telecom Association; and WTA, WC Docket No. 10-90, at 2-6 (filed Mar. 31, 2014) (NTCA et al. Mar. 31, 2014 Reply Comments); Comments of The Colorado Telecommunications Association, Idaho Telecom Alliance, Nevada Telecommunications Association, Oregon Telecommunications Association, and Washington Independent Telecommunications Association, WC Docket No. 10-90, at 6-7 (filed Mar. 31, 2014) (Western Association Mar. 31, 2014 Reply Comments); Reply Comments of the Washington Utilities and Transportation Commission, WC Docket No. 10-90, at 2-4 (filed Mar. 31, 2014) (Washington UTC Mar. 31, 2014 Reply Comments).

148 ITTA & USTelecom Mar. 31, 2014 Reply Comments at 2-3; GVNW Mar. 31, 2014 Reply Comments at 5-6; NTCA et al. Mar. 31, 2014 Reply Comments at 2-6; ACS Mar. 31, 2014 Reply Comments at 2-4.

149 *See id.*

necessary to mitigate the risk of rate shock for consumers.[150] While comments vary on the appropriate phase-in, two associations argued that an annual increase capped at roughly $2.00 would be acceptable.[151] In addition, several commenters ask the Commission to re-evaluate the local service rate floor as a general matter, suggesting that capping the annual increase in the local rate service floor would not impact the high-cost budget adopted in the *USF/ICC Transformation Order* or affect the universal service fund contribution factor.[152] NARUC filed a petition asking the Commission to (1) maintain the current benchmark ($14) pending release of information regarding the data and methodology that produced the $20.46 rate, and (2) to seek comment on how to calculate the benchmark.[153] Finally, the Maine Office of Public Advocate argues that "a carrier should receive full universal service high cost support for each Lifeline customer served even if that customer's monthly rate is a rate that is below the Rate Floor."[154]

77. *Discussion*. Initially, we note that support under the federal high-cost program historically has been provided to high-cost areas to ensure reasonable comparability of rates between urban and rural areas without consideration of the relative income levels in such areas; the program has not been designed to provide differing amounts of high-cost support for areas with lower incomes.[155] Rather, other Commission mechanisms – specifically, the Lifeline program – are the primary means by which the Commission seeks to ensure that rates are affordable for low-income households.[156] The

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[150] *See* MITA Mar. 31, 2014 Reply Comments at 4-6; ITTA & USTelecom Mar. 31, 2014 Reply Comments at 3-5; GVNW Mar. 31, 2014 Reply Comments at 6-7; Washington UTC Mar. 31, 2014 Reply Comments at 2-4.

[151] *See* ITTA & USTelecom Mar. 31, 2014 Reply Comments at 3-5; GVNW Mar. 31, 2014 Reply Comments at 7. In support of limiting the increase of the rate floor to $2 per year, commenters note that the Commission has capped the Access Recovery Charge to an annual increase of $0.50. *See* ITTA & USTelecom Mar. 31, 2014 Reply Comments at 3-4; NTCA et al. Mar. 31, 2014 Reply Comments at 5.

[152] *See* ITTA & USTelecom Mar. 31, 2014 Reply Comments at 5-6; NTCA et al. Mar. 31, 2014 Reply Comments at 7; Letter from David Certner, Legislative Policy Counsel and Legislative Policy Director, AARP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al., at 3 (filed Apr. 15, 2014) (AARP Apr. 15, 2014 Letter).

[153] Petition of the National Association of Regulatory Utility Commissioners (NARUC), WC Docket No. 10-90, at 7 (filed Apr. 15, 2014) (NARUC Apr. 15, 2014 Petition).

[154] Letter from Timothy R. Schneider, Public Advocate, Maine Office of Public Advocate, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al. (filed Apr. 11, 2014) (Maine Public Advocate Letter). The Maine Office of Public Advocate also requests that "when a carrier determines the average rate paid by customers, the carrier should not include Lifeline customers." *Id.* Carriers are required under the current rules to report the number of lines under the rate floor, whether or not those lines are provided to Lifeline customers.

[155] *See, e.g.*, *High-Cost Universal Service Support et al.*, WC Docket No. 05-337 et al., Order and Notice of Proposed Rulemaking, 25 FCC Rcd 4136, 4156-58, paras. 34-35 (2010) (finding that the low-income program is the program best suited to address issues of affordability and subscribership in Puerto Rico).

[156] As discussed below, lines serving Lifeline customers will not be subject to the rate floor. Moreover, even if rates in some areas ultimately are increased to the level of the rate floor, *see infra* para. 81, anecdotes about income differences between median households in areas that are not subsidized by federal high-cost support and those in selected rural areas, *see* Dissent at 4-5, do not alone demonstrate that such rates would not be "affordable," 47 U.S.C. § 254(b)(1), or would be materially less affordable than the status quo in rural areas. Finally, even assuming *arguendo* that there was some incremental effect on affordability, using federal high-cost universal service support to subsidize rates below a level necessary for reasonable comparability under section 254(b)(3) of the Act would burden consumers across the country, in conflict with the sufficiency principle in section 254(b)(5) of the Act – a situation the Commission has found to be inequitable. *USF/ICC Transformation Order*, 26 FCC Rcd at 17749-50, 17751, paras. 235, 237. *See also, e.g.*, *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1102-03 (D.C. Cir. 2009) (the Commission's universal service policies must consider "not just affordability for those benefited, but fairness for

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underlying purpose of the rate floor is one of fairness: "we do not believe it is equitable for consumers across the country to subsidize the cost of service for some consumers that pay local service rates that are significantly lower than the national urban average."[157] As the Commission explained in adopting the rate floor in 2011, "[i]t is inappropriate to provide federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability. Doing so places an undue burden on the Fund and consumers that pay into it."[158] The results of the urban rate survey show there is significant variation among the states in the local rates charged to residential consumers; nonetheless, in many states, residential consumers are paying $25 or more per month for local service.[159] To the extent that individual states wish to maintain intrastate rates significantly lower than the national urban average, they are free to do so. This rule merely prevents them from doing so in a manner that would burden ratepayers nationwide.[160]

78. In the *USF/ICC Transformation Order,* the Commission "anticipate[d] that the rate floor for the third year will be set at a figure close to the sum of $15.62 plus state regulated fees."[161] To mitigate the impact of the implementation of the rate floor and provide time to implement a new rate survey, the Commission concluded that the rate floor should be phased in over several years: $10 beginning July 1, 2012, $14 beginning July 1, 2013, and then the average urban rate, as determined from data in the Urban Rates Survey, beginning July 1, 2014.[162] Its goal in adopting a multi-year transition was "to avoid a flash cut that would dramatically affect either carriers or the consumers they serve."[163]

79. For 2014, the Bureau's survey determined that the average urban rate is $19.81 plus $0.65 in state fees (a total of $20.46). Because the survey average for flat-rate local service is more than four dollars higher than the Commission anticipated, we agree with commenters that a more gradual

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those burdened," and the agency "enjoys broad discretion" when balancing potentially competing principles under section 254).

157 *USF/ICC Transformation Order*, 26 FCC Rcd at 17751, para. 237.

158 *Id*.

159 *See* Urban Rate Survey Data, http://www.fcc.gov/encyclopedia/urban-rate-survey-data (last visited Apr. 25, 2014) (Urban Rate Survey Data); Letter from Michael J. Jacobs, Legal Advisor to the Chief, Wireline Competition Bureau, Federal Communications Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Apr. 2, 2014) (WCB Apr. 2, 2014 Letter).

160 47 U.S.C. § 254(f). *See also USF/ICC Transformation Order*, 26 FCC Rcd at 17751, para. 238 ("[T]he purposes of this rule change are to ensure that *states* are contributing to support and advance universal service and that consumers are not contributing to the Fund to support customers whose rates are below a reasonable level.") (emphasis in original). The Commission previously has recognized that "current retail rates . . . are the result of the interplay of underlying costs and other factors that are unrelated to whether an area is high-cost," and as noted in the text above, states remain free to base intrastate policies on those additional considerations. *High-Cost Universal Service Support et al.,* WC Docket No. 05-337 et al., Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4105, paras. 62-63 (2010), *aff'd sub nom Vermont Pub. Svc. Bd. v. FCC,* 661 F.3d 54 (D.C. Cir. 2011).

161 *USF/ICC Transformation Order*, 26 FCC Rcd at 17753, para. 243.

162 *Id.* at 17751, para. 239.

163 *Id*. at 17752, para. 242.

approach to the reductions to universal service support under section 54.318(b) is warranted,[164] and waiver of this rule is appropriate.[165]

80. Therefore, we waive the application of section 54.318(b) for lines reported July 1, 2014, with a rate of $14 or above. Commencing January 2, 2015 (reflecting rates as of December 1, 2014), and thereafter, through June 30, 2016, we waive section 54.318(b) to the extent reported lines are greater than or equal to $16. For the period between July 1, 2016, and June 30, 2017, we waive section 54.318(b) to the extent reported rates are greater than or equal to $18, or the 2016 rate floor, whichever is lower. For the period between July 1, 2017, and June 30, 2018, we waive section 54.318(b) to the extent reported rates are greater than or equal to $20, or the 2017 rate floor, whichever is lower. We believe that this four-year transition should provide sufficient time for carriers and state commissions to determine whether and how to make adjustments, without unreasonable effects on carriers and consumers. Further, because we are extending implementation of the support reductions associated with the next rate floor until July 2016, we do not believe that it is necessary to change the annual date on which the annual rate floor goes into effect.[166] Because ETCs otherwise are required to submit their annual reports on July 1 each year,[167] we think it will be easier to keep the rate floor effective date consistent with these other filings. We leave flexibility to the affected parties to determine whether and, if they seek to adjust their rates, how to do so over the next four years. We emphasize, however, that nothing in our rules requires carriers affected by the rate floor to adjust their local rates.

81. While we understand some parties are concerned about significant rate hikes,[168] we are not convinced based on the information before us that implementation of the approach adopted herein will lead to widespread rate hikes. Our experience with the implementation of the rule thus far suggests that not all carriers will raise rates to meet the rate floor. The $14 rate floor went into effect on July 1, 2013, and carriers have now had two opportunities to report the number of lines below that rate floor. The rate floor increased from $10 in 2012 to $14 in 2013, a 40 percent increase.[169] When this occurred, interested parties were largely silent and voiced little opposition. We note that three-quarters of the lines subject to support reductions this year (based on the rates in effect on December 1, 2013) were price cap carrier lines, while one-quarter of the lines affected were reported by rate-of-return carriers. The fact that many carriers continue to report some lines with rates well below the $14 rate floor suggests that they may have made a business decision to grandfather the lower rates for those customers and accept the associated support reductions.[170] Indeed, we note that more than two years after the Commission adopted the $14

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[164] *See, e.g.,* ITTA & USTelecom Mar. 31, 2014 Reply Comments at 2-3; GVNW Mar. 31, 2014 Reply Comments at 5-6; NTCA et al. Mar. 31, 2014 Reply Comments at 2-6; ACS Mar. 31, 2014 Reply Comments at 2-4.

[165] The Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[166] *See* Associations' Mar. 11, 2014 Petition.

[167] *See* 47 C.F.R. § 54.313(j).

[168] *See* ITTA & USTelecom Mar. 31, 2014 Reply Comments; MITA Mar. 31, 2014 Reply Comments; GVNW Mar. 31, 2014 Reply Comments; ACS Mar. 31, 2014 Reply Comments; NTCA et al. Mar. 31, 2014 Reply Comments; Western Association Mar. 31, 2014 Reply Comments; Washington UTC Mar. 31, 2014 Reply Comments; Reply Comments of Pioneer Communications, Inc., WC Docket No. 10-90 (filed Mar. 31, 2014); Reply Comments of Hot Springs Telephone Company and Ronan Telephone Company, WC Docket No. 10-90 (filed Mar. 31, 2014).

[169] *USF/ICC Transformation Order*, 26 FCC Rcd at 17751-53, paras. 239-43.

[170] Based on their January 2014 filings, price cap carriers are subject to a monthly support reduction of $170,000, or $2,040,000 on an annualized basis. This reduction in support represents less than 0.20 percent of the $1.1 billion in Phase I frozen support that price cap carriers received in 2013. Additionally, rate-of-return carriers are subject to a monthly support reduction of $120,000, or $1,440,000 on an annualized basis. This reduction in support represents

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rate floor to be implemented in 2013, carriers in 34 study areas in 16 states still are reporting a number of lines with residential local service charges of $5 or less,[171] further reinforcing our view that individual carriers may choose not to raise rates in response to the current rate floor. We therefore can predict that, although there could be increases in some rates, it is unlikely that there will be a significant number of dramatic increases.[172]

82. In response to the NARUC petition, we note that the Bureau has posted on the Commission's website the data used to develop the rate floor with explanatory notes,[173] effectively granting that aspect of NARUC's petition. Moreover, we also note that our action today to phase-in the effect of the rule over a four-year period effectively responds to NARUC's suggestion that "at a minimum, delay and perhaps a phasing in of the new floor is warranted."[174] NARUC also suggests that the Commission should seek comment on how to calculate the benchmark.[175] In the *Rate Floor Order*, the Bureau clearly explained that the sample would be drawn using FCC Form 477 data from fixed terrestrial providers in urban census tracts, and that the average urban rate would be calculated based on the non-promotional rate for stand-alone voice service.[176] To the extent that NARUC is challenging that methodology, its request is an untimely petition for reconsideration of the *Rate Floor Order*.[177] If the intent of NARUC's petition is to challenge the Bureau's decision to use only incumbent LEC data in computing the average urban rate,[178] we note that this decision resulted in a lower rate floor than would have resulted if the Bureau had used the data from all providers.[179] Therefore, seeking comment on that aspect of the methodology would not advance NARUC's objective, and we see no other reason to do so. We therefore grant in part and deny in part NARUC's petition.

83. We are not persuaded by arguments that we should artificially cap the 2014 rate floor to be a figure lower than what was calculated by the rate survey. The rate floor rule is separate from the rule requiring reductions in support for rates below the rate floor; there is no reason why it is necessary to "cap" the rate floor itself.

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roughly 0.07 percent of the $1.958 billion that rate-of-return carriers received in 2013. *See* WCB Apr. 2, 2014 Letter.

[171] *Id*.

[172] Further, ETCs are required to use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e); 47 C.F.R. § 54.314. High-cost universal service support is intended for voice telephony service provided over broadband-capable networks. *USF/ICC Transformation Order*, 26 FCC Rcd at 17684, 17685-86, paras. 62, 64. To the extent that the rate floor leads carriers to increase low voice telephony rates, the carriers no longer could be using federal universal service support to subsidize those artificially low rates, and instead will use those funds for the deployment and availability of broadband-capable networks in the areas they serve. We thus reject the dissent's contention, *see* Dissent at 5, that consumers will not benefit when ETCs receive the full available federal high-cost universal service support upon increasing rates to the rate floor.

[173] *See* Urban Rate Survey Data.

[174] NARUC Apr. 15, 2014 Petition at 6.

[175] *Id.* at 7.

[176] *Rate Floor Order*, 28 FCC Rcd at 4244-45, paras. 8-12.

[177] NARUC Apr. 15, 2014 Petition at 7. To the extent that it instead is seeking a stay or waiver pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the good cause analysis here persuades us to grant a waiver of the nature and extent discussed above, and not more broadly. *See supra* paras. 77-81.

[178] *Rate Survey Results Public Notice*, 29 FCC Rcd 2967.

[179] *Universal Service Implementation Progress Report* at Figure 7.

84. We do not waive section 54.313(h) of our rules. The announced urban rate floor is $20.46; incumbent ETCs must report their rates to USAC to the extent that their rates plus state fees are below this amount. Having information regarding ETC rates below the urban rate floor will facilitate our ability over the next four years to monitor the impact of this rule on carriers and consumers. Effective July 1, 2016, the rate floor will be determined by the next urban rate survey. We direct the Bureau to conduct the next survey in sufficient time to announce the results in early 2015 and to announce the 2016 rate floor no later than January 31, 2016.

85. We agree with the Maine Office of Public Advocate that a carrier should not be subject to universal service support reductions as a result of the rate floor for those lines provided to Lifeline customers.[180] The Commission has consistently emphasized its commitment to ensuring that its reforms do not negatively impact Lifeline customers.[181] We therefore waive application of section 54.318(i) for lines provided to customers enrolled in the Lifeline program. We conclude that allowing carriers to maintain rate plans that are priced below the rate floor for Lifeline subscribers strikes the appropriate balance between ensuring that consumers across America are not funding below-average rates for selected consumers, while providing targeted relief to ensure this rule does not negatively impact Lifeline subscribers.[182] Therefore, we waive section 54.318(i) and direct USAC to take steps to ensure there will be no reductions in high-cost support for lines provided to customers enrolled in the Lifeline program.

86. We decline to reconsider the adoption of a rate floor.[183] Such requests effectively are untimely petitions for reconsideration of the original decision in the *USF/ICC Transformation Order* to adopt the rate floor. The Commission denied petitions for reconsideration of the adoption of the rate floor in the *Third Order on Reconsideration*.[184] Moreover, as noted above, the Commission adopted the rate floor as a matter of fairness to ensure that consumers throughout the country do not support consumers and states with very low rates.[185] While parties may disagree with the particular operation of the current

[180] Maine Public Advocate Letter. We note that waiving support reductions for Lifeline customers will help address AARP's concerns regarding low-income older consumers. *See* AARP Apr. 15, 2014 Letter at 2.

[181] *See, e.g., USF/ICC Transformation FNPRM,* 26 FCC Rcd at 18066, para. 1102 (emphasizing ongoing commitment to ensuring Lifeline consumers have access to service); *Lifeline and Link Up Reform and Modernization et al.,* WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6659, para. 1 (2012) (emphasizing importance of "ensuring that eligible low-income consumers who do not have the means to pay for telephone service can maintain their current voice service through the Lifeline program").

[182] The Wireline Competition Bureau provided similar relief last year in response to a petition filed by carriers in West Virginia. *Connect America Fund et al.,* WC Docket No. 10-90 et al., Order, 28 FCC Rcd 9230, 9235, para. 16 (Wireline Comp. Bur. 2013).

[183] *See, e.g.,* ITTA & USTelecom Mar. 31, 2014 Reply Comments at 5-6; NTCA et al. Mar. 31, 2014 Reply Comments at 7. As courts have recognized, the mere fact that a Commission rule might have an incidental effect on rates does not mean that the Commission is "regulating" rates. *See, e.g.*, *Cable & Wireless PLC v. FCC*, 166 F.3d 1224, 1230 (D.C. Cir. 1999) (finding that even though "the practical effect of the Order will be to reduce settlement rates charged by foreign carriers … the Commission does not exceed its authority simply because a regulatory action has extraterritorial consequences"); *Cellular Telecomms. Indus. Ass'n v. FCC*, 168 F.3d 1332, 1336 (D.C. Cir. 1999) (upholding the Commission's determination that a state commission's imposition of universal service contribution requirements on wireless carriers did not amount to "rate regulation" preempted by 47 U.S.C. § 332(c)(3), even though such requirements "impact the rates charged to customers"). Moreover, the Commission has authority under section 254 "to create some inducement . . . for the states to assist in implementing the goals of universal service." *Qwest Corp. v. FCC*, 258 F.3d 1191, 1203-04 (10th Cir. 2001). We also find no other basis for concluding that the Commission is improperly exercising jurisdiction with respect to intrastate rates here, and thus conclude that the rate floor does not violate section 2(b) of the Act, as the dissent alleges. *See* Dissent at 7.

[184] *Third Order on Reconsideration,* 27 FCC Rcd at 5631, para. 23-24.

[185] *USF/ICC Transformation Order*, 26 FCC Rcd at 17751, para. 238.

rule, that does not change the fact that consumers across the country otherwise would be continuing to subsidize, through federal universal service support, excessively low rates in some areas. As explained above, in no sense does this policy require carriers to raise their rates, nor does it preclude states from subsidizing low prices through their own universal-service mechanisms.[186] We thus continue to believe that the rate floor is necessary to maintain fairness in the universal service support mechanism and accordingly grant in part and deny in part the Associations' Petition to the extent described herein.

B. Waiver of Fees for Study Area Boundary Waivers

87. *Background.* A study area is the geographic territory of an incumbent LEC. The Commission froze all study area boundaries effective November 15, 1984, in order to prevent incumbent LECs from establishing separate study areas made up only of high-cost exchanges to maximize their receipt of high-cost universal service support.[187] A carrier must therefore apply to the Commission for a waiver of the study area boundary freeze if it wishes to transfer or acquire additional exchanges or parts of exchanges.[188]

88. The Commission's rules require carriers filing petitions for waiver of the study area boundary freeze to submit a $7,990 application fee with their petitions.[189] Historically, the Commission has imposed application fees to recoup a portion of the direct cost it incurs to provide specific services to individuals and companies.[190] The $7,990 fee is a uniform fee that applies to all petitions for waiver of Part 32 accounting rules, Part 36 separations rules, Part 43 reporting requirements, Part 64 cost allocation rules, Part 65 rate of return rules, and Part 69 access charge rules.

89. *Discussion.* In response to informal inquiries from state commissions and others, we now waive on our own motion the $7,990 application fee for carriers seeking a study area waiver to transfer lines below the exchange level.[191] We note that the Bureau generally considers petitions seeking to transfer lines at the sub-exchange level as routine.[192] This burden and cost has been reduced even further by the streamlined study area boundary freeze waiver process instituted in the *USF/ICC Transformation*

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[186] *See* 47 U.S.C. § 254(f).

[187] *See MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 78-72 et al., Decision and Order, 50 Fed. Reg. 939 (1985) (*Part 67 Order*). *See also* 47 C.F.R. pt. 36, App. ("Study area boundaries shall be frozen as they are on November 15, 1984.").

[188] *See Part 67 Order*, 50 Fed. Reg. at 939-40, para. 1; *Sacred Wind Communications, Inc. and Qwest Corporation, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules; Sacred Wind Communications, Inc.; Related Waivers of Parts 36, 54, and 69 of the Communication's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 9227 (Wireline Comp. Bur. 2006); *Panora Communications Cooperative and Prairie Telephone Co., Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36 of the Commission's Rules*, CC Docket No. 96-45, Order, 25 FCC Rcd 5558 (Wireline Comp. Bur. 2010).

[189] *See* 47 C.F.R. § 1.1105; *see also* Federal Communications Commission, Wireline Competition Bureau Common Carrier Services Fee Filing Guide at 7 (June 21, 2011), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308188A1.pdf.

[190] The authority to collect these fees was provided by Congress in the Consolidated Omnibus Budget Reconciliation Act of 1989. *See* Omnibus Budget Reconciliation Act of 1989, § 3001, 47 U.S.C. 158 (2012).

[191] We note that the Commission has previously waived this fee on its own motion for parties seeking waiver of the HCLS benchmarking rule. *Fifth Order on Reconsideration*, 27 FCC Rcd at 14558-59, para. 24.

[192] *See, e.g.*, *Wireline Competition Bureau Grants Qwest/All West Joint Petition for Study Area Waivers*, CC Docket No. 96-45, Public Notice, 27 FCC Rcd 15968 (Wireline Comp. Bur. 2012); *The Telecommunications Access Policy Division of the Wireline Competition Bureau Grants Three Study Area Waiver Petitions*, CC Docket No. 96-45, Public Notice, 27 FCC Rcd 2193 (Wireline Comp. Bur. 2012).

Order.[193] The administrative burden and cost associated with reviewing these petitions and issuing decisions, therefore, is relatively small, while the amount of the fee is a deterrent to transferring lines at the sub-exchange level. Accordingly, there is good cause to grant this limited waiver.

VI. MEMORANDUM OPINION AND ORDER

90. In this section, we address two applications for review of the Bureau's *Phase II Service Obligations Order* related to the requirements for a provider to be designated an unsubsidized competitor.[194] Alaska Communications Systems (ACS) requests review of the Bureau's statement that it will consider challenges to a competitor's unsubsidized status even if that competitor is receiving high-cost support that is being phased out.[195] The National Cable and Telecommunications Association (NCTA) requests review of the decision to use the same criteria for determining whether a provider is an unsubsidized competitor as are used in setting the obligations for Phase II funding recipients.[196] For the reasons set forth below, we deny ACS's application, and we dismiss NCTA's application. We conclude that it is appropriate for the Bureau to commence the Phase II challenge process under the framework established in the *Phase II Service Obligations Order*.[197]

91. In the *USF/ICC Transformation Order*, the Commission decided that all ETCs "will be required to offer broadband service in their supported areas that meets certain basic performance requirements."[198] In setting those performance requirements for Phase II model-based funding recipients, the Commission stated that those recipients must "offer broadband at actual speeds of at least 4 Mbps downstream and 1 Mbps upstream, with latency suitable for real-time applications, such as VoIP, and with usage capacity reasonably comparable to that available in comparable offerings in urban areas,"[199] offered at rates that are reasonably comparable to the rates offered in urban areas. In determining the areas that will be eligible for Connect America Phase II support, the Commission stated that it will "exclude areas where an unsubsidized competitor offers broadband service that meets the [above-mentioned] broadband performance requirements."[200] The task of assigning quantifiable metrics to the

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[193] In the *USF/ICC Transformation Order*, the Commission streamlined the process by which study area boundary waiver petitions would be addressed. *USF/ICC Transformation Order*, 26 FCC Rcd at 17763, para. 267. Though the Bureau continues to seek comment on these petitions, study area waivers eligible for streamlined treatment are deemed granted, absent any further action by the Bureau, on the 60th day after the reply comment due date. *See id.* The Commission stated that these reforms would reduce administrative burdens, provide greater regulatory certainty and a more certain timetable for carriers, and allow the Bureau to process petitions for waiver of the study area freeze more efficiently and effectively. *See id.*

[194] 47 C.F.R. § 1.115 (Application for review of action taken pursuant to delegated authority); *Phase II Service Obligations Order*.

[195] ACS, Application for Review, WC Docket No. 10-90 (filed Nov. 26, 2013) (ACS Nov. 26, 2013 Petition).

[196] NCTA, Application for Review, WC Docket No. 10-90 (filed Dec. 23, 2013) (NCTA Dec. 23, 2013 Petition)

[197] We recognize that we seek comment on a number of issues in the FNPRM that, if adopted, could change existing requirements. In order to proceed in a timely fashion to make the offer of support to price cap carriers, we conclude that the Bureau should conduct the challenge process in a way that does not prejudge the Commission's ultimate decisions. This will also ensure that the Phase II challenge process may proceed without delay. *See* Letter from Thomas Cohen, Counsel, ACA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at 4-5 (filed Apr. 15, 2014) (ACA Apr. 15, 2014 Ex Parte).

[198] *USF/ICC Transformation Order*, 26 FCC Rcd at 17695, para. 86.

[199] *Id.* at 17726, para. 160.

[200] *Id.* at 17729, para. 170.

Commission's general performance criteria, both for Phase II recipients and for unsubsidized competitors, was delegated to the Bureau.[201]

92. In the *Phase II Service Obligations Order*, the Bureau implemented the Commission's direction that Connect America Phase II funding recipients meet certain performance criteria.[202] The Bureau specified the performance metrics that would be required of recipients of Phase II model-based support.[203] The Bureau also specified how those criteria would be used in determining what areas would be considered served by an unsubsidized competitor, and therefore ineligible for support. The Bureau noted that, per the Commission's direction, "an unsubsidized competitor must be offering broadband and voice service that would meet the Commission's requirements for price cap carriers receiving model-based support."[204] Thus, in order to qualify as an unsubsidized competitor, a provider must offer broadband with speeds of 4 Mbps downstream and 1 Mbps upstream (4 Mbps/1 Mbps), roundtrip provider network latency of 100 ms or less, minimum usage allowances of at least 100 GB per month, and pricing that is reasonably comparable to that in urban areas.[205]

A. ACS Application for Review

93. In the *Phase II Service Obligations Order*, the Bureau stated that it would "presume that any recipient of high-cost support at the time the challenge process is conducted" would not meet the definition of "unsubsidized competitor," but it would "entertain challenges to that presumption from any competitive [ETC] that otherwise meets or exceeds the performance standards established [for price cap carriers accepting model-based support] and whose high-cost support is scheduled to be eliminated during the five-year term of Phase II." It further stated that this would "provide an opportunity for the Commission to consider whether to waive application of the 'unsubsidized' element of the unsubsidized competitor definition in situations that would result in Phase II support being used to overbuild an existing broadband-capable network."[206]

94. ACS requests that we review and reverse the Bureau's decision.[207] For the reasons discussed below, we deny ACS's application.

95. The *USF/ICC Transformation Order* states, "[i]n determining the areas eligible for support, [the Commission] will also exclude areas where an unsubsidized competitor offers broadband service that meets the broadband performance requirements described above, with those areas determined by the Wireline Competition Bureau as of a specified future date as close as possible to the completion of the model."[208] ACS argues that allowing a provider to challenge its unsubsidized status even if it continues to receive support after the start of Phase II violates the requirement that the determination be made "as close as possible to the completion of the model."[209]

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[201] *See, e.g.*, *id.* at 17680, 17729, paras. 48, 170 ("We delegate authority to the [Wireline Competition Bureau and Wireless Telecommunications Bureau] to finalize performance measures as appropriate consistent with the goals we adopt today.").

[202] *Phase II Service Obligations Order*, 28 FCC Rcd at 15060, para. 1.

[203] *Id.* at 15062-76, paras. 6-38.

[204] *Id.* at 15077, para. 40.

[205] *Id.* at 15063-75, paras. 7-36 (providing details regarding definition of standards).

[206] *Id.* at 15077, para. 41.

[207] ACS Nov. 26, 2013 Petition at 1.

[208] *Id.* at 5-6; *USF/ICC Transformation Order*, 26 FCC Rcd at 17729, para. 170.

[209] ACS Nov. 26, 2013 Petition at 5-6.

96. We conclude that the Bureau's action falls within its delegated authority to interpret and implement the requirements of the unsubsidized competitor rule.[210] ACS's arguments fail for two reasons. First, while the Commission required that the list of eligible areas be determined as close as possible to the completion of the cost model, that does not necessarily translate to a requirement that the unsubsidized status of a provider be determined based on whether that provider is receiving funding at the time the cost model is completed. While the former is a decision made by the Commission, the latter is an interpretation of what it means to be "unsubsidized," and the authority to make that interpretation is delegated to the Bureau.

97. Second, ACS's argument is not ripe for our consideration. The Bureau has not ruled that any and all providers receiving support after the start of Phase II qualify as unsubsidized. Quite the opposite: the Bureau presumes such providers are subsidized and requires that they come forward to present evidence if they wish to challenge that designation. In light of this, all the Bureau did was provide a procedural vehicle through which interested parties could – if they so choose – present certain evidence for consideration. Recognizing that the Commission delegated to the Bureau the implementation of the challenge process, we are not persuaded that it was beyond the Bureau's delegated authority to invite parties to bring such evidence to the agency's attention.

98. Ultimately, the issue of the Bureau's delegated authority is moot, however, because we agree that the Phase II challenge process is the appropriate venue for parties to present evidence that they serve areas with a service that meets the standards established for Phase II, and that those areas should be excluded from the offer of support to price cap carriers. We therefore affirm the Bureau's invitation to interested parties to present such evidence in the challenge process. ACS will suffer no substantial prejudice by the challenge process proceeding as the Bureau has outlined, as there will be time to make any final determinations on this topic based on a full record before the offer of support is extended. It is appropriate and timely for the Bureau to move forward with the Phase II challenge process now.

99. To provide all interested parties, including those outside Alaska, the opportunity to weigh in more broadly on how we can use Connect America funding most efficiently, we seek comment more generally on this topic in the attached FNPRM.[211] Specifically, we propose to exclude areas with competitors, whether or not subsidized, from Phase II eligibility in certain circumstances. Parties are free to raise substantive arguments in response to the FNPRM as to whether this approach would harm universal service. As such, we decline to address ACS's substantive policy arguments at this time,[212] and we deny ACS's Application for Review.

B. NCTA Application for Review

100. NCTA challenges the Bureau's determination that the standards used for Phase II recipients' service obligations will also be used in assessing whether a provider qualifies as an unsubsidized competitor.[213] We conclude that the arguments advanced by NCTA are not appropriate for consideration in an application for review. We therefore dismiss NCTA's Application for Review.

101. NCTA seeks review of the Bureau's determination that uniform standards will be used in assessing whether areas are served by unsubsidized competitors as well as setting the requirements that apply to recipients of Phase II model-based support. NCTA argues that using the same standards for both

[210] *USF/ICC Transformation Order*, 26 FCC Rcd at 17729, para. 170.

[211] *See infra* Section VIII.C.

[212] However, given the broader rulemaking questions, in determining the ongoing applicability of the unsubsidized requirement we will consider the arguments made in ACS's Application for Review in conjunction with the record we develop in response to the FNPRM.

[213] NCTA Dec. 23, 2013 Petition at 1.

groups will result in wasteful and inefficient use of universal service funds; that the decision is tantamount to directly regulating broadband rates, terms, and conditions; and that unsubsidized competitors should not be held to the same performance standards as Phase II recipients, but rather should be evaluated based only on the speed of their offerings.[214]

102. NCTA's arguments constitute an untimely petition for reconsideration of the decisions made in the *USF/ICC Transformation Order*, and, therefore, are not proper for an application for review. The decision for which NCTA seeks review is not an action taken by the Bureau on delegated authority; therefore, the matter is not properly addressed in an application for review. In the *USF/ICC Transformation Order*, the Commission affirmatively decided that a uniform standard will apply in determining what areas are served by an unsubsidized competitor as well as in setting the performance obligations for recipients of Phase II model-based support.[215] Rather than constituting a new decision made under delegated authority, the Bureau's *Phase II Service Obligations Order* simply implements the Commission's prior direction to use a uniform standard.[216] Per the Commission's rules, a party may file an application for review if it is "aggrieved by any action *taken pursuant to delegated authority*."[217] But NCTA is not challenging a decision the Bureau made on delegated authority. Rather, NCTA challenges the Bureau's implementation of a prior Commission decision. An application for review of a Bureau decision implementing a Commission directive may not be used as a vehicle to seek reconsideration of the Commission's earlier decision.[218] The proper method for challenging the Commission's decision on this point would have been for NCTA to seek reconsideration of the *USF/ICC Transformation Order*. However, the window for filing such a petition has passed.[219] We therefore dismiss NCTA's Application for Review of the *Phase II Service Obligations Order* as improper on the grounds that the application does not seek review of any Bureau action taken pursuant to delegated authority; to the extent the filing should be viewed as a petition for reconsideration of the Commission's decision in the *USF/ICC Transformation Order*, we dismiss it as untimely.

103. We conclude that NCTA's application is procedurally defective. Therefore, we dismiss NCTA's Application for Review.

VII. SEVENTH ORDER ON RECONSIDERATION

104. In this section, we address several petitions for reconsideration of certain aspects of the *USF/ICC Transformation Order*, making adjustments where appropriate. First, to provide a more measured transition for rate-of-return carriers that would have qualified for SNA support based on their significant network investment, we permit such carriers to receive SNA for such investments made in 2010 and 2011. Second, we deny a petition challenging the imposition of broadband public interest

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[214] *Id.* at 4-8.

[215] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17729, para. 170 ("In determining the areas eligible for support, we will also exclude areas where an unsubsidized competitor offers broadband service that meets the broadband performance requirements described above . . . .").

[216] *See Phase II Service Obligations Order*, 28 FCC Rcd at 15076-77, paras. 39-40 n.97 ("The Commission directed the Bureau to exclude areas where an unsubsidized competitor meets the broadband performance requirements 'described above,' referring to the earlier discussion in the *USF/ICC Transformation Order* of public interest obligations for ETCs.").

[217] 47 C.F.R. § 1.115 (emphasis added).

[218] The Commission's bureaus and offices implement Commission regulations and precedent many times per day. Allowing review of such implementation to reopen the Commission's underlying regulatory and adjudicatory decisions would generate uncertainty and hinder the functioning of the Commission.

[219] 47 U.S.C. § 405(a); 47 C.F.R. § 1.429(d) ("The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of such action.").

conditions on recipients of high-cost support, concluding that does not constitute common carrier regulation. Third, we eliminate the HCLS benchmarking rule so that carriers' HCLS will no longer be limited by benchmarks calculated using the QRA methodology.

A. Safety Net Additive

105. *Background.* In 2001, the Commission created the SNA high-cost universal service support mechanism to provide further support to incumbent carriers that made significant investment in their infrastructure.[220] Such investment was measured by realized growth in year-end telecommunications plant in service (TPIS) on a per-line basis of at least 14 percent more than the study area's TPIS per-line investment at the end of the prior period.[221] Eligible carriers received SNA support in addition to their capped HCLS.[222] Once a carrier qualified for SNA, it would receive SNA support beginning in the second year after costs were incurred for the qualifying year, plus four subsequent years, for a total of five years.[223]

106. When the Commission adopted SNA, the number of access lines was growing. At that time, the Commission did not anticipate that incumbent telephone companies would lose access lines as they have over the past decade. Because incumbent LECs qualified for SNA support by realizing growth in TPIS on a *per-line* basis, decreasing access lines resulted in the majority of carriers receiving SNA support due to significant loss of lines, rather than significant increases in investment. For example, in 2009 and 2010, close to sixty percent of incumbent LECs that qualified for SNA did so because of line loss rather than increased investment.[224]

107. In the 2011 *USF/ICC Transformation Order*, the Commission made the decision to eliminate and phase out SNA.[225] The Commission found that the mechanism was not fulfilling its purpose of encouraging "additional significant investment in telecommunications plant" because the majority of incumbent carriers qualified for SNA due to line loss rather than network investment.[226] The Commission decided that carriers that qualified for SNA support due to a 14 percent or greater increase in total TPIS over the prior year would continue to receive support for the full five-year period for which they were eligible.[227] The Commission concluded that other carriers – i.e., those qualifying for SNA based on line loss – would have their SNA support phased down by 50 percent in 2012 and completely

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[220] SNA was adopted based on the recommendation of the Rural Task Force. *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Fourteenth Report and Order et al., 16 FCC Rcd 11244, 11276-81, paras. 77-90 (2001) (*Rural Task Force Order*).

[221] *See* 47 C.F.R. §§ 32.2001, 36.605(c).

[222] Specifically, for carriers that qualified prior to 2011, SNA support was calculated by the following equation: SNA support = (Uncapped support in the qualifying year - Uncapped support in the base year) - (Capped support in the qualifying year - Amount of support received in the base year). 47 C.F.R. § 36.605(b). In 1993, the Commission imposed an indexed cap on HCLS, which limited total support to the previous year's total, adjusted by the rate of annual loop growth for all carriers. *See Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board,* CC Docket No. 80-286, Report and Order, 9 FCC Rcd 303, 305, paras. 19-20 (1993) (subsequent history omitted). In 2001, the Commission modified the cap to adjust it annually by an index based on changes in the Gross Domestic Product/Consumer Price Index and access lines. *See Rural Task Force Order*, 16 FCC Rcd at 11249, para. 12.

[223] 47 C.F.R. § 36.605(c)(3)(ii). For example, a carrier increasing TPIS on a per-line basis in 2009 would receive support beginning in 2011 and continuing through 2015.

[224] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17757, para. 249.

[225] *See id.* at para. 250.

[226] *Id.* at paras. 249-50.

[227] *Id.* at 17758, para. 252.

eliminated in 2013 because such support was not being paid on the basis of significant investment in telecommunications plant.[228] Because the Commission eliminated SNA effective December 29, 2011, carriers that otherwise would have newly received SNA in 2012 or 2013 based on qualifying investments prior to the effective date of the Commission's action were no longer eligible for SNA.[229]

108. Since the release of the *USF/ICC Transformation Order*, rate-of-return carriers have urged the Commission to reconsider its decision to eliminate SNA support.[230] NECA, OPASTCO, and WTA (NECA et al.) also argue that, rather than eliminating SNA support, the Commission should revise the qualification requirements for SNA so that only those carriers that increase their total network investment from year-to-year – i.e., carriers that experience *total* year-over-year, rather than per-line, TPIS growth – would qualify for SNA support.[231] Both NECA et al. and USTelecom urge the Commission to extend the SNA phase down schedule for carriers that qualified for SNA based on line loss.[232] On December 20, 2012, North Central Telephone Cooperative, Inc. (North Central) filed a petition seeking waiver of the Commission's rules to enable it to receive SNA support for investments the company made in 2010.[233] North Central alleges that the decrease in support as a result of the elimination of SNA has caused it to defer investments that would have resulted in lower annual operating costs and increased broadband availability and adoption in very rural areas.[234]

109. *Discussion.* On reconsideration, we conclude that a more measured transition for carriers that qualified for SNA based on investment is appropriate. Specifically, we will allow carriers that would have qualified for SNA based on increased investment – an increase of at least 14 percent in their total TPIS in 2010 or 2011 – to receive such support. This relief applies only to carriers that would have qualified for such support based on investment undertaken in 2010 or 2011 that led to a 14 percent or greater increase in total TPIS, not carriers that would have qualified due to line loss.[235] We conclude that

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[228] *Id.*

[229] Under the previous rules, carriers began receiving SNA support two years after incurring significant network investments. For example, under the former rules, a carrier increasing its total TPIS by 14 percent or greater in 2010 would receive SNA support beginning in 2012 and continuing for the four subsequent years. A carrier increasing its total TPIS in 2011 would begin receiving SNA in 2013.

[230] For example, NECA and other rural associations argue that the Commission should allow carriers to receive SNA support for costs incurred after 2009. *See* Petition for Reconsideration and Clarification of the National Exchange Carrier Association et al., WC Docket. No. 10-90 et al., at 15-16 (filed Dec. 29, 2011) (NECA Dec. 29, 2011 Petition). Similarly, the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), WTA, and NTCA assert that eliminating SNA support for costs incurred after 2009 "amounts to inequitable treatment of similarly situated carriers." *See* Letter from Stuart Polikoff, Vice President – Regulatory Policy and Business Development, OPASTCO, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al., at 3 (filed Nov. 14, 2012). OPASTCO and NTCA subsequently unified to form a new association, NTCA – The Rural Broadband Association. *See* Press Release, NTCA, Leading Rural Telecommunications Associations Agree to Unify (Feb. 6, 2013), http://www.ntca.org/2013-press-releases/leading-rural-telecommunications-associations-agree-to-unify.html.

[231] NECA Dec. 29, 2011 Petition at 14-15.

[232] *Id.* at 16; Petition for Reconsideration of USTelecom, WC Docket No. 10-90 et al., at 28-29 (filed Dec. 29, 2011) (USTelecom Dec. 29, 2011 Petition).

[233] *See* Petition for Waiver of North Central Telephone Cooperative, Inc., WC Docket No. 10-90 (filed Dec. 20, 2012).

[234] *See* Letter from David Cosson, Counsel to North Central Telephone Cooperative, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al. (filed Apr. 26, 2013).

[235] We direct USAC to make a lump sum payment, no later than 60 days after the effective date of this Order, for the monthly support that would have been received up until the effective date of this Order had the rule not been eliminated, and then monthly payments under the normal schedule for SNA, until the end of 2016 or 2017, as

(continued...)

providing SNA support for this limited group of carriers is consistent with our goal of increasing rural broadband deployment by promoting investment in modern networks. Moreover, providing SNA for this discrete group of carriers is consistent with the Commission's goal of "phas[ing] in reform with measured but certain transitions, so companies affected by reform have time to adapt to changing circumstances."[236] Because of the relief granted herein, we dismiss North Central's petition as moot.

110. We reiterate that carriers are not entitled to universal service support simply because they may have an expectation of such support.[237] However, we believe that providing a more measured transition for carriers is not only consistent with the original intent of the SNA mechanism, but also furthers the goals of the *USF/ICC Transformation Order*, which was intended to expand modern communications networks in rural communities throughout the country.[238]

111. We note that our decision, by focusing only on those carriers who qualify for SNA based on significant network investments, will have a limited budgetary impact. In 2013, USAC disbursed approximately $20 million in SNA support to eligible carriers.[239] We estimate that allowing SNA support for carriers qualifying for SNA based on investment in 2010 and 2011 will result in an increase of approximately $31.5 million in SNA support in 2014, $12 million annually in 2015 and 2016, and $4.5 million in 2017.[240]

112. We otherwise find that parties have presented no new evidence or raised new arguments that convince us to delay or reverse the Commission's general decision to eliminate and phase out SNA. Accordingly, we deny other requests to reconsider actions relating to SNA.[241]

113. As the Commission explained in the *USF/ICC Transformation Order*, allowing qualification based on growth in total investment rather than per line investment, as petitioners suggest, "would not address [the Commission's] overarching concern that [SNA] as a whole does not provide the right incentives for investment in modern communications networks."[242] For example, the rule provided support for investment in terrestrial wireline networks in extremely high-cost areas where it may be more cost effective to deploy alternative technologies. The rule also provided SNA to carriers for investments in areas served by an unsubsidized competitor. Therefore, simply modifying the qualification requirement, rather than eliminating SNA altogether, would fail to provide sufficient assurance that

(Continued from previous page)
applicable. We take this opportunity to remind these carriers that they must file the necessary documentation with USAC verifying that they qualify for SNA in order to receive such support.

[236] *USF/ICC Transformation Order*, 26 FCC Rcd at 17671, para. 11.

[237] *See id.* at 17758, para. 252 n.409.

[238] *Id.* at 17671, para. 14. The Commission's reforms were designed to provide "access to critical employment, public safety, educational, and health care opportunities to millions of Americans for the first time." *Id*.

[239] Wireline Competition Bureau staff determined the total amount of SNA disbursed in 2013 by analyzing USAC disbursement data. *See* USAC, Funding Disbursement Search, http://www.usac.org/hc/tools/disbursements/default.aspx (last visited Apr. 23, 2014) (*USAC High-Cost Disbursement Tool*).

[240] As directed above, carriers qualifying as a result of investment in 2010, that would have received support in 2012, will receive approximately $22.5 million in support in 2014, reflecting their support for 2012, 2013, and 2014. *See supra* note 235. Carriers qualifying as a result of investment in 2011 will also receive $9 million in 2014, reflecting their support for 2013 and 2014. Total support for 2015 and 2016 will be $12 million each year ($7.5 million per year for carriers investing in 2010, $4.5 million per year for carriers investing in 2011). In 2017, support will decrease to $4.5 million, reflecting the last year of support for carriers investing in 2011.

[241] NECA Dec. 29, 2011 Petition at 14-15.

[242] *USF/ICC Transformation Order*, 26 FCC Rcd at 17757-58, para. 251.

carriers receiving support in the future would make reasonable or cost-efficient investments or target these investments to areas that would not otherwise be served, contrary to the goals of the *USF/ICC Transformation Order*.[243]

114. We also decline to alter the phase down of support for carriers that qualified for SNA due to line loss prior to or during 2009. The phase down adopted by the Commission was part of a total package of reforms designed to balance the Commission's objectives of advancing the availability of modern networks capable of supporting broadband and voice services at reasonably comparable rates and encouraging efficient investment while minimizing the burden on consumers and businesses.[244] The Commission found that the SNA mechanism was not well designed to meet its intended purpose. Extending the phase down for two additional years would thwart the Commission's reform goals and reward inefficiency.[245]

115. We also are not persuaded by USTelecom's argument that we should extend the phase down of SNA support for incumbent rate-of-return carriers that qualified for SNA support due to line loss to provide treatment equivalent to that provided to competitive ETCs. In the *USF/ICC Transformation Order*, the Commission established a five-year transition period for competitive ETCs' existing high-cost universal service support in recognition of the fact that they were losing all support with the elimination of the identical support rule.[246] The Commission adopted this phase down to eliminate legacy support entirely for competitive ETCs.[247] Rate-of-return carriers remain eligible to receive support from existing high-cost support mechanisms as reformed by the *USF/ICC Transformation Order*, as well as CAF-ICC support.[248] As such, the different approach for competitive ETCs makes sense in the context of the overall set of reforms.

[243] *Id.*

[244] *See id.* at 17672, para. 17.

[245] *Id.* at 17738, para. 194.

[246] *Id.* at 17827, 17830-31, paras. 502, 513-14. The identical support rule provided competitive ETCs "the same per-line amount of high-cost universal service support as the incumbent local exchange carrier serving the same area." *Id.* at 17825, para. 498.

[247] The phase down for competitive ETCs is halted at 40 percent in the event that the Mobility Fund Phase II is not operational by June 30, 2014. *See id.* at 17832, para. 519.

[248] *Id.* at 17740, para. 204. We note that the Commission reached a similar conclusion when it denied ARC's petition for reconsideration urging the Commission to give rural incumbent carriers serving remote Alaska the same phase down period as competitive ETCs serving remote Alaska. *See Third Order on Reconsideration*, 27 FCC Rcd at 5637, paras. 41-42; *see also* Alaska Rural Coalition Petition for Reconsideration, WC Docket No. 10-90 et al., at 3-8 (filed Dec. 29, 2011). The Commission had delayed the five-year phase down of support for competitive ETCs serving remote Alaska for an additional two years, "to ensure that support would not be reduced until after the mechanism that will provide ongoing support targeted at such carriers – the Mobility Fund Phase II, including its Tribal component – is operational." *Third Order on Reconsideration*, 27 FCC Rcd at 5637, para. 42; *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17835-36, para. 529. In contrast, the Commission found that incumbent rate-of-return carriers, like those represented by ARC, would continue to receive support while the Commission considered how to provide long-term support for rate-of-return carriers. *See Third Order on Reconsideration*, 27 FCC Rcd at 5637, para. 42. The Commission stated that "although some rate-of-return carriers will receive less support based on the Commission's decision to place reasonable limits on expenses and to phase out mechanisms that were outdated and not operating as intended, other rate-of-return carriers will see little change in support, and yet others will see increases in support." *Id.* Based on this analysis, the Commission held that the reasoning underlying its decision to delay the phase down of support for competitive ETCs serving remote areas of Alaska did not apply to incumbent carriers. *Id.*

B. Broadband Public Interest Conditions

116. *Background.* In the *USF/ICC Transformation Order*, the Commission held that, as a "condition of receiving federal high-cost universal service support," all recipients of such support must offer broadband service meeting certain performance metrics (i.e., speed, latency, capacity), and at rates in rural areas that are reasonably comparable to rates offered in urban areas.[249] The recipients of high-cost support also must comply with broadband reporting obligations.[250] We refer to these requirements collectively, hereinafter, as the "broadband public interest conditions."

117. For price cap carriers, the Commission began the process of transitioning high-cost support to the Connect America Fund. In Connect America Phase I, the Commission froze existing high-cost support for price cap carriers and their rate-of-return affiliates until Connect America Phase II is implemented.[251] As a condition of receiving this frozen support, the Commission required price cap carriers to use a portion of that support "to build and operate broadband-capable networks" necessary "to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor."[252]

118. The *USF/ICC Transformation Order* also implemented a number of reforms for rate-of-return carriers.[253] Relevant here, the Commission determined that rate-of-return carriers would continue to receive support under existing universal service support mechanisms (subject to some modifications to improve the efficiency and effectiveness of those mechanisms).[254] As a condition on the continued receipt of high-cost loop support, interstate common line support, and support from the CAF-ICC recovery mechanism, the Commission required rate-of-return carriers to provide broadband service meeting the specified performance requirements upon reasonable request for service and within a reasonable amount of time.[255]

119. In its petition for reconsideration, USTelecom claims that the Commission "lacks authority" to condition the receipt of "legacy" federal universal support on these broadband public interest

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[249] *USF/ICC Transformation Order*, 26 FCC Rcd at 17695, para. 86. The Commission noted that federal high-cost universal service support included all existing high-cost universal service mechanisms and the Connect America Fund. *Id.* at 17695, para. 86 n.126; *see also id.* at 17696-709, paras. 90-114 (describing broadband performance metrics, reasonably comparable pricing, and broadband measuring obligations).

[250] *See* 47 C.F.R. § 54.313; *USF/ICC Transformation Order*, 26 FCC Rcd at 17852-58, paras. 579-604.

[251] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17715, para. 133.

[252] *Id.* at 17723, para. 150. In 2013, price cap carriers had to use at least one-third of their frozen high-cost support for this purpose; in 2014, they must use at least two-thirds of their frozen high-cost support for this purpose; and for 2015 and subsequent years, all of their frozen support must be used for this purpose. *Id.*

[253] *See id.* at 17738-40, paras. 194-204.

[254] *Id.* at 17738, para. 194.

[255] *Id.* at 17740-41, paras. 206-08. The Commission declined to disturb pre-existing state processes for determining whether requests to extend voice service are reasonable. *Id.* at paras. 206-09. The Commission explained that it is "funding a broadband-capable voice network," so "to the extent states retain jurisdiction over voice service, states will have jurisdiction to monitor [rate-of-return] carriers' responsiveness to customer requests for service" over that network. *Id.* at 17741, para. 208; *see also ETC Designation Process Order,* 20 FCC Rcd at 6380, para. 21 (stating that states "should determine, pursuant to state law, what constitutes a 'reasonable request' for service"). Indeed, the Commission "expect[s] that rate-of-return carriers will follow pre-existing state requirements, if any, regarding service line extensions in their highest-cost areas." *USF/ICC Transformation Order,* 26 FCC Rcd at 17741, para. 209. The Commission will monitor ETCs' progress in deploying broadband-capable networks in part through the annual reporting process. *See id.* at 17740-41, para. 206; 47 C.F.R. § 54.313(a)(3).

conditions.[256] It argues that these conditions constitute "common-carrier regulation," and that because broadband is classified as a Title I information service, the Commission is precluded from imposing such conditions on support pursuant to section 3(51) of the Act.[257] That section provides, in relevant part, that "[a] telecommunications carrier shall be treated as a common carrier under this [Act] only to the extent that it is engaged in providing telecommunications services."[258]

120. *Discussion.* The broadband public interest conditions that the *USF/ICC Transformation Order* imposes on the receipt of federal universal service subsidies do not constitute a *per se* common carrier obligation. After the *USF/ICC Transformation Order*, as before, carriers or their affiliated Internet Service Providers[259] are free to offer or decline to sell broadband Internet access service to any end user. Carriers need not hold themselves out to offer service indiscriminately to *anyone*. Instead, carriers only have to provide broadband service to a customer *if* the *carrier* seeks designation as an ETC from a state commission or the FCC and requests federal subsidies.[260] As such, the *USF/ICC Transformation Order* imposes funding conditions,[261] not "regulation" – and certainly not a *per se* common carrier obligation. Indeed, as the United States Court of Appeals for the Tenth Circuit has explained, conditions placed on the receipt of federal universal service subsidies – even though they may be similar to the duties imposed on common carriers – do not amount to a *per se* common carrier obligation because carriers voluntarily assume the conditions in the first instance and "retain[] the ability to opt out of them entirely by declining … federal universal service subsidies."[262] USTelecom concedes that price cap carriers "may decline [Connect America] Phase I incremental support if they 'cannot meet [the Commission's] broadband

[256] USTelecom Dec. 29, 2011 Petition at 11; *see also* Comments of AT&T, WC Docket 10-90 et al., at 27-28 (filed Feb. 9, 2012).

[257] USTelecom Dec. 29, 2011 Petition at 11 (citing 47 U.S.C. § 153(51) and *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, CC Docket No. 02-33 et al., Report and Order et al., 20 FCC Rcd 14853, 14855-56, paras. 1-3 (2005)). USTelecom also raises arguments about whether the Commission's universal service reforms provide sufficient funding for carriers to meet the broadband public service conditions. USTelecom Dec. 29, 2011 Petition at 10. We do not address these arguments at this time.

[258] 47 U.S.C. § 153(51).

[259] *See Connect America Fund*, WC Docket No. 10-90, Order, 28 FCC Rcd 7227, 7228-29, para. 6 (Wireline Comp. Bur. 2013).

[260] *See* 47 U.S.C. § 214(e)(2),(6).

[261] It is well-established that the federal government may impose conditions on universal service subsidies. *See United States v. Am. Library Ass'n, Inc.*, 539 U.S. 194, 211-12 (2003) (upholding the requirement that public libraries use Internet filters as a condition on the receipt of federal universal service subsidies); *Qwest Commc'ns Int'l v. FCC*, 398 F.3d 1222, 1238 (10th Cir. 2005) (affirming the Commission's authority to condition universal service support on state commission certification that local telephone rates are "reasonably comparable"); *Tex. Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 444 (5th Cir. 1999) (affirming the Commission's authority to condition federal universal service support on state-established discount rates for intrastate services provided to schools, libraries, and rural health care providers). Absent the performance metrics and rate comparisons included in the broadband public interest conditions, the Commission would have no means to ensure that federal universal service subsidies are being used, as required by section 254(b)(1)-(3) of the Act, to deploy "in all regions of the Nation" networks capable of providing affordable voice and broadband services that are reasonably comparable – in terms of rates and quality – to voice and broadband in urban areas. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17695, 17696, 17703, 17708, paras. 87, 91, 106, 113; 47 U.S.C. § 254(b)(1)-(3).

[262] *WWC Holding Co. v. Sopkin*, 488 F.3d 1262, 1274 (10th Cir. 2007); *cf. Cellco P'ship v. FCC*, 700 F.3d 534, 542-43 (D.C. Cir. 2012) (finding that the rule at issue did not "*mandate*[] the provision of service," it "merely defines the form . . . [the] service must take for those who seek a license to offer it," on the ground that the petitioner, "[l]ike any other entity, . . . may choose not to provide . . . service").

deployment requirement' and may decide not to accept [Connect America] Phase II support."[263] The same holds true with respect to legacy support – price cap carriers have the option of declining legacy high-cost support if they do not want to comply with the broadband public interest conditions in the *USF/ICC Transformation Order*.

121. We are not persuaded by the argument that the broadband public interest obligations are not a voluntarily assumed condition on the receipt of federal subsidies because incumbent LECs cannot recover the costs they incur fulfilling various other regulatory obligations in the absence of high-cost universal service support and, therefore, incumbent LECs have no choice but to comply with the broadband public interest conditions.[264] Implicit in this argument is the notion that incumbent LECs are entitled to universal service subsidies. The Commission considered and rejected a variation on this argument, which is analogous to a takings claim, in the *USF/ICC Transformation Order*.[265] Indeed, consistent with our view, reviewing courts have uniformly rejected similar entitlement claims, recognizing that the "purpose of universal service is to benefit the customer, not the carrier."[266]

122. Moreover, all incumbent LECs are subject to regulatory obligations as incumbents, irrespective of whether they receive high-cost universal service support. Thus, those obligations, which are distinct from the universal service objectives of section 254, do not entitle some subset of incumbent LECs to high-cost universal service support.[267] Further, incumbent LECs recover the costs associated with many of those obligations from other sources.[268] Accordingly, we do not agree that incumbent LECs have no choice but to comply with the broadband public interest conditions because they will not be able to recover their costs in the absence of federal subsidies.

123. Likewise, we do not share the view that support is not "'sufficient . . . to preserve and advance universal service.'"[269] The Commission explained, at length, the basis of its predictive judgment that federal universal service subsidies would be sufficient to support both voice and broadband in the

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[263] USTelecom Dec. 29, 2011 Petition at 9 (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17720, 17726, paras. 144, 160).

[264] Dissent at 9-10.

[265] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17770-71, paras. 293-94.

[266] *Rural Cellular Ass'n*, 588 F.3d at 1103 (quoting *Alenco Commc'ns, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000)).

[267] *See* Dissent at 10. We find no distinction between conditions on support distributed under the new funding mechanisms and conditions on legacy high-cost universal service support. Dissent at 10 n.60. All incumbent LECs are subject to specific regulatory obligations (e.g., the duty to provide Lifeline service), irrespective of whether they receive high-cost universal service support or the source of such support (i.e., from legacy or new funding mechanisms).

[268] For example, the Commission reimburses incumbent LECs for their provision of Lifeline service through a low-income universal service program that is distinct from the high-cost universal service program addressed in the *USF/ICC Transformation Order* and this Seventh Order on Reconsideration. Likewise, state commissions, pursuant to section 252(d)(1) of the Act, typically establish rates that allow an incumbent LEC to recover the costs associated with its obligation to provide interconnection, unbundled network elements, and collocation pursuant to a federal methodology. 47 U.S.C. § 252(d)(1); 47 C.F.R. pt. 51, subpt. F. Hence, a reduction in high-cost support should have no bearing on the incumbent LEC's ability to recover the costs associated with its provision of service to low-income customers, or interconnection and unbundled network elements to its competitors. Moreover, incumbent LECs that opt out of the broadband public interest conditions can request other means of cost recovery (e.g., rate increases, state universal service funding, etc.) from the relevant regulatory body (i.e., a state commission or the Federal Communications Commission) to compensate for reductions in their high-cost universal service support to the extent actually needed.

[269] Dissent at 10, citing 47 U.S.C. § 254(b)(5).

USF/ICC Transformation Order,[270] and nothing leads us to reconsider that determination. As the courts have held, *consumers* are the intended beneficiaries of universal service subsidies.[271] Properly viewed from the customer's perspective, the evidence demonstrates that support is sufficient for purposes of section 254(b)(5).

124. Marketplace trends since the Commission adopted the *USF/ICC Transformation Order* support the Commission's conclusion that support is sufficient to meet the broadband public interest obligations. For example, there has been an increase in broadband deployment by incumbent LECs, both price-cap and rate-of-return carriers.[272] Likewise, there have been increases in both broadband[273] and telephone[274] penetration rates since the adoption of the *USF/ICC Transformation Order*. If support was insufficient we would expect those rates to stagnate or decline. We also find no evidence that the broadband public interest obligations have proved to be too onerous for incumbent LECs. To the contrary, since the Commission adopted the *USF/ICC Transformation Order* in 2011, only 14 out of the nation's approximately 740 rate-of-return carriers have sought waivers of universal service support reductions.[275] Given the dearth of such waiver requests, we find no merit to the claim that we are providing incumbent LECs insufficient support to satisfy the broadband public interest conditions.

125. Even if the broadband public interest conditions amounted to regulation, which they do not, they fall far short of a *per se* common carrier obligation. The D.C. Circuit has held that a carrier is "being relegated to common carrier status" if that carrier "is forced to offer service indiscriminately and on general terms."[276] USTelecom's petition for reconsideration, which lacks any discussion of how the broadband public interest conditions are commensurate with a *per se* common carrier obligation under Title II of the Act,[277] fails to demonstrate that those conditions impose such a duty on universal service support recipients. After the *USF/ICC Transformation Order*, as before, providers are free to set their own prices for broadband service and may charge different rates to different end-user customers. Indeed, the broadband public interest conditions only require ETCs to offer broadband service if they request federal subsidies,[278] and then to do so at rates in rural areas that are "reasonably comparable" to those in

[270] *USF/ICC Transformation Order*, 26 FCC Rcd at 17710-12, 17768-71, paras. 121-26, 285-94.

[271] *Alenco*, 201 F.3d at 620; *see also Rural Cellular Ass'n.*, 588 F.3d at 1103 ("So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications service, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well.").

[272] *Universal Service Implementation Progress Report* at Figure 14. The Commission has consistently used 3 Mbps/768 kbps as a proxy for 4 Mbps downstream/1 Mbps upstream broadband service. *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17701, para. 103 n.168.

[273] *Universal Service Implementation Progress Report* at Figure 13.

[274] Wireline Competition Bureau Universal Service Monitoring Report (Data Through October 2013), Table 3.1, available at: http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCCState_Link/Monitor/2013_Monitoring_Report.pdf.

[275] *Id.* at Figure A1. There are just over 1,000 study areas served by rate-of-return carriers in the United States.

[276] *Verizon v. FCC*, 740 F.3d 623, 652 (D.C. Cir. 2014) (citing *Cellco P'ship*, 700 F.3d at 547).

[277] *See* USTelecom Dec. 29, 2011 Petition at 11.

[278] *Cf. Verizon,* 740 F.3d at 656 (explaining that the regulation affirmed in *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968), which "compelled cable operators to transmit the signals of local broadcasters when cable operators imported the competing signals of other broadcasters into the local service area," did not constitute a *per se* common carriage obligation because it was conditional – specifically, it "imposed no obligation on cable operators to hold their facilities open to the public generally, but only to certain specific broadcasters if and when the cable operators acted in ways that might harm those broadcasters").

urban areas.[279] In other words, ETCs are free to offer their broadband services on terms they choose, and may offer different pricing structures to different areas of the country, subject only to the condition that the rates they offer in rural areas fall within a "reasonable range of urban rates for reasonably comparable broadband service."[280]

126. If, for example, a customer such as a community anchor institution negotiated terms and pricing for broadband services with an ETC to address the unique needs of that institution, the *USF/ICC Transformation Order* does not then require the ETC to offer those same terms to any – let alone all – of the ETC's other customers.[281] As such, the broadband public interest conditions "leave[] substantial room for individualized bargaining and discrimination in terms," distinguishing them from common carriage.[282]

C. Elimination of the Benchmarking Rule

127. *Background.* In the *USF/ICC Transformation Order*, the Commission reformed HCLS by adopting a benchmarking rule that, for the first time, placed limits on capital and operating expenses eligible for reimbursement from HCLS and redistributed freed-up HCLS to carriers that stay within these limits.[283] The objective of the benchmarking rule was twofold: to create incentives for rate-of-return carriers with higher expenditures than their similarly situated peers to moderate their expenditures[284] and

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[279] *USF/ICC Transformation Order*, 26 FCC Rcd at 17708, para. 113; *see also* 47 U.S.C. § 254(b)(3) ("Consumers in all regions of the Nation . . . should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.").

[280] *USF/ICC Transformation Order*, 26 FCC Rcd at 17708, para. 113. The Commission delegated authority to the Wireline Competition Bureau and Wireless Telecommunications Bureau to conduct an annual survey to "derive a national range of rates for broadband service." *Id.* at para. 114; *see also Cellco P'ship*, 700 F.3d at 540, 548 (finding that the data roaming rule, which requires wireless telephone companies to "offer data roaming arrangements on commercially reasonable terms and conditions" but allows providers to "tailor roaming agreements to 'individualized circumstances without having to hold themselves out to serve all comers indiscriminately on the same or standardized terms,'" does not impose common carrier requirements); *but see Verizon*, 740 F.3d at 657 (holding that "[i]f the Commission will likely bar broadband providers from charging edge providers for using their service, thus forcing them to sell this service to all who ask at a price of $0, we see no room at all for 'individualized bargaining'") (citing *Cellco P'ship*, 700 F.3d at 548).

[281] *USF/ICC Transformation Order*, 26 FCC Rcd at 17700, para. 102 n.164 (noting that the Commission expects "ETCs would provide higher bandwidth offerings to community anchor institutions in high-cost areas at rates that are reasonably comparable to comparable offerings to community anchor institutions in urban areas").

[282] *Cellco P'ship*, 700 F.3d at 548. We thus do not agree that the broadband public interest obligations "smack of common carriage" simply because those conditions impose some constraints on broadband rates and service quality. Dissent at 8-9. Comparing the broadband public interest conditions to the obligations associated with an ETC's duty to provide "voice telephony service" further underscores that the former does not constitute *per se* common carrier regulation. "Voice telephony service" is the only service that receives high-cost universal service support under section 254(c)(1) of the Act and the *USF/ICC Transformation Order*. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17684, 17693, 17776, paras. 62, 80, 309. To be eligible for support, "a common carrier designated as an eligible telecommunications carrier . . . shall, throughout the service area for which the designation is received, offer the services that are supported by Federal universal service support mechanisms under section 254(c) . . . and advertise the availability of such services and the charges therefor using media of general distribution." 47 U.S.C. § 214(e)(1)(A)-(B). The broadband public interest conditions in the *USF/ICC Transformation Order* do *not* impose those duties on an ETC's provision of broadband facilities and services.

[283] *USF/ICC Transformation Order*, 26 FCC Rcd at 17741-42, 17744-45, paras. 210, 219.

[284] The Commission delegated to the Bureau the authority to adopt and implement a methodology within the parameters set forth by the Commission, after receiving public input in response to the proposal. *See USF/ICC Transformation Order,* 26 FCC Rcd at 17743-44, 17747, paras. 214, 217, 226; 47 C.F.R. § 36.621(a)(5). In the April 2012 *HCLS Benchmarks Implementation Order*, the Bureau adopted a QRA methodology for establishing benchmarks for capital expenses (capex) and operating expenses (opex) to be used in the formula that determines

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to encourage other rate-of-return carriers to invest in and advance the deployment of voice and broadband-capable networks by redistribution of support to carriers that did not exceed their benchmarks.[285]

128. In the February 2013 *Sixth Order on Reconsideration*, the Commission reconsidered some aspects of the benchmarking rule.[286] WTA, ERTA, and NECA (the Rural Associations) filed a petition for reconsideration of that Order.[287] In their petition, the Rural Associations claim that the current benchmarking methodology results in unpredictable support and discourages investment in telecommunications and broadband infrastructure; they urge the Commission to reconsider its conclusion that the rule produces predictable support, or use at a minimum benchmarks solely as a trigger to determine if a carrier's costs require further examination.[288]

129. Subsequently, the Bureau implemented a data collection to update study area boundaries used in developing the geographical variables in the regression analysis.[289] In July 2013, the Bureau took

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HCLS for each rate-of-return cost company study area. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 27 FCC Rcd 4235, 4238, para. 10 (Wireline Comp. Bur. 2012) (*HCLS Benchmarks Implementation Order*).

[285] *See USF/ICC Transformation Order,* 26 FCC Rcd at 17745, para. 220.

[286] *See Connect America Fund et al.,* WC Docket No. 10-90 et al., Sixth Order on Reconsideration et al., 28 FCC Rcd 2572 (2013) (*Sixth Order on Reconsideration*). Specifically, the Commission directed the Bureau to develop a regression methodology that would generate a single total loop cost cap for each study area beginning in 2014. *See id.* at 2581-83, paras. 24-28. As an interim measure toward a single cost cap, the Commission directed the Bureau to sum capex and opex caps generated by its current methodology for purposes of calculating 2013 HCLS support. *See id*. at 2583, para. 29; *Wireline Competition Bureau Releases New High-Cost Loop Support Benchmarks for 2013*, WC Docket No. 10-90 et al., Public Notice, 28 FCC Rcd 3256 (Wireline Comp. Bur. 2013) (*2013 Benchmarks Public Notice*) (providing new benchmarks for 2013 based on sum of capex and opex caps). The Commission also modified the phase-in of the benchmarks for 2013 to provide carriers additional time to adjust to the changes. *See Sixth Order on Reconsideration*, 28 FCC Rcd at 2583-84, para. 30. Further, the Commission reconsidered the requirement that the benchmark regression be updated annually to generate new coefficients, and delegated determination of the frequency for running the regression analysis to the Bureau. *See id.* at 2578-79, para. 16. As a result of these modifications, 75 out of 747 study areas were capped by the benchmarks from April to June 2013. *See 2013 Benchmarks Public Notice*, 28 FCC Rcd at 3256.

[287] *See* Petition for Reconsideration of the WTA et al., WC Docket No. 10-90 et al. (filed Apr. 18, 2013) (Rural Associations Apr. 18, 2013 Petition). The Small Company Coalition and NTCA filed comments in support of the Rural Associations' petition. *See* Comments of the Small Company Coalition, WC Docket No. 10-90 et al. (filed June 3, 2013); Reply of NTCA to Oppositions to the Rural Associations Apr. 18, 2013 Petition, WC Docket No. 10-90 et al. (filed June 11, 2013). The Arctic Slope Telephone Association Cooperative, Inc. (ASTAC) and Copper Valley Telephone Cooperative (CVTC) also filed an untimely petition for reconsideration (improperly styled as an application for review) of the *Sixth Order on Reconsideration,* claiming that there were Alaska-specific flaws in the QRA's climate variable. Application for Review of Arctic Slope Telephone Association Cooperative, Inc. and Copper Valley Telephone Cooperative, WC Docket No. 10-90 et al. (filed May 20, 2013) (ASTAC and CVTC Application for Review).

[288] Rural Associations Apr. 18, 2013 Petition at 6-22.

[289] The Bureau required that state commissions choosing to submit study area boundaries for incumbent carriers within their states do so by June 28, 2013 and that carriers whose state commissions were not submitting data submit study area boundaries by May 23, 2013. *Wireline Competition Bureau Announces Brief Delay in Activation of Study Area Boundary Collection Site*, WC Docket No. 10-90 et al., Public Notice, 28 FCC Rcd 5704 (Wireline Comp. Bur. 2013). The Bureau published an online map of the submitted study area boundaries on December 2, 2013, and requested that carriers review the map, resolve any overlaps and gaps with neighboring incumbents, and resubmit modified data as necessary. *Wireline Competition Bureau Publishes Online Map of Submitted Study Area Boundaries, Announces Procedures for Filing Revised Data*, WC Docket No. 10-90 et al., Public Notice, 28 FCC Rcd 16315 (Wireline Comp. Bur. 2013). The deadline for updates was March 17, 2014. *Id.* at 16318.

several additional measures to provide greater clarity regarding the support amounts that rate-of-return carriers would receive in 2014.[290]

130. *Discussion.* We remain firmly committed to the goal of ensuring that universal service support is utilized efficiently to preserve voice and extend broadband-capable networks in high-cost areas in rural America. As discussed in the *USF/ICC Transformation Order*, the Commission has taken steps to reform the universal service mechanisms that support rate-of-return carriers "to address the misaligned incentives" of the previous regime "by correcting program design flaws, extending successful safeguards, ensuring basic fiscal responsibility, and closing loopholes to ensure our rules reward only prudent and efficient investment in modern networks."[291]

131. We now conclude, however, that the benchmarking rule is not effectively advancing those objectives. When the Commission adopted the benchmarking rule in the *USF/ICC Transformation Order*,[292] it anticipated that the rule would encourage carriers to make fiscally responsible investments in their infrastructure and that the support redistributed by the rule would encourage new investment in voice and broadband-capable networks.[293] Based on our further experience with the rule, however, we conclude that it is not functioning as originally intended. Therefore, on reconsideration, we eliminate the benchmarking rule.[294]

132. We now find that the rule unintentionally has encouraged carriers that were not subject to the benchmarks to believe that they too needed to limit their investment in broadband-capable networks.[295] This was due in part to the fact that the new rule relied on a statistical methodology that was unfamiliar to many affected stakeholders.

133. The evidence before us does not permit us to draw a firm conclusion regarding the actual impact of the rule in question; much of the concern appears to be focused on potential other reforms that might be implemented in the future. A number of trade associations, carriers, and consultants have expressed to the Commission that the benchmarking rule has been discouraging investment.[296] According to the Rural Associations, 69 percent of the NTCA members that responded to a survey stated that they were "postponing or cancelling fixed network upgrades" due to "uncertainty surrounding" the

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[290] *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 28 FCC Rcd 10999 (Wireline Comp. Bur. 2013). The Bureau concluded it would use the same regression coefficients for 2014 that were previously used for 2012 and 2013. *Id.* at 11003-04, para. 13. The Bureau also delayed the phase-in of support reductions for one year rather than making the reductions fully effective in 2014, and it waived the benchmarking rule for rate-of-return study areas in Alaska for 2014. *Id.* at 11004-05, paras. 14-17.

[291] *USF/ICC Transformation Order*, 26 FCC Rcd at 17769, para. 288.

[292] *See id.* at 17741-42, para. 210; *Sixth Order on Reconsideration*, 28 FCC Rcd at 2572-73, para. 2.

[293] *See Sixth Order on Reconsideration*, 28 FCC Rcd at 2574, para. 4.

[294] We also conclude that we will not extend the current benchmarking rule to the ICLS mechanism. *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18061-62, paras. 1085-88.

[295] The number of uncapped study areas far exceeds the number of capped study areas. *Universal Service Implementation Progress Report* at Figure A2.

[296] *See, e.g.*, Comments of John Staurulakis, Inc. on Rate of Return Represcription Staff Report, WC Docket No. 10-90 et al., at 4 (filed July 25, 2013); Comments of USTelecom, WC Docket No. 10-90, at 8 (filed June 17, 2013); Letter from Brenda Shepard, Chief Executive Officer, TelAlaska, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al., at 1 (filed Mar. 4, 2013); Letter from Stephen G. Kraskin, Communications Advisory Counsel LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al., at 1 (filed Sept. 16, 2013); Letter from Vincent H. Wiemer, Principal, Alexicon Consulting, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al., Attach. at 21 (filed Sept. 5, 2013).

benchmarking rule and other reforms in the *USF/ICC Transformation Order*.[297] On the other hand, the Bureau's *Universal Service Implementation Progress Report* noted that in the year following the April 2012 implementation of the benchmarking rule, there was a 10 percent increase in the number of census bocks reported by rate-of-return carriers in which service at speeds of at least 3 Mbps/768 kbps was available.[298] Investment thus has continued to occur post-*USF/ICC Transformation Order*, and we would expect the steps we take today will lead to even greater investment in the deployment of next-generation broadband networks.

134. While the Bureau staff and affected stakeholders have proceeded in good faith to implement the directives of the Commission in the *Sixth Order on Reconsideration*,[299] we anticipate it still would take many months for the Bureau develop new regressions, seek public input on potential equations, and finalize the methodology to be used to calculate support in 2014 and beyond. No party has provided any concrete suggestions as to what standards should be applied to determine excessive costs if the benchmarking rule were used as a trigger for further examination of costs. Thus, we decline to adopt the Rural Associations' suggestion that we use the QRA as a trigger to determine if a carrier's costs require further examination,[300] although we are firmly committed to developing standards for what are reasonable and appropriate investments for rate-of-return carriers. We now conclude that eliminating the benchmarking rule at this time is a prudent step that should enable rate-of-return carriers to evaluate realistically the impact of the reforms adopted in the *USF/ICC Transformation Order* on their business operations and extend broadband-capable infrastructure where economically appropriate. As a result of this decision, carriers' HCLS support will no longer be capped by benchmarks calculated using the QRA methodology. Instead, we are leaving in place the HCLS mechanism that the Rural Associations themselves argue is predictable,[301] while we continue to evaluate alternative ways to ensure that rate-of-return carriers have structural incentives to operate efficiently and make prudent expenditures with universal service support.

135. With the elimination of the benchmarking rule, carriers' HCLS support will be distributed as it previously had been prior to the *USF/ICC Transformation Order*.[302] Nothing in today's decision disturbs the other rules governing eligibility for HCLS, such as the HCLS indexed cap, which limits the total amount of HCLS provided to rate-of-return carriers and has been in effect for decades.[303]

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[297] Rural Associations Apr. 18, 2013 Petition at 6. 185 NTCA member companies responded to the survey. Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al., Attach. at 18-19 (filed July 24, 2013) (submitting the white paper by Simon J. Wilkie, "An Economic Analysis of the FCC's Modifications to the High-Cost Loop Support Mechanism" (July 2013)). *See also* Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al., at 2 (filed Nov. 19, 2013).

[298] *Universal Service Implementation Progress Report* at Figure 14.

[299] *See, e.g.*, Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al. (filed July 19, 2013); Letter from Michael R. Romano, Senior Vice President – Policy, NTCA – The Rural Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al. (filed May 31, 2013) (both letters, discussing issues with QRA identified by NTCA et al.).

[300] Rural Associations Apr. 18, 2013 Petition at 18-22.

[301] *Id.* at 13.

[302] The elimination of the QRA benchmarks shall become effective as of the first of the month following publication of a summary of this order in the Federal Register.

[303] In the Report and Order, we move the current HCLS rules from Subpart F of Part 36 to a new Subpart M within Part 54 in order to consolidate all universal service rules in one location. We seek comment in the FNPRM below on certain modifications to the current HCLS rules.

Likewise, the $250 monthly per-line cap on total high-cost federal universal service support and the corporate operations expense limitations for ICLS remain in place for all rate-of-return carriers.[304]

136. We continue to have significant concerns with the "race to the top" incentives that exist under the HCLS rule.[305] Given the perception of and concerns with the benchmarking rule, however, we conclude it is appropriate to eliminate it while we consider options to increase incentives for efficient investment of universal service funds. We will press forward with efforts to ensure that these funds are disbursed efficiently and in the public interest. Such efforts are essential if we are to remain within the budget framework established by a unanimous Commission in the *USF/ICC Transformation Order*.[306] We seek comment in the FNPRM below on several specific reforms to the existing support mechanisms for rate-of-return carriers, while inviting additional proposals that will create an appropriate framework for network investment and expansion over the longer term.

137. *ASTAC and CVTC's Application for Review.* We also take this opportunity to dismiss ASTAC and CVTC's untimely filed application for review of the *Sixth Order on Reconsideration*.[307] The *Sixth Order on Reconsideration* was not properly subject to an application for review, because it was adopted by the Commission and not by the Bureau on delegated authority.[308] Moreover, even if we were to treat the application as a petition for reconsideration, we dismiss the pleading pursuant to section 1.429(d) and (i) of the Commission's rules.[309] Not only does the application address an issue that is wholly unrelated to and outside the scope of the *Sixth Order on Reconsideration* (the QRA's climate variable), but the application was also filed 30 days late – petitions for reconsideration must be filed within 30 days of public notice,[310] and whereas the *Sixth Order on Reconsideration* was published in the Federal Register on March 19, 2013, the application for review was not filed until May 18, 2013.[311]

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[304] *See* 47 C.F.R. § 54.302; *USF/ICC Transformation Order*, 26 FCC Rcd at 17747-48, 17764-66, paras. 227-33, 272-79; *see also Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 28 FCC Rcd 3319, 3332, para. 29 (Wireline Comp. Bur. 2013).

[305] *USF/ICC Transformation Order*, 26 FCC Rcd at 17742, para. 211.

[306] In that order, the Commission concluded that if actual program demand exceeded $4.5 billion for any consecutive four quarters, the Bureau would be required to initiate a process to return expenditures to budgeted levels. *Id.* at 17847-48, para. 563.

[307] *See* ASTAC and CVTC Application for Review.

[308] *See* 47 C.F.R. § 1.115(a) (providing that a party may file an application for review by the Commission of "any action taken pursuant to delegated authority").

[309] 47 C.F.R. § 1.429(d), (i).

[310] 47 C.F.R. § 1.429(d); *see* 47 U.S.C. § 405(a).

[311] *See Sixth Order on Reconsideration*, 78 Fed. Reg. 16808 (Mar. 19, 2013). We deny ASTAC and CVTC's request that the Commission grant an exception to the 30-day filing rule because of the complexity of calculations required for exhibits supporting their pleading. *See* ASTAC and CVTC Application for Review at 3, Exh. B & C. Courts have discouraged the Commission from considering an untimely filed petition for reconsideration, *see, e.g.*, *Virgin Islands Telephone Corp. v. FCC,* 989 F.2d 1231, 1237 (D.C. Cir. 1993), and we waive the rule only in "extremely unusual circumstances." *See, e.g*., *Warren C. Havens, Applications to Provide Automated Maritime Telecommunications System Stations at Various Locations in Texas, and Applications to Provide Automated Maritime Telecommunications System Stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado,* Memorandum Opinion and Order, 23 FCC Rcd 3210, 3212, para. 7 (2008); *see also 21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 199-200 (D.C. Cir. 2003). The circumstances cited by ASTAC and CVTC do not support an exception to the 30-day filing rule. The calculations required for the exhibits are nothing more than basic division and the use of the regression function in a spreadsheet program. Further, the *HCLS Benchmarks Implementation Order* was likely the source of the data used in the calculations, and these data were

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VIII. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Public Interest Obligations

138. *Evolving Speed Obligations*. Consistent with the Commission's authority in section 254(e) of the Communications Act, the Commission supports the deployment of voice and broadband-capable networks in furtherance of the section 254(b) objective that residents in all parts of the country, including rural and high-cost areas, have access to advanced telecommunications and information services.[312] In the *USF/ICC Transformation Order*, the Commission committed to initiating a proceeding no later than the end of 2014 to review the broadband service performance requirements established for the Connect America Fund.[313] Today, we initiate that proceeding. In particular, we propose to increase the minimum broadband speeds that we seek to achieve with universal service funding to 10 Mbps downstream. We seek comment on this proposal, as well as the consequences and tradeoffs involved in raising the standard, including the ability to preserve and advance broadband service for consumers within the Connect America budget. We also seek comment on whether to increase the upstream speed requirement to something higher than 1 Mbps. The new speed standards would apply generally to all recipients of high-cost support that are subject to broadband public interest obligations: ETCs that elect model-based Phase II support, ETCs that receive Phase II support through the competitive bidding process, and rate-of-return ETCs that receive support through legacy mechanisms and CAF-ICC support.[314]

139. In the *USF/ICC Transformation Order*, the Commission established a speed benchmark for broadband of 4 Mbps/1 Mbps, with speeds for the later years of an anticipated 2012-2017 timeframe increasing to 6 Mbps downstream and 1.5 Mbps upstream (6 Mbps/1.5 Mbps).[315] The marketplace for broadband has continued to evolve since the adoption of the *USF/ICC Transformation Order*. At the time of the adoption of the *USF/ICC Transformation Order*, Phase II model-based support was expected to begin in 2013 and run until 2017. With model-based support now likely to be disbursed in the 2015-2019 timeframe, it is appropriate to reevaluate the speed benchmark in light of the most recent data.

140. We propose a new downstream speed standard of 10 Mbps to further the statutory goal of ensuring that consumers in rural parts of the country have access to advanced telecommunications and information services that are reasonably comparable to those services available in urban areas.[316] The

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published on the Commission's website on April 25, 2012 – thus the carriers had a year to work with the data. *See generally HCLS Benchmarks Implementation Order*.

[312] 47 U.S.C. § 254(b), (e).

[313] *USF/ICC Transformation Order*, 26 FCC Rcd at 17703, para. 106.

[314] While competitive ETCs may receive high-cost support while the legacy identical support rule is phased out, they do not have accompanying broadband deployment obligations. Thus, this proposed speed benchmark would have no effect on competitive ETCs. These changes to the obligations would also not apply to previously-made deployment commitments, such as commitments in connection with Connect America Phase I and Mobility Fund Phase I, which provided one-time, rather than recurring, support. Recipients of Connect America Phase I and Mobility Fund Phase I funding remain bound to their original obligations.

[315] *USF/ICC Transformation Order*, 26 FCC Rcd at 17726, para. 162.

[316] 47 U.S.C. § 254. Some parties have expressed concerns over proposing a higher speed standard. *See, e.g.*, Letter from Dave Cohen, Vice President – Policy, USTelecom to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at 1-2 (filed Apr. 11, 2014) (USTelecom Apr. 11, 2014 Ex Parte); Letter from Jonathan Banks, Senior Vice President – Law and Policy, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Apr. 16, 2014); Letter from Michael D. Saperstein, Vice President – Federal Regulatory Affairs, Frontier Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Apr. 16, 2014); Letter from Micah M. Caldwell, Vice President – Regulatory Affairs, ITTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC

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most recent round of State Broadband Initiative (SBI) data show that nearly all persons living in urban areas have access to fixed broadband with downstream speeds of at least 10 Mbps.[317] SBI data as of June 2013 indicate that only two percent of the population residing in urban census blocks lack access to fixed broadband with speeds of 10 Mbps downstream/768 kbps upstream. In contrast, the SBI data indicate that 33 percent of the population residing in rural census blocks lack access to fixed broadband providing 10 Mbps/768 kbps speeds.[318]

141. SBI data also show that urban users have greater access to higher upstream speeds than rural users.[319] Given the statutory goal of reasonable comparability, should we set an upstream speed requirement for universal service purposes at a level higher than 1 Mbps, such as 2 Mbps? We specifically seek comment on whether 1 Mbps upstream will provide sufficient bandwidth for residential consumers to take advantage of applications and services that advance critical public purposes such as education and healthcare. In the recent Rural Broadband Workshop, some parties suggested that upload speeds higher than 1 Mbps were necessary to support certain telehealth applications.[320] To the extent commenters argue that we should set a different upstream benchmark than 1 Mbps for universal service purposes, they should provide specific examples of the applications and services that require such upstream capability for residential consumers.

142. In proposing to increase the current broadband downstream speed benchmark, we are primarily focusing on the minimum standard for *new* deployments of broadband-capable infrastructure.[321] Our goal is to ensure that Connect America funding is used efficiently, going forward, to deploy networks that are capable of scaling to higher speeds over time, as consumer demand warrants. By proposing a new speed benchmark, we do not intend to suggest that ETCs must deliver such speeds immediately upon

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Docket No. 10-90 (filed Apr. 16, 2014). Parties suggested that an increase in speed should be accompanied by changes to Phase II support, such as extending the term of support to 10 years. *See, e.g.*, USTelecom Apr. 11, 2014 Ex Parte at 2-3. We seek comment on this proposal, and also encourage parties to submit other suggestions as to how Phase II support might be modified in light of a higher speed benchmark.

[317] Anne Neville, *Working to Provide a Better National Broadband Map*, National Broadband Map (Feb. 20, 2014), http://www.broadbandmap.gov/blog/. *See also* National Broadband Map, http://www.broadbandmap.gov/ (last visited Apr. 23, 2014).

[318] *See* National Broadband Map, http://www.broadbandmap.gov/ (last visited Apr. 23, 2014). A similar trend can be seen in NTIA's annual reports. NTIA, Broadband Statistics Report 8 (Feb. 2014), http://www2.ntia.doc.gov/files/broadbanddata/Broadband_Availability_in_Rural_vs_Urban_Areas_June2013.pdf . *See also* Office of Science and Technology Policy and The National Economic Council, Executive Office of the President, Four Years of Broadband Growth, at 3 (2013), http://www.whitehouse.gov/sites/default/files/broadband_report_final.pdf ("[W]e acknowledge that the country is rapidly reaching the point at which baseline broadband evaluations should increase, and might instead begin at 10 Mbps downstream. This evolving baseline reflects a growing need for increased bandwidth as more Americans use the Internet for work and to build career skills.").

[319] SBI data indicate that, when examining users with access to downstream speeds of 10 Mbps or greater, approximately 92 percent of urban residents have access to fixed broadband with 3 Mbps upstream speed, as compared to only 50 percent of rural users, a difference of 42 percent. *See* National Broadband Map, http://www.broadbandmap.gov/ (last visited Apr. 23, 2014). By comparison, at upstream speeds of 768 kbps, the difference in access between urban and rural consumers is 31 percent.

[320] Statement of Thomas F. Klobucar, Deputy Director, Office of Rural Health, U.S. Department of Veterans Affairs (Mar. 19, 2014), http://www.fcc.gov/events/rural-broadband-workshop (statement begins at 63:30); *see also* PowerPoint Presentation of Thomas F. Klobucar, Deputy Director, Office of Rural Health, U.S. Department of Veterans Affairs, at 11, http://transition.fcc.gov/presentations/03192014/Thomas-Klobucar.pptx (2014).

[321] Given the likelihood that required broadband speeds will continue to increase over time, we expect recipients of funding to deploy technologies capable of delivering faster speeds (and higher capacities) over time with limited additional investment.

adoption of a new rule. Rather, consistent with the approach we adopted for the current speed benchmark, we are proposing a standard that ETCs, current and future, would be expected to achieve over a period of years, as they utilize high-cost support to extend and upgrade networks in high-cost areas.

143. In the *USF/ICC Transformation Order*, the Commission adopted a requirement that ETCs develop five-year service improvement plans and provide annual updates regarding those plans. Likewise, in the *USF/ICC Transformation Order*, the Commission established a five-year time frame for recipients of model-based support to meet the deployment milestones for Phase II. The Commission thus recognized that broadband-capable infrastructure would not, and realistically could not, be ubiquitously deployed overnight, but rather that it would be deployed over a period of time. As such, we emphasize that there is no immediate consequence, and in particular no loss of universal service support, to the extent an existing ETC is not currently offering speeds that meet the current 4 Mbps /1 Mbps benchmark throughout its entire service territory, nor would an ETC be immediately non-compliant with our rules if in the future we were to revise the downstream speed standard to, for instance, 10 Mbps in response to this FNPRM.[322] Rather, our intent in proposing to revisit this standard is to establish a new minimum standard that we build toward over time, recognizing that consumers increasingly will utilize applications and services that require greater bandwidth than our current standard.

144. As discussed in the Report and Order above, under the framework adopted by the Commission in the *USF/ICC Transformation Order*, a rate-of-return carrier is required to deploy broadband-capable infrastructure to a customer upon reasonable request.[323] If the Commission were to revise its broadband performance obligations to require higher speeds, such as 10 Mbps downstream, such new deployments would be required to meet the new benchmark. But a rate-of-return carrier would only be required to meet that higher speed if the request for service was *reasonable*. A reasonable request is one where the carrier could cost-effectively extend a voice and broadband-capable network to that location. In determining whether a particular upgrade is cost effective, the carrier should consider not only its anticipated end-user revenues from the services to be offered over that network, both voice and retail broadband internet access, but also other sources of support, such as federal and, where available, state universal service funding. Under our proposal to increase the minimum downstream speed threshold, we thus would not expect a rate-of-return carrier immediately to upgrade its entire existing infrastructure to provide 10 Mbps downstream and 1 Mbps upstream (10 Mbps/1 Mbps) to all current customers.[324] Rather, we propose that rate-of-return carriers would take into account any revised speed standards when considering whether and where to upgrade existing plant in the ordinary course of business and would report on progress toward this goal in preparing annual updates to their five-year service improvement plans. We seek comment on this proposal. To the extent commenters believe it would take longer than five years to upgrade networks to meet the proposed new standard, they should specify what time frame they believe is realistic.

145. In addition, if commenters believe that it would make more requests for service unreasonable, therefore requiring carriers to scale back their deployment plans, we seek comment on how

[322] In this regard, the purpose of filing five-year service quality plans, annual updates to those plans, and information regarding the number of requests for service from potential customers that were unfulfilled during the prior calendar years with the Commission, the Fund Administrator, the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate, is to enable the Commission to monitor progress on achievement of its universal service objectives and to ensure that support is being used for the intended purposes. *See* 47 C.F.R. §§ 54.313(a)(1)-(3), (f)(1)(i), 54.314.

[323] *USF/ICC Transformation Order*, 26 FCC Rcd at 17741, para. 208.

[324] This proposed higher speed benchmark would only apply prospectively, not to preexisting obligations. For example, even if we were to adopt a revised downstream speed requirement of 10 Mbps, an ETC that accepted support through Phase I of Connect America would not be required to deploy 10 Mbps/1 Mbps in fulfilling its Phase I commitment.

to ensure that consumers in those areas receive service. For example, if a request for a higher speed service would be unreasonable but a request that meets our current standard would be reasonable, we seek comment on permitting the deployment at the lower speed standard. We also seek comment on whether carriers should be allowed to self-identify territories that they would not be able to serve (either alone or through a voluntary partnership) so that the Commission could extend broadband service to those consumers through a different mechanism.

146. We seek comment on the costs and benefits of increasing the speed benchmark. Will it help or hinder our efforts to reach unserved consumers? Will the benefits gained by consumers in having access to higher speeds outweigh the increased cost of deploying a more robust network? What impact would it have on participation in the Phase II competitive bidding process and our ability to preserve and advance universal service in areas where a price cap carrier declines model-based support? Is it reasonable to assume that the same number of residents would be served in Phase II at speeds of 10 Mbps/1 Mbps as would be served at 4 Mbps/1 Mbps? We direct the Bureau to publish information within 15 days of release of this FNPRM regarding the number of locations that would be eligible for the offer of model-based support if the revised speed benchmark were used to determine the presence of an unsubsidized competitor and the number of locations that would be above the extremely high-cost threshold.[325] We encourage parties to address in their comments how changing the speed standard would affect the number of consumers that could be served.

147. We intend to take action on this proposed revision to the speed benchmark prior to extending the offer of support to price cap carriers so that they have clarity as to what is expected of them over the five-year Phase II term if they make state-level commitments to accept model-based support. Under the existing rules, Phase II state-level commitment funding recipients must provide broadband with speeds of 4 Mbps/1 Mbps to all locations and speeds of 6 Mbps/1.5 Mbps to a subset of locations as specified by the Bureau.[326] If we adopt our proposal to raise the minimum speed benchmark to 10 Mbps downstream, we propose that the Bureau would no longer be required to specify a number of locations that would receive 6 Mbps downstream or 1.5 Mbps upstream for recipients of model-based support. We seek comment on this proposal.

148. If the Commission adopts the proposal to extend broadband downstream speeds to 10 Mbps, we seek comment regarding whether it should provide a longer term for Connect America Phase II model-based support than the five-year term it adopted in the *USF/ICC Transformation Order*.[327] For instance, should carriers accepting a state-level commitment for five years have the ability to extend that term for additional two years, assuming verification of specified deployment milestones to deliver service with 10 Mbps downstream speed.

149. *Usage and Latency Standards*. We propose to apply the same usage allowances and latency benchmarks that the Bureau implemented for price cap carriers that will accept the offer of model-based support in the state-level commitment process to ETCs that will receive support through a competitive bidding process.[328] Under this proposal, all Phase II recipients would be required to offer at least one plan with an initial minimum usage allowance of 100 GB, adjusted over time to take into

[325] For purposes of this direction, the Bureau may publish results using 10 Mbps downstream/768 kbps upstream as a proxy for 10 Mbps downstream/1 Mbps upstream.

[326] *USF/ICC Transformation Order*, 26 FCC Rcd at 17726, para. 160.

[327] *See, e.g.*, USTelecom Apr. 11, 2014 Ex Parte at 1-2.

[328] The Commission sought comment in the *USF/ICC Transformation FNPRM* as to whether to relax the performance standards for entities that are awarded support through a competitive bidding process. *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18088, para. 1204.

account trends in consumer usage,[329] at a price that is reasonably comparable to similar fixed wireline offerings in urban areas. We also propose to require recipients of support through the competitive bidding process to provide a roundtrip provider network latency of 100 ms or less. This latency is suitable to allow for existing real time applications, such as VoIP. We seek comment on these proposals.

150. Parties that argue that standards should be relaxed for the Phase II competitive bidding process that will occur in areas where the price cap carrier declines model-based support should identify with specificity which standard should be relaxed and to what extent, and explain why relaxation of such standards is consistent with achievement of our universal service objectives. For instance, to the extent parties argue that a 100 ms or less standard for roundtrip provider network latency is too stringent, they should identify what numerical standard should be used for the Phase II competitive bidding process. Likewise, to the extent parties argue that recipients of support through a competitive bidding process should not be required to offer at least one plan with a minimum usage allowance of 100 GB at a price that is reasonably comparable to comparable fixed wireline offerings in urban areas, they should identify what usage level instead would fulfill the statutory principle that consumers in high-cost areas should have access to "reasonably comparable services" at "reasonably comparable rates."

151. In the *Phase II Service Obligations Order*, the Bureau stated that recipients of model-based support are permitted to offer their customers services other than those meeting the stated performance criteria.[330] We propose a similar approach for ETCs awarded support in the competitive bidding process, so they would be free to offer an array of services, including those not meeting the proposed performance requirements, so long as at least one offering met all the necessary metrics.[331] We seek comment on this proposal.

152. We also propose to apply these usage allowance and latency standards to rate-of-return ETCs that are subject to broadband performance obligations. This would ensure that consumers have access to the same baseline level of broadband service regardless of whether they reside in a price cap or rate-of-return study area. Again, we emphasize that we do not expect that rate-of-return carriers would only provide broadband offerings to customers that meet these requirements. Rather, they would be free to offer an array of services of varying speeds, usage, and price to meet customer demand. If commenters argue that rate-of-return carriers should either be exempted from or be subject to relaxed usage allowance and latency standards, we specifically seek comment on how we can ensure that consumers in rate-of-return areas are not relegated to substantially less robust services than consumers living in price cap areas.

153. *Role of Alternative Technologies in Phase II*. In reforming the universal service fund, the Commission established the Connect America Fund, focused on terrestrial, fixed broadband deployment,

[329] *See Phase II Service Obligations Order*, 28 FCC Rcd at 15068, para. 18 (requiring price cap carriers accepting model-based Phase II support to offer a minimum usage allowance over the course of the state-level commitment's five-year term, that remains consistent with trends in usage for 80 percent of consumers using cable or fiber-based broadband services). As usage allowance and latency standards were implemented by the Bureau relatively recently, in October 2013, we do not see a need to update these metrics at this time. By contrast, the 4 Mbps/1 Mbps speed standard was adopted by the Commission in 2011 in the *USF/ICC Transformation Order*, with the 4 Mbps/1 Mbps standard originally being proposed in the 2010 National Broadband Plan. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17967, para. 93; Federal Communications Commission, Connecting America: The National Broadband Plan, at 135 (2010), *available at* http://download.broadband.gov/plan/national-broadband-plan.pdf.

[330] *Phase II Service Obligations Order*, 28 FCC Rcd at 15062, para. 6 n.12. For example, a price cap carrier is not limited to only offering broadband plans with usage allowances of at least 100 GB; it may offer a value plan with a lower amount of usage and a premium plan with a higher amount of usage. A recipient need only have a single voice and broadband offering that satisfies all the specified criteria.

[331] For example, under this proposal, an ETC awarded support through a competitive bidding process could offer a lower cost plan that had a usage allowance of only 50 GB, so long as customers had an option of purchasing a plan with a usage allowance of at least 100 GB that met all the other stated requirements.

and the Mobility Fund, focused on mobile broadband deployment.[332] Connect America Fund Phase II recipients were required to deploy networks capable of providing "broadband service that is reasonably comparable to terrestrial fixed broadband service in urban America."[333] The Commission did not explicitly prohibit the use of mobile or satellite technology in meeting Phase II obligations, as long as it provided performance comparable to terrestrial, fixed broadband. Relatedly, in providing funding for the Connect America Fund, the Commission excluded Phase II support for areas that were served by unsubsidized competitors; it limited the definition of unsubsidized competitor to terrestrial, fixed providers.[334] The Commission stated that it would revisit this definition as satellite and mobile technologies developed over time.[335]

154. We seek to develop more fully the record on allowing Phase II recipients to satisfy their obligations using any technology or combination thereof – whether wireline or wireless, fixed or mobile, terrestrial or satellite – that meets the performance standards for Phase II.[336] Specifically, any Phase II recipient satisfying its obligations would be required to meet the Phase II requirements for speed, latency, usage allowance, and pricing,[337] as they exist today or may be modified in the future in response to this FNPRM. We emphasize that wireless providers are free, and indeed encouraged, to participate in Connect America Phase II, and fixed wireless already is an option for the delivery of service in Phase II under the framework established by the Commission in the *USF/ICC Transformation Order*. What is important from the consumer's perspective is the quality of the user experience and the price of the service offering, not the specific technology used to deliver service.[338] Given that, we seek comment on whether, for purposes of Phase II implementation, we should allow the use of mobile or satellite technology that meets the Phase II requirements,[339] while maintaining the service and pricing standards established by the Bureau for the offer of model-based support.[340]

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[332] *USF/ICC Transformation Order*, 26 FCC Rcd at 17702, para. 105.

[333] *Id.* at 17726, para. 160.

[334] *Id.* at 17701-02, para. 104. The Commission received a petition, which remains pending, requesting reconsideration of the definition of unsubsidized competitor to allow for mobile providers to qualify as unsubsidized competitors. Petition for Reconsideration of NTCH, Inc., WC Docket No. 10-90 et al. (filed Dec. 29. 2011). A similar request has been received to permit the use of satellite technology. Petition for Reconsideration of ViaSat, Inc., WC Docket No. 10-90 et al. (filed Dec. 29, 2011).

[335] *USF/ICC Transformation Order*, 26 FCC Rcd at 17701-02, para. 104. The Commission noted that it did "not anticipate changing the definition for the next few years." *Id.*

[336] We note that in the context of the Section 706 Report, the Commission has declined to include mobile services in the definition of broadband due to concerns about the reliability of data regarding mobile service. *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 11-121, Eighth Broadband Progress Report, 27 FCC Rcd 10342, 10366, para. 35 (2012). The reliability of the data is less of a concern in the context of Phase II, as the Phase II challenge process will permit the Commission to assess, in particular instances, whether mobile service is available that satisfies all the necessary requirements.

[337] *See generally Phase II Service Obligations Order*.

[338] We note that the quality of the user experience is not limited to merely the quantifiable metrics of speed, usage allowance, latency, and price. Therefore, we seek comment below on other issues that would impact a consumer's experience in using mobile technology, such as the ability to tether the connection to other devices, or the ability to use multiple devices at once using a single connection.

[339] We propose above to increase the downstream speed standard to 10 Mbps. *See supra* para. 140. At least one party has noted that, if we were to expand the use of mobile technology, we should take into account the availability of new spectrum on the market in meeting that speed standard. *See* Letter from David LaFuria, Counsel, United States Cellular Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (filed Apr.

(continued...)

155. In a similar vein, for the Phase II competitive bidding process, should we exclude from eligibility for funding any area that is served by a competitor that meets the Commission's current standards for the offer of model-based support to price cap carriers, again presuming that the same service and pricing standards are met, regardless of technology? We welcome input on the extent to which mobile or satellite providers today meet those standards.

156. We seek comment on how to ensure that the end-user experience is functionally equivalent whether the connection is provided through fixed or mobile means. Should we require, for instance, that providers allow consumers subscribing to the service to attach or tether their mobile connections to other devices?[341] This will allow consumers to use their mobile connections on traditionally fixed platforms, such as desktop computers, thus allowing access to the same applications and functionalities as consumers served through fixed connections. We also seek comment on the ability of a mobile connection to support multiple devices. Should we adopt requirements that the mobile service allow users to be able to use multiple devices simultaneously? To the extent that additional devices or subscriptions are required to support multiple devices, should we consider that in determining reasonable price comparability? We additionally seek comment on whether any other requirements should attach to Phase II support for mobile or satellite technologies to ensure they provide the end user with the same service qualities obtained when a fixed service is purchased. For example, mobile service can have a far greater variation in service quality as compared to fixed services, with service quality not only changing based on location within a tower's footprint, but also even whether the service is being used indoors rather than outdoors. How should we address these issues to ensure that networks supported with universal service funds provide consumers with high-quality broadband access regardless of the technology deployed? How should we ensure that consumers are still able to use services that generally rely on fixed networks, such as medical monitoring or security systems? What would be the impact on businesses and anchor institutions if we were to exclude from eligibility for Phase II support those areas that are served by mobile or satellite providers that meet the Phase II standards?

157. *Evolving Standards*. In the above Report and Order, we adopt a term of support of ten years for those ETCs that are awarded Phase II through a competitive bidding process.[342] It is likely that the public's expectations for connectivity will evolve substantially over the next decade. Should we adjust the Phase II obligations for the later years of the ten-year term of support? To plan a network, recipients of support need to know ahead of time what will be expected of them. What is a reasonable requirement for entities receiving ten years of support? For example, would requiring Connect America Phase II recipient to deploy broadband at a higher speed tier for a discrete subset of locations ensure that the evolving expectations of consumers are met? Should we require Connect America Phase II participants to provide 20 Mbps downstream service to 20 percent of locations by year eight? Should we set a higher (or lower) speed threshold? Should we require recipients to meet the higher speed threshold at more or fewer locations? Or should we decline to establish an additional concrete service obligation on Connect America Phase II recipients?

(Continued from previous page)
14, 2014) (U.S. Cellular Apr. 14, 2014 Ex Parte). We seek comment on how to account for the interplay between higher speed requirements, the use of mobile technology, and the availability of spectrum.

[340] This discussion in no way should be viewed as impacting analyses or determinations in other contexts, including proceedings assessing whether mobile broadband is a substitute for fixed broadband, and the Broadband Progress Report required by 47 U.S.C. § 1302, which evaluates the availability of broadband. Rather, the proposal merely reflects our desire to direct universal service support to areas where it is needed most, and where there appears to be the lowest likelihood of a market-based solution to address the lack of broadband.

[341] Under such an approach, if consumers tethering are charged an additional fee, we presume that fee would be included in demonstrating rate comparability.

[342] *See supra* Section III.A.2.

158. Alternatively, should we require recipients of such support to provide an evolving level of service over the funding period based on trends in consumer usage? For instance, should we use FCC Form 477 and other Commission data, such as the Measuring Broadband America results, to monitor the service available in urban markets and create an index that would enable the Commission to modify service obligations (speed, usage allowance, latency, and price) based on trends in urban offerings and usage for all ETCs receiving support with a ten-year term? We seek comment on what, if any, other data sources we should rely on if we were to establish an evolving benchmark. Should the evolving standard be based on an average or median consumer's usage? Would use of this approach with an evolving standard affect the incentives for providers to accept support with a ten-year term and, ultimately, affect the deployment of broadband to consumers?

159. *Connections to Schools, Libraries, and Health Care Providers*. In the *USF/ICC Transformation Order*, the Commission indicated its expectation that ETCs would offer broadband at speeds greater than 4 Mbps/1 Mbps to community anchor institutions in rural and high-cost areas and that they would provide such offerings "at rates that are reasonably comparable to comparable offerings to community anchor institutions in urban areas."[343] The Commission did not have a record before it at the time to specify what specific speeds are appropriate for anchor institutions. We seek to develop the record more fully, and thus invite comment on how best to ensure that this expectation is fulfilled by ETCs, with specific reference to institutions and the charges, terms, and conditions of service provided to those institutions.

160. *Incentives for Faster Deployment.* In the above Report and Order, we adopt a term of ten years for funding Phase II projects through the competitive bidding process.[344] The Commission already established a five-year term for Phase II recipients that receive support through the state-level commitment process. Phase II recipients are required to complete deployment to 85 percent of supported locations within three years of notification of funding authorization, with completion to all locations required within five years.[345]

161. We propose to provide financial incentives for recipients of Phase II support to accelerate their network deployment. Specifically, funds could be disbursed on an accelerated timetable if a recipient completed its deployment ahead of the required timeframe. For instance, for price cap carriers making a state-level commitment, all or some fraction of the remaining support for the five-year term that has not yet been disbursed after network completion is validated could be paid out over six months.[346] How could a similar proposal be implemented for ETCs awarded support through a competitive bidding process? If we adopt such a system, how should we structure the accelerated payout? We propose that if we were to adopt such a system, accelerated payment would not be made until USAC has validated the completion of network deployment. We seek comment on this proposal.

B. Flexibility in Meeting Deployment Obligations

162. In developing the Connect America Cost Model, the Bureau concluded that census blocks shown as served on the National Broadband Map would be treated as presumptively served, and it determined that, for purposes of the Phase II challenge process, partially served census blocks would be treated as fully served.[347] It did so primarily for administrative reasons, due to concern that conducting a

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[343] *USF/ICC Transformation Order*, 26 FCC Rcd at 17700, para. 102 n.164.

[344] *See supra* Section III.A.2.

[345] 47 C.F.R. § 54.310(c).

[346] For example, a state-level commitment process recipient that completed its deployment 18 months ahead of schedule would receive its five years' worth of support paid out in four years (i.e., the last 18 months of support would be paid in six months).

[347] *Phase II Challenge Process Order*, 28 FCC Rcd at 7220, para. 22.

challenge process at the sub-census block level would be time consuming and burdensome for all affected parties.

163. In the Report and Order above, we recognized the need to provide recipients of Phase II support flexibility to serve areas where the average cost is equal to or above the Connect America Phase II funding benchmark. We concluded that allowing funding recipients in the competitive bidding process to deploy to locations that would be above the extremely high-cost threshold would enable them to build integrated networks in adjacent census blocks as appropriate.

164. For similar reasons, we now seek comment on two potential measures that would provide all recipients of Phase II funding, both in the state-level commitment process and competitive bidding process, greater flexibility to satisfy their deployment obligations.

165. First, we seek comment on to permitting Phase II recipients (both price cap carriers accepting the state-level commitment and winners in a competitive bidding process) to specify they are willing to deploy to less than 100 percent of locations in their funded areas, with associated support reductions to the extent they elect to deploy to less than 100 percent of funded locations.[348] If we were to adopt such a proposal, we propose to establish a minimum percentage of locations that must be served by a Phase II recipient. Would 95 percent of funded locations be an appropriate minimum?[349] To the extent parties argue that the required percentage should be lower than 95 percent, they should identify with specificity the particular number. Should we require the Phase II recipient to specify the number of locations it intends to deploy to at the time funding is first authorized, or should we provide it with flexibility to adjust its deployment commitments for some period of time after making a state-level commitment or being authorized to receive support through a competitive bidding process?

166. We seek comment on how to adjust the support a Connect America Phase II recipient should receive if we were to adopt this proposal. One way to reduce support would be in direct proportion to the number of locations left unserved within a given state. Another way would reduce a provider's support based on the support the model attributed to serving each location.[350] Is one methodology superior to the other? Is one method more administrable or does either create better incentives for deployment? Would the method that reduces support based on model-determined support be appropriate for Phase II recipients that are awarded support through a competitive bidding process? Are there other methodologies that would better serve our universal service goals if we were to adopt this proposal?

167. Second, we seek comment on allowing Phase II recipients to substitute some number of unserved locations within partially served census blocks for locations within funded census blocks. Phase II funding recipients thus would have the option to deploy to some number of unserved locations within partially served census blocks in lieu of deploying to a number of locations in otherwise eligible census

[348] In Mobility Fund Phase I, winning bidders were allowed to deploy to less than the number of road miles specified in their winning bids, with additional funding available to the extent they fully deployed to 100 percent of the requisite road miles. *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, 4737, para. 28 (Wireless Tel. Bur. 2012).

[349] To provide a simple example to illustrate the proposal, if a price cap carrier electing to make a state-level commitment were obligated to deploy to 10,000 locations in a given state, it could elect to deploy to 9,500 locations, with associated adjustment of support amounts.

[350] To illustrate, consider CAFtel, a fictional Phase II recipient that serves 100 locations with model-calculated support equaling $1 for the first location, $2 for the second, all the way up to $100. In total, CAFtel receives $5,050 in support. Under the direct-proportion method, for every location that CAFtel does not serve, it would lose $50.50 in support (one percent of its total). Under the modelled-support method, if CAFtel did not serve the $5 location or the $80 location, it would lose $5 or $80 in support, respectively.

blocks. This approach could enable more effective network deployment and bring service to unserved consumers in those partially served census blocks. If we were to adopt such an approach, should we establish a limit on the number of locations that could be substituted to meet the deployment obligation? For instance, should a price cap carrier or recipient of support through a competitive bidding process be able to substitute no more than five percent of its funded locations with unserved locations in partially served census blocks?

168. We seek comment on whether the benefits of allowing the flexibility to serve in partially served census blocks outweigh the costs imposed on those that have invested private capital to deploy service nearby. We seek comment on how the substitution process would work given that Connect America Phase II recipients are most likely to substitute locations when the costs of serving the new locations is lower than the cost of serving the locations originally designated in funded census blocks. For example, the simplest substitution metric would require that the number of new locations equal or exceed the number of old locations (i.e., one-for-one swaps). A more complicated substitution metric would require the modelled support for serving the new locations equal or exceed the modelled support for serving old locations.[351] Is one methodology superior to the other? Is either more administrable or does either create better incentives for deployment? Are there other methodologies that would better serve our universal service goals if we were to adopt this proposal?

169. We emphasize that we are not proposing to overturn the Bureau's decision not to entertain sub-census block challenges in the Phase II challenge process. That was a reasonable decision given the anticipated number of challenges that may be filed regarding the list of census blocks potentially eligible for the offer of model-based support. Partially served census blocks will continue to be treated the same as fully served census blocks, and excluded from calculations of the offer of model-based support. Rather, we are proposing to give funding recipients the flexibility to deploy to unserved locations that within census blocks that are deemed served, after they are awarded support either through the offer of model-based support or the competitive bidding process, subject to reasonable limitations to ensure that no overbuilding occurs.[352]

170. We seek comment on measures to ensure that this flexibility does not result in the overbuilding of those locations within such census blocks that are in fact served. For example, should the Phase II funding recipient be required to announce publicly the locations in any partially served census block it plans to deploy to, with sufficient specificity that would enable other providers to determine whether they serve such areas? Would it be sufficient to require an identification of the roads or addresses intended for deployment, or should we also require an announcement of the latitude/longitude coordinates for specific locations?

[351] To return to the CAFtel example, say that unserved locations (in a partially served census block) with modelled support of $5 abut CAFtel's service territory. Under the one-for-one method, CAFtel could deploy to two new locations instead of deploying to the $5 and $80 locations in its service territory. Under the modelled-support method, CAFtel would need to deploy to 17 new locations instead of deploying to the $5 and $80 locations in its service territory.

[352] Contrary to the concerns of some parties, we are not proposing to conduct a challenge process for unserved locations in partially served census blocks. *See, e.g.*, Letter from Thomas Cohen, Counsel, ACA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at 1-2 (filed Apr. 17, 2014); Letter from K.C. Halm, Counsel to Charter Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Apr. 16, 2014); Letter from Jennifer K. McKee, Vice President and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Apr. 16, 2014). Unlike in the challenge process, this option would not involve the Bureau reviewing evidence or making preliminary determinations as to the status of a location. Rather, this approach would allow substitution of locations after funding is awarded and deployment has begun.

171. To minimize the burden of monitoring intended deployment plans on other potentially impacted parties, we propose that the price cap carrier would be required to identify locations outside of its funded census blocks intended for potential deployment on an annual basis during the five-year term. This could occur, for instance, in conjunction with filing the annual FCC Form 481. After making such an announcement, the funding recipient would be required to wait a period of time before commencing construction to those locations. Is 90 days a sufficient period of time? We seek comment on whether a 90-day notice process would enable any existing providers to inform the Phase II funding recipient that it already serves the locations in question with voice and broadband service meeting the Commission's standards. If no statement of service is received within 90 days, the funding recipient would be permitted to deploy to the locations. The funding recipient could disregard statements received after the 90-day window. What process should occur if another provider contends that it serves the locations, but the Phase II funding recipient wants to contest such assertions?

172. If the Commission were to adopt such a rule, should it specify a format for the announcement of the planned deployment or the statement of service? Would it be sufficient that the announcement be posted to the Phase II funding recipient's website, or should we require that the announcement be posted to ECFS? Should we require that a copy of the announcement of intended deployment plans be sent to any existing voice and broadband provider shown as serving the area on the National Broadband Map? Should we require that the statement of service be made under penalty of perjury? Should such statements be posted to ECFS in lieu of or in addition to submitting them to the funding recipient? What other requirements should we consider that will meet our objectives of providing service to unserved consumers in high-cost areas, regardless of their location, while ensuring that we do not inadvertently fund deployment to areas that are in fact served?

C. Eligibility of Areas for Phase II Support

173. *Background*. In the *USF/ICC Transformation Order*, the Commission adopted a general requirement that "all broadband build out obligations for fixed broadband are conditioned on not spending the funds to serve customers in areas already served by an 'unsubsidized competitor.'"[353] Section 54.5 of the Commission's rules defines an unsubsidized competitor as "a facilities-based provider of residential terrestrial fixed voice and broadband service that does not receive high-cost support."[354] The Commission concluded it would exclude from the offer of model-based support areas where an unsubsidized competitor offers broadband service meeting the Commission's broadband performance obligations (speed, usage, latency, and price), and it directed the Bureau to determine at a time as close as possible to adoption of the forward-looking cost model which areas are served by an unsubsidized competitor.[355]

174. *Discussion*. We now propose to revisit the requirement that a competitor be "unsubsidized" to exclude a service area from receiving high-cost support, including Connect America support. We ask whether it is the most efficient use of the Connect America budget to provide support in geographic areas where there is another facilities-based terrestrial provider of fixed residential voice and broadband services that meets our current requirements – whether that competitor is subsidized or not. Every dollar that is spent in such areas is a dollar not available to extend broadband to areas that lack it. We therefore propose to exclude from the offer of model-based support any census block that is served by a facilities-based terrestrial competitor offering fixed residential voice and broadband services that meet the Commission's service requirements. If we adopt our proposal to increase the downstream benchmark to 10 Mbps, we propose to exclude from Connect America Phase II those census blocks where there is a facilities-based terrestrial competitor offering fixed residential voice and broadband services meeting that new speed standard. We seek comment on these proposals.

[353] *USF/ICC Transformation Order*, 26 FCC Rcd at 17701, para. 103.

[354] 47 C.F.R. § 54.5.

[355] *USF/ICC Transformation Order*, 26 FCC Rcd at 17729, para. 170.

175. We also seek comment on excluding from the Phase II competitive bidding process any area that is served by a price cap carrier that offers fixed residential voice and broadband meeting the Commission's requirements. Consequently, if we adopt our proposal to establish a new downstream speed benchmark of 10 Mbps, Phase II funds would only be available in a competitive bidding process for any area lacking 10 Mbps/1 Mbps. We ask whether it would make sense to include in the competitive bidding process those areas where a price cap carrier already offers voice and broadband service meeting the requisite standards, either the current standard or any new standards we may adopt in response to this FNPRM. If we were to adopt such an approach, and a price cap carrier declined to elect a state-level commitment, another provider could receive Phase II support through the competitive bidding process to overbuild a price cap carrier's existing network. We are skeptical that this is an efficient use of the budget for Phase II.

176. If we were to allow Connect America support to be used to overbuild the broadband network of a provider, even one that is subsidized, it would mean those support dollars would not be available to deploy broadband-capable infrastructure in areas that truly lack broadband. On the other hand, we recognize that excluding areas that currently may have fixed residential voice and broadband services may make it more difficult for bidders in a competitive process to develop bids for a network that is cost-effective to build; it is possible that the amount of support provided for the unserved census blocks alone may be insufficient to build out to those census blocks on a stand-alone basis. We seek comment on this analysis and how best to ensure that we extend broadband-capable infrastructure to those lacking it today.

177. We seek comment on whether we should exclude from Phase II support only those areas where the current provider certifies that it is able and willing to continue providing terrestrial fixed residential voice and broadband services meeting the Commission's requirements for a specified period of time, such as five years. Some parties argue that a subsidized provider may cease to provide service once support is phased out, leaving consumers in such areas without service.[356] Rather than assuming that existing providers will not exit those markets that they currently serve, regardless of whether they receive legacy support in such areas or not, requiring a certification could provide an additional assurance that consumers will receive the same level of service that they otherwise would have if the area were not receiving Phase II support. If the current provider is unwilling to make such a certification, then the area would not be precluded from receiving Phase II support.

178. Finally, we also seek comment on the broader question of whether universal service funds are ever efficiently used when spent to overbuild areas where another provider has already deployed service. In this section, we propose to exclude support for areas already served by an existing provider meeting the requisite voice and broadband requirements; whether a provider receives universal service support should not necessarily be the determining factor. We propose to define such a provider that meets the voice and broadband requirements as a "qualifying competitor." Second, we seek comment on whether our other rules that reduce or eliminate support in areas with unsubsidized competitors should be reframed as reducing or eliminating support in areas with qualifying competitors, whether subsidized or not. For example, should the 100 percent overlap rule apply only where unsubsidized competitors overlap an incumbent or also where any qualifying competitor overlaps the incumbent?

[356] *See* Comments of USTelecom, WC Docket No. 10-90, at 4-5 (filed Dec. 11, 2013) ("The Bureau and the Commission have no reason to assume such services will continue to be provided by CETCs after their high-cost support is phased out.").

D. ETC Designation

179. As noted above in the Report and Order, only ETCs designated pursuant to section 214(e) of the Act "shall be eligible to receive specific Federal universal service support."[357] Section 214(e)(2) gives states the primary responsibility for ETC designation.[358] However, section 214(e)(6) provides that this Commission is responsible for processing requests for ETC designation when the service provider is not subject to the jurisdiction of the state public utility commission.[359]

180. Streamlining the process of seeking federal designation when states may lack jurisdiction is necessary for the efficient implementation of the Connect America Fund, so that we may provide support for access to services in high-cost areas, including the most remote and costly areas of the nation, in an efficient and timely manner. We believe that this can be accomplished within the Act's framework for state and federal action. Although the Commission has previously stated that it would act on ETC designation applications "only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction"[360] and that the technology used (e.g., satellite service) "does not *per se* place the carrier outside the parameters of the state commission designation authority under section 214(e)(2),"[361] we tentatively conclude that a different approach is warranted to ensure successful implementation of the Connect America Fund, including the Remote Areas Fund.

181. In the above Order, we permit entities to seek ETC designation *after* being selected for the offer of Phase II Connect America funding.[362] Here, we propose to adopt a requirement that a winning bidder must submit an application to become an ETC within 30 days of public notice that it is the winning bidder for the offer of support in those areas where it has not already been designated an ETC. We also propose that an applicant for Phase II support that fails to submit such an application within 30 days would be deemed in default and therefore subject to default payments. We propose to require winning bidders to submit proof to the Commission that they have filed the requisite ETC designation application within the required timeframe to the extent filed with a state commission. We seek comment on these proposals.

182. Second, we propose to adopt a rebuttable presumption that a state commission lacks jurisdiction over an ETC designation petition for purposes of Connect America Phase II competitive bidding or Remote Areas Fund if it fails to initiate a proceeding on that petition within 60 days of receiving it. We seek comment on whether we should adopt a similar rebuttable presumption if a state commission fails to decide a petition within a certain period of time, such as 90 days of initiating a proceeding on it. Under this proposal, a carrier may file for ETC designation with the Commission and point to the lack of state action within the prescribed time period as evidence that the petitioner is not

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[357] 47 U.S.C. § 254(e).

[358] *ETC Designation Process Order*, 20 FCC Rcd at 6397, para. 61.

[359] 47 U.S.C. § 214(e)(6).

[360] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12214, para. 8 (2000) (The "affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier").

[361] *Id.* at 12262, para. 109. We are also aware of at least one satellite provider being designated as an ETC by a state commission.

[362] *See supra* Section III.B. We seek comment in Section VIII.H below on whether to require parties in Mobility Fund Phase II to receive ETC designation before applying to participate in competitive bidding, subject to limited exceptions, or to permit them to seek ETC designation after public notice that they are winning bidders.

subject to the jurisdiction of a state commission.[363] In determining whether a state commission lacks jurisdiction over the applicant, Commission staff would weigh any statements that a state commission submits during the notice-and-comment period against the lack of action and the arguments of the applicants. We seek comment on this proposal.

183. We note that this streamlined framework would not preempt a state's designation authority under section 214(e)(2) but instead is intended to be consistent with the framework of the Communications Act, while ensuring that applications will not remain pending before state commissions for an undefined period of time while carriers wait for an affirmative statement that there is no state jurisdiction.[364] Nor would this action make ETC designation "nationwide,"[365] but instead would require approval by this agency on a case-by-case basis, based on reviewing the evidence of jurisdiction, as well as the fact that the individual state commission did not act within the requisite period.[366] And we recognize that alternative technology service providers, such as satellite or fixed wireless service, have not traditionally been subject to state public utility commission regulations.[367] If a state has a law expressly stating that it does not have jurisdiction over a relevant type of technology, Commission staff would consider such a statute relevant in its determination of Commission jurisdiction. To the extent states do assert jurisdiction over alternative technology service providers, given our shared commitment to expanding the availability of broadband to all Americans, we expect that state commissions will act swiftly to conclude such proceedings in order to rule on the ETC application.[368]

184. Third, we seek comment on sunsetting ETC designations tied to participation in the Connect America Phase II competitive bidding process or the Remote Areas Fund after the funding term has expired and the entity has fulfilled its build-out and public interest obligations.[369] As WISPA has explained, "imposing continuing obligations that extend beyond the funding term would discourage participation by qualified companies that desire to compete for funding under the subject CAF

[363] We would expect carriers taking this path to certify that the requisite period has in fact passed without appropriate state action, as part of their ETC designation petitions.

[364] *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

[365] *See, e.g.,* Clearwire Jan. 18, 2012 Comments at 8; SBP Jan. 18, 2012 Comments at 11–12.

[366] We encourage national providers to submit such applications to this Commission on a consolidated basis, however, to facilitate the Bureaus' timely review.

[367] Comments of DISH Network L.LC., Echostar Technologies L.L.C., and Hughes Network Systems L.L.C., WC Docket No. 10-90, at 7 (filed Feb. 19, 2013); Comments of ViaSat, WC Docket No. 10-90, at 15-16 (filed Feb. 19, 2013) (ViaSat *RAF Public Notice* Comments); SBP Feb. 17, 2012 Reply Comments at 20.

[368] We note that several state commissions completed ETC designations for potential bidders in Mobility Fund Phase I within 46 to 99 days. *See, e.g., Petition of T-Mobile South LLC and Powertel/Memphis, Inc. for Conditional Designation as Eligible Telecommunications Carriers for the Purposes of Establishing Eligibility to Participate in the Mobility Fund Phase I Auction on September 27, 2012 at the Federal Communications Commission and Request for Expedited Consideration*, Docket No. 2012-UA-134, Order (Miss. Pub. Serv. Comm'n, June 22, 2012); *Petition of T-Mobile West Corp. for Designation as an Eligible Telecommunications Carrier for the Purposes of Establishing Eligibility to Participate in the Mobility Fund Phase I Auction on September 27, 2012 at the Federal Communications Commission and Request for Expedited Consideration*, Case No. 12-00097-UT, Order (New Mex. Pub. Reg. Comm'n, July 10, 2012); *Petition of T-Mobile West Corporation for Conditional Designation as an Eligible Telecommunications Carrier for Purposes of Participating in the Mobility Fund Phase I Auction*, Docket No. UT-120512, Order Granting Conditional Designation as an Eligible Telecommunications Carrier (Wash. Util. and Transp. Comm'n, June 14, 2012).

[369] We note that this proposal would tie the ETC obligations of a recipient of support to the Phase II funding term (i.e., ten years), not the period of time during which it gets funding (which may be less).

program."[370] We seek comment on whether sunsetting those ETC designations is consistent with the Act. We note that a carrier may not discontinue voice service without receiving authorization pursuant to section 214 and that sunsetting an ETC designation for federal purposes would not impact state obligations such as carrier of last resort obligations to the extent applicable. We seek comment on this proposal. Under such a proposal, how would the Commission ensure that rates remain affordable for low-income consumers? Should those ETCs be required to maintain their ETC designation for purposes of the Lifeline program throughout the areas for which they receive support, subject to existing procedures for relinquishment?

185. At this time, we do not propose to preempt state review of ETC designation applications[371] or to deem applications granted after 30 days[372] because there is nothing in the record before us that would warrant such a broad change from the existing framework.[373] Rather, we believe that the proposed changes to the current ETC process would be sufficient.[374] We seek comment on this analysis.

E. Transitions to Phase II

186. In this section, we seek to develop further the record on several transition issues relating to implementation of Phase II in areas currently served by price cap carriers. First, we seek comment on the amount of support to be provided to the incumbent ETC in areas that no other provider wishes to serve, and the associated obligations that go with such funding. Second, we seek comment on performance obligations to be associated with frozen support elected by price cap carriers serving non-contiguous areas of the country. Third, we propose various minor changes and clarifications regarding the transition to Phase II.

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[370] Letter from Stephen E. Coran, Counsel to Wireless Internet Service Providers Association (WISPA), to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, GN Docket No. 13-5, at 3 (filed Apr. 15, 2014) (WISPA Apr. 15, 2014 Ex Parte).

[371] SBP Jan. 18, 2012 Comments at 10-11; ViaSat *RAF Public Notice* Comments at 16.

[372] *See* Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 4 (filed Oct. 21, 2011) (stating that state commissions would have no authority to use the ETC designation process to impose substantive obligations on broadband, and that the Commission should ensure that ETC designation requests are addressed in a timely manner by adopting a requirement that such requests be deemed granted within 30 days of filing unless the relevant designating entity finds that the ETC has not demonstrated compliance with the criteria within that timeframe); *see also* Comments of National Rural Electric Cooperative Association, WC Docket No. 10-90, at 4 (filed Feb. 19, 2013) (stating that the Commission should adopt a requirement that ETC designation requests be deemed granted within 30 days of their filing unless the relevant designating entity finds that the ETC has not demonstrated compliance with the criteria within that timeframe); *contra* Reply Comments of National Association of State Utility Consumer Advocates , WC Docket No. 10-90, at 2 n.8 (filed Mar. 18, 2013) (disagreeing with the NCTA proposal).

[373] *See* Comments of Nebraska Rural Independent Companies, WC Docket No. 10-90, at 75-76 (filed Jan. 18, 2012) (arguing that only in exceptional cases would there be a need for the Commission to presuppose greater authority over ETCs).

[374] *See* Reply Comments of ViaSat, Inc., WC Docket No. 10-90 et al., at 20 (filed Mar. 18, 2013) (arguing for a "rebuttable presumption that states do not exercise jurisdiction with respect to [satellite] providers"); *see also* SBP Jan. 18, 2012 Comments at 12 n.24 (noting that "nothing in Section 214(e)(6) requires the Commission to wait for states to 'waive' jurisdiction where it is clear that they would be preempted from asserting such jurisdiction"); ACA Apr. 15, 2014 Ex Parte at 2-3 (urging the Commission to institute a shot clock (60-90 days) for state decisions); WISPA Apr. 15, 2014 Ex Parte at 2-3 (stating that if the state takes no action or fails to provide written notice of rejection within the 60-day review period, the application should be deemed granted).

1. Frozen Support in High-Cost Areas

187. *Background.* In the *USF/ICC Transformation Order*, the Commission stated that for a carrier declining the state-level commitment, "the carrier will continue to receive support in an amount equal to its CAF Phase I support amount until the first month that the winner of any competitive bidding process receives support under CAF Phase II; at the time, the carrier . . . will cease to receive high-cost universal service support."[375] It further concluded that "[n]o additional broadband obligations apply to funds received during the transition period."[376] In particular, carriers declining the state-level commitment would be required to meet "their pre-existing Phase I obligations."[377]

188. After implementation of the offer of model-based support to price cap carriers and the Phase II competitive bidding process, there may be areas of the country that no provider wishes to serve. Moreover, under the framework established by the Commission, the offer of model-based support will not be extended for price cap areas where the average cost is above the extremely high-cost threshold, while such areas will be eligible for support through the competitive bidding process. While the Commission contemplated that the Remote Areas Fund would provide support for such areas, it is possible there will be discrete geographic areas that even providers using alternative technology are not willing to serve.

189. *Discussion*. We clarify that the Commission's decision to eliminate frozen support when there is a winner of a competitive bidding process applies only with respect to the geographic area – however defined – where another provider is awarded Phase II support.[378] We need a mechanism to determine the appropriate amount of frozen support to provide in those instances where a competitive ETC is awarded support to serve less than the entire area of the incumbent where the average cost exceeds the funding benchmark.

190. We seek comment on how to calculate the amount of frozen support that should be provided to the price cap carrier in situations where another ETC is awarded support through a competitive bidding process to serve a portion, but not all, of the area that is subject to the state-level commitment. We also seek comment on providing frozen support on an interim basis to price cap carriers, in those areas determined by the model to be extremely high-cost areas where there is no other voice provider, pending designation of other ETCs to serve such areas and further Commission proceedings.

191. We propose a simplified methodology to calculate the amount of support to provide at least on an interim basis in high-cost and extremely high-cost areas to the extent no other ETC is designated to serve such areas.[379] In particular, we propose to use the Connect America Cost Model to develop a ratio of the cost of serving all blocks where the average cost per location is at or above the final funding benchmark adopted by the Bureau for determining the offer of model-based support to price cap carriers, to the total cost of serving for the state. That ratio would then be multiplied by the total amount of Phase I frozen support for that carrier in the relevant state.[380] Is this a reasonable interim methodology

[375] *USF/ICC Transformation Order,* 26 FCC Rcd at 17733, para. 180.

[376] *Id*.

[377] *Id*.

[378] A simple example illustrates the point: assume that 100 census blocks in a given state would receive funding under the offer of model-based support. Assume further that the price cap carrier declines the offer of model-based support, and in a competitive bidding process, another entity is awarded support to serve 20 of the 100 census blocks. The price cap carrier would continue to receive frozen support for the 80 census blocks that no other party wishes to serve.

[379] Such interim support would not be necessary if and when other providers are designated ETCs to such areas.

[380] A simple example illustrates the calculation: assume the model calculates the costs associated with census blocks at or above the funding benchmark to be $5 million, and the total cost of serving the price cap carrier's service

(continued...)

to use to calculate support to be provided for those areas that no other party wishes to serve? Are there other potential methodologies for providing a pro-rata amount of frozen high-cost support for such areas? What would be the budgetary impact of awarding such additional frozen support to incumbent providers in certain areas if the full Phase II budget is awarded through the combination of the offer of model-based support to price cap carriers and competitive bidding process?

192. We propose to eliminate or modify the current requirement that the price cap carrier certify that all of its frozen support in 2015 and thereafter "was used to build and operate-broadband-capable networks used to offer the provider's own retail broadband services in areas substantially unserved by an unsubsidized competitor."[381] We seek comment on whether, once the offer of model-based support is implemented, price cap carriers declining model-based support should instead be required to certify that they are using such support to continue to offer voice service in such high-cost and extremely high-cost areas that no other providers wish to serve. Should such frozen support be provided for a defined period of time, or until the occurrence of specific event, such as the designation of another ETC to serve the area in question? What would be an appropriate time frame to revisit both the nature of the obligations and the amount of frozen support to be provided to price cap carriers to serve such high-cost and extremely high-cost areas? In particular, should the Commission revisit these questions when it conducts further proceedings to determine next steps after the end of the term of Phase II support for those price cap carriers that elect to receive model-based support?

193. Both landline and mobile voice services meet the definition of voice telephony and both have been supported through the federal high-cost and the Lifeline programs. In the *Tech Transitions Order,* the Commission noted that evolving technology transitions bring additional choices to consumers by supplementing the legacy copper circuit-switched voice services and consumers may choose to "cut-the-cord" by using wireless voice services.[382] Information from the Tech Transition experiments will allow the Commission and the public to evaluate how customers are affected by the historic technology transitions that are transforming our nation's voice communications services.[383] We note also that the Commission will begin collecting more data regarding mobile availability on FCC Form 477, although such data collection will not begin until June 30, 2014.[384] We do know that in some areas of the country these alternatives may not be available. We are committed to preserving universal service, consistent with the statute.[385]

194. We ask commenters to provide specific data relating to the extent of mobile wireless coverage in the areas identified by the forward-looking cost model as high-cost or extremely high-cost. How would we determine whether areas purportedly served by mobile voice providers are in fact served? What data sources should we rely upon, if we were ultimately to conclude that interim frozen support is not necessary in areas where there is a mobile voice service provider? How should we take into account

(Continued from previous page)
territory in the state to be $20 million. The relevant ratio would be 25 percent, and the price cap carrier would receive 25 percent of the frozen Phase I support for that state to continue to provide supported voice service in those census blocks at or above the funding benchmark, subject to the general condition that such support may not be used in census blocks served by other providers.

[381] *See* 47 C.F.R § 54.313(c)(4).

[382] *Tech Transitions Order,* 29 FCC Rcd at 1436, para. 3.

[383] *Id.*

[384] *See* Federal Communications Commission, Internet Access Services: Status as of December 31, 2012, Industry Analysis and Technology Division, Wireline Competition Bureau, http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1224/DOC-324884A1.pdf (Dec. 2013).

[385] *USF/ICC Transformation Order*, 26 FCC Rcd at 17680, para. 49 (adopting a performance goal "to preserve and advance universal availability of voice service").

the fact that mobile coverage may vary within a census block, with some customers receiving adequate coverage while other customers may not? Should we refocus our vision for the Remote Areas Fund to preserve voice service for residential consumers in those price cap areas that do not have adequate signal strength for mobile service to be a reliable alternative?

2. Obligations of Incumbent LECs that No Longer Receive High-Cost Support

195. *Background*. Section 214 of the Act defines an ETC as a "common carrier designated [by a state commission or the FCC as] eligible to receive universal service support in accordance with section 254."[386] That section further provides that the Commission shall permit an ETC to relinquish its designation "in any area served by more than one" ETC, so long as "the remaining [ETCs] ensure that all customers served by the relinquishing carrier will continue to be served."[387]

196. *Discussion*. We seek to further develop the record on how to apply this statutory framework to situations where an incumbent LEC ETC no longer receives high-cost universal service support for a given geographic area or where a non-incumbent carrier has been selected for support through the competitive bidding process. At the outset, we note that most incumbent LEC ETCs are receiving CAF-ICC support and will continue to do so for several years. And we also note that the obligations of being an ETC are distinct from the more general section 214 obligation to receive Commission approval before discontinuing voice service to a community.

197. We seek comment on whether ETCs should be deemed to only have a federal high-cost obligation for the geographic areas for which they receive support. Does such a reading comport with the statutory language in section 214 - which specifies that ETCs "shall, throughout the service area for which the designation is received - offer the services that are supported by Federal universal service support mechanisms under section 254(c)"?[388] We note that under such a statutory interpretation, if an incumbent LEC ETC no longer were receiving any form of high-cost support, it would effectively become Lifeline-only ETCs throughout its service territory with the continuing obligation to provide service to Lifeline customers, subject to existing ETC relinquishment procedures.

198. What specific ETC obligations would an incumbent LEC be relieved of under such an interpretation of the statute? To the extent an incumbent LEC receives CAF-ICC support, how should we determine the specific geographic areas that would be associated with that support?

3. Obligations of Carriers Serving Non-Contiguous Areas that Elect Frozen Support

199. *Background*. In the *USF/ICC Transformation Order*, the Commission directed the Bureau to consider the unique circumstances of non-contiguous areas such as Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and Northern Marianas Islands when developing the cost model.[389] The Commission further directed the Bureau to determine whether the cost model provides sufficient support to these areas, and if, in the Bureau's determination, the model does not provide these areas with

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[386] 47 U.S.C. § 214(a).

[387] 47 U.S.C. § 214(e)(4).

[388] Letter from Jonathan Banks, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 5–7 (filed Mar. 14, 2014) (arguing that the statutory language in section 214 relieves an ETC of its obligations in areas where carriers do not receive high-cost support); *see also* Letter from Mary L. Henze, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (filed Apr. 16, 2014) (stating that ETC rules that applied in the legacy USF environment must be transformed at the same time that Connect America Phase II is implemented, and ETC designations and obligations must be limited only to areas eligible for support and to those providers who willingly accept and receive that support).

[389] *USF/ICC Transformation Order*, 26 FCC Rcd at 17737-38, para. 193.

sufficient support, the Commission granted the Bureau the discretion to "maintain existing support levels, as modified in this Order, to any affected price cap carrier, without exceeding the overall budget of $1.8 billion per year for price cap areas."[390]

200. Several carriers serving non-contiguous areas (non-contiguous carriers) claimed that any national cost model would be unable to adequately account for the unique challenges they face in deploying and offering broadband services, and they initially proposed carrier-specific models for their respective service territories. For example, ACS modeled certain Alaska-specific cost variables, which it submitted in February 2012.[391] Additionally, Puerto Rico Telephone Company, Inc. (PRTC) submitted a stand-alone, Puerto Rico-specific cost model in January 2013,[392] and the Virgin Islands Telephone Corporation (Vitelco) filed a similar Virgin Islands-specific cost model in May 2013.[393]

201. In the *CAM Inputs Order*, the Bureau declined to adopt the carrier-specific models submitted by ACS, PRTC and Vitelco.[394] Instead, the Bureau adjusted a number of inputs in the Connect America Cost Model specific to non-contiguous areas to reflect better the unique costs and circumstances of serving those areas.[395] For example, the final version of the cost model refined the approach to modeling the investment and cost for undersea cable and landing station facilities needed to transport traffic to and from non-contiguous areas to the contiguous United States, as well as submarine cable costs necessary for intrastate middle mile routes requiring an underwater connection between locations in non-contiguous areas.[396] Despite calibrating the model to estimate non-contiguous costs and circumstances, the Bureau recognized that a number of questions remained about the sufficiency of the model-calculated support in some non-contiguous areas.[397] As a result, the Bureau provided all non-contiguous carriers the option of choosing either to continue to receive frozen support amounts for the five-year term of Phase II, or to elect to receive the model-determined support amount.[398]

202. *Discussion*. We propose specific service obligations for non-contiguous carriers electing to continue to receive frozen support amounts.[399] In the course of the model development process, the

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[390] *Id.*

[391] *See* Letter from Karen Brinkmann, Counsel to ACS, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (filed Feb. 13, 2012).

[392] *See* Letter from Thomas J. Navin, Counsel to PRTC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (filed Jan. 18, 2013).

[393] *See* Letter from Russell Blau, Counsel to Vitelco, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed May 20, 2013).

[394] *CAM Inputs Order*, 29 FCC Rcd at 4019, para. 125.

[395] *Id.* at 4019, para. 126.

[396] *Id.* at 4020-23, paras. 129-35.

[397] *Id.* at 4029, para. 151. Specifically, questions have been raised about whether the model accurately accounts for wireline terrestrial middle mile costs in Alaska, as well as whether model-calculated support would be sufficient in Puerto Rico and the U.S. Virgin Islands. *See, e.g.,* Letter from Karen Brinkmann, Counsel to ACS, and Leonard A. Steinberg, General Counsel and Corporate Secretary, ACS, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 05-337, at 4-9 (filed Mar. 28, 2014); Comments of General Communication, Inc., WC Docket No. 10-90, at 3-7 (filed Jan. 7, 2014); Comments of PRTC, WC Docket No. 10-90 (filed Jan. 7, 2014); Comments of Vitelco, WC Docket No. 10-90 (filed Jan. 7, 2014).

[398] *CAM Inputs Order*, 29 FCC Rcd at 4029, paras. 152-54.

[399] The proposals discussed in this section apply only to the extent the non-contiguous carrier elects to receive frozen support in lieu of considering the offer of model-based support. Non-contiguous carriers will be required to indicate whether they elect the option of frozen support before the offer of model-based support is made generally to price cap carriers; this is necessary in order to determine the appropriate budget to use in the offer of model-based

(continued...)

Bureau sought to develop the record on several of these issues.[400] We now invite parties to comment on specific proposals. We also seek comment on how we can monitor for compliance with these obligations.

203. We propose that non-contiguous carriers electing to receive frozen support be subject to the same public interest service standards as those receiving model-based support, however modified in response to this FNPRM.[401] Above, we seek comment on whether we should increase the minimum broadband speed requirement for carriers that elect model-based Phase II support to 10 Mbps downstream.[402] If we adopt this new standard, we propose it should also apply to non-contiguous carriers that elect to continue to receive frozen support. To the extent non-contiguous carriers contend that they should be held to a lesser speed standard, they should propose with specificity the number or percentage of locations in their funded areas that would receive lesser service.

204. Consistent with the *USF/ICC Transformation Order*, we also propose requiring non-contiguous carriers who continue receiving frozen support to offer both voice and broadband service at rates reasonably comparable to those services offered in urban areas.[403] As with carriers accepting model-based support, we propose that non-contiguous carriers receiving frozen support would have two options for showing reasonable comparability: reasonable comparability benchmarks as announced by the Wireline Competition Bureau based on the annual urban rate survey[404] or a certification by the carrier that it is offering services meeting our voice and broadband requirements for the same or lower prices in rural areas as urban areas.[405] We seek comment on whether there are any challenges unique to these non-contiguous carriers that they would face in meeting this obligation and how the Commission should account for those challenges and also fulfill its statutory obligation to ensure reasonably comparable rates.

205. In addition to speed and price obligations, we propose that non-contiguous carriers continuing to receive frozen support be subject to the same usage allowance specified by the Bureau for price cap carriers receiving model-based support. Specifically, we propose that these non-contiguous carriers must initially offer at least one service option that provides a minimum usage allowance of 100 GB per month at a rate that either meets the reasonable comparability benchmark announced by the Bureau or at a rate that is the same or lower than rates for its fixed wireline services in urban areas. We also propose that this minimum initial usage allowance should be adjusted over time to reflect trends in consumer usage over time. The Bureau permitted price cap carriers accepting model-based support to make this determination based on the usage level of 80 percent of all of its broadband subscribers,

(Continued from previous page)
support. The proposals in this section are not intended to apply to the situation where a non-contiguous carrier elects to consider the offer of model-based support, subsequently declines model-based support, and continues to receive frozen support for all or portions of its study area because no other ETC has been designated to serve such areas.

[400] *See Wireline Competition Bureau Seeks Comment on Connect America Phase II Support for Price Cap Areas Outside of the Contiguous United States*, WC Docket No 10-90, Public Notice, 28 FCC Rcd 1030, 1034-35, para. 14 (Wireline Comp. Bur. 2013).

[401] *See supra* Section VIII.A.

[402] *See supra* Section VIII.A.

[403] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17694, 17708-09, paras. 85, 113-14. The Commission concluded that voice rates would be presumed to be reasonably comparable if they fall within two standard deviations of a national average. *See, e.g.*, *id*. at 17694, para. 84.

[404] The Bureau recently announced that the 2014 reasonable comparability benchmark for voice services is $46.96. *Rate Survey Results Public Notice*, 29 FCC Rcd 2967. The Bureau is still analyzing the broadband data, and we anticipate the reasonable comparability benchmark for broadband service will be available prior to the offer of model-based support to price cap carriers.

[405] *See Phase II Service Obligations Order*, 28 FCC Rcd at 15063-64, paras. 7-11.

including those subscribers that live outside of Phase II-funded areas, while concluding that 100 GB would serve as a floor, even if 80 percent of the carrier's subscribers used less than 100 GB. We seek comment on whether – in light of the potentially unique circumstances in non-contiguous areas – it would be appropriate to relax the 100 GB minimum usage allowance for non-contiguous carriers and instead allow them to meet their usage requirements based on a comparison to 80 percent of their entire subscriber base.

206. We also propose that non-contiguous carriers be required to meet a roundtrip provider network latency of 100 milliseconds or less.[406] The Bureau noted in the *Phase II Service Obligations Order* that latency determinations for carriers serving non-contiguous areas could be affected by the use of undersea cable, depending upon the type and length of cable.[407] Therefore, it allowed carriers in non-contiguous areas of the United States who receive model-based support to conduct their latency network testing from the customer location to a point at which traffic is consolidated for transport to an Internet exchange point in the continental United States. We propose allowing non-contiguous carriers that choose to continue to receive frozen support to fulfill their latency requirements using the same measurement. The Commission previously recognized that satellite backhaul may limit the performance of broadband networks as compared to terrestrial backhaul, and it exempted fixed broadband providers that must rely on satellite backhaul facilities from the usage allowance and latency requirements as a result.[408] We propose exempting non-contiguous carriers that choose to continue to receive frozen support from these requirements as well, provided they rely exclusively on satellite backhaul and certify annually that no terrestrial backhaul options exist.

207. We propose that non-contiguous carriers receiving frozen support must not use such support in any areas where there is a terrestrial provider of fixed residential voice and broadband service that meets our Phase II performance requirements.[409] To the extent a non-contiguous carrier is unable to meet this requirement, we propose that it relinquish whatever amount of frozen support it is unable to use for the intended purpose.[410] We seek comment on these proposals.

208. We seek comment on the specific build out obligations that non-contiguous carriers receiving frozen support would have in those census blocks that do not currently have broadband service meeting the Commission's requirements. Specifically, should non-contiguous carriers receiving frozen support be required to deploy voice and broadband-capable networks and offer services meeting the above performance metrics to all locations in those funded areas, consistent with the state-level

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[406] *Id.* at 15070, paras. 22-23.

[407] *Id.* at 15075, para. 35.

[408] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17699-700, para. 101 (relaxing the broadband public interest obligation for carriers providing fixed broadband, that are compelled to use satellite backhaul facilities to 1 Mbps/256 kbps); *see also* 47 C.F.R. § 54.313(g).

[409] An unsubsidized competitor currently is defined as a facilities-based provider of residential terrestrial fixed voice and broadband service that does not receive high-cost support. *USF/ICC Transformation Order*, 26 FCC Rcd at 17701, para. 103. We are proposing in this FNPRM, however, to exclude from Phase II support any area that is served by a terrestrial provider of fixed voice and broadband meeting the requisite requirements, whether that provider is subsidized or not.

[410] A simple example illustrates the concept. Assume there are 200 locations in the non-contiguous carrier's service territory, and of that, 150 locations are in census blocks served by another terrestrial provider of fixed voice and broadband meeting the requisite requirements. Assume further that the total amount of frozen support for the service territory is $200. To the extent the non-contiguous carrier is only able to use $100 in funding to maintain, operate and extend broadband-capable networks to serve the 50 locations in the census blocks unserved by a competitor, it would relinquish the remaining $100 in frozen support.

commitments required of carriers receiving model-based support?[411] In the alternative, should these carriers be allowed to serve some subset of locations within their respective service areas where the average cost equals or exceeds the funding benchmark established by the Bureau? Should they also be required to extend broadband-capable networks to serve some specified number of locations in census blocks determined by the model to be above the extremely high-cost threshold?

209. We seek comment on how to monitor and enforce compliance by non-contiguous carriers receiving frozen support once we have determined their specific service obligations. Are there any measures that must be in place to ensure that we have the ability to monitor compliance with these service obligations? Are there any considerations specific to non-contiguous areas that we should account for when determining whether these carriers have complied with their service obligations? Below, we propose potential support reductions for price cap carriers receiving model-based support that fail to fulfill their service obligations.[412] We propose that non-contiguous carriers receiving frozen support would be subject to similar reductions in support for failing to fulfill their service obligations. Should any adjustments to that framework be made?

210. Finally, we seek comment on whether to specify a five-year term for those non-contiguous carriers that elect to receive frozen support, and whether there is a need to modify the term of support for such non-contiguous carriers. Are there any specific extenuating circumstances in non-contiguous areas that would require extending the term of frozen support for longer than five years?[413]

211. Recognizing there may be differing circumstances for each of the non-contiguous carriers, we ask whether we should adopt tailored service obligations for each one that chooses to elect frozen support. To the extent non-contiguous carriers contend that they could not meet one or more of the public interest service standards set forth above, they should submit specific alternatives. However, we note that, for certain non-contiguous carriers, the amount of frozen support they would receive is greater than the amount of model-based support they would receive. We expect, therefore, that any alternatives proposed by these carriers would reflect this level of support and would be consistent with the Commission's goal of ensuring universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions.

4. Other Issues Relating to the Phase II Transition

212. We propose several minor changes and clarifications regarding the implementation of the transition to model-based support to ease the administration of Connect America Phase II. First, we propose to align the five-year term for model-based support provided to price cap carriers that elect to make a state-level commitment with calendar years, specifically, 2015 through 2019. Second, we propose that a carrier accepting state-level support pursuant to Connect America Phase II should receive the full amount of Phase II support in the initial year, rather than the transitional amount of support adopted in the *USF/ICC Transformation Order*.[414] Third, we propose to clarify that for purposes of calculating the baseline for carriers in states where model-based support will be less than Phase I support, the baseline only includes Connect America Phase I frozen high-cost support, and not Phase I incremental support.

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[411] *See Phase II Service Obligations Order*, 28 FCC Rcd at 15075-76, para. 37.

[412] *See infra* Section VIII.K.3.

[413] The five-year term for non-contiguous carriers electing to receive frozen support would be aligned with calendar years 2015-2019, consistent with our proposal below to align the five-year term for model-based support provided to price cap carriers that elect to make a state-level commitment with calendar years 2015 through 2019. *See infra* Section VIII.E.4.a.

[414] *USF/ICC Transformation Order*, 26 FCC Rcd at 17733, para. 180.

a. Aligning Connect America Phase II Funding and Calendar Years

213. Under the recordkeeping and reporting rules established by the Commission, many accountability requirements operate on a calendar year basis. Aligning the funding years of Connect America Phase II with the reporting and recordkeeping years established in sections 54.313 and 54.314 of the Commission's rules could lessen administrative burdens, for the Fund Administrator, states, and recipients.

214. At this juncture, we anticipate that while the offer of support may be extended before the end of 2014, the deadline for acceptance will be in 2015, 120 days later. We propose to disburse a lump sum amount to those carriers for whom model-based support in a given state will be greater than Connect America Phase I support, representing the additional amount of model-based support that would accrue for the beginning months of the year while the offer of support is under consideration, so that in calendar year 2015 those carriers will receive the appropriate yearly amount. Should such support be disbursed in the month after the acceptance of model-based support, or some other date? We seek comment on these proposals.

b. Transition Where Model-Based Support is Greater than Connect America Phase I Support

215. In the *USF/ICC Transformation Order*, the Commission specified that price cap carriers electing the state-level commitment would receive five years of model-based support[415] and established a process for transitioning support from Connect America Fund Phase I to Phase II in states where model-based support is greater than frozen support. Specifically, for a carrier accepting the state-level commitment, "in the first year, the carrier will receive one-half the full amount the carrier will receive under CAF Phase II and one-half the amount the carrier received under CAF Phase I for the previous year (which would be the frozen amount if the carrier declines Phase I [incremental support] or the frozen amount plus the incremental amount if the carrier accepts Phase I [incremental support]); in the second year, each carrier accepting the state-wide commitment will receive the full CAF Phase II amount."[416] In a Public Notice, the Bureau sought to develop further the record on various issues regarding implementation of this transition.[417]

216. We now propose to eliminate the transition year and disburse the full amount of model-based support in the initial year to those carriers for whom the amount of model-based support is greater than frozen support. We expect this will reduce administrative burden on the Fund Administrator, as it will only need to program its systems once to disburse the appropriate monthly amounts over the five-year period, rather than first implementing a transition year, and then switching to the full model-determined amounts the second year. In addition, we expect that this would provide greater certainty for carriers accepting a state-level commitment than deferring disbursement of part of the initial year's support until certain milestones are met, as suggested in the *Additional Phase II Issues Public Notice*. Given that in all relevant circumstances, the carriers will be receiving a support level that is higher than their prior frozen support for that state, we propose that there is no need for a transition year, and the public interest and the purposes of section 254 of the Act will be served by disbursing the new, model-based level in the first year.

217. We therefore propose that, for a carrier accepting a state-level commitment, in the first year the carrier will receive 100 percent of the annualized amount the carrier will receive pursuant to Connect America Phase II, and no additional Connect America Phase I support. We seek comment on this proposal and our analysis.

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[415] *Id.* at 17729, para. 171.

[416] *Id.* at 17733, para. 180.

[417] *Additional Phase II Issues Public Notice*, 28 FCC Rcd at 16403-04.

c. Base Support Amount for Transition to Connect America Phase II

218. As described above, the Commission noted "[t]o the extent a carrier will receive less money from CAF Phase I than it will receive under frozen high-cost support, there will be an appropriate multi-year transition to the lower amount."[418] It is not clear from the language whether the Commission intended the reference to "CAF Phase I" to encompass Phase I incremental support.

219. We propose to clarify that for the purposes of transitioning from Connect America Phase I to Phase II, only Connect America Phase I frozen support is relevant. Specifically, the multi-year phase down in support that we adopt in the Report and Order above would only apply to frozen support and would not include Phase I incremental support.[419] Incremental support was provided to carriers on a one-time basis in exchange for specific build-out commitments, in contrast to the ongoing frozen support. We are unaware of any policy justification for providing any fraction of the one-time support on a recurring basis under the guise of a transition to Connect America Phase II. We seek comment on this proposed clarification.

F. Interplay between Rural Broadband Experiments and Offer of Model-Based Support

220. More than 1,000 expressions of interest in rural broadband experiments have been filed by a wide range of entities.[420] Although we have not yet established selection criteria or a budget for those experiments,[421] it is likely that there will be a number of well-developed formal proposals. Such proposals provide strong evidence that at least some entities are prepared to extend robust broadband in a given high-cost area for an amount less than or equal to the amount of model-based support that would be provided to a price cap carrier through the state-level commitment process for that area. We therefore seek comment on whether such an indication of potential competitive entry through a formal proposal for an area should be grounds for removing that area from a carrier's state-level commitment (i.e., the carrier would not receive model-based support for that area and would have no obligation to meet the broadband performance obligations in that area).

221. We seek comment on what conditions a rural broadband experiment formal proposal would have to meet in order to remove a geographic area from a price cap carrier's state-level commitment. In particular, we seek comment on the broadband performance, amount of support requested, and other conditions a rural broadband formal proposal should meet before the area it covers would be removed from the price cap carrier's state-level commitment. For example, based on staff review thus far, it appears that the vast majority of the expressions of interest received to date are requesting one-time support, rather than recurring support. In order to remove a particular geographic area from the state-level commitment, should the amount of one-time support requested be annualized over a ten-year period, to provide an apples-to-apples basis for comparison to model-based support? Should the proposal be required to indicate a willingness to receive the amount of one-time support requested over a multi-year period, such as five or ten years? What other factors should the Commission consider before concluding a formal application is sufficiently meritorious to remove an area from a carrier's state-level commitment?

222. From an administrative perspective, how would the Commission implement the removal of an area from a carrier's state-level commitment? Should the Commission remove all areas that are

[418] *USF/ICC Transformation Order,* 26 FCC Rcd at 17733, para. 180 n.294.

[419] *See supra* Section III.C.1.

[420] *See* List of Expressions of Interest, http://www.fcc.gov/encyclopedia/rural-broadband-experiments (last visited Apr. 23, 2014).

[421] *Tech Transitions Order*, 29 FCC Rcd at 1470, 1471, paras. 105, 109.

covered by formal rural broadband experiment proposals that meet the conditions discussed above that the Commission does not fund through the rural broadband experiment? What other criteria could the Commission use to determine whether an area should be removed from a carrier's state level commitment? To the extent a formal rural broadband experiment proposal covers an area that is served in part by a rate-of-return carrier and in part by a price cap carrier, should the proposal be required to indicate that the applicant will proceed if only funded in the price cap portion of the proposed service area, in order to be sufficient to remove an area from the price cap carrier state-level commitment?

223. If the Commission were to adopt such an approach, how would this affect the incentives of potential participants in the Phase II competitive bidding process to express their interest prior to the offer of support to price cap carriers? How would this affect the incentives of price cap carriers to accept or decline model-based support? How would it affect the timing and extent of the deployment of broadband-capable infrastructure in high-cost areas? Given that the vast majority of the expressions of interest proposing to extend fiber-based technologies propose to deploy fiber-to-the-premise, would removing such areas from the state-level commitment result in greater deployment of broadband to high-cost areas than would be the case under the current Connect America framework?

G. Phase II Competitive Bidding Process

224. In the Report and Order, we set certain parameters for the Phase II competitive bidding process. In this section, we seek to develop further the record on additional issues relating to the competitive bidding process that will occur in Phase II.

225. In the *USF/ICC Transformation Order*, the Commission adopted rules to apply generally for competitive bidding to award universal service support, codified in Subpart AA of Part I. In the *USF/ICC Transformation FNPRM*, it proposed to use a reverse auction to distribute support to providers of voice and broadband services in price cap areas where the price cap carrier declined support. The Commission proposed to use such a mechanism to determine where services meeting the specified performance requirements can be offered "at the lowest cost per unit" with the relevant unit being the number of residential and business locations in a given census block.[422] The Commission also sought comment on relaxing performance obligations and allowing bidders to offer to provide service with different performance characteristics, with the Commission considering these service quality attributes when it evaluates bids.[423]

226. We recognize the importance of specifying in advance objective, well-defined, and measurable criteria for selecting among entities that seek funding in a competitive bidding process. The record received in response to the *USF/ICC Transformation FNPRM* is not sufficiently well developed on this issue, however, for us to make final decisions at this time. But we are nevertheless determined to finalize the details of the competitive bidding process so that it can occur shortly after the model-based elections take place. Above, we adopt certain rules with respect to participation, the term of support, and the ETC designation process, and we seek further comment on other aspects of those rules elsewhere. Here, we focus on the mechanics of the competitive bidding process and seek comment on specific proposals.

227. *First*, we propose that the Commission adopt reserve prices based on the Connect America Cost Model so that the reserve price for a given geographic area in the competitive bidding (i.e., census tract or census block) equals the amount of support the model would have calculated for that same geographic unit in the state-level election process. To the extent we ultimately decide that census tracts will be the minimum geographic unit for competitive bidding, we propose that the reserve price for a given census tract would be the support associated with the requisite number of locations in census blocks

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[422] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18085-86, 18088, paras. 1190, 1194, 1203.

[423] *Id.* at 18088-89, para. 1204.

within that tract that are eligible for funding. That support could be used to serve locations within census blocks where the average cost per location exceeds the extremely high-cost threshold established by the model. To the extent parties argue that the model should not be used to determine reserve prices either generally or in specific areas, they should articulate what instead should be used for a reserve price.

228. *Second*, we propose bidders may bid for a package of geographic areas, either census blocks or census tracts. We believe that such package bidding is likely necessary so that bidders may construct efficient networks and are not left to serve certain high-cost tracts without the scale to do so effectively.

229. *Third*, we propose that the total of all bids accepted nationwide be no greater than the total Connect America Phase II budget that remains after the state-level election process. We note that because bidders can compete both for areas subject to the state-level election process as well as areas that are deemed extremely high-cost, there could be insufficient funds to support all bidders even if there is only one bid in each area. As such, the competitive bidding process is likely to result in both intra-area and inter-area competition for funding.

230. *Fourth*, we propose that the competitive bidding process use a multi-round auction so that competitive bidders have the opportunity to reevaluate their bids in light of the actions of others. A multi-round process may be especially important here so that bidders can reevaluate their deployment objectives in light of the demonstrated willingness of other bidders to build out broadband in an area.

231. *Fifth,* we propose that the competitive bidding process be implemented in a way that first identifies those provisionally winning bids that propose service that substantially exceeds the Commission's service standards, for an amount per location equal to or less than the model-determined amount of support for the relevant geographic areas. To the extent funding remains available, we propose that the next round of bidding would identify those bids proposing to provide service that meets the Commission's service standards, for an amount of support per location equal to or less than the model-determined amount. To the extent funding still remains available after these two determinations, we propose that the competitive bidding process would then identify winning bidders that are willing to provide service using relaxed performance standards for an amount of support equal to, or less than, the model-determined reserve price. We seek comment on the specific characteristics of services that would be deemed to be "substantially" exceeding the Commission's standards. In order to qualify for such a preference, must a bidder commit to offering service that substantially exceeds our standards to 100 percent of all funded locations, or some lesser percentage? In addition, we seek comment on whether we should adopt any other limits on the priorities discussed above. For instance, should the auction be designed so that we select all bids that substantially exceed the Commission's standards before selecting any bids for service that meets or falls below the Commission's standards? Should we allocate funding in a way that provides geographic coverage across various states? We also seek comment on how we might incorporate into our auction design consideration of the expressed preferences of the affected community for service of a particular type or quality. What would be an appropriate form for such an indication?

232. Rather than the multi-step approach proposed above, should we consider bidding credits to effectuate priorities that advance our objectives? We seek to refresh the record on the use of bidding credits, including bidding credits for service to Tribal lands,[424] and also ask whether to provide bidding credits to bidders that propose to offer service that substantially exceeds the Commission's standards.

233. We also seek comments on concerns that a reverse auction will result in bidders competing to provide the minimally acceptable level of service. How can we best ensure that any competitive bidding process we ultimately adopt will bring an evolving level of broadband service to

[424] In the *USF/ICC Transformation FNPRM*, the Commission proposed to provide a 25 percent bidding credit to Tribally-owned or controlled entities. *Id.* at 18091-92, para. 1219.

consumers, businesses, and anchor institutions in rural America? We now seek to refresh the record and seek more focused comment on what objective metrics should be used when the Connect America Phase II competitive bidding process is implemented nationwide in price cap territories to the extent the offer of model-based support is declined. Specifically, what criteria should be adopted that will determine who is awarded support?

234. Additionally, we seek comment on what specific rules and requirements must be in place before we make the offer of model-based support to price cap carriers. As noted above, the Commission has already adopted rules for the award of universal service support through a competitive bidding process, codified in Subpart AA of Part 1. Those rules specify, among other things, that the following will be specified by public notice prior to the commencement of competitive bidding: (1) the dates and procedures for submitting applications to participate in the competitive bidding process; (2) the details of and deadlines for posting a bond or depositing funds with the Commission to provide funds to draw upon in the event of defaulting bids; (3) procedures for competitive bidding, including but not limited to whether package bidding will be allowed and reserve prices; and (4) the amount of default payments, not to exceed 20 percent of the amount of the defaulted bid amount. Typically, these matters would be specified only after we know the inventory of areas that will be subject to auction. We seek comment on which, if any, of these matters should be specified by public notice before we make the offer of model-based support to price cap carriers. Are there other rules and requirements that should be specified in advance of the commencement of the Connect America Phase II competitive bidding process?

H. Mobility Fund Phase II

235. *Background.* In the *USF/ICC Transformation Order*, the Commission established as a goal the universal availability of "mobile networks capable of delivering mobile broadband and voice service in areas where Americans live, work, or travel."[425] This goal was "designed to help ensure that all Americans in all parts of the nation, including those in rural, insular, and high-cost areas, have access to affordable technologies that will empower them to learn, work, create, and innovate."[426]

236. The Commission also made clear the importance of ensuring that universal service funding that furthers this goal be "cost-effective and targeted to areas that require public funding to receive the benefits of mobility."[427] To accomplish these goals, the Commission adopted the Mobility Fund.[428] The Mobility Fund included two phases. For Mobility Fund Phase I, the Commission provided up to $300 million in one-time support payments, to be awarded through a reverse auction.[429] In Mobility Fund Phase II, the Commission concluded it would provide up to $500 million per year in ongoing support and sought comment in the FNPRM on the structure and operational details of that fund.[430] Each phase of the Mobility Fund also included funding specifically designated for service to Tribal lands.[431]

237. The Commission completed the Mobility Fund Phase I reverse auction in September 2012.[432] For that auction, the Commission established bidding and coverage units based on road miles in

[425] *USF/ICC Transformation Order*, 26 FCC Rcd at 17682, para. 53.

[426] *Id.*

[427] *Id.* at 17772-73, para. 298.

[428] *Id.* at 17773, para. 299.

[429] *Id.*

[430] *Id.*

[431] *Id.*

[432] *Auction 901 Closing Public Notice*. Mobility Fund Phase I disbursements were authorized beginning April 2013 and are anticipated to continue through 2016. *Mobility Fund Phase I Support Authorized for Seven Winning*

(continued...)

each eligible census block for purposes of comparing bids and assessing performance. The auction awarded support generally based on the lowest amounts bid per road mile to target "persistent gaps in mobile services" and maximize the number of road miles that could be covered without exceeding the Mobility Fund Phase I budget of $300 million.[433] For the Tribal Mobility Fund Phase I reverse auction held in February 2014, the Commission determined that the bidding and coverage units should be based on the population in eligible census blocks and awarded support based on the lowest bids per unit of population to maximize the population that could be covered without exceeding the $50 million budget for the Tribal Mobility Fund Phase I.[434]

238. Since the *USF/ICC Transformation Order* was adopted, there has been significant commercial deployment of mobile broadband services.[435] According to some sources, nearly 99.5 percent of the U.S. population today (and the road miles associated with that population) is covered by some form of mobile broadband technology.[436] Verizon asserts that its 4G LTE network currently is available to 95 percent of the U.S. population – more than 500 markets covering approximately 303 million people.[437] Similarly, AT&T has stated that at present its LTE deployment covers all major metropolitan areas, totaling nearly 280 million people, and it expects to cover approximately 300 million people by the summer of 2014.[438]

239. *Discussion.* Based on these marketplace developments, we propose to target the funds set aside to support mobile services in Mobility Fund Phase II on preserving and extending service in those areas that will not be served by the market without governmental support. The Commission emphasized in the *USF/ICC Transformation Order* that it did not intend to provide ongoing support for

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Bidders; Defaults on Two Auction 901 Winning Bids Determined, AU Docket No. 12-25, Public Notice, 28 FCC Rcd 5599 (Wireless Tel. Bur./Wireline Comp. Bur. 2013) (*Mobility Fund I Authorizations Public Notice*).

433 *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716, 14719, para. 5 (2010).

434 *USF/ICC Transformation Order*, 26 FCC Rcd at 14822, para. 488 (concluding that a population-based metric is more appropriate for the Tribal Mobility Fund Phase I auction).

435 We use the term "mobile broadband" here to cover service provided by 3G and 4G mobile technologies, i.e., EVDO, EVDO Rev A, UMTS/HSPA, HSPA+, Wi-Max, and LTE, the absence of which made census blocks eligible for funding for voice and mobile broadband under the Mobility Fund Phase I rules. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17784, para. 334 & n.567; *see also 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, 4730, para. 10 & n.16 (Wireless Tel. Bur./Wireline Comp. Bur. 2012) (*Auction 901 Procedures Public Notice*). This use of the term mobile broadband should not be construed as prejudging the definition of mobile broadband in any other context, including the definition of mobile broadband (advanced telecommunications capability) under section 706 of the Telecommunications Act of 1996.

436 *See Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, 28 FCC Rcd 3700, 3749, para. 48 (2013) (*16th Competition Report*) (analyzing mobile broadband coverage data licensed from Mosaik Solutions, LLC, ©2012 Mosaik Solutions, LLC). The *16th Competition Report* notes that the mobile broadband coverage analysis "likely overstates the coverage actually experienced by consumers, however, because Mosaik Solutions, LLC reports advertised coverage as reported to it by many mobile wireless service providers, each of which uses a different definition or determination of coverage." *Id.* at 3744, para. 42 n.145.

437 *See* Verizon Communications, Fourth Quarter Report (Form 10-Q), at 15 (Jan. 21, 2014), *available at* http://www.verizon.com/investor/DocServlet?doc=vz_bulletin_2013_4q.pdf.

438 AT&T Inc., Annual Report (Form 10-K), at 2 (Feb. 21, 2014), *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=113088&p=irol-sec.

service to areas that are likely to be served absent support.[439] Given marketplace developments over the last few years, we seek comment on how to ensure that Mobility Fund Phase II is focused on preserving service that otherwise would not exist and expanding access to 4G LTE in those areas that the market will not serve.

240. Section 254(b) of the Act requires the Commission to base policies on the "preservation and advancement of universal service."[440] In recognition of this statutory directive, the Commission in the *USF/ICC Transformation Order* adopted specific performance goals to preserve and advance the universal availability of voice service, including ensuring the universal availability of modern networks capable of providing advanced mobile voice and broadband services.[441] We reaffirm this commitment and therefore seek to target the Mobility Fund Phase II funding in a way that preserves mobile service where it only exists today due to support from the universal service fund and to extend service to areas unserved by 4G LTE.

241. Given the experiences with Mobility Fund Phase I and Tribal Mobility Fund Phase I where demand for universal service support far exceeded the supply of available funding, we recognize that there is a need and desire on the behalf of providers to extend mobile service, consistent with our universal service goals.[442] We therefore propose to focus competitive bidding for Mobility Fund Phase II support on extending mobile 4G LTE to the remaining U.S. population that will not have it available from either Verizon or AT&T. Consistent with this objective, we propose to distribute those funds within a defined budget so as to maximize the population that can be served with 4G LTE.[443] We propose to identify areas eligible for support, i.e., areas where neither Verizon nor AT&T provide 4G LTE, but also seek comment below on whether this standard will preserve existing service in those situations where the network of a mobile provider covers both eligible and ineligible areas. We also propose to identify eligible areas using the most recently available data for this purpose as reported on Form 477. Our FCC Form 477 data collection was revised in June 2013; we expect to begin collecting more granular data regarding mobile broadband service and new data regarding mobile voice service availability in September 2014.[444] We seek comment on these proposals.

242. Based on technological developments in the industry, our proposal would require that recipients of Mobility Fund Phase II support deploy 4G LTE. Is there another deployment standard we should use? For example, in the *USF/ICC Transformation Order*, the Commission allowed winners of

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[439] *USF/ICC Transformation Order*, 26 FCC Rcd at 17701, para. 103.

[440] 47 U.S.C. § 254(b).

[441] *See, e.g.*, *USF/ICC Transformation Order*, 26 FCC Rcd at 17672, 17682, paras. 17, 53.

[442] *See* U.S. Cellular Apr. 14, 2014 Ex Parte at 1.

[443] In the *USF/ICC Transformation Order FNPRM,* the Commission proposed to distribute Mobility Fund Phase II funds so as to maximize the road miles covered, and sought comment on using alternative bidding units, such as population and workplaces, to determine coverage. *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18073, para. 1134; *see also Further Inquiry Public Notice*, 27 FCC Rcd at 14801-02, paras. 12-13.

[444] *See Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Report and Order, 28 FCC Rcd 9887 (2013); *see also* Federal Communications Commission, Changes Coming to the Form 477 Data Collection, http://www.fcc.gov/encyclopedia/changes-coming-form-477-data-collection (last visited Apr. 23, 2014). In the *USF/ICC Transformation Order and FNPRM*, the Commission noted that going forward it may be possible to rely on data from Form 477, but proposed in the *FNPRM* to identify eligible areas for Mobility Fund Phase II using data supplied by American Roamer. *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17784, 18070-71, paras. 335, 1124. American Roamer changed its name in February 2012 to Mosaik Solutions LLC. *See* Mosaik Solutions, American Roamer Unveils New Corporate Name and Branding Strategy at Mobile World Congress, http://www.mosaik.com/news/american-roamer-unveils-new-corporate-name-and-branding-strategy-at-mobile-world-congress-/ (Feb. 26, 2012).

Mobility Fund Phase I support to elect to deploy 3G or 4G, with a shorter deployment deadline for those that elected 3G.[445] The Commission originally proposed requiring 4G deployment for Mobility Fund Phase II.[446] For those parties who argue that we should employ a deployment standard other than 4G LTE, please explain how using that standard would help us address the other issues we identify in this section and help us meet our goals of preserving and extending service in those areas that will not be served by the market without governmental support. In identifying eligible areas under our proposed standard, if there are areas where a portion of a network overlaps in part with an area that has LTE coverage provided by AT&T and/or Verizon, how should we treat the eligibility of those areas so as to promote the preservation of service in the portion that does not overlap? Similar to the process used for Auctions 901 and 902, which awarded Mobility Fund Phase I support, we expect that proposed eligible areas would be identified publicly prior to the commencement of bidding for Mobility Fund Phase II support and would be subjected to a challenge process to add or subtract areas from the original proposed eligible areas.[447] What is the best way to verify in such a process that proposed ineligible areas are in fact served by LTE and that proposed eligible areas are indeed eligible because they lack LTE? In addition, we ask commenters to describe whether and, if so how, we should modify other aspects of the original proposals for Mobility Fund Phase II competitive bidding to conform to this proposed new approach.[448]

243. *Size of Retargeted Mobility Fund Phase II*. Given marketplace developments, the areas requiring support to preserve and advance mobile services appear to be less extensive than the Commission anticipated in 2011. We therefore propose to adjust downward the budget for a retargeted Mobility Fund II. Based on February 2014 disbursement figures, we estimate that wireless competitive ETCs currently are collectively receiving about $590 million in support on an annualized basis, with about $185 million of that support going to two of the largest national providers that have announced the commercial roll-out of LTE.[449] Thus, we estimate that about $400 million is going to smaller and regional wireless providers. This funding is not well-targeted, however, as it is supporting multiple networks with overlapping coverage in some areas, and in some areas supporting a network that overlaps with the coverage provided by one of the four national wireless providers that is not relying on federal universal service support to offer mobile services in that area. To the extent we eliminate unnecessary support in such areas, we could target that support to those areas that will not be served with 4G LTE through commercial deployments.

244. We seek to further develop the record on how much of that $400 million in competitive ETC support provided today to smaller and regional wireless providers is covering ongoing operating expenses, and how much of it is being used to extend service to unserved areas. To the extent commenters contend that the current funding is necessary to preserve existing service, they should identify with particularity those amounts and specify the extent to which such subsidized service overlaps

[445] *See, e.g., USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17791-92, paras. 360-65.

[446] *Id.* at 17791-92, 18075, paras. 360-65, 1142.

[447] *Id.* at 18069, para. 1124; *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Comment Sought on Competitive Bidding Procedures for Auction 901 and Certain Program Requirements*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 530 (Wireless Tel. Bur./Wireline Comp. Bur. 2012); *Tribal Mobility Fund Phase I Auction Scheduled for October 24, 2013; Comment Sought on Competitive Bidding Procedures for Auction 902 and Certain Program Requirements*, AU Docket No. 13-53, Public Notice, 28 FCC Rcd 2764 (Wireless Tel. Bur./Wireline Comp. Bur. 2013).

[448] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18069-85, paras. 1121-88; *Further Inquiry Public Notice*.

[449] Current disbursements are available on USAC's website. *See USAC High-Cost Disbursement Tool*. Of the $400 million currently going to the smaller and regional wireless providers, we estimate that approximately $71 million is going to wireless competitive ETCs in remote areas in Alaska.

with the coverage areas of one of the four national providers. To what extent is existing frozen support being provided to areas that are not expected to receive 4G LTE from either Verizon or AT&T?

245. In re-evaluating the appropriate size of the Mobility Fund Phase II, should we preserve the existing amount of funding dedicated to Tribal lands? In 2011, the Commission concluded that up to $100 million of the Mobility Fund Phase II budget should be targeted at Tribal lands throughout the nation, including remote areas in Alaska. Recognizing the continuing connectivity challenges facing Tribal lands, should we proceed to conduct an auction to award up to $100 million in ongoing support to mobile providers on Tribal lands throughout the nation? To what extent are Tribal lands in the geographic areas where AT&T and Verizon do not intend to extend 4G LTE? Should we implement such an auction first, before determining how to proceed more generally with respect to Mobility Fund Phase II?

246. If we adjust downward the budget for Mobility Fund Phase II, we propose to reallocate those funds to the Remote Areas Fund or the competitive bidding process for Connect America Phase II. We seek comment on this proposal. We expect wireless providers that meet the requisite service standards will participate in both the Remote Areas Fund and Connect America Fund. Wireless technology may well be the appropriate solution to serve many areas lacking broadband today, and the Connect America Phase II competitive bidding process and Remote Areas Fund will be implemented in a technologically neutral manner to allow the participation of as many entities as possible. Would re-allocating a portion of the Mobility Fund Phase II budget to either of these mechanisms be consistent with our overall reform objectives?

247. We specifically ask commenters whether, instead of maintaining the $500 million budget for Mobility Fund Phase II, we should use a portion of that budget, potentially including undisbursed funds remaining from Mobility Fund Phase I,[450] to provide one-time support to those providers willing to extend mobile LTE to eligible unserved areas. If we were to adopt such an approach, how much funding should we reserve for recurring annual support under a more narrowly focused Mobility Fund Phase II?

248. *Proposed Rules*. The *USF/ICC Transformation FNPRM* included proposed rules for Phase II of the Mobility Fund. We now seek comment on revised proposed rules for Mobility Fund Phase II in light of the above proposals and the Commission's experience with administering Phase I of the Mobility Fund.[451] We seek comment on these proposed rules in Appendix B.[452]

249. *Timing of ETC Designation*. As described in the Order, we adopt new rules to enable participants in the Connect America Phase II competitive bidding process to seek designation as an eligible telecommunications carrier *after* winning competitive bidding for Connect America Phase II

[450] With respect to Mobility Fund Phase I, the Commission recognized that, under various circumstances, the full amount of the original $300 million budget might not be disbursed to winning bidders. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17792-93, paras. 366-67; *see also Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4764-65, para. 142; s*ee also, e.g.*, *Mobility Fund I Authorizations Public Notice*. In the *USF/ICC Transformation Order*, the Commission concluded that undisbursed funds from Mobility Fund Phase I would be "used in a manner consistent with the purposes of the Universal Service program." *USF/ICC Transformation Order*, 26 FCC Rcd at 17815, para. 462. We note that United States Cellular Corporation has filed a Petition seeking a declaratory ruling that the Wireline Competition and Wireless Telecommunications Bureaus must award undisbursed Mobility Fund Phase I monies from Auction 901 to "next-in-line" bidders in Auction 901. Petition for Declaratory Ruling, United States Cellular Corporation, WC Docket No. 10-90, WT Docket No. 10-208, AU Docket No. 12-25 (filed Mar. 21, 2014).

[451] For example, the proposed rules now focus on coverage of population rather than road miles, include requirements consistent with 4G LTE deployment, and reflect the current date for filing annual reports, in light of changes made since release of the *USF/ICC Transformation Order*.

[452] *See infra* Appendix B (Proposed Rules).

support.[453] We seek comment on whether to adopt this approach for Mobility Fund Phase II or to maintain the Commission's practice that parties must have ETC designations, subject to certain exceptions, *before* applying to participate in Mobility Fund competitive bidding.[454] Participants in Mobility Fund competitive bidding have been able to obtain new designations prior to applying to participate in competitive bidding.[455] There may, however, be benefits to permitting parties to participate in competitive bidding for Mobility Fund Phase II prior to seeking a designation, such as increased competition in the bidding. We seek comment on whether a greater number of qualified parties would participate in Mobility Fund Phase II if we only required that they seek designation after winning competitive bidding.

I. Phase-down of Identical Support

250. We propose to amend our identical support phase-down rules in several ways. First, for each wireless competitive ETC for which competitive ETC funding exceeds 1 percent of its wireless revenues, we propose to maintain existing support levels until a specified date after the announcement of winning bidders for Mobility Fund Phase II ongoing support, with that date depending on whether it is a winning bidder of such support. While we are not convinced that maintaining existing support levels for these providers is necessary to ensure that consumers continue to have access to mobile service, we lack sufficient data at this time to adopt a more tailored approach. Second, we propose to accelerate the phase-down for those wireless carriers that we presume are not relying on such support to maintain existing service. In particular, we propose to adopt a rule that would eliminate competitive ETC frozen support for providers for whom such funding represents 1 percent or less of their wireless revenues. Finally, we propose to freeze support for wireless providers serving remote areas in Alaska as of December 31, 2014, and to maintain those frozen support levels until a specified date after winning bidders are announced for ongoing support under Tribal Mobility Fund Phase II or Mobility Fund Phase II, with that date depending on whether wireless providers become winning bidders of such support.

251. *Background.* In the *USF/ICC Transformation Order*, the Commission eliminated the identical support rule, which had formed the basis of support until that time, and adopted a phase-down of support provided pursuant to the identical support rule to all competitive ETCs, including mobile service providers.[456] In eliminating the identical support rule, the Commission concluded that "[b]ased on more

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[453] *See supra* Section III.B.

[454] *See* 47 C.F.R. §§ 54.1003(a), 1004(a) (eligibility rules for Phase I of the Mobility Fund). Parties could participate with designations conditioned on winning support. Moreover, specified Tribal entities could participate prior to designation so long as their petitions were pending prior to applying to participate in the competitive bidding. *See also USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18074, para. 1140 (proposing to apply the same eligibility requirements in Phase II of the Mobility Fund).

[455] The Wireline Competition Bureau and the Wireless Telecommunications Bureau together granted three petitions for designation as an ETC that had been filed for purposes of participating in the Mobility Fund Phase I auction prior to the deadline for filing applications to participate in the bidding. *Petitions for Designation as an Eligible Telecommunications Carrier for Purposes of Participation in Mobility Fund Phase I; Petition of SI Wireless, LLC for Designation as an Eligible Telecommunications Carrier in Tennessee*, WC Docket No. 09-197, WT Docket No. 10-208, AU Docket No. 12-25, Order, 27 FCC Rcd 7218 (Wireline Comp. Bur./Wireless Tel. Bur. 2012); *Petitions for Designation as an Eligible Telecommunications Carrier for Purposes of Participation in Mobility Fund Phase I; Petition of Carolina West Wireless, Inc.*, WC Docket N. 09-197, WT Docket No. 10-208, AU Docket No. 12-25, Order, 27 FCC Rcd 7235 (Wireline Comp. Bur./Wireless Tel. Bur. 2012); *Petitions for Designation as an Eligible Telecommunications Carrier for Purposes of Participation in Mobility Fund Phase I; Petition of T-Mobile for FCC Designation as an Eligible Telecommunications Carrier for Mobility Fund Phase I (Auction 901)*, WC Docket No. 09-197, WT Docket No. 10-208, AU Docket No. 12-25, Order, 27 FCC Rcd 7247 (Wireline Comp. Bur./Wireless Tel. Bur. 2012).

[456] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17825-37, paras. 498-532.

than a decade of experience with the operation of [the rule] and having received a multitude of comments noting that the [rule] fails to efficiently target support where it is needed, . . .[the rule] has not functioned as intended."[457] It found that "identical support does not provide appropriate levels of support for the efficient deployment of mobile services in areas that do not support a private business case for mobile voice and broadband."[458] In order "to avoid shocks to service providers that may result in service disruptions for consumers," however, the Commission adopted a five-year transition to phase-down the support competitive ETCs had received pursuant to the identical support rule.[459] The Commission found that a five-year transition would be "sufficient for competitive ETCs that are currently receiving high-cost support to adjust and make necessary operational changes to ensure that service is maintained during the transition."[460] The Commission prescribed a phase-down of support in five annual steps beginning July 1, 2012, while concluding that there would be a temporary halt of the phase-down if the Mobility Fund Phase II is not operational by June 30, 2014.[461] If the Mobility Fund Phase II is not implemented by that day, competitive ETCs will continue to receive support at their June 2014 levels (60 percent of the baseline) until it is implemented.[462]

252. *Discussion.* We reaffirm the decision to eliminate the identical support rule. As the Commission stated at that time, the rule did not encourage the efficient deployment of service to areas that would otherwise be unserved and was therefore an ineffective use of universal service funds.[463] Moreover, as discussed above, AT&T and Verizon's recent and ongoing mobile LTE deployments will reach the areas where the vast majority of all Americans live.[464] Nevertheless, we are concerned that some areas of the country may lose service if competitive ETC funding is further phased down before the rules for Mobility Fund Phase II are adopted. Thus, given our proposal to retarget Mobility Fund Phase II funds,[465] for each wireless competitive ETCs for which competitive ETC support is more than 1 percent of its wireless revenues, we propose to maintain existing support levels (i.e., 60 percent of baseline support) until (1) the first month after the month in which its Mobility Fund Phase II ongoing support is authorized in the case of a winning bidder of such Mobility Fund Phase II support, or (2) the first month after the month in which a public notice announces winning bidders for Mobility Fund Phase II ongoing support in the case of a competitive ETC that is not a winning bidder of such Mobility Fund Phase II support. Support levels would then be reduced to 40 percent of the baseline for the next year, and then 20 percent of the baseline for the subsequent year. We seek comment on this proposal and any alternatives. For instance, should we resume the phase-down in support upon adoption of rules establishing the framework for Mobility Fund Phase II? Should we resume the phase-down in support for all competitive ETCs the first month after any bidder is authorized to receive funding from Mobility Fund Phase II? Should we resume the phase-down in support for all recipients of frozen support when 50 percent of Mobility Fund Phase II funding has been authorized, regardless of whether a particular competitive ETC is a winning bidder or not?

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[457] *Id.* at 17827, para. 502.

[458] *Id.*

[459] *Id.* at 17830-31, para. 513.

[460] *Id.*

[461] *Id.* at 17832, para. 519.

[462] *Id.*

[463] *Id.* at 17827-28, paras. 502-06.

[464] *See supra* Section VIII.H.

[465] *See supra* Section VIII.H.

253. Regardless of what we ultimately adopt regarding the phase-down in frozen support for competitive ETCs, we propose to accelerate the phase-down for any wireless competitive ETC for whom high-cost support represents one percent or less of its wireless revenues, eliminating such support on December 31, 2014 or the effective date of the rule, whichever is later. A number of competitive ETCs currently are receiving very small amounts of support.[466] Is it reasonable to assume that if a carrier's competitive ETC support is a tiny fraction of its revenues, that carrier is not relying on such support to maintain existing service? We propose to determine the requisite percentage based on reported revenues as submitted by the high-cost recipient or its affiliated holding company on the most recent FCC Form 499-A. We seek comment on this proposal. For purposes of implementing such a proposal for wireless competitive ETCs, should we focus solely on reported wireless revenues or on total revenues reported on the FCC Form 499? We note that if we were to adopt this proposal, any provider could seek a waiver of the accelerated phase-down if the elimination of support would result in consumers losing access to existing service.[467]

254. We seek comment on whether to take a different approach for resumption of the phase-down in frozen support for wireline competitive ETCs. For instance, should we maintain existing frozen support levels (i.e., 60 percent of baseline support) for wireline competitive ETCs until winning bidders are announced in the Phase II competitive bidding process? Or, should we revise our rules and continue the phase down of support for these wireline competitive ETCs upon the effective date of a rule, unless they are the only provider of voice and broadband service meeting our current broadband performance obligations in an area?

255. Finally, we note that because the *USF/ICC Transformation Order* froze their support at the study area level, most competitive ETCs stopped reporting line counts. However, the Commission delayed the phase-down by two years for remote areas in Alaska until June 30, 2014, or the implementation of Mobility Fund Phase II and Tribal Mobility Fund Phase II, whichever is later, to "preserve newly initiated service and facilitate additional investment in still unserved and underserved areas."[468]

256. We now propose to freeze the total amount provided to each competitive ETC serving remote areas in Alaska.[469] This would simplify support calculations for the Administrator, while not disturbing existing support levels for existing competitive ETCs. Competitive ETCs would no longer be required to file line counts for remote areas of Alaska, thus alleviating the need for the Bureau to address on a case-by-case basis how competitive ETCs should report line counts in situations where the customer's billing address is either unavailable or does not accurately represent the location of where the service is actually provided.[470] Under this proposal, the baseline for competitive ETC support in remote

[466] *See USAC High-Cost Disbursement Tool.*

[467] *USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para. 542. A mobile provider should include in its waiver petition "evidence demonstrating that it is the only provider of mobile service in a significant portion of any study area for which it seeks a waiver." *Id.*

[468] *Id.* at 17835, para. 529.

[469] *See, e.g.*, Letter from Shannon M. Heim, Counsel to ARC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at 1 (filed Apr. 16, 2014) (supporting a freeze in competitive ETC support in Alaska).

[470] *See, e.g.*, *Bristol Bay Partnership Petition for Waiver of the Federal Communication Commission's Rules Concerning the Administration of the Universal Service Fund*, CC Docket No. 96-45, Order, 22 FCC Rcd 21500, 21501-02, para. 5 (Wireline Comp. Bur. 2007). In situations where customer billing addresses misrepresent actual usage of mobile services, competitive ETCs may use an alternative method to assign a customer location consistent with the Commission's objective of identifying where customers are actually using their mobile service.

areas of Alaska would be set as of a date certain, such as December 31, 2014, or the effective date of the rule, whichever is later. We seek comment on this proposal.

257. Above, we propose to maintain existing support levels for wireless competitive ETCs until after we adopt rules for Mobility Fund Phase II. Consistent with the framework established by the Commission in 2011, we propose to maintain the baseline frozen support for each competitive ETC serving remote areas in Alaska until (1) the first month after the month in which its Mobility Fund Phase II or Tribal Mobility Fund Phase II ongoing support is authorized in the case of a winning bidder of such Mobility Fund Phase II support, or (2) the first month after the month in which a public notice announces winning bidders for ongoing support under Mobility Fund Phase II or the Tribal Mobility Fund Phase II, whichever is later, for a competitive ETCs that is not winning bidder of such Mobility Fund Phase II or Tribal Mobility Fund Phase II support. Upon that date certain, the phase-down in support would commence under the schedule originally adopted by the Commission: 80 percent of the baseline in the first year; 60 percent of the baseline in the second year; 40 percent of the baseline in the third year; and 20 percent of the baseline in the fourth year. We seek comment on this proposal. To the extent parties argue for a different approach, they should specify when the phase-down in support in remote Alaska should begin. Should remote areas in Alaska or any other areas in the United States be subject to exceptions or other conditions with respect to the phase-down in frozen support?[471]

J. Reforms in Rate-of-Return Study Areas

258. Rate-of-return carriers play a significant and vital role in the deployment of 21st century networks throughout the country. We recognize that telephone service would not exist today in many rural and remote areas of the country without the concerted efforts of local companies to serve their communities. As we move forward with the Connect America Fund Phase II for price-cap carriers, we remain cognizant of the fact that many of the same marketplace and technological forces that led to the development of the Connect America Fund for price cap carriers are also affecting rate-of-return carriers. Access lines are declining; residential customers increasingly are cutting the cord; and both consumers and businesses are demanding broadband. Rate-of-return carriers are not insulated from competitive pressures, and they must be prepared to shift their business models for a new era. In light of these realities, we seek here to renew a dialogue regarding the best way to encourage continued investment in broadband networks throughout rural America to ensure that all consumers have access to reasonably comparable services at reasonably comparable rates. In short, we seek to establish a "Connect America Fund" for rate-of-return carriers.

1. Near-Term Reforms for Rate-of-Return Carriers

259. We continue to have significant concerns regarding the structure and incentives created under the existing high-cost mechanisms for rate-of-return carriers, such as the "race to the top" incentives that exist under HCLS and the "cliff effect" of the annual adjustment of the HCLS cap. The structure of the current HCLS mechanism creates problematic incentives: some companies operating in high-cost areas receive all of their incremental additional investment through the federal support mechanism, while other companies operating in high-cost areas receive no support whatsoever from HCLS due to how support is reduced to fall within the overall HCLS cap.

260. Support for rate-of-return carriers has been subject to the HCLS cap, which is rebased annually through a rural growth factor, for more than a decade.[472] In 2001, the Commission modified the

[471] *See, e.g.*, Letter from John T. Nakahata, Counsel to General Communication, Inc., to Marlene H. Dortch,, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al. (filed Apr. 16, 2014) (proposing new transition plan for Alaska that would, among other things, remove Alaska from Mobility Fund Phase II and Tribal Mobility Fund Phase II and instead establish a separate Remote Alaska Fund).

[472] *See Rural Task Force Order*, 16 FCC Rcd 11244.

distribution of HCLS by rebasing the fund for rural telephone companies and retaining an indexed cap.[473] Specifically, the Commission concluded that the total cap on HCLS would be adjusted annually by a rural growth factor equal to the sum of the annual percentage changes in the gross domestic product-chain priced index and the total number of working loops.[474] Given decreases in working loops in rate-of-return study areas in recent years, resulting in reductions of the indexed cap, HCLS has been reduced substantially for many rate-of-return carriers while others incur almost no reduction. The Commission also adopted a rule that ensures that rural carriers receive the total amount of capped HCLS, regardless of the extent to which individual carriers' costs exceed the actual national average cost per-loop (NACPL) by the requisite percentages.[475] Neither of these features of the HCLS rule was altered in the *USF/ICC Transformation Order.*

261. As a near term measure that can be quickly implemented to mitigate both of these deficiencies, we propose to reduce support proportionally among all HCLS recipients by no longer adjusting the NACPL, but instead reducing the reimbursement percentages for all carriers. Under the proposed rule, reductions in support will be spread proportionally among all carriers, and carriers presently close to the NACPL will no longer run the risk of "falling off the cliff" in terms of their receipt of HCLS support. This rule could be implemented beginning January 1, 2015. We seek comment on this proposal and invite comment on other possible methods to address this issue.

262. The HCLS rules require adjusting the NACPL annually so that total HCLS support equals the indexed cap.[476] Currently, HCLS rules reimburse 65 percent of the loop costs in excess of 115 percent, but less than 150 percent of the NACPL and 75 percent of loop costs in excess of 150 percent of the NACPL. Because the NACPL is adjusted each year, many carriers are precluded from receiving any HCLS, and those carriers with costs close to the NACPL that is used to determine HCLS experience large percentage reductions in support. This gives those carriers with the highest loop costs relative to the national average minimal incentive to reduce costs. To curtail this "race to the top," we propose to freeze the NACPL that is used to determine support and instead to reduce HCLS proportionately among all HCLS recipients by reducing the 65 percent and 75 percent reimbursement percentages by equivalent amounts to maintain aggregate support at the indexed cap. This effectively would freeze the NACPL at the capped amount as of December 31, 2014, or the effective date of the rule, whichever is later. In conjunction with this "freezing" of the NACPL, we also propose to reduce the NACPL and continue to use the 65 percent and 75 percent reimbursement percentages whenever calculated support using the 65 and 75 percentages will not exceed the indexed cap for HCLS in the aggregate. Under the first part of the proposed rule, reductions in support would be spread proportionally among all recipients of HCLS, and carriers presently close to the now frozen NACPL would no longer run the risk of "falling off the cliff" in terms of their receipt of HCLS support. Under the second part of the proposed rule, if there are other changes that would otherwise result in a lowering of the NACPL, carriers will receive support based on the 65 and 75 percentage reimbursements.

263. We propose as another near-term measure to adopt a rule that no new investment after a date certain (i.e., December 31, 2014) may be recovered through HCLS and ICLS when such investment occurs in areas that are already served by a qualifying competitor. We seek comment on this proposal.

264. We propose measures to monitor and enforce compliance with such a rule. Price cap carriers today are precluded from using support in areas that are served by an unsubsidized competitor. Support may be used to serve geographic areas that are partially served by an unsubsidized competitor;

[473] *See id*. at 11249-51, para. 12.

[474] *Id.*

[475] 47 C.F.R. § 36.622(c)(2).

[476] *Id.*

however, price cap carriers must certify that, with respect to the support dollars subject to this obligation, a majority of the served locations are unserved by an unsubsidized competitor.[477] For purposes of determining whether this requirement is met, price cap carriers must be prepared to provide asset records demonstrating the existence of facilities that serve locations in census blocks where there is no unsubsidized competitor.[478] We propose to take a similar approach if we adopt a rule precluding recovery of new investment in areas served by competitors through our universal service support mechanisms.

265. In particular, to enforce a requirement that new investment recovered in whole or in part through HCLS or ICLS not occur in areas where there is a competing provider, we propose that rate-of-return carriers be prepared to produce, in an audit or other inquiry, asset records and associated receipts to document that new investment for which recovery is sought through the federal support mechanisms, after a date certain, occurred only in census blocks that are not served by other providers. Recognizing concerns expressed in the record regarding the coverage indicated in the National Broadband Map, we further propose to create a safe harbor that would allow rate-of-return carriers to include new investment in cost studies used to determine HCLS or ICLS if they publicly post information on their website regarding deployment plans and wait a specified period of time, such as 90 days. If no competing provider notifies the rate-of-return carrier that it serves the areas in question, the rate-of-return carrier may presume no other provider is serving those locations, and new investment in such areas may be eligible for cost recovery, consistent with any applicable rules for existing or future support mechanisms. We seek comment on these proposals and any alternatives that would provide a mechanism to provide clarity as to which new investments would be applicable for cost recovery through universal service support mechanisms, without creating undue burden on either rate-of-return carriers or potential qualifying competitors in their service areas.

266. In the Report and Order above, we codified the rule adopted by the Commission to eliminate support in study areas where there is a 100 percent overlap with an unsubsidized competitor. If we adopt our proposal above to not provide support to areas with a "qualifying competitor," should we similarly modify the 100 percent overlap rule? We also propose to adopt a timeline for periodic determination of whether there is a 100 percent overlap, with the Bureau reviewing the study area boundary data in conjunction with data collected on the FCC Form 477 and the National Broadband Map every other year to determine whether and where 100 percent overlaps exist. We also propose to adjust the baseline for support reductions to be the amount of support received in the immediately preceding year before a determination is made that there is a 100 percent overlap, rather than 2010 support amounts. We seek comment on these proposals.

2. Longer-Term Reforms for Rate-of-Return Carriers

267. In the longer term, we question the continued viability of the HCLS and ICLS mechanisms in their current form and suggest that all affected stakeholders focus on creating a new Connect America Fund for cost recovery that will be consistent with the core principles for reform adopted by the Commission in 2011. For that reason, we seek comment on a rule under which no new investment would be included in cost studies used for the determination of HCLS and ICLS after a date certain, and HCLS and ICLS would become the mechanisms to recover only past investment occurring prior to that date certain. Over time, the amount recovered through HCLS and ICLS would diminish, and all new investment would be recovered through a new Connect America Fund for rate-of-return territories specifically designed to meet the Commission's overall objective to support voice and broadband-capable networks in areas that the marketplace would not otherwise serve and to ensure that consumers in rural, insular and high-cost areas have access to reasonably comparable services at reasonably comparable rates to consumers living in high-cost areas.

[477] *USF/ICC Transformation Order*, 26 FCC Rcd at 17722-23, para. 149 n.238.

[478] *Id*.

268. If the Commission were to adopt such a rule, we would not implement the limitation on recovery of new investment through the existing mechanisms until the new Connect America Fund was in place and operational. We welcome stakeholder proposals for the design of this Connect America Fund to make more efficient use of universal service funds and encourage the deployment of broadband-capable networks, working within the existing budget of $2 billion for rate-of-return territories. What timeline would be an appropriate target to set for the implementation of the Connect America Fund for rate-of-return territories and the limitation on recovery of investment in the old mechanisms? If the Commission were to wind down the existing HCLS and ICLS mechanisms and create a new Connect America Fund for use in rate-of-return territories, what action should the Commission then take in its pending rate represcription proceeding?

269. We propose to adopt a stand-alone broadband funding mechanism for rate-of-return carriers and provide specific guidance on the desired implementation of such an approach. We propose that such a mechanism be designed to (a) calculate support amounts that remain within the existing rate-of-return budget, (b) distribute support equitably and efficiently, so that all rate-of-return carriers have the opportunity to extend broadband service where it is cost-effective to do so, (c) distribute support based on forward-looking costs (rather than embedded costs), and (d) ensure that no double recovery occurs by removing the costs associated with the provision of broadband Internet access service from the regulated rate base. We seek comment on how to implement such a proposal for rate-of-return carriers. We specifically seek comment on what rules or rule parts would need to change (e.g., how should Parts 32, 64 and/or 69 change to ensure that costs associated with the provision of broadband Internet access service are not included in the regulated rate base), and whether such a mechanism should be designed in a way that provides support based on locations or total network costs, rather than subscriber access lines. We seek comment on whether, for instance, we should modify our cost allocation rules to require that costs associated with multi-use facilities used to deliver broadband Internet access service be allocated between regulated and non-regulated activities based on an actual revenue allocator (or a potential revenues allocator), in such fashion that the amount removed from the regulated rate base would not exceed the amount of support received via a stand-alone broadband funding mechanism, or some other method. We also seek comment on whether such a mechanism should be designed to support lines where a consumer also subscribes to voice service, and whether the collected-but-not-yet-distributed support from the $2 billion annual budget for rate-of-return territories currently in the broadband reserve account should be used to kick start such a mechanism. We believe that such a proposal is consistent with the Commission's stated policy goals, would create incentives for continued broadband deployment in rate-of-return territories, and would reduce incentives to skew customer purchasing decisions.

270. We also seek to develop further the record on other proposals. NTCA has presented its own stand-alone broadband proposal, which relies on complicated cost-calculations based on embedded costs.[479] The proposal also does not appear to account for the fact that when a carrier's voice line is lost, the following-year both its HCLS and ICLS will likely increase on a per-line basis because fixed costs are now recovered over a smaller number of lines. Further, the proposal states that stand-alone broadband support would be developed based on annual projected costs followed by a true-up to actual costs developed using the existing HCLS rules.[480] However, HCLS payments, under the current rules, are

[479] *See, e.g.*, Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al., at 2-3 (filed Apr. 1, 2013). The Bureau sought comment on this proposal in a May 2013 Public Notice. *See Wireline Competition Bureau Seeks Comment on Options to Promote Rural Broadband in Rate-of-Return Areas*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 7201 (Wireline Comp. Bur 2013) (*May 2013 Public Notice*).

[480] *See* Comments of NTCA, NECA, WTA, and ERTA, WC Docket No. 10-90, at Attach. 1 (filed June 17, 2013); 47 C.F.R § 36.621.

based on costs incurred two years previously.[481] How would NTCA's proposal avoid recovery of costs from both HCLS and a stand-alone broadband support mechanism, given this timing difference? Also, under NTCA's proposal, there would be no definitive way to determine how HCLS is affected by voice line migration to broadband-only lines until true-ups are reconciled two years later. What impact would that have on the size of the fund, and what incentives would that create for cost reporting?

271. We also seek to understand further the rationale for the assumed broadband subscriber line charge of $26 in NTCA's proposal. For the offer of model-based support in price cap territories, the Commission directed the Wireline Competition Bureau to set the funding threshold for model-based support taking into account "where the cost of service is likely to be higher than can be supported through reasonable end-user rates alone."[482] We expect end user rates for broadband-only lines to be higher than $26. If the Commission were to provide support for stand-alone broadband offered by rate-of-return carriers, should it provide such support only for costs that exceed the $52.50 funding benchmark established for price cap territories? To the extent parties argue that a lower figure should be used in rate-of-return areas, they should provide a detailed analysis of what figures we should assume are reasonable end user rates for retail broadband internet access.

272. We also seek comment on whether an approach that provides support for all costs over a pre-determined figure – whatever that dollar figure may be – would provide appropriate incentives for carriers to make efficient expenditures. By providing support for 100 percent of incremental costs to all study areas with costs above the proposed $26 per line per month threshold, what is the incentive on the part of recipients to be efficient as they make new investments in the future?[483] Would a better approach be one that provides a set amount of Connect America support for voice and broadband-capable infrastructure in the study area, potentially with the amount per study area adjusted over time in a manner consistent with the growth in broadband-only subscription rates, rather than a per-line amount?

273. We also seek comment on how the proposal fits within the overall universal service support budget framework. Of the $4.5 billion budget for the Connect America Fund, the Commission concluded that "up to $2 billion," including intercarrier compensation recovery would be available annually in rate-of-return territories.[484] USAC's projected demand for rate-of-return carriers was at an annualized rate of $2.014 billion in 2013, with actual disbursements of $1.958 billion.[485] According to

[481] *See* 47 C.F.R §§ 36.602(b), 36.611, and 36.631.

[482] *USF/ICC Transformation Order*, 26 FCC Rcd at 17728, para. 167.

[483] It appears that the vast majority of study areas would be eligible for more support per line under the stand-alone broadband proposal than under current rules, even assuming constant costs. Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al. (filed Mar. 31, 2014). In fact, if all lines converted to stand-alone broadband with no change in the underlying costs of those lines, total support under the stand-alone broadband proposal would be 42 percent higher than the forecast sum of ICLS and HCLS for 2014. *Id.* at Attach. While we do not expect all lines would convert to stand-alone broadband quickly, this would represent a substantial increase in the overall size of the Connect America Fund.

[484] *USF/ICC Transformation Order*, 26 FCC Rcd at 17711-12, para. 126. The Commission concluded that if actual program demand exceeded $4.5 billion for any consecutive four quarters, the Bureau would be required to initiate a process to return expenditures to budgeted levels. *Id.* at 17847-48, para. 563.

[485] *See* USAC FCC Quarterly Filings, 2013 First, Second, Third, and Fourth Quarter Appendices, "HC01- High Cost Support Projected by State by Study Area," *available at* http://www.usac.org/about/tools/fcc/filings/ (last visited Apr. 24, 2014) (showing quarterly projections that amount to an annualized projected demand of $2.014 billion); *USAC High-Cost Disbursement Tool*. Disbursements often differ from projected demand and actual support, because disbursements take into account true-ups for past overpayments and underpayments, which are driven in large part by carriers filing corrected data. Disbursements were lower in 2013 than USAC's projections because there were overpayments in 2012 that resulted in downward adjustments to carrier disbursements in early 2013.

(continued...)

NTCA's own projections, its stand-alone broadband proposal would result in support in excess of $2 billion flowing to rate-of-return carriers annually in 2015-2017 under a variety of assumptions.[486]

274. Finally, the NTCA proposal does not appear to have a mechanism to ensure that universal service is not subsidizing new investment occurring in areas served by an unsubsidized competitor. We therefore seek further comment on this issue, and alternative proposals that would better meet our reform objectives.

275. In addition to its proposal concerning support for broadband-only lines, NTCA submitted a plan to establish an annual investment budget for individual rate-of-return carriers called the "Capital Budget Mechanism."[487] NTCA states that this mechanism is intended to promote fiscal responsibility while also providing more predictable and transparent planning for investment in rate-of-return carrier networks.[488] It includes a four-step framework for determining a budget for high-cost supported future investment, as follows: (1) determine current loop investment (i.e., total loop investment for each rate-of-return carrier study area), adjusted for inflation; (2) determine a "future allowable loop investment" for each rate-of-return carrier, based on the replacement of depreciated plant, precluding support to replace plant that is still used and useful; (3) use a trigger to identify alleged inefficiencies, which would enable prospective adjustment to a carrier's future allowable loop investment; and (4) establish an annual budget for each rate-of-return carrier by dividing each carrier's future allowable investment by a period of years to establish budget of supported additional investment each year.[489] One critical shortcoming in the proposal as presented, however, is that there is no concrete plan for how the Commission would implement the trigger that "identifies alleged inefficiencies." Absent specificity on this key point, we are skeptical as to how the proposal could be put in place in the near term. We therefore seek to develop the record on this proposal and invite specific, actionable proposals for defining the relevant triggers. How would it work within the context of the Commission's current rules? How does this proposal fit within the budget for rate-of-return territories?

3. Voluntary Transition of Rate-of-Return Carriers to Incentive Regulation

276. We propose to adopt rules that would allow rate-of-return ETCs to elect to participate in a voluntary, two-phase transition to model-based universal service support, including participation in the Connect America Fund Phase II. We also seek comment on whether rate-of-return carriers should be allowed to transition on a voluntary basis to an alternative rate regulation approach. As an initial matter, we ask parties to address whether the voluntary path to model-based support and the alternative rate regulation approach are linked, or whether they should be considered independent of each other. We propose to adopt a transition framework for voluntary participation in Connect America Phase II for rate-

(Continued from previous page)
Disbursements for the third and fourth quarters of 2013 exceeded $2 billion on an annualized basis ($2.018 billion in the third quarter and $2.023 billion in the fourth quarter).

For purposes of this calculation, we only include the support provided to those carriers that were regulated as rate-of-return at the time of adoption of the *USF/ICC Transformation Order;* we do not include the support for lines that were in price cap territories at the time of that Order, such as the lines of Fremont Telcom Co. that were sold from Fairpoint Communications to Blackfoot Telecommunications Group. In setting the $2 billion budget, the Commission specifically set the budget for rate-of-return *territories*, not rate-of-return *carriers*. *USF/ICC Transformation Order*, 26 FCC Rcd at 17711, para 126.

486 Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al., at Attachs. (Data-Only Broadband Support Impact Analysis) (filed Dec. 16, 2013).

487 *Id.* at 13.

488 *Id*.

489 *Id.*

of-return carriers and seek comment on alternative rate regulation approaches and specific implementation details below.

277. *Background.* The Commission previously has sought comment in this docket on potential reforms that would provide support to rate-of-return carriers under mechanisms other than the current legacy mechanisms.[490] The Bureau sought further to develop the record on facilitating voluntary participation in Phase II of the Connect America Fund in the *May 2013 Public Notice*.[491]

278. ITTA has proposed the most comprehensive plan in the record for such a transition (ITTA Plan).[492] The ITTA Plan calls for, among other things, a voluntary, two-phase transition to a model-based support framework for rate-of-return ETCs.[493] ITTA argues that the plan is designed to provide a viable path for rate-of-return carriers to move to model-based support.[494] Any rate-of-return carrier would be free to participate at any time during either of the two phases of the plan.[495] A participating carrier would also have the discretion to opt-in to model-based support for all of its study areas, or for a subset of its study areas.[496]

279. During the first phase of the ITTA Plan, an electing carrier's ICLS and HCLS would be frozen at current levels (i.e.*,* as of December 31 of the year prior to that carrier's election).[497] Existing service obligations for rate-of-return carriers, such as the requirement to offer broadband service meeting the Commission's current requirements, with actual speeds of at least 4 Mbps downstream and 1 Mbps upstream "upon reasonable request" would remain in effect.[498]

280. The second phase of the ITTA Plan for universal service support would begin after a rate-of-return carrier-specific support model is defined and established.[499] According to ITTA, rate-of-return carriers that accept support under this model would assume the same service and public interest obligations as price cap carriers receiving Connect America Phase II model-based support.[500] Model-

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[490] *See Further Inquiry Into Certain Issues in the Universal Service Intercarrier Compensation Transformation Proceeding*, WC Docket No. 10-90 et al., Public Notice, 26 FCC Rcd 11112 (Wireline Comp. Bur. 2011); *see also Connect America Fund et al.,* WC Docket No. 10-90 et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4690-92, paras. 448-56 (2011).

[491] *See May 2013 Public Notice*, 28 FCC Rcd at 7205-08, paras. 8-19.

[492] *See* ITTA Feb. 27, 2014 Ex Parte.

[493] *See id.*

[494] *Id.* at 2.

[495] *Id*. Attach. at 1

[496] *Id*.

[497] *Id*. Attach. at 2. According to the plan, Safety Net Additive support would not be frozen. Furthermore, the level of frozen ICLS and HCLS would not change for any rate-of-return company electing to engage in study area consolidation or any company subject to merger, acquisition or other change in ownership. *Id.*

[498] *Id.*; *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17674, para. 126.

[499] ITTA Feb. 27, 2014 Ex Parte Attach. at 3.

[500] *Id.* Under the existing rules, price cap carriers accepting model-based support must deploy broadband-capable infrastructure providing speeds to all locations in funded areas of at least 4 Mbps/1 Mbps, and must provide speeds of 6 Mbps downstream and 1 Mbps upstream to a subset of locations as specified by the Bureau. As discussed above, they must also offer an initial minimum usage allowance of 100 GB per month, and the service meeting these criteria must be offered at a rate that is reasonably comparable to comparable fixed wireline service in urban areas. In this FNPRM, we propose to increase the downstream speed to 10 Mbps for all recipients of Phase II support. *See supra* Section VIII.A.

based support would be made available for ten years to participating rate-of-return carriers. For those rate-of-return carriers choosing to participate in the second phase after it becomes operational, model-based support would be made available to such carriers for the remainder of the ten-year timeframe left for carriers who elected to participate at the beginning of the second phase.[501]

281. The ITTA Plan proposes that rate-of-return carriers that decline support for certain study areas would be relieved of ETC status and obligations in those study areas where support is declined.[502] Those study areas would then be opened up to a competitive bidding process similar to that used in areas where price cap carriers decline Connect America Phase II support.[503] To the extent that the Phase II funding made available for a study area in the second phase is lower than frozen support, ITTA proposes that support would be transitioned down to the level determined appropriate by the rate-of-return-specific model over a five-year period.[504]

282. The ITTA Plan proposes an alternative rate regulation approach for rate-of-return carrier intercarrier compensation (ICC), special access, and broadband internet access services. Carriers could elect participation in the proposed alternative rate regulation plan at any time by study area. Electing carriers would continue to implement ICC rate reductions pursuant to the timeline adopted in the *USF/ICC Transformation Order* for rate-of-return carriers and, if eligible, would continue to charge an Access Recovery Charge and receive CAF-ICC support. Electing carriers choosing to participate in the NECA pool for special access services would move to an alternative rate regulation approach for special access cost determination employing principles taken from the average schedule process and settle with the pool based on the interstate special access revenue requirement established by the retention ratio.[505] Electing carriers with company-specific special access tariffs would use their most recent tariff filing data to initialize their rates and be allowed to "adjust their tariffs on a going-forward basis to take into account evolving circumstances."[506] The ITTA Plan does not describe the alternative rate regulation that would govern non-pooled special access services beyond saying that it would be a "price cap-like structure." ITTA also does not indicate how common line rates of electing carriers would be affected going forward and whether such services would be subject to rate-of-return or an alternative regulatory mechanism. Finally, electing carriers that offer the transmission component of their broadband Internet access service as a Title II of the Act regulated service would have the option to elect to have that transmission component deregulated upon electing to participate in the ITTA Plan.

283. *Discussion*. We propose to adopt a transition framework for a voluntary election by rate-of-return carriers to receive model-based support. We tentatively conclude that such a framework could achieve important universal service benefits, creating a framework that creates incentives for deployment

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[501] ITTA Feb. 27, 2014 Ex Parte Attach. at 1.

[502] *Id.* Attach. at 3.

[503] *Id*.

[504] *Id*.

[505] ITTA states that a "study area specific 'retention ratio' formula would be calculated individually for each participating company using the interstate special access revenue requirement and revenues from the calendar year prior to electing participation in the Plan." Letter from Genevieve Morelli, President, ITTA, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Mar. 21, 2014) (in reference to ex parte meeting with staff of Commissioner Clyburn and staff of Commissioner Rosenworcel). ITTA states that this approach is similar in concept to the existing average schedule mechanism. The retention ratio is equal to a carrier's special access costs divided by its special access revenues. The retention ratio presumably would be multiplied by a carrier's special access revenues for a period to determine its special access costs for that period. The special access costs so determined would be the amount of the carrier's settlement from the NECA traffic-sensitive pool.

[506] Letter from Genevieve Morelli, President, ITTA, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at 2 (filed Mar. 21, 2014) (in reference to ex parte meeting with Bureau staff).

of voice and broadband-capable infrastructure. We seek comment on how to implement such a framework in a way that furthers these important public policy objectives, while ensuring that we also meet our statutory directives under sections 201(b) and 202 of the Act. We also ask commenters to address specifically how other proposals in this FNPRM, if adopted, would affect the ITTA Plan and incentives for rate-of-return carriers to voluntarily move to model-based support.

284. *Time Frame for Implementation*. The ITTA Plan does not appear on its face to contemplate a specific time frame in which rate-of-return carriers would elect to participate in the voluntary plan. Should we allow rate-of-return carriers to transition in any year for the remaining years of the model-based support, or should we only open a window for such transitions, i.e., allowing carriers to elect to transition in 2015 only? Under either approach, we specifically propose that an electing carrier's ICLS and HCLS would be frozen at the amount received for a given study area as of December 31 of the year prior to the election. We seek comment on this proposal.

285. Should we adopt a specific deadline for rate-of-return carriers to elect this voluntary path to receive model-based support? For instance, should carriers be required to elect this path within 120 days of the Bureau adopting revisions to the Connect America Cost Model for use in determining support for rate-of-return carriers electing to receive model-based support? Put another way, should we prohibit carriers from voluntarily transitioning to model-based support if they do not do so within a Commission-defined window? To the extent parties argue a longer time period to make the election is necessary, they should specify what time frame would be appropriate.

286. *Impact on HCLS Cap*. Consistent with the approach taken when the Commission transitioned price cap carriers and their rate-of-return affiliates to Connect America Phase I, we propose to rebase the high-cost loop cap to deduct the HCLS that electing rate-of-return carriers would have received in the year after their election, had they not made the voluntary election to transition to the Connect America Fund. Specifically we propose to direct NECA to submit a revised 2015 HCLS cap within 30 days of any deadline for the election by a rate-of-return carrier to pursue this voluntary path to model-based support, and to make similar adjustments in subsequent years to the extent we permit carriers to make elections to pursue this voluntary path to model-based support after 2015. We seek comment on this proposal.

287. *State-level Election*. The ITTA Plan proposes to allow participating rate-of-return carriers to make an election on a study area-by-study area basis. We propose instead that participating carriers be required to make a state-level election to receive model-based support, comparable to what is required of price cap carriers. Such an approach would prevent rate-of-return carriers from cherry picking the most attractive areas in their study areas, potentially those areas where model-support is greater than legacy support, leaving the least desirable areas for a competitive process.[507] We seek comment on this proposal. Would requiring a state-level commitment have a material impact on the incentives of rate-of-return carriers to participate in this voluntary plan? If the Commission were to adopt an approach, as proposed above, that would provide greater flexibility to Phase II participants regarding how they may meet their deployment obligations in funded areas,[508] would that create a greater incentive for rate-of-return carriers to voluntarily elect to receive model-based support?

288. *Transition to Model-Based Support*. The ITTA Plan proposes that carriers for whom frozen support is more than model-based support would transition to the lower model-based amount over a five-year period. Above, we adopted a four-year transition for price cap carriers for whom model-based support is lower in a given state. We propose a similar approach for rate-of-return carriers that

[507] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17730, para. 173.

[508] *See supra* Section VIII.B (proposing that Phase II funding recipients have the option to deploy to some number of unserved locations within partially served census blocks in lieu of deploying to an equal number of locations in otherwise eligible census blocks).

voluntarily elect to receive model-based support. In particular, in the first year, the carrier would receive, in addition to its Phase II support, 75 percent of the difference between the annualized amount of Connect America Phase II support that it accepted and the amount of its frozen high-cost support; in the second year, it would receive 50 percent of the difference; in third year, it would receive 25 percent of the difference; and then in the fourth year, it would receive model-based support. We seek comment on this proposal. Would adopting a four-year transition, rather than a five-year transition as proposed by ITTA, have a material impact on the incentives of rate-of-return carriers to participate in this voluntary plan?

289. *Impact on Budget*. In the *USF/ICC Transformation Order*, the Commission adopted a $1.8 billion budget for price cap territories, and a $2 billion budget for rate-of-return territories.[509] How would implementation of a voluntary plan for rate-of-return carriers to elect to receive model-based support impact rate-of-return carriers that do not participate in the voluntary plan, given the overall high-cost fund budget and the budget for rate-of-return areas in particular? Specifically, to the extent there are incentives for rate-of-return carriers to opt voluntarily into this plan only if model-based support is the same or greater than their current support under legacy mechanisms, would the net effect be to squeeze the remaining budget for rate-of-return territories that are served by rate-of-return carriers that do not opt into the plan? Are there any adjustments to the ITTA Plan or the Commission's proposal that could reduce any such squeeze? How would implementation of this plan meet the overall statutory principle of providing predictable and sufficient support and other statutory criteria such as the framework of section 214(e)? How could the Commission maintain the overall budget within a voluntary framework, with no way to determine how many carriers may elect to participate? Would one option be to allocate some defined amount from the existing broadband reserve account to the extent the voluntary election of certain carriers in rate-of-return territories to receive model-based support results in the overall support level for rate-of-return territories exceeding the budgeted amount of $2 billion? Do commenters recommend any other adjustments to the ITTA Plan to minimize concerns about the budget or how it is allocated among rate-of-return carriers?

290. *Adjustments to the Model*. In the Declaratory Ruling above, we directed the Bureau to incorporate the results of the study area boundary data collection in the Connect America Cost Model and to make such other adjustments as appropriate for use of that model in rate-of-return territories. Here, we ask commenters to address what specific changes should be implemented in the model before using it to calculate the offer of model-based support for rate-of-return carriers that voluntarily elect to receive model-based support.[510]

291. The ITTA Plan also suggests that a competitive bidding process be designed for rate-of-return areas where support is declined under the second phase of the proposal.[511] What timeframe would be realistic to assume for further model development, and how would that affect the overall timing of implementation of the ITTA proposal? What are the advantages and disadvantages of holding the competitive bidding process for areas not elected by the rate-of-return carriers at a date subsequent to the Phase II competitive bidding process that will occur after the offer of model-based support to price cap carriers?

292. *Cost determination for special access services under the ITTA Plan.* Rate-of-return carriers determine their interstate revenue requirement by allocating the costs assigned to the interstate

[509] *USF/ICC Transformation Order*, 26 FCC Rcd at 17711, para. 126.

[510] A number of parties have provided suggestions on how the model might be used for rate-of-return carriers that voluntarily elect to receive model-based support. *See, e.g.*, Comments of the Nebraska Rural Independent Companies, WC Docket No. 10-90 (filed June 17, 2013); Comments of NTCA, WC Docket No. 10-90 (filed June 17, 2013).

[511] ITTA Feb. 27, 2014 Ex Parte Attach. at 3.

jurisdiction by the separations procedures contained in Part 36 of the Commission's rules[512] among the various access categories, one of which is special access, in accordance with the investment and expense allocation rules contained in Part 69 of the Commission's rules.[513] As noted above, under the ITTA Plan, a rate-of-return carrier filing its own special access tariff would use the preceding year's special access data to initialize its costs and/or rates for participating in an alternative rate regulation plan. Parties should explain the scope and nature of any adjustments that would be allowed to take into account "evolving circumstances." While a retention ratio would produce a dollar amount reflective of the year for which the calculation was made, the ITTA Plan does not explain how the retention ratio would be used going forward. Would it be a fixed percentage, or would it be adjusted each year to reflect special access growth, special access rate changes, or other factors? Parties should address how this approach could be implemented going forward, as well as identifying other approaches that could be considered in an alternative regulatory framework for rate-of-return carriers. Parties should address how the proposed ITTA Plan would produce projections of costs and/or rates that would remain reasonable over time, and propose specific measures to ensure that it meets the Commission's overall objectives.

293. The ITTA Plan allows carriers to elect participation by study area and to choose when to enter an alternative rate regulation plan. With this flexibility, the sensitivity of the retention ratio, or other costing determinant, to year-to-year differences could create the ability for carriers to time their election to maximize their retention ratio, or their cost base, to their benefit. Above we propose to require electing carriers to make a state-level election to receive model-based support. Would that lessen the incentive of participants to time strategically their elections to maximize their retention ratios or their cost base? Parties should comment on the sensitivity of any alternative costing measure and on means by which any gaming opportunities can be minimized. Parties should also address the need for any special conditions to check the ability of affiliated carriers to shift costs between study areas electing an alternative regulation plan and those that do not.

294. *Pricing for special access services under the ITTA Plan.* The costs determined pursuant to an alternative rate regulation plan must be translated into special access rates. A single retention ratio produces overall special access costs, but does not address the allocation of those costs among special access services. Parties should address what rules or principles should govern the development of special access rates, whether individually or within the NECA pool, to ensure that they are just and reasonable and not unjustly discriminatory pursuant to sections 201(b) and 202 of the Act, respectively.[514] In particular, parties should address the degree of flexibility to adjust rates carriers electing an alternative rate regulation plan should be allowed. Are there specific mechanisms that could or should be built into the cost determination process that could facilitate the development of special access rates? Parties should consider whether the proposed rules or principles would produce different incentives depending on whether the carrier participates in the NECA traffic-sensitive pool or tariffs its own special access rates.

295. *NECA pooling issues.* The ITTA Plan would allow electing carriers to participate in the NECA traffic-sensitive pool. In light of the questions asked concerning the costing and pricing of special access services, we invite parties to address the feasibility of pooling both carriers electing an alternative regulation plan and those remaining under traditional rate-of-return regulation within a single pool. What changes, if any, would need to be made to the pooling procedures to ensure that both groups of carriers were treated equitably? Parties should address how earning variations within the pool should be handled, whether pool entry and exit rules would need to be modified, and if there would be any effect on the banding processes that NECA uses to establish special access rates. Any party proposing that a carrier

[512] 47 C.F.R. pt. 36.

[513] *See generally* 47 C.F.R. pt. 69.

[514] 47 U.S.C. §§ 201(b), 202.

electing an alternative rate regulation plan should have additional flexibility to adjust rates should explain how that would be handled in the pooling process.

296. *Broadband internet access service deregulation.* Rate-of-return carriers today offer the transmission component of their broadband Internet access service as a Title II regulated service. The ITTA Plan proposes that rate-of-return carriers would have the option to elect to offer the transmission component of their broadband Internet access service on a deregulated Title I basis upon electing to participate in the ITTA Plan. What impact would this aspect of the proposal have on achievement of the Commission's goals?

297. *Switched access services*. The ITTA Plan proposes to continue the switched access transition and associated recovery mechanism for rate-of-return carriers unchanged. We ask parties to comment on whether there are changes that should be made to the switched access transition process or recovery mechanism if changes similar to those proposed for common line or special access in the ITTA Plan were to be adopted. For example, should the five percent annual reduction in Base Period Revenue be accelerated, or should the CAF-ICC recovery of rate-of-return carriers be subjected to a phase-out at some point similar to that applicable to price cap carriers? To the extent parties disagree, they should identify the public interest rationale and specify the timing and amount of any such changes that they believe should be implemented.

298. *Other ratemaking issues.* We request ITTA and other parties to clarify how an alternative rate regulation plan would adjust, if at all, the rates for common line rate elements going forward. We also invite parties to comment on whether, if cost savings are achieved as a result of any changes adopted, a portion of such savings should be used to reduce access rates. Parties believing that such savings should be used to reduce access rates should identify the portion of any savings that should be used to reduce rates, as well as how the savings should be allocated among the various access services. We also invite parties to comment on the regulatory treatment if an electing rate-of-return carrier in the future becomes affiliated with a price cap carrier. We note that the price cap rules require acquired entities to convert to price cap regulation within one year.[515]

299. Finally, how would adoption of some variant of the ITTA Plan further the Commission's goals? In the *USF/ICC Transformation Order*, the Commission adopted a framework to provide ongoing support to areas served by price cap and rate-of-return carriers in order to, among other things, "ensure universal availability of modern networks capable of providing voice and broadband service . . . [and] minimize the universal service contribution burden on consumers and businesses."[516] How could this proposal, or one similar to it, further these and other important Commission goals?

4. Support for Middle Mile for Rate-of-Return Carriers

300. In this section, we seek comment on potential measures to provide support for middle mile for rate-of-return carriers, recognizing that the cost of backhaul is an important component of the ability of such providers to offer broadband services to their customers at rates that are reasonably comparable to similar offerings in urban areas. We propose to focus initially on supporting middle mile infrastructure on Tribal lands. We also invite longer term proposals for supporting middle mile connectivity in territories served by rate-of-return carriers.

301. *Background*. ARC has argued that the Commission should dedicate $25 million of support annually "for at least five years to construct middle mile infrastructure in Alaska."[517] They also

[515] 47 C.F.R. § 61.41(c)(2).

[516] *USF/ICC Transformation Order,* 26 FCC Rcd at 17672, para. 17.

[517] Comments of the Alaska Rural Coalition, WC Docket No. 10-90, at 9 (filed Feb. 19, 2013) (ARC Feb. 19, 2013 Comments).

request $10 million in annual support to purchase access to existing middle mile infrastructure, arguing that dedicated funding is necessary for parity in Alaska.[518] ARC further suggests that such projects could be made available "at cost-based rates or on a non-discriminatory basis" or could be used to extend projects that are already underway.[519] ARC further supports efforts to increase support for middle mile access through a benchmark related to the "ratio of terrestrial backhaul cost to overall carrier expenses or revenue becomes cost prohibitive."[520]

302. *Discussion*. We propose measures to address the challenges of extending middle mile projects on Tribal lands, including remote areas in Alaska. We seek comment on the ARC proposal and seek data on the availability of middle mile infrastructure more generally on Tribal lands, as well as the benefits and the costs of providing support for these types of infrastructure projects.[521] We encourage commenters to provide factual information to support any projections placed in the record.

303. As an initial step, we propose to award $10 million in one-time support for new middle mile construction in 2015 on Tribal lands. Depending on lessons learned, this approach then could be expanded further in subsequent years to address middle mile challenges facing rate-of-return carriers more generally.[522]

304. We propose to award the $10 million support for middle mile projects on Tribal lands pursuant to our existing rules for competitive bidding processes codified in Subpart AA of Part 1. Under such a competitive bidding process, we would solicit proposals for middle mile projects designed to expand voice and broadband coverage to the greatest number of unserved locations on Tribal lands.[523] We propose to award funds through a single round bidding process to those applicants proposing to bring new terrestrial broadband service to the greatest number of locations for a specified amount of funding. We seek comment on this proposal and alternatives.

305. We encourage multi-stakeholder partnerships in the creation of competitive proposals. We are particularly interested in proposals that would encourage contributions from state and Tribal governments or entities. Should we award a bidding credit to the extent there is an explicit commitment of matching funds from state or Tribal government or related entities? The Commission could, for instance, provide a 50 percent bidding credit to the extent state or Tribal entities provided matching funds dollar for dollar. Should the same bidding credit be available to applicants that can leverage other sources of funding for the project, such as funding from other federal agencies?

306. We seek comment on whether support for the expansion of current middle mile construction projects would be appropriate.[524] We propose not to fund any terrestrial middle mile in areas that already have terrestrial middle mile, whether fiber or microwave-based. To prevent waste, fraud, and

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518 *Id.* at 9-10.

519 *Id.* at 11.

520 *Id.* at 12-13.

521 The TERRA-SW middle mile project in Alaska had a budget of $88 million, $44 million of which was from a Rural Utilities Service Broadband Technology Opportunities Program (BTOP) grant. *See* United States Department of Agriculture, About the Recovery Act Broadband Initiatives Program, http://www.rurdev.usda.gov/utp_bip.html (last visited Apr. 25, 2014). The project has been built in the southwest corner of the state, and has built out 400 miles of fiber optic cable and 13 new microwave towers that connect a number of communities.

522 *See supra* Section IV.

523 We note that because voice telephony service is the supported service, service providers receiving funding for the middle mile projects must offer voice services. *USF/ICC Transformation Order*, 26 FCC Rcd at 17692, para. 77. *See also* 47 U.S.C. § 254(c)(1).

524 ARC Feb. 19, 2013 Comments at 11.

abuse, how do we ensure that the funding proposed in this *FNPRM* is not used to overbuild existing middle mile facilities? What lessons can be learned from BTOP to inform our decision regarding the award of funding for middle mile infrastructure?

307. We seek comment on ARC's suggestion that the Commission should adopt some mechanism to ensure that recipients of middle mile funding should be required, as a condition of that funding, to provide access to that middle mile connectivity at a reasonable rate.[525] For example, while allowing recipients of funding to enter into individually negotiated arrangements with other providers, should they be required to charge rates for middle mile connectivity that are no higher than rates for comparable connectivity in urban areas of the state? Should they be precluded from charging rates that are higher than the discounted rates available to recipients of funding under the E-rate or rural health care programs?[526]

308. To avoid waste, fraud, and abuse, we seek further comment on what reporting requirements we should require to ensure that middle mile infrastructure projects are financially viable and can be timely completed. We propose that any applicant certify to its financial and technical capability to build out such infrastructure. We propose the winning bidders be subject to a default payment in an amount equal to 20 percent of the defaulted bid, pursuant to section 1.21004 of our current competitive bidding rules.[527] We also seek comment on oversight measures that will ensure that USAC has sufficient information to oversee project deployment and completion.

K. Accountability and Oversight

309. In the *USF/ICC Transformation Order*, the Commission adopted several reforms to harmonize and update annual ETC requirements by establishing a "uniform national framework for accountability" that replaced the various data and certification filing deadlines that carriers were required to meet previously.[528] The Commission concluded that such an accountability framework is "critical to ensure appropriate use of high-cost support and to allow the Commission to determine whether it is achieving its goals efficiently and effectively."[529] Among other things, the new framework incorporates annual unified reporting and certification procedures.[530]

310. Here, we seek comment on issues related to this framework that are applicable to all Connect America Fund recipients that are required to offer broadband service as a condition of receiving high-cost support. These recipients include price cap carriers accepting the state-level commitment in exchange for model-based support, recipients of the Phase II competitive bidding process, and rate-of-return carriers that receive high-cost loop support, interstate common line support, or CAF-ICC support.[531] We first seek comment on codifying a broadband reasonable comparability certification requirement for all ETCs receiving Connect America support. We also seek comment on modifying the

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[525] *See* Letter from Shannon M. Heim, Counsel to ARC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at 2 (filed Apr. 11, 2014).

[526] A simple example illustrates the point: if the non-discounted rate for middle mile connectivity to schools, libraries, or rural health care providers is $1,000 per month, but the discounted rate provided to E-rate and rural health care recipients is $200 month, a recipient of middle mile funding under this proposal could not charge other providers more than $200 per month for that middle mile connectivity supported through the Connect America Fund.

[527] 47 C.F.R. § 1.21004.

[528] *USF/ICC Transformation Order*, 26 FCC Rcd at 17850, para. 573.

[529] *Id.*

[530] *See, e.g.*, 47 C.F.R. §§ 54.313, 54.314.

[531] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17695, 17740, paras. 86, 206.

reduction in support for late-filed section 54.313 and 54.314 reports and certifications.[532] Finally, we seek comment on the consequences we should impose if ETCs do not meet the Commission's service obligations for voice or broadband service.

1. Reasonably Comparable Rates Certification for Broadband

311. *Background.* In the *USF/ICC Transformation Order*, the Commission required that as a condition of receiving Connect America Fund support, recipients must offer voice and broadband services in supported areas at rates that are reasonably comparable to offerings of comparable services in urban areas.[533] While the Commission codified a reasonable comparability certification requirement for voice services to ensure this obligation is being met by Connect America recipients,[534] it did not codify a similar requirement for broadband services.

312. In the *Phase II Service Obligations Order*, the Bureau concluded that price cap carriers that accept the Phase II state-level commitment may demonstrate that their rates for voice and broadband services conform to the reasonable comparability requirement by certifying that the rates they offer are at or below the reasonable comparability benchmarks set by the urban rate survey.[535] Alternatively, the Bureau held that if a price cap carrier certifies that it offers fixed services meeting the voice and broadband service obligations for the same or lower prices in rural areas as its fixed wireline services in urban areas, then that carrier's rates will be presumed reasonably comparable.[536]

313. *Discussion.* We propose to codify a broadband reasonable comparability certification requirement that will apply generally to all ETCs that are required to offer broadband service as a condition of receiving ongoing high-cost Connect America Fund support in areas served by price cap and rate-of-return carriers.[537] We propose to amend section 54.313(a) to include a new section 12 requiring recipients to submit in their annual section 54.313 report (FCC Form 481):

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[532] 47 C.F.R. §§ 54.313, 54.314.

[533] *USF/ICC Transformation Order*, 26 FCC Rcd at 17693, 17695, paras. 81, 86. *See also* 47 U.S.C. § 254(b). Recipients are also required to submit with their annual pricing data both for their voice and broadband offerings. 47 C.F.R. § 54.313(a)(7); *USF/ICC Transformation Order*, 26 FCC Rcd at 17856, para. 594.

[534] Recipients of Connect America support must demonstrate compliance with the reasonable comparability requirement by submitting a letter certifying that their voice services are no more than two standard deviations above the applicable national average urban rate for voice service. 47 C.F.R. § 54.313(a)(10); *USF/ICC Transformation Order*, 26 FCC Rcd at 17855, para. 592. The Bureau recently announced that the 2014 reasonable comparability benchmark for voice services is $46.96. *Rate Survey Results Public Notice*, 29 FCC Rcd 2967.

[535] *Phase II Service Obligations Order*, 28 FCC Rcd at 15063, para. 7. The Bureau is still analyzing the broadband data collected in the urban rate survey and has not yet announced the reasonable comparability benchmark for broadband services.

[536] *Id.* at para. 8. The rates in the Phase II funded areas must have substantially similar terms and conditions in both urban and rural areas, and the basis for comparison must be the lowest cost non-promotional rate for an urban service offering that meets or exceeds each dimension of the service obligations adopted in the *Phase II Service Obligations Order*. *Id.* at 15063-64, paras. 8-9. The presumption can be overcome in "extreme circumstances," meaning that "evidence strongly suggests" that the urban rate plan that the price cap carrier is relying on for comparison purposes is one that has few subscribers or if the urban rate plan is only being offered in a "very small portion" of an urban area. *Id.* at 15064, para. 11. An urban area is defined as any "urban area" or "urban cluster" that sits within a Metropolitan Statistical Area, as defined by the Census Bureau. *Id.* at para. 12.

[537] The Commission sought comment on whether mobile services present features that make a different certification requirement appropriate or if recipients of ongoing Mobility Fund II support should be subject to the same requirement as recipients of other ongoing high-cost support. *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18076, paras. 1149-51.

a letter certifying that the pricing of the company's broadband services is no more than the applicable benchmark as specified in a public notice issued by the Wireline Competition Bureau, or is no more than the non-promotional prices charged for comparable fixed wireline services in urban areas.

314. Recognizing that ETCs receiving Connect America Fund support are free to offer a variety of broadband service offerings, for purposes of this certification we propose that they would only need to certify that one plan meets the reasonable comparability benchmark specified annually by the Wireline Competition Bureau in a Public Notice in order to make the requisite certification.

315. We seek comment on when we should begin to require Connect America recipients to submit their broadband reasonable comparability certification. Carriers that accept the state-level commitment are required to certify that they are providing broadband service that meets the required public service obligations to 85 percent of their supported locations by the end of the third year of support.[538] However, throughout the five-year term as they increasingly deploy broadband to supported locations and connect customers, we expect that they will offer broadband service that at least meets the Commission's requirements. Similarly, we expect that while the Commission will impose build-out requirements for Phase II competitive bidding recipients, recipients will offer broadband service that at least meets the Commission's requirements throughout their support term. Thus, we propose requiring price cap carriers that accept the state-level commitment and recipients of the Phase II competitive bidding process to submit their first certification with the first annual report they are required to submit after accepting support, and then each year with their annual report thereafter. Under the proposed timeline for the offer of model-based support to price cap carriers, this would mean that price cap carriers accepting model-based support would be required to make their first such certification in the annual report filed on July 1, 2016. We also propose that rate-of-return carriers, which are currently required to provide broadband that meets the Commission's public service obligations upon reasonable request,[539] should submit such a certification. Because rate-of-return carriers are already required to be providing broadband service upon reasonable request as a condition of their support, we propose that they begin to submit such a certification with the first annual report after the requirement has received Paperwork Reduction Act (PRA) approval from the Office of Management and Budget,[540] and then each year with their annual report thereafter.

316. We seek comment on this proposal and whether any adjustments need to be made to either certification requirement to account for differences between price cap carriers and rate-of-return carriers and other potential recipients of funding awarded through the Phase II competitive bidding process.

2. Reduction in Support for Late Filing

317. *Background.* Failure to meet the annual data and certification deadlines imposed by the *USF/ICC Transformation Order* results in reduced support to the ETC based on the length of the delay in certification or data submission,[541] rather than the immediate loss of an entire year's support regardless of when the data or certification is filed. In particular, ETCs that fail to meet these deadlines lose support on a quarterly basis until they make a proper filing.[542] Thus, carriers that file their reports within three months after the deadline will only receive support for the second, third, and fourth quarters of the year,

[538] 47 C.F.R. § 54.313(e)(1).

[539] *USF/ICC Transformation Order*, 26 FCC Rcd at 17740, para. 206.

[540] Paperwork Reduction Act of 1995, Public Law 104-13; s*ee* 44 U.S.C. § 3507(a).

[541] *See* 47 C.F.R. §§ 54.313(j), 54.314(d).

[542] *Id.*

carriers that file their reports in the second quarter after the deadline will only receive support for the third and fourth quarters of the year, carriers that file their reports in the third quarter after the deadline will only receive support for the fourth quarter of the year, and carriers that file their reports in the fourth quarter will lose all support for that year.[543]

318. *Discussion*. In general, deadlines set in Commission rules are strictly enforced,[544] and the new framework adopted in the *USF/ICC Transformation Order* was intended to ensure that the consequences of non-compliance are appropriate rather than unduly harsh. On further consideration, however, we have concerns that the rules adopted may not be appropriately calibrated to meet our objectives. We continue to recognize the importance of ensuring compliance with the reporting deadlines adopted in the *USF/ICC Transformation Order*. USAC, which processes a large amount of data, requires that the data be timely filed so that it can calculate support amounts. But we must also balance these concerns with ensuring that the support reduction we impose on carriers is a proportionate response to their failure to meet deadlines and not unduly punitive given the nature of the non-compliance.[545] We therefore propose to modify the reduction in support for late-filed section 54.313 and 54.314 reports and certifications to better calibrate the reduction of support with the length in delay of the filing.

319. Under the current rules, a carrier that misses a section 54.313 and 54.314 filing deadline by only a few days loses an entire quarter of support.[546] We propose to adopt a rule that would impose a minimum support reduction for any late filing, which would be applied even in those instances when the filing is only a few days late. In particular, we propose that deadlines for filing reports shall be strictly enforced, with a minimum reduction of support in an amount equivalent to seven days of support, and to the extent the deadline is missed by more than seven days, support would be reduced on a pro-rata daily basis equivalent to the period of non-compliance. If we were to adopt these proposed rule changes, a carrier that files a report or certification within 14 days of the deadline would lose 14 days of support, a carrier that files a report or certification two months after a deadline would lose two months of support, and so on. We thus propose to modify section 54.313(j) to read as follows:

> (1) In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this section annually by July 1 of each year. Eligible telecommunications carriers that file their reports after the July 1 deadline shall receive a reduction in support pursuant to the following schedule: (a) Eligible telecommunications carriers that file after the July 1 deadline, but by July 8, will have their support reduced in an amount equivalent to seven days in support; (b) Eligible telecommunications carriers that file on or after July 9 will have their support reduced on a pro-rata daily basis equivalent to the period of non-compliance.

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[543] *Id.*

[544] *See NetworkIP v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

[545] Prior to the *USF/ICC Transformation Order*, the Bureau typically waived high-cost filing deadlines in instances where carriers missed filing deadlines by only a few days and made commitments to revise their internal filing procedures, finding that strict enforcement of the deadlines would "disproportionately penalize" the carriers and could "undermine" the carriers' "investments in [their] network, and thus [their] ability to ensure that customers have and maintain access to adequate services." *See, e.g.*, *NPCR, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 22 FCC Rcd 560, 562-63, paras. 6-9 (Wireline Comp. Bur. 2007). *See also AT&T Communications of NY and AT&T Communications of California Petitions for Waiver of Section 54.802(a) of the Commission's Rules,* CC Docket No. 96-45, Order, 22 FCC Rcd. 953, 955-56, paras. 6-9 (Wireline Comp. Bur. 2006); *Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 16761, 16763-64, paras. 7-10 (Wireline Comp. Bur. 2005).

[546] 47 C.F.R. §§ 54.313(j), 54.314(d).

320. We also propose to modify the rule regarding certifications for use of support, section 54.314(d), to read as follows:

> (1) In order for an eligible telecommunications carrier to receive federal high-cost support, the State or the eligible telecommunications carrier, if not subject to the jurisdiction of a State, must file an annual certification, as described in paragraph (c) of this section, with both the Administrator and the Commission by October 1 of each year. If states or eligible telecommunications carriers file the annual certification after the October 1 deadline, the carriers subject to the certification shall receive a reduction in support pursuant to the following schedule: (a) Eligible telecommunications carriers subject to certifications filed after the October 1 deadline, but by October 8, will have their support reduced in an amount equivalent to seven days in support; (b) Eligible telecommunications carriers subject to certifications filed on or after October 9 will have their support reduced on a pro-rata daily basis equivalent to the period of non-compliance.[547]

321. Recognizing that some ETCs quickly rectify their failure to meet a filing deadline, thereby minimizing the negative impact on the administration of the Connect America Fund, should we also provide a one-time grace period for ETCs that miss the filing deadline by only a few days? We propose that any ETC that misses the deadline but files within three days after the deadline would not receive a reduction in support. But if the ETC filed on the fourth day after the deadline, it would be subject to the seven day minimum support reduction, and then after seven days, its support would be reduced on a pro-rata daily basis equivalent to the period of non-compliance, as described in the prior paragraph. If we were to adopt this proposed one-time grace period, an ETC that files a report or certification within two days of the deadline would not lose support, an ETC that files a report or certification within five days of the deadline would lose seven days of support, and an ETC that files a report or certification within 14 days of the deadline would lose 14 days of support, and so on. We propose only providing this grace period once for a given holding company, regardless of the number of affiliated operating companies that may individually be designated as an ETC. If an ETC misses the deadline a subsequent year, the seven day minimum support reduction would apply even if it files within three days of the deadline. We also propose to apply the grace period at the holding company level, so that a grace period would not be available to another operating company of that holding company that holds the ETC designation to serve a different study area.[548] Finally, we propose that if an ETC (or another ETC with the same holding company) misses the deadline for a second time, it will be responsible for the reduction in support that would have occurred the first year that the deadline was missed if there had been no grace period. For example, if an ETC missed the deadline by two days the first year, it would not lose support due to the grace period. But, if another ETC within the same holding company (or the same ETC) misses the deadline again a subsequent year by eight days, it would be subject to a loss of support for eight days, plus the seven day minimum reduction of support that would have applied to its affiliate ETC the prior year if there had been no grace period, for a reduction in support that totals 15 days.

322. The proposed rule would amend the rule for annual reporting by recipients of high-cost support, section 54.313(j) to add a new subsection (2):

> (2) Grace period. An eligible telecommunications carrier that submits the annual reporting information required by this section after July 1 but before July 5 will not receive a reduction in support if the eligible telecommunications carrier and all other eligible telecommunications carriers owned by the same holding company as the eligible telecommunications carrier have not

[547] We would also retain 47 C.F.R. § 54.314(d)(6), which requires a newly designated ETC or the applicable state to file the certification within 60 days of the effective date of the carrier's designation as an ETC.

[548] ETCs are required to report holding company information pursuant to 47 C.F.R. § 54.313(a)(8).

> missed the July 1 deadline in any prior year. The next time that either the eligible telecommunications carrier that had previously benefitted from the grace period or an eligible telecommunications carrier owned by the same holding company misses the July 1 deadline, that eligible telecommunications carrier will be subject to a reduction of seven days in support in addition to the reduction of support it will receive pursuant to (j)(1) of this section.

323. The proposed rule also would amend the rule for certification regarding use of support, section 54.314(d), to add a new subsection (2):

> (2) Grace period. If an eligible telecommunications carrier or state submits the annual certification required by this section after October 1 but before October 5, the eligible telecommunications carrier subject to the certification will not receive a reduction in support if the eligible telecommunications carrier and all other eligible telecommunications carriers owned by the same holding company as the subject eligible telecommunications carrier have not missed the October 1 deadline in any prior year. The next time that either the eligible telecommunications carrier that had previously benefitted from the grace period or an eligible telecommunications carrier owned by the same holding company misses the October 1 deadline, that eligible telecommunications carrier will be subject to a reduction of seven days in support in addition to the reduction of support it will receive pursuant to (d)(1) of this section.

324. We also propose to cease the practice of providing waivers to parties that commit to implement improved internal controls to ensure compliance in the future as we have done previously. As a practical matter, parties invariably seek waivers of the filing requirements when they miss the deadline and addressing such waiver requests diverts staff from other Commission priorities. While waivers may have been justified in the past when the consequence for failure to meet a deadline was the loss of entire year of support, going forward we do not believe it serves the public interest to absolve an ETC of any consequence when it fails to meet a Commission-mandated requirement merely due to administrative or clerical oversight. All ETCs should have policies and procedures in place to ensure compliance with Commission reporting requirements, and promising to do better in the future should not become a routine basis for grant of a waiver of a filing deadline. We thus seek comment on whether we should revisit our prior findings that good cause for waiver is present when parties commit to implement improved internal controls to ensure compliance in the future. More generally, we seek comment on these proposals to modify our rules and practices regarding filing deadlines and alternatives identified by commenters.

325. We also seek comment on whether we should apply our proposals described above to reduce support for late-filed section 54.313 and 54.314 reports and certifications to recipients of Mobility Fund Phase II support, and if so, whether any of the specific proposals we make today for Mobility Fund Phase II warrant a modification of our approach to reductions of support.

3. Support Reductions for Non-Compliance with Service Obligations

326. *Background.* The Commission has previously held that funds that are disbursed from the high-cost program in violation of a Commission rule that "implements the statute or a substantive program goal" should be recovered from the recipient.[549] It has also held that while sanctions, including enforcement action, are appropriate in cases of waste, fraud and abuse, they are not appropriate in cases of clerical or ministerial errors.[550] In the *USF/ICC Transformation FNPRM*, the Commission sought comment on various alternative remedies in the event a provider fails to comply with Commission rules.[551] The record received in response to the *USF/ICC Transformation FNPRM* is not sufficiently well

[549] *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight et al.*, WC Docket No. 05-195 et al., Report and Order, 22 FCC Rcd 16372, 16386, para. 30 (2007).

[550] *Id.*

[551] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18066-68, paras. 1104-16.

developed on this issue, however, for us to make final decisions at this time. We now seek to develop further the record on possible consequences for failure to satisfy service obligations and related certification requirements.

327. *Discussion*. Providers should face predictable consequences for performance noncompliance. Under existing Commission rules, eligible telecommunications carriers lose a quarter of support in the following calendar year for each quarter they are late in filing their annual reports,[552] while we propose above to adjust the support reduction for late filing to be proportionate to the degree a filing is late. Similarly, here we propose that recipients of high-cost support should face a proportional loss of support, depending on the degree of non-compliance with established standards.

328. One alternative would be to give providers an opportunity to improve performance prior to withholding support in certain circumstances. For example, if there were an audit finding or other determination that a provider failed to meet performance measurements for a certain number of months consecutively (such as two months) or a certain number of months during a one-year period (such as three months), the provider could be required to submit a plan to USAC describing how it will come into compliance within a certain period (such as six months). If a provider does not meet its performance standards during the requisite period, it would then lose a certain percentage of funding (such as five percent) for each month until performance improves. Monitoring would continue throughout this process until the provider had demonstrated compliance with the performance measures for four consecutive months or five months out of a six month period. If performance did not improve within one year, an additional five percent of funding would be lost for each month until the provider consistently meets performance requirements or is no longer receiving high-cost funding. We seek comment on this proposal and alternative options for the mechanics of how it could operate.

329. Another alternative would be to adopt quickly-increasing support reductions to heighten provider incentives to meet performance standards. For example, if there were an audit finding or other determination that a provider failed to meet performance measurements for a certain number of months consecutively (such as two months) or a certain number of months during a one-year period (such as three months), the provider could lose five percent of its funding for each of the next six months. If performance levels were not being met after six months, the provider would lose 25 percent of its funding for each of the next six months.

330. We also seek to develop more fully the record on consequences for failing to meet the Commission's reasonable comparability benchmarks. Under longstanding precedent, the Commission presumes that a voice rate is within a reasonable range if it falls within two standard deviations of the national average. In the *USF/ICC Transformation Order*, the Commission concluded it would "consider rural rates for broadband services to be 'reasonably comparable' to urban rates under section 254(b)(3) if rural rates fall within a reasonable range of urban rates for reasonably comparable broadband service."[553] What should be the appropriate remedy if a recipient of high-cost support is unable to certify that either its voice or broadband services meet the Commission's reasonable comparability benchmarks, or if there is an audit finding or other determination that the provider in fact failed to offer at least one plan meeting the reasonable comparability benchmark? Given that the Commission has concluded that the reasonable comparability benchmark for voice is a presumption, not an absolute mandate, what should be the process for an ETC to rebut that presumption? If the ETC is unable to rebut the presumption, should it face a reduction of support, such as five percent of monthly funding, until the situation is remedied? Should the Commission take other action if ETCs fail to offer service at reasonably comparable rates? Would other support reductions for noncompliance be more effective?

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[552] 47 C.F.R. § 54.313(j).

[553] *USF/ICC Transformation Order*, 26 FCC Rcd at 17708, para. 113.

331. We also seek comment on whether we should apply any of our proposals described above for reducing support for non-compliance with service obligations to recipients of Mobility Fund Phase II support, and whether any of the specific proposals we make today for Mobility Fund Phase II would warrant a modification of our approach to such reductions of support.

IX. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

332. This document contains new information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,[554] we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) in Appendix C, *infra*.

333. The FNPRM contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. In addition, pursuant to the Small Business Paperwork Relief Act, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Congressional Review Act

334. The Commission will send a copy of this Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[555]

C. Final Regulatory Flexibility Analysis

335. The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." Accordingly, we have prepared a FRFA concerning the possible impact of the rule changes contained in the Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, and Seventh Order on Reconsideration on small entities. The FRFA is set forth in Appendix C.

D. Initial Regulatory Flexibility Analysis

336. As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the FNPRM. The analysis is found in Appendix D. We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the FNPRM, and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Report and Order, Declaratory Ruling, Order, Memorandum Opinion and

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[554] Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

[555] *See* 5 U.S.C. § 801(a)(1)(A).

Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

E. Ex Parte Presentations

337. *Permit-But-Disclose*. The proceeding this Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.[556] Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

F. Filing Requirements

338. *Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[557] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[558]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Because more than one docket number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries

[556] 47 C.F.R. §§ 1.1200 *et seq.*

[557] 47 C.F.R. §§ 1.415, 1.419.

[558] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

339. *People with Disabilities*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

340. *Availability of Documents*. Comments, reply comments, and ex parte submissions will be publically available online via ECFS.[559] These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

341. *Additional Information*. For additional information on this proceeding, contact Alexander Minard of the Wireline Competition Bureau, Telecommunications Access Policy Division, Alexander.Minard@fcc.gov, (202) 418-7400, or Suzanne Yelen of the Wireline Competition Bureau, Industry Analysis and Technology Division, Suzanne.Yelen@fcc.gov, (202) 418-7400.

X. ORDERING CLAUSES

342. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 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), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429, that this Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register, except for (1) those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the Federal Register of OMB approval, (2) the waiver of sections 1.1105, 54.318(b), and 54.318(i) of the Commission's rules to the extent described herein which shall become effective upon release pursuant to sections 1.4(b)(2) and 1.103 of the Commission's rules (47 C.F.R. §§ 1.4(b)(2), 1.103), and (3) the elimination of the benchmarking rule, which shall become effective as of the first month following publication of a summary of this order in the Federal Register. It is our intention in adopting these rules that if any of the rules that we retain, modify, or adopt herein, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

343. IT IS FURTHER ORDERED that Parts 36, 54, and 69 of the Commission's rules, 47 C.F.R. Parts 36, 54, and 69, ARE AMENDED as set forth in Appendix A, and such rule amendments SHALL BE EFFECTIVE thirty (30) days after publication of the rules amendments in the Federal Register, except to the extent they contain information collections subject to PRA review. The rules that

[559] Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

contain information collections subject to PRA review SHALL BECOME EFFECTIVE immediately upon announcement in the Federal Register of OMB approval.

344. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 5, 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), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and sections 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, 1.429, NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this Further Notice of Proposed Rulemaking.

345. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Petition for Extension of Time filed by the Eastern Rural Telecom Association, the Independent Telephone & Telecommunications Alliance, the National Exchange Carrier Association, NTCA – The Rural Broadband Association, the United States Telecom Association, and WTA – Advocates for Rural Broadband on March 11, 2014, IS GRANTED IN PART and IS DENIED IN PART to the extent described herein.

346. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g), the Application for Review filed by Alaska Communication Systems on November 26, 2013, IS DENIED.

347. IT IS FURTHER ORDERED that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g), the Application for Review filed by the National Cable and Telecommunications Association on December 23, 2013, IS DISMISSED.

348. 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 section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the Petition for Reconsideration and Clarification filed by the National Exchange Carrier Association, Inc., the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance on December 29, 2011, IS GRANTED IN PART AND DENIED IN PART to the extent described herein.

349. 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 section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the Petition for Reconsideration filed by the United States Telecom Association on December 29, 2011, IS DENIED IN PART to the extent described herein.

350. IT IS FURTHER ORDERED that the petition for waiver of section 36.605 of the Commission's rules, 47 C.F.R. § 36.605, eliminating eligibility of local exchange carriers to receive Safety Net Additive support with respect to qualifying investments made during the year 2010, filed by North Central Telephone Cooperative, Inc. on December 20, 2012, IS DISMISSED as described herein.

351. 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 section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the Petition for Reconsideration filed by the Western Telecommunications Alliance, The Eastern Rural Telecom Association, and the National Exchange Carrier Association on April 18, 2013, is GRANTED to the extent described herein.

352. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 5 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 155(c), 405, and sections 1.115 and 1.429 of the Commission's rules, 47 C.F.R. §§ 1.115, 1.429, the Application for Review filed by Arctic

Slope Telephone Association Cooperative, Inc. and Copper Valley Telephone Cooperative on May 20, 2013 and dated May 18, 2013, is DISMISSED as described herein.

353. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, and 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 405, and sections 1.3 and 1.429 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.429, the petition filed by the National Association of Regulatory Utility Commissioners on April 15, 2014 IS GRANTED IN PART and DENIED IN PART to the extent described herein.

354. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), and sections 1.3,1.4(b)(2), and 1.103 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.4(b)(2), 1.103 on our own motion, section 1.1105 of the Commission's rules, 47 C.F.R. § 1.1105 is WAIVED to the extent described herein effective upon release.

355. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), and sections 1.3, 1.4(b)(2), and 1.103 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.4(b)(2), 1.103, sections 54.318(b) and 54.318(i) of the Commission's rules, 47 C.F.R. §§ 54.318(b), (i) are WAIVED to the extent described herein effective upon release.

356. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

357. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis and the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons discussed in the Report and Order, the Federal Communications Commission amends 47 C.F.R. parts 36, 54, and 69 to read as follows:

PART 54 – UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.302 by revising paragraph (b) to read as follows:

§ 54.302 Monthly per-line limit on universal service support.

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(b) For purposes of this section, universal service support is defined as the sum of the amounts calculated pursuant to §§54.1304 and 54.1310, of this chapter and §§~~54.301,~~ 54.305, and 54.901 through .904. Line counts for purposes of this section shall be as of the most recent line counts reported pursuant to §54.1306(i) of this chapter.

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3. Amend § 54.305 by revising paragraph (d) to read as follows:

§ 54.305 Sale or transfer of exchanges.

*****

(d) Transferred exchanges in study areas operated by rural telephone companies that are subject to the limitations on loop-related universal service support in paragraph (b) of this section may be eligible for a safety valve loop cost expense adjustment based on the difference between the rural incumbent local exchange carrier's index year expense adjustment and subsequent year loop cost expense adjustments for the acquired exchanges. Safety valve loop cost expense adjustments shall only be available to rural incumbent local exchange carriers that, in the absence of restrictions on high-cost loop support in §54.305(b), would qualify for high-cost loop support for the acquired exchanges under §54.1310 of this chapter.

(1) For carriers that buy or acquire telephone exchanges on or after January 10, 2005, from an unaffiliated carrier, the index year expense adjustment for the acquiring carrier's first year of operation shall equal the selling carrier's loop-related expense adjustment for the transferred exchanges for the 12-month period prior to the transfer of the exchanges. At the acquiring carrier's option, the first year of operation for the transferred exchanges, for purposes of calculating safety valve support, shall commence at the beginning of either the first calendar year or the next calendar quarter following the transfer of exchanges. For the first year of operation, a loop cost expense adjustment, using the costs of the acquired exchanges submitted in accordance with §§54.1305 and 54.1306 of this chapter, shall be calculated pursuant to §54.1310 of this chapter and then compared to the index year expense adjustment. Safety

valve support for the first period of operation will then be calculated pursuant to paragraph (d)(3) of this section. The index year expense adjustment for years after the first year of operation shall be determined using cost data for the first year of operation of the transferred exchanges. Such cost data for the first year of operation shall be calculated in accordance with §§54.1305, 54.1306, and 54.1310 of this chapter. For each year, ending on the same calendar quarter as the first year of operation, a loop cost expense adjustment, using the loop costs of the acquired exchanges, shall be submitted and calculated pursuant to §§54.1305, 54.1306, and 54.1310 of this chapter and will be compared to the index year expense adjustment. Safety valve support for the second year of operation and thereafter will then be calculated pursuant to paragraph (d)(3) of this section.

(2) For carriers that bought or acquired exchanges from an unaffiliated carrier before January 10, 2005, and are not subject to the exception in paragraph (c) of this section, the index year expense adjustment for acquired exchange(s) shall be equal to the rural incumbent local exchange carrier's high-cost loop expense adjustment for the acquired exchanges calculated for the carrier's first year of operation of the acquired exchange(s). At the carrier's option, the first year of operation of the transferred exchanges shall commence at the beginning of either the first calendar year or the next calendar quarter following the transfer of exchanges. The index year expense adjustment shall be determined using cost data for the acquired exchange(s) submitted in accordance with §§54.1305 and 54.1306 of this chapter and shall be calculated in accordance with §54.1310 of this chapter. The index year expense adjustment for rural telephone companies that have operated exchanges subject to this section for more than a full year on the effective date of this paragraph shall be based on loop cost data submitted in accordance with §54.1306 of this chapter for the year ending on the nearest calendar quarter following the effective date of this paragraph. For each subsequent year, ending on the same calendar quarter as the index year, a loop cost expense adjustment, using the costs of the acquired exchanges, will be calculated pursuant to §54.1310 of this chapter and will be compared to the index year expense adjustment. Safety valve support is calculated pursuant to paragraph (d)(3) of this section.

(3) Up to fifty (50) percent of any positive difference between the transferred exchanges loop cost expense adjustment and the index year expense adjustment will be designated as the transferred exchange's safety valve loop cost expense adjustment and will be available in addition to the per-line loop-related support transferred from the selling carrier to the acquiring carrier pursuant to §54.305(b). In no event shall a study area's safety valve loop cost expense adjustment exceed the difference between the carrier's study area loop cost expense adjustment calculated pursuant to §54.1310 of this chapter and transferred support amounts available to the acquired exchange(s) under paragraph (b) of this section. Safety valve support shall not transfer with acquired exchanges.
(e) The sum of the safety valve loop cost expense adjustment for all eligible study areas operated by rural telephone companies shall not exceed five (5) percent of the total rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment calculated pursuant to §54.1302 of this chapter. The five (5) percent cap on the safety valve mechanism shall be based on the lesser of the rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment calculated pursuant to §54.1302 of this chapter or the sum of rural incumbent local exchange carrier expense adjustments calculated pursuant to §54.1310 of this chapter. The percentage multiplier used to derive study area safety valve loop cost expense adjustments for rural telephone companies shall be the lesser of fifty (50) percent or a percentage calculated to produce the maximum total safety valve loop cost expense adjustment for all eligible study areas pursuant to this paragraph. The safety valve loop cost expense adjustment of an individual rural incumbent local exchange carrier also may be further reduced as described in paragraph (d)(3) of this section.

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4. Amend § 54.310 by revising paragraphs (a) and (b) and adding paragraphs (e) and (f) to read as follows:

§ 54.310 Connect America Fund for Price Cap Territories – Phase II.

(a) Geographic Areas Eligible for Support. Connect America Phase II support may be made available for census blocks or other areas identified as eligible by public notice, including locations identified by the forward-looking cost model as extremely high-cost. The number of supported locations will be identified for each area eligible for support will be identified by public notice.

(b) Term of Support. Connect America Phase II model-based support shall be provided to price cap carriers that elect to make a state-wide commitment for five years. Connect America Phase II support awarded through a competitive bidding process shall be provided for ten years.

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(e) Provider Eligibility. Any eligible telecommunications carrier is eligible to receive Connect America Phase II support in eligible areas.

(1) An entity may obtain eligible telecommunications carrier designation after public notice of winning bidders in a competitive bidding process for the offer of Phase II Connect America support. An applicant in the competitive bidding process shall certify that it is financially and technically qualified to provide the services supported by Connect America Phase II in order to receive such support.

(2) To the extent an applicant in the competitive bidding process seeks eligible telecommunications carrier designation prior to public notice of winning bidders for Phase II Connect America support, its designation as an eligible telecommunications carrier may be conditional subject to the receipt of Phase II Connect America support.

(f) Transition to Model-Based Support. Eligible telecommunications carriers electing model-based support in states where that support is less than their Phase I frozen support will transition to model-based support as follows: in addition to model-based support, in the first year of Phase II, they will receive 75% of the difference between Phase I frozen support and model-based support; in the second year of Phase II, they will receive 50% of the difference between Phase I frozen support and model-based support; and in the third year of Phase II, they will receive 25% of the difference between Phase I frozen support and model-based support.

5. Amend § 54.313 by revising paragraphs (f)(1) and (i) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

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(f) In addition to the information and certifications in paragraph (a) of this section, any rate-of-return carrier shall provide:

(1) Beginning July 1, 2015. A progress report on its five-year service quality plan pursuant to §54.202(a) that includes the following information:

*****

(i) All reports pursuant to this section shall be filed with the Office of the Secretary of the Commission clearly referencing WC Docket No. 14-58, with the Administrator, and with the relevant state commissions or relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

*****

6. Amend § 54.314 by revising paragraph (c) to read as follows:

§ 54.314 Certification of support for eligible telecommunications carriers.

*****

(c) Certification format.

(1) A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 14-58, and with the Administrator of the high-cost support mechanism, on or before the deadlines set forth in paragraph (d) of this section. If provided by the appropriate regulatory authority for the State, the annual certification must identify which carriers in the State are eligible to receive federal support during the applicable 12–month period, and must certify that those carriers only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. A State may file a supplemental certification for carriers not subject to the State's annual certification. All certificates filed by a State pursuant to this section shall become part of the public record maintained by the Commission.

(2) An eligible telecommunications carrier not subject to the jurisdiction of a State shall file a sworn affidavit executed by a corporate officer attesting that the carrier only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. The affidavit must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 14-58, and with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth in paragraph (d) of this section. All affidavits filed pursuant to this section shall become part of the public record maintained by the Commission.

7. Amend § 54.318 by revising paragraphs (d) and (g) to read as follows:

§ 54.318 High-cost support; limitations on high-cost support.

*****

d) For purposes of this section, high-cost support is defined as the support available pursuant to §54.1310 of this chapter and frozen high-cost support provided to price cap carriers to the extent it is based on support previously provided pursuant to §54.1310 or former high-cost proxy model support ~~§54.309 of this chapter~~.

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(g) Any reductions in high-cost support under this section will not be redistributed to other carriers that receive support pursuant to §54.1310 of this chapter.

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8. Amend Subpart D to add new § 54.319 Elimination of High-Cost Support in Areas with 100 Percent Coverage by an Unsubsidized Competitor.

<u>§ 54.319 Elimination of High-Cost Support in Areas with 100 Percent Coverage by an Unsubsidized Competitor</u>.

(a) Universal service support shall be eliminated in an incumbent local exchange carrier study area where an unsubsidized competitor, or combination of unsubsidized competitors, as defined in section 54.5, offers to 100 percent of residential and business locations in the study area voice and broadband service at speeds of at least 4 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas.

(b) After a determination there is a 100 percent overlap, the incumbent local exchange carrier shall receive the following amount of high-cost support:

(1) In the first year, two-thirds of the lesser of the incumbent's total 2010 high-cost support or $3000 times the number of reported lines as of year-end 2010;

(2) In the second year, one-third of the lesser of the incumbent's total 2010 high-cost support or $3000 times the number of reported lines as of year-end 2010;

(3) In the third year and thereafter, no support shall be paid.

9. Amend § 54.903 by revising paragraphs (a)(1) and (2) to read as follows:

<u>§ 54.903 Obligations of rate-of-return carriers and the Administrator</u>.

(a) To be eligible for Interstate Common Line Support, each rate-of-return carrier shall make the following filings with the Administrator.

(1) Beginning July 31, 2002, each rate-of-return carrier shall submit to the Administrator in accordance with the schedule in §54.1306 of this chapter the number of lines it serves, within each rate-of-return carrier study area~~, by disaggregation zone if disaggregation zones have been established within that study area pursuant to §54.315,~~ showing residential and single-line business line counts and multi-line business line counts separately. For purposes of this report, and for purposes of computing support under this subpart, the residential and single-line business class lines reported include lines assessed the residential and single-line business End User Common Line charge pursuant to §69.104 of this chapter, and the multi-line business class lines reported include lines assessed the multi-line business End User Common Line charge pursuant to §69.104 of this chapter. For purposes of this report, and for purposes of computing support under this subpart, lines served using resale of the rate-of-return local exchange carrier's service pursuant to section 251(c)(4) of the Communications Act of 1934, as amended, shall be considered lines served by the rate-of-return carrier only and must be reported accordingly.

(2) A rate-of-return carrier may submit the information in paragraph (a) of this section in accordance with the schedule in §54.1306 of this chapter, even if it is not required to do so. If a rate-of-return carrier makes a filing under this paragraph, it shall separately indicate any lines that it has acquired from another

carrier that it has not previously reported pursuant to paragraph (a) of this section, identified by customer class and the carrier from which the lines were acquired.

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10. Amend Parts 36 and 54 to move Part 36 Subpart F to Part 54 to create new Part 54 Subpart M:

Subpart M– High Cost Loop Support for Rate-of-Return Carriers

Sec.

<u>§ 54.1301 General</u>.

(a) T~~he term Universal Service Fund in t~~his subpart addresses ~~refers only to the~~ support for loop-related costs included in §54.1308. ~~The term Universal Service in part 54 of this chapter refers to the comprehensive discussion of the Commission's rules implementing section 254 of the Communications Act of 1934, as amended, 47 U.S.C. 254, which addresses universal service support for rural, insular, and high-cost areas, low income consumers, schools and libraries, and health care providers.~~ The expense adjustment calculated pursuant to this subpart M shall be added to interstate expenses and deducted from state expenses after expenses and taxes have been apportioned pursuant to subpart D of Part 36. ~~Beginning January 1, 1998, the expense adjustment calculated pursuant to this subpart will be administered and funded through the new universal service system discussed in part 54 of this chapter.~~ Effective January 1, 2012, this subpart will only apply to incumbent local exchange carriers that are rate-of-return carriers not affiliated, as "affiliated companies" are defined in §32.9000 of this chapter, with price cap local exchange carriers. Rate-of-return carriers and price cap local exchange carriers are defined pursuant to §54.5 and §61.3(~~aa~~bb) of this chapter, respectively.

(b) The expense adjustment will be computed on the basis of data for a preceding calendar year which may be updated at the option of the carrier pursuant to §54.1306(a).

§ 54.1302 Calculation of incumbent local exchange carrier portion of nationwide loop cost expense adjustment for rate-of-return carriers.

(a) ~~Beginning January 1, 2003, the annual amount of the rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment calculated pursuant to this subpart F shall not exceed the amount of the total rural incumbent local exchange carrier loop cost expense adjustment for the immediately preceding calendar year, multiplied times one plus the Rural Growth Factor calculated pursuant to §54.1303. Beginning January 1, 2012, the total annual amount of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall not exceed the expense adjustment calculated for rate-of-return regulated carriers pursuant to this paragraph. Beginning January 1, 2012, rate-of-return local exchange carriers shall not include rate-of-return carriers affiliated with price cap local exchange carriers as set forth in §54.1301(a) of this subpart.~~ Beginning January 1, 2013, and each calendar year thereafter, the total annual amount of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall not exceed the amount for the immediately preceding calendar year, multiplied times one plus the Rural Growth Factor calculated pursuant to §54.1303.

(b) The annual rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall be reduced to reflect the transfer of rural incumbent local exchange carrier access lines that are eligible for expense adjustments pursuant to §54.1310. The reduction shall equal the amount of the §54.1310 expense adjustment available to the transferred access lines at the time of the transfer and shall be effective in the next calendar quarter after the access lines are transferred.

(c) Safety net additive support calculated pursuant to §54.1304, and transferred high-cost support and safety valve support calculated pursuant to §54.305 of this chapter shall not be included in the rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment.

§ 54.1303 Calculation of the rural growth factor.

(a) ~~Until July 30, 2012,~~ The Rural Growth Factor (RGF) is equal to the sum of the annual percentage change in the United States Department of Commerce's Gross Domestic Product – Chained Price Index (GPD-CPI) plus the percentage change in the total number of rural incumbent local exchange carrier working loops during the calendar year preceding the July 31st filing submitted pursuant to §54.1305. The percentage change in total rural incumbent local exchange carrier working loops shall be based upon the difference between the total number of rural incumbent local exchange carrier working loops on December 31 of the calendar year preceding the July 31st filing and the total number of rural incumbent local exchange carrier working loops on December 31 of the second calendar year preceding that filing, both determined by the company's submissions pursuant to §54.1305. Loops acquired by rural incumbent local exchange carriers shall not be included in the RGF calculation.

(b) Beginning July 31, 2012, pursuant to §54.1301(a) of this subpart, the calculation of the Rural Growth Factor shall not include price cap carrier working loops and rate-of-return local exchange carrier working loops of companies that were affiliated with price cap carriers during the calendar year preceding the July 31st filing submitted pursuant to §54.1305.

§ 54.1304 Calculation of safety net additive.

(a) “Safety net additive support.” Only those local exchange carriers that qualified for safety net additive based on 2011 or prior year costs shall be eligible to receive safety net additive pursuant to paragraph (c) of this section. A local exchange carrier ~~qualifying for safety net additive~~ shall not ~~longer~~ receive safety net additive unless the carrier’s realized total growth in Telecommunications Plant in Service (TPIS) was more than 14 percent in 2011 or earlier, pursuant to paragraph (c) of this section. ~~A local exchange carrier qualifying for safety net additive that fails to meet the requirements set forth in the preceding sentence shall receive 50 percent of the safety net additive that it otherwise would have received pursuant to this rule in 2012 and cease to receive safety net additive in 2013 and thereafter.~~

(b) Calculation of safety net additive support for companies that qualified based on 2011 or prior year costs: Safety net additive support is equal to the amount of capped support calculated pursuant to this subpart ~~F~~M in the qualifying year minus the amount of support in the year prior to qualifying for support subtracted from the difference between the uncapped expense adjustment for the study area in the qualifying year minus the uncapped expense adjustment in the year prior to qualifying for support as shown in the following equation: Safety net additive support = (Uncapped support in the qualifying year – Uncapped support in the base year) – (Capped support in the qualifying year – Amount of support received in the base year).

(c) Operation of safety net additive support for companies that qualified based on 2011 or prior year costs:

(1) In any year in which the total carrier loop cost expense adjustment is limited by the provisions of § 54.1302, a rate-of-return incumbent local exchange carrier~~, as set forth in §36.601(a) of this subpart,~~ shall receive safety net additive support as calculated in paragraph (b) of this section, if in any study area, the rural incumbent local exchange carrier realizes growth in end of period ~~Telecommunications Plant in Service (~~TPIS~~)~~, as prescribed in § 32.2001~~of this chapter~~, on a per loop basis, of at least 14 percent more than the study area’s TPIS per loop investment at the end of the prior period.

(2) If paragraph (c)(1) of this section is met, the rural incumbent local exchange carrier must notify the Administrator; failure to properly notify the Administrator of eligibility shall result in disqualification of that study area for safety net additive, requiring the rural incumbent local exchange carrier to again meet the eligibility requirements in paragraph (c)(1) of this section for that study area in a subsequent period.

(3) Upon completion of verification by the Administrator that the study area meets the stated criterion in paragraphs (a), (b), or (c) of this section, the Administrator shall:

(i) Pay to any qualifying rural telephone company~~,~~ safety net additive support for the qualifying study area in accordance with the calculation set forth in paragraph (b) of this section; and

(ii) Continue to pay safety net additive support in any of the four succeeding years in which the total carrier loop expense adjustment is limited by the provisions of §54.1302. Safety net additive support in the succeeding four years shall be the lesser of:

(A) The sum of capped support and the safety net additive support received in the qualifying year; or

(B) The rural telephone company's uncapped support.

~~**Data Collection**~~

§ 54.1305 Submission of information to the National Exchange Carrier Association (NECA).

(a) In order to allow determination of the study areas and wire centers that are entitled to an expense adjustment pursuant to §54.1310, each incumbent local exchange carrier (LEC) must provide the National Exchange Carrier Association (NECA) (established pursuant to part 69 of this chapter) with the information listed for each study area in which such incumbent LEC operates, with the exception of the information listed in paragraph (h) of this section, which must be provided for each study area. ~~and, if applicable, for each wire center, as defined in part 54 of this chapter, and each disaggregation zone as established pursuant to §54.315 of this chapter.~~ This information is to be filed with NECA by July 31st of each year. The information provided pursuant to paragraph (i) of this section must be updated pursuant to §54.1306. Rural telephone companies that acquired exchanges subsequent to May 7, 1997, and incorporated those acquired exchanges into existing study areas shall separately provide the information required by paragraphs (b) through (i) of this section for both the acquired and existing exchanges.

(b) Unseparated, i.e., state and interstate, gross plant investment in Exchange Line Cable and Wire Facilities (C&WF) Subcategory 1.3 and Exchange Line Central Office (CO) Circuit Equipment Category 4.13. This amount shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

(c) Unseparated accumulated depreciation and noncurrent deferred federal income taxes, attributable to Exchange Line C&WF Subcategory 1.3 investment, and Exchange Line CO Circuit Equipment Category 4.13 investment. These amounts shall be calculated as of December 31st of the calendar year preceding each July 31st filing, and shall be stated separately.

(d) Unseparated depreciation expense attributable to Exchange Line C&WF Subcategory 1.3 investment, and Exchange Line CO Circuit Equipment Category 4.13 investment. This amount shall be the actual depreciation expense for the calendar year preceding each July 31st filing.

(e) Unseparated maintenance expense attributable to Exchange Line C&WF Subcategory 1.3 investment and Exchange Line CO Circuit Equipment Category 4.113 investment. This amount shall be the actual repair expense for the calendar year preceding each July 31st filing.

(f) Unseparated corporate operations expenses, operating taxes, and the benefits and rent proportions of operating expenses. The amount for each of these categories of expense shall be the actual amount for that expense for the calendar year preceding each July 31st filing. The amount for each category of expense listed shall be stated separately.

(g) Unseparated gross telecommunications plant investment. This amount shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

(h) Unseparated accumulated depreciation and noncurrent deferred federal income taxes attributable to local unseparated telecommunications plant investment. This amount shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

(i) ~~For incumbent local exchange carriers subject to §54.1301(a) of this subpart, t~~ The number of working loops for each study area. ~~For non-rural telephone companies, the number of working loops for each study area and for each wire center.~~ For universal service support purposes, working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service. These figures shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

§ 54.1306 Updating information submitted to the National Exchange Carrier Association.

(a) Any incumbent local exchange carrier subject to §54.1301(a) of this subpart may update the information submitted to the National Exchange Carrier Association (NECA) on July 31st pursuant to §54.1305 one or more times annually on a rolling year basis according to the schedule. ~~Every non-rural telephone company must update the information submitted to NECA on July 31st pursuant to §54.1305 (i) according to the schedule.~~

(1) Submit data covering the last nine months of the previous calendar year and the first three months of the existing calendar year no later than September 30th of the existing year;

(2) Submit data covering the last six months of the previous calendar year and the first six months of the existing calendar year no later than December 30th of the existing year;

(3) Submit data covering the last three months of the second previous calendar year and the first nine months of the previous calendar year no later than March 30th of the existing year.

(b) [Reserved]

§ 54.1307 Submission of information by the National Exchange Carrier Association.

(a) On October 1 of each year, the National Exchange Carrier Association (NECA) shall file with the Commission and Administrator the information listed below. Information filed with the Commission shall be compiled from information provided to ~~the Association~~ NECA by telephone companies pursuant to §54.1305.

(1) The unseparated loop cost for each study area and a nationwide-average unseparated loop cost.

(2) The annual amount of the high cost expense adjustment for each study area, and the total nationwide amount of the expense adjustment.

(3) The dollar amount and percentage of the increase in the nationwide average unseparated loop cost, as well as the dollar amount and percentage increase for each study area, for the previous 5 years, or the number of years NECA has been receiving this information, whichever is the shorter time period.

(b) [Reserved]

~~**Calculation of Loop Costs for Expense Adjustment**~~

§ 54.1308 Study area total unseparated loop cost.

(a) For the purpose of calculating the expense adjustment, the study area total unseparated loop cost equals the sum of the following:

(1) Return component for net unseparated Exchange Line C&WF subcategory 1.3 investment and Exchange Line CO Circuit Equipment Category 4.13 investment. This amount is calculated by deducting

the accumulated depreciation and noncurrent deferred Federal income taxes attributable to C&WF ~~s~~ Subcategory 1.3 investment and Exchange Line Category 4.13 circuit investment reported pursuant to §54.1305(b) from the gross investment in Exchange Line C&WF ~~s~~ Subcategory 1.3 and CO Category 4.13 reported pursuant to §54.1305(a) to obtain the net unseparated C&WF ~~s~~ Subcategory 1.3 investment, and CO Category 4.13 investment. The net unseparated C&WF ~~s~~ Subcategory 1.3 investment and CO Category 4.13 investment is multiplied by the study area's authorized interstate rate of return.

(2) Depreciation expense attributable to C&WF ~~s~~ Subcategory 1.3 investment, and CO Category 4.13 investment as reported in §54.1305(c).

(3) Maintenance expense attributable to C&WF ~~s~~ Subcategory 1.3 investment, and CO Category 4.13 investment as reported in §54.1305(d).

(4) Corporate Operations Expenses, Operating Taxes and the benefits and rent portions of operating expenses, as reported in §54.1305(e) attributable to investment in C&WF Category 1.3 and COE Category 4.13. This amount is calculated by multiplying the total amount of these expenses and taxes by the ratio of the unseparated gross exchange plant investment in C&WF Category 1.3 and COE Category 4.13, as reported in §54.1305(a), to the unseparated gross telecommunications plant investment, as reported in §54.1305(f). ~~Total Corporate Operations Expense, for purposes of calculating universal service support payments beginning July 1, 2001 and ending December 31, 2011, shall be limited to the lesser of §54.1308 (a)(4)(i) or (ii).~~ Total Corporate Operations Expense for purposes of calculating high-cost loop ~~universal service~~ support payments beginning January 1, 2012 shall be limited to the lesser of §54.1308 (a)(4)(i) or (ii~~i~~).

(i) The actual average monthly per-loop Corporate Operations Expense; or

~~(ii) A monthly per-loop amount computed according to paragraphs (a)(4)(ii)(A), (a)(4)(ii)(B), (a)(4)(ii)(C), and (a)(4)(ii)(D) of this section. To the extent that some carriers' corporate operations expenses are disallowed pursuant to these limitations, the national average unseparated cost per loop shall be adjusted accordingly.~~

~~(A) For study areas with 6,000 or fewer working loops the amount monthly per working loop shall be $33.30853 − (.00246 × the number of working loops), or, $50,000 ÷ the number of working loops, whichever is greater;~~

~~(B) For study areas with more than 6,000 but fewer than 18,006 working loops, the monthly amount per working loop shall be $3.83195 + (88,429.20 ÷ the number of working loops); and~~

~~(C) For study areas with 18,006 or more working loops, the monthly amount per working loop shall be $8.74472.~~

~~(D) Beginning January 1, 2002, the monthly per-loop amount computed according to paragraphs (a)(4)(ii)(A), (a)(4)(ii)(B), and (a)(4)(ii)(C) of this section shall be adjusted each year to reflect the annual percentage change in the United States Department of Commerce's Gross Domestic Product-Chained Price Index (GDP-CPI).~~

~~(5)Study area unseparated loop cost may be limited annually pursuant to a schedule announced by the Wireline Competition Bureau.~~

~~(b) [Reserved]~~

(ii~~i~~) A monthly per-loop amount computed according to paragraphs (a)(4)(ii~~i~~)(A), (a)(4)(ii~~i~~)(B), (a)(4)(ii~~i~~)(C), and (a)(4)(ii~~i~~)(D) of this section. To the extent that some carriers' corporate operations expenses are disallowed pursuant to these limitations, the national average unseparated cost per loop shall be adjusted accordingly.

(A) For study areas with 6,000 or fewer total working loops the amount monthly per working loop shall be $42.337 − (.00328 × the number of total working loops), or, $63,000 / the number of total working loops, whichever is greater;

(B) For study areas with more than 6,000 but fewer than 17,887 total working loops, the monthly amount per working loop shall be $3.007 + (117,990 / the number of total working loops); and

(C) For study areas with 17,887 or more total working loops, the monthly amount per working loop shall be $9.562.

(D) Beginning January 1, 2013, the monthly per-loop amount computed according to paragraphs (a)(4)(ii~~i~~)(A), (a)(4)(ii~~i~~)(B), and (a)(4)(ii~~i~~)(C) of this section shall be adjusted each year to reflect the annual percentage change in the United States Department of Commerce's Gross Domestic Product-Chained Price Index (GDP-CPI).

(b) [Reserved]

§ 54.1309 National and study area average unseparated loop costs.

(a) National Average Unseparated Loop Cost per Working Loop. Except as provided in paragraph (c) of this section, this is equal to the sum of the Loop Costs for each study area in the country as calculated pursuant to §54.1308(a) divided by the sum of the working loops reported in §54.1305(h) for each study area in the country. The national average unseparated loop cost per working loop shall be calculated by the National Exchange Carrier Association. Effective July 1, 2001, the national average unseparated loop cost for purposes of calculating expense adjustments for rural incumbent local exchange carriers, as that term is defined in §54.5 of this chapter, is frozen at $240.00.

(1) The National Average Unseparated Loop Cost per Working Loop shall be recalculated by the National Exchange Carrier Association to reflect the September, December, and March update filings.

(2) Each new nationwide average shall be used in determining the additional interstate expense allocation for companies which made filings by the most recent filing date.

(3) The calculation of a new national average to reflect the update filings shall not affect the amount of the additional interstate expense allocation for companies which did not make an update filing by the most recent filing date.

(b) Study Area Average Unseparated Loop Cost per Working Loop. This is equal to the unseparated loop costs for the study area as calculated pursuant to §54.1308(a) divided by the number of working loops reported in §54.1305(i) for the study area.

(1) If a company elects to, or is required to, update the data which it has filed with the National Exchange Carrier Association as provided in §54.1306(a), the study area average unseparated loop cost

per working loop and the amount of its additional interstate expense allocation shall be recalculated to reflect the updated data.

(2) [Reserved]

(c) The National Average Unseparated Loop Cost per Working Loop shall be the greater of:

(1) The amount calculated pursuant to the method described in paragraph (a) of this section; or

(2) ~~Until June 30, 2001, an amount calculated to produce the maximum total Universal Service Fund allowable pursuant to §54.1301(c). Effective July 1, 2001, for non-rural carriers, an amount calculated to produce the maximum non-rural carrier portion of nationwide loop cost expense adjustment allowable pursuant to §36.602.~~ Effective July 1, 2001, for rural carriers, an amount calculated to produce the maximum rural incumbent local exchange carrier portion of nationwide loop cost expense adjustment allowable pursuant to §54.1302(a).

~~**Calculation of Expense Adjustment – Additional Interstate Expense Allocation**~~

<u>§ 54.1310 Calculation of Expense Adjustment – Additional Interstate Expense Allocation ~~Expense adjustment~~</u>.

(a)-(b) [Reserved]

(c) Beginning January 1, 1988, for study areas reporting 200,000 or fewer working loops pursuant to §54.1305(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (c)(1) through (2) of this section.

(1) Sixty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to §54.1309(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost as calculated pursuant to §54.1309(a) multiplied by the number of working loops reported in §54.1305(h) for the study area; and

(2) Seventy-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to §54.1309(b) in excess of 150 percent of the national average for this cost as calculated pursuant to §54.1309(a) multiplied by the number of working loops reported in §54.1305(h) for the study area.

~~(d) Beginning January 1, 1998, for study areas reporting more than 200,000 working loops pursuant to §54.1305(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (d)(1) through (4) of this section.~~

~~(1) Ten percent of the study area average unseparated loop cost per working loop cost per working loop as calculated pursuant to §54.1309(b) in excess of 115 percent of the national average for this cost but not greater than 160 percent of the national average for this cost as calculated pursuant to §54.1309(a) multiplied by the number of working loops reported in §54.1305(h) for the study area;~~

~~(2) Thirty percent of the study area average unseparated loop cost per working loop as calculated pursuant to §54.1309(b) in excess of 160 percent of the national average for this cost but not greater than 200 percent of the national average for this cost as calculated pursuant to §54.1309(a) multiplied by the number of working loops reported in §54.1305(h) for the study area;~~

~~(3) Sixty percent of the study area average unseparated loop cost per working loop as calculated pursuant to §54.1309(b) in excess of 200 percent of the national average for this cost but not greater than 250 percent of the national average for this cost as calculated pursuant to §54.1309(a) multiplied by the number of working loops reported in §54.1305(h) for the study area; and~~

~~(4) Seventy-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to §54.1309(b) in excess of 250 percent of the national average for this cost as calculated pursuant to §54.1309(a) multiplied by the number of working loops reported in §54.1305(h) for the study area.~~

(d) Beginning April 1, 1989, the expense adjustment calculated pursuant to §54.1310(c) shall be adjusted each year to reflect changes in the amount of high-cost loop support ~~size of the Universal Service Fund~~ resulting from adjustments calculated pursuant to §54.1306(a) made during the previous year. If the resulting amount exceeds the previous year's fund size, the difference will be added to the amount calculated pursuant to §54.1310(c) for the following year. If the adjustments made during the previous year result in a decrease in the size of the funding requirement, the difference will be subtracted from the amount calculated pursuant to §54.1310(c) for the following year.

~~Transitional Expense Adjustment~~

PART 69 – Access Charges

1. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

2. Revise § 69.413 to read as follows:

<u>§ 69.413 High Cost Loop Support Universal service fund expenses</u>.

Beginning April 1, 1989, expenses allocated to the interstate jurisdiction pursuant to §§ 54.1310 and 36.641 shall be assigned to ~~the Carrier Common Line Element until March 31, 1989. Beginning April 1, 1989, such expenses shall be assigned to~~ the Universal Service Fund Element.

APPENDIX B

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 C.F.R. part 54 to read as follows:

PART 54 – Universal Service

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.5 by deleting the term and definition for "Unsubsidized competitor" and inserting the following term and definition immediately beneath "LAN. 'LAN' is a local area network, which is a set of high-speed links connecting devices, generally computers, on a single shared medium, usually on the user's premises."

§ 54.5 Terms and Definitions.

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Qualifying competitor. A "qualifying competitor" is a facilities-based provider of residential terrestrial fixed voice and broadband service. The broadband service provided must satisfy the specifications set forth in § 54.309.

3. Amend § 54.202 to add paragraph (d):

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

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(d) If a state fails to initiate a proceeding on an entity's application for eligible telecommunications carrier designation within 60 calendar days from the date the application is filed, that applicant may presume the state lacks jurisdiction and may file an application for eligible telecommunications carrier designation with the Commission pursuant to section 214(a)(6).

4. Revise § 54.307 to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a) Competitive eligible telecommunications carriers will, beginning January 1, 2012, receive support as described in this paragraph.

(1) *Baseline Support Amount*. Each competitive eligible telecommunication carrier will have a "baseline support amount" equal to its total 2011 support in a given study area, or an amount equal to $3,000 times the number of reported lines for 2011, whichever is lower. Each competitive eligible telecommunications carrier will have a "monthly baseline support amount" equal to its baseline support amount divided by twelve.

(i) "Total 2011 support" is the amount of support disbursed to a competitive eligible telecommunication carrier for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by the Administrator on January 31, 2012.

(ii) For the purpose of calculating the $3,000 per line limit, the average of lines reported by a competitive eligible telecommunication carrier pursuant to line count filings required for December 31, 2010, and December 31, 2011, shall be used. The $3,000 per line limit shall be applied to support amounts determined for each incumbent study area served by the competitive eligible telecommunications carrier.

(2) *Monthly Support Amounts*. Competitive eligible telecommunications carriers shall receive the following support amounts, except as provided in paragraphs (b)(3), (c), and (d) of this section.

(i) From January 1, 2012, to June 30, 2012, each competitive eligible telecommunications carrier shall receive its monthly baseline support amount each month.

(ii) From July 1, 2012 to June 30, 2013, each competitive eligible telecommunications carrier shall receive 80 percent of its monthly baseline support amount each month.

(iii) Beginning July 1, 2013, until a date specified by public notice, each competitive eligible telecommunications carrier shall receive 60 percent of its monthly baseline support amount each month.

(iv) Each competitive eligible telecommunications carrier that is not a winning bidder for Mobility Fund Phase II support shall receive 40 percent of its monthly baseline support amount each month for twelve months, beginning the first month after the month in which a public notice announces winning bidders for Mobility Fund Phase II support, and then 20 percent of its monthly baseline support amount each month for the subsequent twelve months. Thereafter, it shall not receive universal service support pursuant to this section.

(v) If a competitive eligible telecommunications carrier becomes eligible to receive high-cost support pursuant to the Mobility Fund Phase II, it will cease to be eligible for phase-down support in the first month after the month in which its Mobility Fund Phase II support is authorized.

(b) *Delayed Phase Down for Remote Areas in Alaska*. Certain competitive eligible telecommunications carriers serving remote areas in Alaska shall have their support phased down on a later schedule than that described in paragraph (a)(2) of this section.

(1) *Remote Areas in Alaska*. For the purpose of this paragraph, "remote areas in Alaska" includes all of Alaska except;

(i) The ACS-Anchorage incumbent study area;

(ii) The ACS-Juneau incumbent study area;

(iii) The fairbankszone1 disaggregation zone in the ACS-Fairbanks incumbent study area; and

(iv) The Chugiak 1 and 2 and Eagle River 1 and 2 disaggregation zones of the Matanuska Telephone Association incumbent study area.

(2) *Carriers Subject to Delayed Phase Down*. A competitive eligible telecommunications carrier shall be subject to the delayed phase down to the extent that it serves remote areas in Alaska, and it certified that it served covered locations in its September 30, 2011, filing of line counts with the Administrator.

(3) *Interim Support for Remote Areas in Alaska*. From January 1, 2012, until December 31, 2014, competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall continue to receive the support, as calculated by the Administrator, that each competitive telecommunications carrier would have received under the frozen per-line support amount as of December 31, 2011, capped at $3,000 per year, provided that the total amount of support for all such competitive eligible telecommunications carriers shall be capped pursuant to paragraph (b)(3)(i) of this section.

(i) *Cap Amount*. The total amount of support available on an annual basis for competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall be equal to the sum of "total 2011 support," as defined in paragraph (a)(1)(i) of this section, received by all competitive eligible telecommunications carriers subject to the delayed phase down for serving remote areas in Alaska.

(ii) *Reduction Factor*. To effectuate the cap, the Administrator shall apply a reduction factor as necessary to the support that would otherwise be received by all competitive eligible telecommunications carriers serving remote areas in Alaska subject to the delayed phase down. The reduction factor will be calculated by dividing the total amount of support available amount by the total support amount calculated for those carriers in the absence of the cap.

(4) *Baseline for Delayed Phase Down*. Beginning January 1, 2015, each competitive eligible telecommunications carrier subject to the delayed phase down shall receive the annualized monthly support amount it received for December 2014. Competitive eligible telecommunications carriers subject to the delayed phase down described in paragraph (b) of this section shall no longer be required to file line counts beginning January 1, 2015.

(5) *Monthly Support Amounts for Carriers Subject to Delayed Phase Down*. Competitive eligible carriers subject to the delayed phase down for remote areas in Alaska shall receive the following support amounts, except as provided in paragraphs (c) and (d) of this section.

> (i) Commencing in the first month after the month in which a public notice announces winning bidders for ongoing support from Mobility Fund Phase II or Tribal Mobility Fund Phase II, each competitive eligible telecommunications carrier subject to delayed phase down that is not a winning bidder in Mobility Fund Phase II or Tribal Mobility Fund Phase II shall receive 80 percent of its monthly baseline support amount each month for twelve months; 60 percent of its monthly support for the next 12 months; 40 percent of its monthly support for the next twelve months; and 20 percent of its monthly support for the next twelve months. Thereafter, it shall not receive universal service support pursuant to this section.
>
> (ii) If a competitive eligible carrier subject to delayed phase down is a winning bidding for Mobility Fund Phase I or Tribal Mobility Fund Phase II support, it will cease to be eligible for phase-down support in the first month after the month in which its Mobility Fund Phase II or Tribal Mobility Fund Phase II support is authorized.

(c) *Further reductions*. If a competitive eligible telecommunications carrier ceases to provide services to high-cost areas it had previously served, the Commission may reduce its baseline support amount.

(d) *Accelerated Phase Down*. Any wireless competitive eligible telecommunications carrier shall cease receiving competitive eligible telecommunications carrier support effective January 1, 2015, to the extent its annualized support in 2014 represented 1 percent or less of its wireless revenues for 2014 as reported on FCC Form 499-A.

5. Revise § 54.309 to read as follows:

§ 54.309 Connect America Fund Phase II Public Interest Obligations.

Recipients of Connect America Phase II support (whether awarded through the offer of model-based support to price cap carriers or through a competitive bidding process) are required to offer broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonable comparable to rates for comparable offerings in urban areas. For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the benchmarks to be announced annually by public notice issued by the Wireline Competition Bureau.

6. Amend § 54.310 to revise paragraphs (c) and (e) to read as follows:

§ 54.310 Connect America Fund for Price Cap Territories – Phase II.

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(c) Deployment Obligation. Recipients of Connect America Phase II support must complete deployment to 85 percent of supported locations within three years of notification of Phase II support authorization and up to 100 percent of supported locations within five years of notification of Phase II support authorization. For purposes of meeting the obligation to deploy to the requisite number of supported locations, recipients may serve unserved locations in census blocks with costs above the extremely high-cost threshold instead of locations in eligible census blocks, provided that they meet the public interest obligations set forth in § 54.309 for those locations and provided that the total number of locations covered is greater than or equal to the number of the eligible census blocks for which funding is authorized.

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(e) Provider Eligibility. Any eligible telecommunications carrier is eligible to receive Connect America Phase II support in eligible areas. An entity may obtain eligible telecommunications carrier designation after public notice of winning bidders in a competitive bidding process for the offer of Phase II Connect America support. An applicant in the competitive bidding process shall certify that it is financially and technically qualified to provide the services supported by Connect America Phase II in order to receive such support. An entity that is a winning bidder must submit an application to become an eligible telecommunications carrier no later than 30 calendar days following the public announcement of the winning bidders for the offer of Phase II Connect America support. To the extent an applicant in the competitive bidding process seeks eligible telecommunications carrier designation prior to notification of winning bidders for Phase II Connect America support, its designation as an eligible telecommunications carrier may be conditional subject to the receipt of Phase II Connect America support.

7. Add § 54.311 to subpart D to read as follows:

§ 54.311 Voluntary Election by Rate-of-Return Carriers to Receive Model-Based Support.

(a) *Frozen High-Cost Support*. Rate-of-return carriers may voluntarily elect to have their support frozen as the first step to a voluntary transition to receive Phase II model-based support. Each carrier making such an election will have a "baseline support amount" equal to its support in the immediately prior year in a given study area, or an amount equal to $3,000 times the number of reported lines for the prior calendar year, whichever is lower. Each such carrier will have a "monthly baseline support amount" equal to its baseline support amount divided by twelve. Upon election to receive frozen support, on a monthly basis, eligible carriers will receive their monthly baseline support amount.

(1) The " baseline support amount" is the amount of support disbursed to a rate-of-return carrier in the prior calendar year, without regard to prior period adjustments related to years other than that calendar year and as determined by USAC in the month following election of frozen support.

(2) For the purpose of calculating the $3,000 per line limit, the average of lines reported by the rate-of-return carrier pursuant to line count filings required for two immediately preceding years shall be used.

(3) A carrier receiving frozen high cost support under this rule shall be deemed to be receiving Interstate Common Line Support equal to the amount of support that the carrier was eligible for under that mechanism in the preceding year.

(b) Connect America Phase II support may be made available in rate-of-return territories for census blocks identified as eligible by public notice. The number of supported locations will be identified for each area eligible for support by public notice. Rate-of-return carriers that voluntarily elect to transition to Phase II model-based support shall elect to make a state-level commitment to receive such support. Such electing carriers will be subject to the public interest obligations set forth in § 54.309.

(c) Upon electing to receive model-based support, rate-of-return carriers will be subject to the transition specified in § 54.310(f) to the extent frozen support is less than Phase II model-based support for a given state.

8. Amend § 54.313 to revise paragraphs (a), (c), (f), and (j) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

(a) Any recipient of high cost support shall provide:

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(12) a letter certifying that the pricing of the company's broadband services is no more than the applicable benchmark as specified in a public notice issued by the Wireline Competition Bureau, or is no more than the non-promotional prices charged for comparable fixed wireline services in urban areas.

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(c) In addition to the information and certification in paragraph (a) of this section, price cap carriers that receive frozen support pursuant to section 54.312(a) shall provide by July 1, 2016 and thereafter a certification that all frozen high-cost support the company received in the previous year was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by a qualifying competitor as defined in § 54.5.

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(f) In addition to the information and certifications in paragraph (a) of this section, any rate-of-return carrier shall provide:

(1) Beginning July 1, 2016. A progress report on its five-year service quality plan pursuant to § 54.202(a) that includes the following information:

(i) A letter certifying that it is taking reasonable steps to provide upon reasonable request broadband services at actual speeds of at least 10 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonable comparable to rates for comparable offerings in urban areas, and that requests for such service are met within a reasonable amount of time; and

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(j) Filing deadlines.

(1) In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this section annually by July 1 of each year. Eligible telecommunications carriers that file their reports after the July 1 deadline shall receive a reduction in support pursuant to the following schedule:

(i) Eligible telecommunications carriers that file after the July 1 deadline, but by July 8, will have their support reduced in an amount equivalent to seven days in support;

(ii) Eligible telecommunications carriers that file on or after July 9 will have their support reduced on a pro-rata daily basis equivalent to the period of non-compliance.

(2) Grace period. An eligible telecommunications carrier that submits the annual reporting information required by this section after July 1 but before July 5 will not receive a reduction in support if the eligible telecommunications carrier and all other eligible telecommunications carriers owned by the same holding company as the eligible telecommunications carrier have not missed the July 1 deadline in any prior year. The next time that either the eligible telecommunications carrier that had previously benefitted from the grace period or an eligible telecommunications carrier owned by the same holding company misses the July 1 deadline, that eligible telecommunications carrier will be subject to a reduction of seven days in support in addition to the reduction of support it will receive pursuant to (j)(1) of this section.

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9. Amend § 54.314 to revise paragraph (d) to read as follows:

§ 54.314 Certification of support for eligible telecommunications carriers.

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(d) Filing deadlines.

(1) In order for an eligible telecommunications carrier to receive federal high-cost support, the state or the eligible telecommunications carrier, if not subject to the jurisdiction of a state, must file an annual certification, as described in paragraph (c) of this section, with both the Administrator and the Commission by October 1 of each year. If states or eligible telecommunications carriers file the annual certification after the October 1 deadline, the carriers subject to the certification shall receive a reduction in support pursuant to the following schedule:

(i) Eligible telecommunications carriers subject to certifications filed after the October 1 deadline, but by October 8, will have their support reduced in an amount equivalent to seven days in support;

(ii) Eligible telecommunications carriers subject to certifications filed on or after October 9 will have their support reduced on a pro-rata daily basis equivalent to the period of non-compliance.

(2) Grace period. If an eligible telecommunications carrier or state submits the annual certification required by this section after October 1 but before October 5, the eligible telecommunications carrier subject to the certification will not receive a reduction in support if the eligible telecommunications carrier and all other eligible telecommunications carriers owned by the same holding company as the subject eligible telecommunications carrier have not missed the October 1 deadline in any prior year. The next time that either the eligible telecommunications carrier that had previously benefitted from the grace period or an eligible telecommunications carrier owned by the same holding company misses the October 1 deadline, that eligible telecommunications carrier will be subject to a reduction of seven days in support in addition to the reduction of support it will receive pursuant to (d)(1) of this section.

(3) Newly designated eligible telecommunications carriers. Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6) of the Act, provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d) of this section.

10. Revise § 54.319 to read as follows:

§ 54.319 Elimination of High-Cost Support in Areas with 100 Percent Coverage by a Qualifying Competitor.

(a) Universal service support shall be eliminated in an incumbent local exchange carrier study area where a qualifying competitor, or combination of qualifying competitors, as defined in section 54.5, offers to 100 percent of residential and business locations in the study area voice and broadband service at speeds of at least 10 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas.

(b) After a determination there is a 100 percent overlap, the incumbent local exchange carrier shall receive the following amount of high-cost support:

(1) In the first year, two-thirds of the lesser of the incumbent's total high-cost support in the immediately preceding calendar year or $3000 times the number of reported lines as of year-end for the immediately preceding calendar year;

(2) In the second year, one-third of the lesser of the incumbent's total high-cost support in the immediately preceding calendar year or $3000 times the number of reported lines as of year-end for the immediately preceding calendar year;

(3) In the third year and thereafter, no support shall be paid.

(c) The Wireline Competition Bureau shall update its analysis of where there is a 100 percent overlap on a biennial basis.

11. Add § 54.905 to Subpart K to read as follows:

§ 54.905 Prohibition on recovery of new investment through interstate common line support in areas served by a qualifying competitor.

(a) Effective January 1, 2015, no new investment shall be recovered through interstate common line support in areas served by a qualifying competitor as defined in section 54.5.

(b) An incumbent local exchange carrier may presume that an area is unserved by a qualifying competitor after publicly posting, for 90 days, information on its website regarding its intent to make new investment in the area in question, if it does not receive notification from a qualifying provider that it serves locations within the area where new investment is proposed.

12. Add §§ 54.1011, 54.1012, 54.1013, 54.1014, 54.1015, 54.1016, 54.1017, 54.1018, 54.1019, and 54.1020 to Subpart L to read as follows:

§ 54.1011 Mobility Fund – Phase II.

The Commission will use competitive bidding, as provided in part 1, subpart AA of this chapter, to determine the recipients of support available through Phase II of the Mobility Fund and the amount(s) of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

§ 54.1012 Geographic Areas Eligible for Support.

(a) Mobility Fund Phase II support may be made available for census blocks or other areas identified as eligible by public notice.

(b) Coverage units for purposes of conducting competitive bidding and disbursing support based on designated population will be identified by public notice for each area eligible for support.

§ 54.1013 Provider Eligibility.

(a) Except as provided in § 54.1014, an applicant shall be an Eligible Telecommunications Carrier in an area in order to receive Mobility Fund Phase II support for that area. The applicant's designation as an Eligible Telecommunications Carrier may be conditional subject to the receipt of Mobility Fund support.

(b) An applicant shall have access to spectrum in an area that enables it to satisfy the applicable performance requirements in order to receive Mobility Fund Phase II support for that area. The applicant shall certify, in a form acceptable to the Commission, that it has such access at the time it applies to participate in competitive bidding and at the time that it applies for support and that it will retain such access for ten (10) years after the date on which it is authorized to receive support.

(c) An applicant shall certify that it is financially and technically qualified to provide the services supported by Mobility Fund Phase II in order to receive such support.

§ 54.1014 Service to Tribal Lands.

(a) A Tribally-owned or –controlled entity that has pending an application to be designated an Eligible Telecommunications Carrier may participate in an auction by bidding for support in areas located within the boundaries of the Tribal lands associated with the Tribe that owns or controls the entity. To bid on this basis, an entity shall certify that it is a Tribally-owned or –controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. A Tribally-owned or -controlled entity shall receive any Mobility Fund Phase II support only after it has become an Eligible Telecommunications Carrier.

(b) Tribally-owned or –controlled entities may receive a bidding credit with respect to bids for support within the boundaries of associated Tribal lands. To qualify for a bidding credit, an applicant shall certify that it is a Tribally-owned or –controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. An applicant that qualifies shall have its bid(s) for support in areas within the boundaries of Tribal land associated with the Tribe that owns or controls the applicant reduced by 25 percent or purposes of determining winning bidders without any reduction in the amount of support available.

(c) A winning bidder for support in Tribal lands shall notify and engage the Tribal governments responsible for the areas supported.

(1) A winning bidder's engagement with the applicable Tribal government shall consist, at a minimum, of a discussion regarding:

(i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;

(ii) Feasibility and sustainability planning;

(iii) Marketing services in a culturally sensitive manner;

(iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and

(v) Compliance with Tribal business and licensing requirements

(2) A winning bidder shall notify the appropriate Tribal government of its winning bid no later than five business days after being identified by public notice as a winning bidder.

(3) A winning bidder shall certify in its application for support that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1014(d)(1), at a minimum, as well as

any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

(4) A winning bidder for support in Tribal lands shall certify in its annual report, pursuant to § 54.1019(a)(5), and prior to disbursement of support, pursuant to § 54.1018, that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1014(d)(1), at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

§ 54.1015 Application Process.

(a) Application to Participate in Competitive Bidding for Mobility Fund Phase II Support. In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for Mobility Fund Phase II support shall:

(1) Provide ownership information as set forth in § 1.2112(a) of this chapter;

(2) Certify that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1016 in each area for which it seeks support;

(3) Disclose its status as an Eligible Telecommunications Carrier in any area for which it will seek support or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any such area, and certify that the disclosure is accurate;

(4) Describe the spectrum access that the applicant plans to use to meet obligations in areas for which it will bid for support, including whether the applicant currently holds a license for or leases the spectrum, and certify that the description is accurate and that the applicant will retain such access for at least 10 years after the date on which it is authorized to receive support;

(5) Make any applicable certifications required in § 54.1014.

(b) Application by Winning Bidders for Mobility Fund Phase II Support.

(1) Deadline. Unless otherwise provided by public notice, winning bidders for Mobility Fund Phase II support shall file an application for Mobility Fund Phase II support no later than 10 business days after the public notice identifying them as winning bidders.

(2) Application Contents. An application for Mobility Fund Phase II support must contain:

(i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter;

(ii) Certification that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1016 in the geographic areas for which it seeks support;

(iii) Proof of the applicant's status as an Eligible Telecommunications or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any area for which it seeks support and certification that the proof is accurate;

(iv) A description of the spectrum access that the applicant plans to use to meet obligations in areas for which it is winning bidder for support, including whether the applicant currently holds a license for or leases the spectrum, and certification that the description is accurate and that the applicant will retain such access for at least 10 years after the date on which it is authorized to receive support;

(v) A detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the budget and describes each specific phase of the project, e.g., network design, construction, deployment and maintenance;

(vi) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from Mobility Fund Phase II and that the applicant will comply with all program requirements;

(vii) Any guarantee of performance that the Commission may require by public notice or other proceedings, including but not limited to the letters of credit required in §54.1017, or a written commitment from an acceptable bank, as defined in §54.1017(a)(1), to issue such a letter of credit;

(viii) Certification that the applicant will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas for a period during the term of the support the applicant seeks;

(ix) Any applicable certifications and showings required in §54.1014; and

(x) Certification that the party submitting the application is authorized to do so on behalf of the applicant.

(xi) Such additional information as the Commission may require.

(3) Application Processing.

(i) No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(ii) Any application that, as of the submission deadline, either does not identify the applicant seeking support as specified in the public notice announcing application procedures or does not include required certifications shall be denied.

(iii) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the Administrator, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(iv) Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive Mobility Fund Phase II support, after the winning bidder submits a Letter of Credit and an accompanying opinion letter as required by § 54.1016, in a form acceptable to the Commission, and any final designation as an Eligible Telecommunications Carrier that any Tribally-owned or –controlled applicant may still require. Each such winning bidder shall submit a Letter of Credit and an accompanying opinion letter as required by § 54.1016, in a form acceptable to the Commission, and any required final designation as an Eligible Telecommunications Carrier no later than 10 business days following the release of the public notice.

(vi) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive Mobility Fund Phase II support.

§ 54.1016 Public Interest Obligations.

(a) Deadline for Construction. A winning bidder authorized to receive Mobility Fund Phase II support shall, no later than three years after the date on which it was authorized to receive support, submit data covering the area for which support was received demonstrating mobile transmissions supporting voice and data to and from the network covering 75 percent of the designated population in the area deemed uncovered, or an applicable higher percentage established by public notice prior to the competitive bidding, and meeting or exceeding the following:

(1) Outdoor minimum data transmission rates of 800 kbps uplink and 2000 kbps downlink;

(2) Transmission latency low enough to enable the use of real time applications, such as VoIP.

(b) Coverage Test Data. Coverage data submitted in compliance with a recipient's public interest obligations shall demonstrate coverage of the population designated in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's support. Any drive tests or scattered site tests submitted in compliance with a recipient's public interest obligations shall be in compliance with standards set forth in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's authorized support. Any drive tests shall demonstrate required transmission rates at vehicle speeds appropriate for the roads covered by the tests.

(c) Collocation Obligations. During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase II on newly constructed towers that the recipient owns or manages in the area for which it receives support. In addition, during this period, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the facilities.

(d) Voice and Data Roaming Obligations. During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall comply with the Commission's voice and data roaming requirements that were in effect as of October 27, 2011, on networks that are built through Mobility Fund Phase II support.

(e) Liability for Failing To Satisfy Public Interest Obligations. A winning bidder authorized to receive Mobility Fund Phase II support that fails to comply with the public interest obligations in this paragraph or any other terms and conditions of the Mobility Fund Phase II support will be subject to repayment of the support disbursed together with an additional performance default payment. Such a winning bidder may be disqualified from receiving any further Mobility Fund Phase II support or other USF support. The additional performance default amount will be a percentage of the Mobility Fund Phase II support that the applicant has been and is eligible to request be disbursed to it pursuant to § 54.1018. The percentage will be determined as specified in the public notice detailing competitive bidding procedures prior to the commencement of competitive bidding. The percentage will not exceed twenty percent.

§ 54.1017 Letter of Credit.

(a) Before being authorized to receive Mobility Fund Phase II support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission. Each winning bidder authorized to receive Mobility Fund Phase II support shall maintain the standby letter of credit or multiple standby letters of credit in an amount equal to the amount of Mobility Fund Phase II support that the winning bidder has been and is eligible to request be disbursed to it pursuant to § 54.1018 plus the additional performance default amount described in § 54.1016(e), until at least 120 days after the winning bidder receives its final distribution of support pursuant to § 54.1017.

(1) The bank issuing the letter of credit shall be acceptable to the Commission. A bank that is acceptable to the Commission is:

(i) Any United States Bank

(A) That is among the 50 largest United States banks, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit,

(B) Whose deposits are insured by the Federal Deposit Insurance Corporation, and

(C) That has a long-term unsecured credit rating issued by Standard & Poor's of A- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(ii) An agricultural credit bank in the United States that serves rural utilities and is a member of the United States Farm Credit System

(A) That has total assets equal to or exceeding the total assets of any of the 50 largest United States banks, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit,

(B) Whose deposits are insured by the Farm Credit System Insurance Corporation, and

(C) That has a long-term unsecured credit rating issued by Standard & Poor's of A- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iii) Any non-U.S. bank that

(A) Is among the 50 largest non-U.S. banks in the world, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit (determined on a U.S. dollar equivalent basis as of such date),

(B) Has a branch office in the District of Columbia or such other branch office agreed to by the Commission,

(C) Has a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to an A- or better rating by Standard & Poor's, and

(D) Issues the letter of credit payable in United States dollars.

(2) [Reserved.]

(b) A winning bidder for Mobility Fund Phase II support shall provide with its Letter of Credit an opinion letter from its legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate under section 541 of the Bankruptcy Code.
(c) Authorization to receive Mobility Fund Phase II support is conditioned upon full and timely performance of all of the requirements set forth in § 54.1016, and any additional terms and conditions upon which the support was granted.

(1) Failure by a winning bidder authorized to receive Mobility Fund Phase II support to comply with any of the requirements set forth in § 54.1015 or any other term or conditions upon which support was granted, or its loss of eligibility for any reason for Mobility Fund Phase II support will be deemed an automatic performance default, will entitle the Commission to draw the entire amount of the letter of credit, and may disqualify the winning bidder from the receipt of Mobility Fund Phase II support or additional USF support.

(2) A performance default will be evidenced by a letter issued by the Chief of either the Wireless Bureau or Wireline Bureau or their respective designees, which letter, attached to a standby letter of credit draw certificate, and shall be sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

§ 54.1018 Mobility Fund Phase II Disbursements.

(a) A winning bidder for Mobility Fund Phase II support will be advised by public notice whether it has been authorized to receive support. The public notice will detail how disbursement will be made available.

(b) Mobility Fund Phase II support will be available for disbursement to a winning bidder authorized to receive support for 10 years following the date on which it is authorized.

(c) Prior to each disbursement request, a winning bidder for support in a Tribal land will be required to certify that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1014(d)(1), at a minimum, as well as any other issues specified by the Commission and to provide a summary of the results of such engagement.

(d) Prior to each disbursement request, a winning bidder will be required to certify that it is in compliance with all requirements for receipt of Mobility Fund Phase II support at the time that it requests the disbursement.

§ 54.1019 Annual Reports.

(a) A winning bidder authorized to receive Mobility Fund Phase II support shall submit an annual report no later than July 1 in each year for the ten years after it was so authorized. In addition to the information required by § 54.313, each annual report shall include the following, or reference the inclusion of the following in other reports filed with the Commission for the applicable year:

(1) Electronic shapefiles of the outdoor minimum data transmission rates requirement coverage polygons illustrating the area newly reached by mobile services at a minimum resolution of 100 meters;

(2) A list of relevant census blocks previously deemed unserved, with total resident population and resident population residing in areas newly reached by mobile services (based on Census Bureau data and estimates);

(3) If any such testing has been conducted, data received or used from drive tests, or scattered site testing, analyzing network coverage for mobile services in the area for which support was received;

(4) Certification that the winning bidder offers service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas;

(5) Any applicable certifications and showings required in § 54.1014; and

(6) Updates to the information provided in § 54.1015(b)(2)(v).

(b) The party submitting the annual report must certify that they have been authorized to do so by the winning bidder.

(c) Each annual report shall be submitted to the Office of the Secretary of the Commission, clearly referencing WT Docket No. 10-208; the Administrator; and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate

§ 54.1020 Record Retention for Mobility Fund Phase II.

A winning bidder authorized to receive Mobility Fund Phase II support and its agents are required to retain any documentation prepared for, or in connection with, the award of Mobility Fund Phase II support for a period of not less than 10 years after the date on which the winning bidder receives its final disbursement of Mobility Fund Phase II support.

13. Amend § 54.1309 to revise paragraph (a) and add paragraph (d) as follows:

§ 54.1309 National and study area average unseparated loop costs.

(a) Until December 31, 2014, the national average unseparated loop cost per working loop, except as provided in paragraph (c) of this section, is equal to the sum of the Loop Costs for each study area in the country as calculated pursuant to §54.1308(a) divided by the sum of the working loops reported in §54.1305(h) for each study area in the country. The national average unseparated loop cost per working loop shall be calculated by the National Exchange Carrier Association. ~~Effective July 1, 2001, the national average unseparated loop cost for purposes of calculating expense adjustments for rural incumbent local exchange carriers, as that term is defined in § 54.5 of this chapter, is frozen at $240.00.~~

~~(1) The National Average Unseparated Loop Cost per Working Loop shall be recalculated by the National Exchange Carrier Association to reflect the September, December, and March update filings.~~

~~(2) Each new nationwide average shall be used in determining the additional interstate expense allocation for companies which made filings by the most recent filing date.~~

~~(3) The calculation of a new national average to reflect the update filings shall not affect the amount of the additional interstate expense allocation for companies which did not make an update filing by the most recent filing date.~~

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(d) Effective January 1, 2015, the national average unseparated loop cost per working loop shall be frozen at the amount in effect as of December 31, 2014, or lowered to the extent the expense adjustment (additional interstate expense allocation) calculated by the sum of paragraphs (d)(1) and (2) of this section does not exceed the maximum allowable support calculated pursuant to section 54.1302(a) of this subpart.

(1) Sixty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to §54.1309(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost pursuant to §54.1309(d) multiplied by the number of working loops reported in §54.1305(h) for all study areas with less than 200,000 working loops.; and

(2) Seventy-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to §54.1309(b) in excess of 150 percent of the national average for this cost pursuant to §54.1309(d) multiplied by the number of working loops reported in §54.1305(h) for all study areas with less than 200,000 working loops.

14. Revise § 54.1310 to read as follows:

§ 54.1310 Calculation of Expense Adjustment – Additional Interstate Expense Allocation.

(a) Beginning January 1, 2015, for study areas reporting 200,000 or fewer working loops pursuant to §54.1305(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (b)(1) and (2) of this section multiplied by the ratio of the maximum allowable support calculated pursuant to section 54.1302(a) to the aggregate sum of paragraphs (b)(1) and (2) of this section for all study areas reporting 200,000 or fewer working loops pursuant to § 54.1305(h).

(b) Until December 31, 2014, for study areas reporting 200,000 or fewer working loops pursuant to §54.1305(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (b)(1) through (2) of this section.

(1) Sixty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to §54.1309(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost as calculated pursuant to §54.1309 multiplied by the number of working loops reported in §54.1305(h) for the study area; and

(2) Seventy-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to §54.1309(b) in excess of 150 percent of the national average for this cost as calculated pursuant to §54.1309) multiplied by the number of working loops reported in §54.1305(h) for the study area.

(c) Beginning January 1, 2015, the expense adjustment shall be adjusted each year to reflect changes in the amount of high-cost loop support resulting from adjustments calculated pursuant to §54.1306(a) made during the previous year. If the resulting amount exceeds the previous year's fund size, the difference will be added to the amount calculated pursuant to §54.1310(a). If the adjustments made during the previous year result in a decrease in the size of the funding requirement, the difference will be subtracted from the amount calculated pursuant to §54.1310 (a) for the following year.

15. Add § 54.1311 to Subpart M to read as follows:

§ 54.1311 Prohibition on recovery of new investment through high-cost loop support in areas served by a qualifying competitor.

(a) Effective January 1, 2015, no new investment shall be recovered through high-cost loop support in areas served by a qualifying competitor as defined in section 54.5.

(b) An incumbent local exchange carrier may presume that an area is unserved by a qualifying competitor after publicly posting, for 90 days, information on its website regarding its intent to make new investment in the area in question, if it does not receive notification from a qualifying provider that it serves locations within the area where new investment is proposed.

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA),[1] as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated in the *Further Notice of Proposed Rule Making* (*USF/ICC Transformation FNRPM*).[2] The Commission sought written public comment on the proposals in the *USF/ICC Transformation FNRPM*, including comment on the IRFA. The Commission did not receive any relevant comments on the *USF/ICC Transformation FNPRM* IRFA.[3] This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[4]

A. Need for, and Objectives of, the Report and Order, Declaratory Ruling, and Order

2. The Report and Order adopts several rules to establish the foundation for the award of support in price cap areas where the price cap carrier declines the offer of model-based support. Specifically, we conclude that all areas where the average cost per location equals or exceeds a specified cost benchmark are eligible for Phase II support in the competitive bidding process.[5] We set a support term of 10 years for support awarded through the competitive bidding process.[6] Finally, we permit price cap carriers that decline model-based support to participate in the competitive bidding process.[7]

3. We also address more generally provider eligibility for support through the competitive bidding process and the Remote Areas Fund. We permit entities to seek designation as eligible telecommunications carriers (ETC) after notification they are winning bidders for the offer of Phase II Connect America funding. We also conclude that recipients of support through the competitive bidding process or Remote Areas Fund must certify as to their financial and technical capabilities to provide the required services within the specified timeframe in the geographic area for which they seek support.[8]

4. We issue a declaratory ruling to provide rate-of-return carriers greater clarity regarding their obligations to extend broadband service upon reasonable request.[9]

[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612 has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *USF/ICC Transformation Order,* 26 FCC Rcd at 18364-95, paras. 1-97.

[3] *See* Furchtgott-Roth Economic Enterprises *USF/ICC Transformation NPRM Ex Parte* Comments at 14; Bluegrass Telephone Company *USF/ICC Transformation NPRM* Comments at 35-36; Letter from Brenda Crosby, President, Cascade Utilities, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90 et al., at 3 (filed April 6, 2011); Molalla Telephone Company *USF/ICC Transformation NPRM* at 3; Letter from John Hemphill, Vice President, Pine Telephone System, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90 et al., at 3 (filed Mar. 30, 2011); Letter from Dave Osborn, Valley Telephone Cooperative, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90 et al., at 3 (filed August 29, 2011).

[4] *See* 5 U.S.C. § 604.

[5] *See supra* Section III.A.1.

[6] *See supra* Section III.A.2.

[7] *See supra* Section III.A.3.

[8] *See supra* Section III.B.

[9] *See supra* Section IV.

5. In the Order, we phase in support reductions associated with the 2014 rate floor of $20.46 over a multi-year period to provide time for incumbent carriers and state commissions to make any adjustments they deem necessary.[10] In particular, we defer any support reductions for lines that have rates of $14 or greater until January 2, 2015. Between January 2, 2015, and June 30, 2016, we implement support reductions only to the extent rates are below $16; between July 1, 2016 and June 30, 2017, we implement support reductions only for lines with rates under $18 or the rate floor established by the 2016 rate survey, whichever is lower; and between July 1, 2017 and June 30, 2018, we implement support reductions only for lines with rates under $20 or the 2017 rate floor, whichever is lower. Thus, the impact of this rule is phased in over a four-year period. In addition, we waive any support reductions associated with lines provided to customers enrolled in the Lifeline program. This will minimize the effect of rate-floor-related support reductions on small entities with Lifeline customers.

6. We also reconsider certain aspects of the *USF/ICC Transformation Order* in response to petitions from a variety of stakeholders. These modifications reflect our continuing commitment in the universal service reforms to efficiency and creating the appropriate incentives to invest and operate modern voice and broadband-capable networks. First, to provide a more measured transition for rate-of-return carriers that would have qualified under the prior rules for certain support known as Safety Net Additive (SNA) based on their significant network investment, we permit such carriers to receive SNA for such investments made in 2010 and 2011.[11] Second, we eliminate the high-cost loop support (HCLS) benchmarking rule so that rate-of-return carriers' support will no longer be limited by benchmarks calculated using quantile regression analysis (QRA).[12]

7. In addition, we waive the application fees for carriers seeking a study area waiver to transfer lines below the sub-exchange level.[13] Prior to this decision, study area waivers required an application fee of $7,990 regardless of the number of lines involved. Because the processing of sub-exchange level transfers is now routine, the burden and cost associated with reviewing these petitions has been reduced and the application fee, which is a deterrent to transferring lines, is no longer necessary. We also deny a petition for reconsideration of the Commission's decision to impose broadband public interest obligations on recipients of high-cost support,[14] and in the Memorandum Opinion and Order we dismiss or deny two applications for review of the Wireline Competition Bureau's (Bureau) *Phase II Service Obligations Order.*[15]

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

8. There were no relevant comments filed that specifically addressed the rules and policies proposed in the *USF/ICC Transformation FNPRM* IRFA.

C. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply

9. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[16] The RFA generally

[10] *See supra* Section V.A.

[11] *See supra* Section VII.A.

[12] *See supra* Section VII.C.

[13] *See supra* Section V.B.

[14] *See supra* Section VII.B.

[15] *See supra* Section VI; *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060 (Wireline Comp. Bur. 2013) (*Phase II Service Obligations Order*).

[16] *See* 5 U.S.C. § 603(b)(3).

defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[17] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[18] A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[19]

10. **Small Businesses**. Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.[20]

11. **Wired Telecommunications Carriers**. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[21] According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.[22] Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more.[23] Thus, under this size standard, the majority of firms can be considered small.

12. **Local Exchange Carriers (LECs)**. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[24] According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[25] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[26] Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Order.

13. **Incumbent Local Exchange Carriers (incumbent LECs)**. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[27] According to Commission data, 1,307 carriers reported that they were incumbent local

[17] *See* 5 U.S.C. § 601(6).

[18] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[19] *See* 15 U.S.C. § 632.

[20] *See* SBA, Office of Advocacy, "Frequently Asked Questions," http://www.sba.gov/advo/stats/sbfaq.pdf (accessed Dec. 2010).

[21] 13 C.F.R. § 121.201, NAICS code 517110.

[22] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110" (issued Nov. 2010).

[23] *See id*.

[24] 13 C.F.R. § 121.201, NAICS code 517110.

[25] *See Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

[26] *See id*.

[27] *See* 13 C.F.R. § 121.201, NAICS code 517110.

exchange service providers.[28] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[29] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Order

14. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[30] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[31] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

15. **Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[32] According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[33] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.[34] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[35] In addition, 72 carriers have reported that they are Other Local Service Providers.[36] Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.[37] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Order.

16. **Interexchange Carriers (IXCs)**. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[38] According to Commission data,

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[28] *See Trends in Telephone Service* at Table 5.3.

[29] *See id*.

[30] 5 U.S.C. § 601(3).

[31] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a); *see also* 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 C.F.R. § 121.102(b).

[32] *See* 13 C.F.R. § 121.201, NAICS code 517110.

[33] *See Trends in Telephone Service* at Table 5.3.

[34] *See id.*

[35] *See id*.

[36] *See id*.

[37] *See id*.

[38] *See* 13 C.F.R. § 121.201, NAICS code 517110.

359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[39] Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[40] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Order.

17. **Prepaid Calling Card Providers**. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[41] According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[42] Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.[43] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Order.

18. **Local Resellers**. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[44] According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[45] Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.[46] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Order.

19. **Toll Resellers**. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[47] According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[48] Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.[49] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Order.

20. **Other Toll Carriers**. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[50] According to Commission data, 284 companies reported that

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[39] *See Trends in Telephone Service* at Table 5.3.

[40] *See id.*

[41] *See* 13 C.F.R. § 121.201, NAICS code 517911.

[42] *See Trends in Telephone Service* at Table 5.3.

[43] *See id*.

[44] *See* 13 C.F.R. § 121.201, NAICS code 517911.

[45] *See Trends in Telephone Service* at Table 5.3.

[46] *See id*.

[47] *See* 13 C.F.R. § 121.201, NAICS code 517911.

[48] *See Trends in Telephone Service* at Table 5.3.

[49] *See id*.

[50] *See* 13 C.F.R. § 121.201, NAICS code 517110.

their primary telecommunications service activity was the provision of other toll carriage.[51] Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.[52] Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the Order.

21. **800 and 800-Like Service Subscribers**.[53] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[54] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.[55] According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736.[56] We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

22. **Wireless Telecommunications Carriers (except Satellite)**. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.[57] Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.[58] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[59] For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.[60] Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more.[61] Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.[62] Of these, an estimated 261 have 1,500 or fewer employees and 152 have

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[51] *See Trends in Telephone Service* at Table 5.3.

[52] *See id*.

[53] We include all toll-free number subscribers in this category, including those for 888 numbers.

[54] *See* 13 C.F.R. § 121.201, NAICS code 517911.

[55] *See Trends in Telephone Service* at Tables 18.7-18.10.

[56] *See id*.

[57] *See* 13 C.F.R. § 121.201, NAICS code 517210.

[58] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[59] 13 C.F.R. § 121.201, NAICS code 517210. The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[60] U.S. Census Bureau, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210" (issued Nov. 2010).

[61] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "100 employees or more."

[62] *See Trends in Telephone Service* at Table 5.3.

more than 1,500 employees.[63] Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

23. **Broadband Personal Communications Service**. The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years.[64] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[65] These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[66] No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[67] In 1999, the Commission re-auctioned 347 C, E, and F Block licenses.[68] There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35.[69] Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.[70] Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in

[63] *See id*.

[64] *See generally Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996) (*Broadband PCS Auction Order*); *see also* 47 C.F.R. § 24.720(b)(1).

[65] *See generally Broadband PCS Auction Order*; *see also* 47 C.F.R. § 24.720(b)(2).

[66] *See, e.g.*, *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

[67] *See* FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997). *See also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436 (1997).

[68] *See C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (Wireless Tel. Bur. 1999).

[69] *See C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (Wireless Tel. Bur. 2001).

[70] *See Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (Wireless Tel. Bur. 2005).

Auction 71.[71] Of the 14 winning bidders, six were designated entities.[72] In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.[73]

24. **Advanced Wireless Services**. In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses.[74] This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710-1755 MHz and 2110-2155 MHz bands (AWS-1). The AWS-1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years ("small business") received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years ("very small business") received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status.[75] Four winning bidders that identified themselves as very small businesses won 17 licenses.[76] Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

25. **Narrowband Personal Communications Services**. In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less.[77] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[78] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.[79] A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[80] A "very small business" is an entity that,

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[71] *See Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (Wireless Tel. Bur. 2007).

[72] *Id*.

[73] *See Auction of AWS-1 and Broadband PCS Licenses Rescheduled For August 13, 3008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78*, AU Docket No. 08-46, Public Notice, 23 FCC Rcd 7496 (Wireless Tel. Bur. 2008).

[74] *See id*. Auction 78 also included an auction of Broadband PCS licenses.

[75] *Id*. at 7521-22.

[76] *See Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78,* Public Notice, 23 FCC Rcd 12749 (Wireless Tel. Bur. 2008).

[77] *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS*, PP Docket No. 93-253, GEN Docket No. 90-314, ET Docket No. 92-100, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

[78] *See Announcing the High Bidders in the Auction of Ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674*, Public Notice, PNWL 94-004 (rel. Aug. 2, 1994); *Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787*, Public Notice, PNWL 94-27 (rel. Nov. 9, 1994).

[79] *Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) (*Narrowband PCS Second Report and Order*).

[80] *Id.*

together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[81] The SBA has approved these small business size standards.[82] A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[83] Three of these claimed status as a small or very small entity and won 311 licenses.

26. **Paging (Private and Common Carrier)**. In the *Paging Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[84] A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards.[85] According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service.[86] Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees.[87] Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses.[88] A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[89] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[90] A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.[91].

27. **220 MHz Radio Service – Phase I Licensees**. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are

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[81] *Id.*

[82] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from A. Alvarez, Administrator, SBA (Dec. 2, 1998) (*Alvarez Letter 1998*).

[83] *See Narrowband PCS Auction Closes*, Public Notice, 16 FCC Rcd 18663 (Wireless Tel. Bur. 2001).

[84] *See Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085–88, paras. 98–107 (1999) (*Paging Third Report and Order*)

[85] *See Alvarez Letter 1998*.

[86] *See Trends in Telephone Service* at Table 5.3.

[87] *See id*.

[88] *See id.*

[89] *See Lower and Upper Paging Band Auction Closes*, Public Notice, 16 FCC Rcd 21821 (Wireless Tel. Bur. 2002).

[90] *See Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (Wireless Tel. Bur. 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

[91] *See Auction of Lower and Upper Paging Bands Licenses Closes*, Public Notice, 25 FCC Rcd 18164 (Wireless Tel. Bur. 2010).

approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees.[92] The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the Order.

28. **220 MHz Radio Service – Phase II Licensees**. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[93] This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[94] A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[95] The SBA has approved these small business size standards.[96] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[97] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[98]

29. **Specialized Mobile Radio**. The Commission awards small business bidding credits in auctions for Specialized Mobile Radio ("SMR") geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years.[99] The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years.[100] The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services.[101] The Commission has held

[92] *See* 13 C.F.R. § 121.201, NAICS code 517210.

[93] *See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997) (*220 MHz Third Report and Order*).

[94] *See id*. at 11068–69, para. 291.

[95] *See id*. at 11068–70, paras. 291–95.

[96] *See* Letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998) (*Alvarez to Phythyon Letter 1998*).

[97] *See Phase II 220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (Wireless Tel. Bur. 1998).

[98] *See Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (Wireless Tel. Bur.1999).

[99] 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

[100] 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

[101] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 10, 1999) (*Alvarez Letter 1999*).

auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996.[102] Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band.[103] The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[104] A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[105]

30. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[106] In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.[107] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

31. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees.[108] We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

32. **Broadband Radio Service and Educational Broadband Service**. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") (previously referred to as the Instructional Television Fixed Service ("ITFS")).[109] In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross

[102] *FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas*, Public Notice, 11 FCC Rcd 18599 (Wireless Tel. Bur. 1996).

[103] *Id*.

[104] *See Correction to Public Notice DA 96-586 "FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,"* Public Notice, 11 FCC Rcd 18637 (Wireless Tel. Bur. 1996).

[105] *See Multi-Radio Service Auction Closes*, Public Notice, 17 FCC Rcd 1446 (Wireless Tel. Bur. 2002).

[106] *See 800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced*, Public Notice, 15 FCC Rcd 17162 (Wireless Tel. Bur. 2000).

[107] *See 800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 1736 (Wireless Tel. Bur. 2000).

[108] *See generally* 13 C.F.R. § 121.201, NAICS code 517210.

[109] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593 para. 7 (1995).

revenues of no more than $40 million in the previous three calendar years.[110] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[111] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) a bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid.[112] In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses.[113] Auction 86 concluded with ten bidders winning 61 licenses.[114] Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

33. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[115] Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[116] The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau

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110 47 C.F.R. § 21.961(b)(1).

111 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard.

112 47 C.F.R. § 27.1218. *See also Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86,* Public Notice, 24 FCC Rcd 8277, 8296 (Wireless Tel. Bur. 2009).

113 *Id*. at 8280.

114 *Auction of Broadband Radio Service Licenses Closes; Winning Bidders Announced for Auction 86*,, Public Notice, 24 FCC Rcd 13572 (Wireless Tel. Bur. 2009).

115 The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on EBS licensees.

116 U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.

data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.[117] Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.[118] Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

34. **Lower 700 MHz Band Licenses**. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[119] The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[120] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[121] Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses, identified as "entrepreneur" and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[122] The SBA approved these small size standards.[123] The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders.[124] Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[125] The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[126] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[127] In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.[128]

35. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.[129] The *700 MHz Second Report and Order* revised the band plan for the

[117] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010).

[118] *See id*.

[119] *See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59),* GN Docket No. 01-74, Report and Order, 17 FCC Rcd 1022 (2002).

[120] *See id*. at 1087-88, para. 172.

[121] *See id*.

[122] *See id*. at 1088, para. 173.

[123] *See Alvarez Letter 1999*.

[124] *See Lower 700 MHz Band Auction Closes; Winning Bidders Announced*, Public Notice, 17 FCC Rcd 17272 (Wireless Tel. Bur. 2002).

[125] *Id*.

[126] *See* Lower 700 MHz Band Auction Closes*; Winning Bidders Announced*, Public Notice, 18 FCC Rcd 11873 (Wireless Tel. Bur. 2003).

[127] *See id.*

[128] *Auction of Lower 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction No. 60*, Public Notice, 20 FCC Rcd 13424 (Wireless Tel. Bur. 2005).

[129] *See Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-*

(continued...)

commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users.[130] An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008.[131] Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.[132]

36. **Upper 700 MHz Band Licenses.** In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz band licenses.[133] In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available.[134] Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

37. **700 MHz Guard Band Licensees**. In the *700 MHz Guard Band Order*, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[135] A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[136] Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[137] An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[138]

(Continued from previous page)
102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephone, *Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, Former Nextel Communications, Inc. Upper700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules*, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket Nos. 96-86, 01-309, 03-264, 06-169, PS Docket No. 06-229, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).

[130] *Id*.

[131] *See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, 23 FCC Rcd 4572 (Wireless Tel. Bur. 2008) (*Auction 73 Closure PN*).

[132] *See Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 92*, Public Notice, 26 FCC Rcd 10494 (Wireless Tel. Bur. 2011).

[133] *700 MHz Second Report and Order*.

[134] *See Auction 73 Closure PN*.

[135] *See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000) (*700 MHz Guard Band Order*).

[136] *See id*. at 5343–45, paras. 106–10.

[137] *See id*.

[138] *See 700 MHz Guard Band Auction Closes; Winning Bidders Announced*, Public Notice, 15 FCC Rcd 18026 (Wireless Tel. Bur. 2000).

Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[139]

38. **Cellular Radiotelephone Service**. Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico.[140] Bidding credits for designated entities were not available in Auction 77.[141] In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.[142]

39. **Private Land Mobile Radio ("PLMR")**. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[143] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[144]

40. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

41. **Rural Radiotelephone Service**. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[145] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[146] In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons.[147] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that

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[139] *See 700 MHz Guard Bands Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 4590 (Wireless Tel. Bur. 2001).

[140] *See Closed Auction of Licenses for Cellular Unserved Service Area Scheduled for June 17, 2008, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77*, Public Notice, 23 FCC Rcd 6670 (Wireless Tel. Bur. 2008).

[141] *Id*. at 6685.

[142] *See Auction of Cellular Unserved Service Area License Closes, Winning Bidder Announced for Auction 77, Down Payment due July 2, 2008, Final Payment due July 17, 2008*, Public Notice, 23 FCC Rcd 9501 (WTB 2008).

[143] *See* 13 C.F.R. § 121.201, NAICS code 517210.

[144] *See generally* 13 C.F.R. § 121.201.

[145] The service is defined in 47 C.F.R. § 22.99.

[146] BETRS is defined in 47 C.F.R. §§ 22.757 and 22.759.

[147] 13 C.F.R. § 121.201, NAICS code 517210.

there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

42. **Air-Ground Radiotelephone Service**. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[148] We will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons.[149] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the Order.

43. **Aviation and Marine Radio Services**. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[150] Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[151] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars.[152] In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[153] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Order.

44. **Fixed Microwave Services**. Fixed microwave services include common carrier,[154] private operational-fixed,[155] and broadcast auxiliary radio services.[156] At present, there are approximately

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[148] *See* 47 C.F.R. § 22.99.

[149] *See* 13 C.F.R. § 121.201, NAICS code 517210.

[150] *See* 13 C.F.R. § 121.201, NAICS code 517210.

[151] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.

[152] *See generally Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853, 19884–88 paras. 64–73 (1998).

[153] *See id*.

[154] *See* 47 C.F.R. §§ 101 *et seq*. (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

[155] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them

(continued...)

22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[157] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

45. **Offshore Radiotelephone Service**. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[158] There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[159] Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[160] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

46. **39 GHz Service**. The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of $40 million or less in the three previous calendar years.[161] An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[162] The SBA has approved these small business size standards.[163] The auction of the 2,173 39 GHz

(Continued from previous page)
from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[156] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[157] *See* 13 C.F.R. § 121.201, NAICS code 517210.

[158] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 C.F.R. §§ 22.1001-22.1037.

[159] *Id*.

[160] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.

[161] *See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, PP Docket No. 93-253, Report and Order, 12 FCC Rcd 18600, 18661–64, paras. 149–151 (1997).

[162] *See id.*

[163] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Order.

47. **Local Multipoint Distribution Service**. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[164] The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[165] An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[166] The SBA has approved these small business size standards in the context of LMDS auctions.[167] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

48. **218-219 MHz Service**. The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[168] In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[169] A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[170] These size standards will be used in future auctions of 218-219 MHz spectrum.

49. **2.3 GHz Wireless Communications Services**. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services ("WCS") auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity

[164] *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, Reallocate the 29.5-30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689-90, para. 348 (1997).

[165] *See id*.

[166] *See id.*

[167] *See Alvarez to Phythyon Letter 1998*.

[168] *See generally Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

[169] *See generally Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999) (*218-219 MHz Report and Order and Memorandum Opinion and Order*).

[170] *See id*.

with average gross revenues of $15 million for each of the three preceding years.[171] The SBA has approved these definitions.[172] The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

50. **1670-1675 MHz Band**. An auction for one license in the 1670-1675 MHz band was conducted in 2003. The Commission defined a "small business" as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670-1675 MHz band license. Further, the Commission defined a "very small business" as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670-1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

51. **3650–3700 MHz band.** In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz).[173] As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

52. **24 GHz – Incumbent Licensees**. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category "Wireless Telecommunications Carriers (except satellite)," which is 1,500 or fewer employees.[174] To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[175] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications "firms" does not track the number of "licenses". The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[176] and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

53. **24 GHz – Future Licensees**. With respect to new applicants in the 24 GHz band, the size standard for "small business" is an entity that, together with controlling interests and affiliates, has

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[171] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879 para. 194 (1997).

[172] *See Alvarez Letter 1998*.

[173] The service is defined in section 90.1301 *et seq*. of the Commission's Rules, 47 C.F.R. § 90.1301 *et seq*.

[174] 13 C.F.R. § 121.201, NAICS code 517210.

[175] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.

[176] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

average annual gross revenues for the three preceding years not in excess of $15 million.[177] "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[178] The SBA has approved these small business size standards.[179] These size standards will apply to a future 24 GHz license auction, if held.

54. **Satellite Telecommunications**. Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million.[180] The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of "Satellite Telecommunications" and "Other Telecommunications." Under the "Satellite Telecommunications" category, a business is considered small if it had $15 million or less in average annual receipts.[181] Under the "Other Telecommunications" category, a business is considered small if it had $25 million or less in average annual receipts.[182]

55. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[183] For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year.[184] Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999.[185] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Order.

56. The second category of Other Telecommunications "primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry."[186] For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.[187] Of

[177] *See Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 para. 77 (2000) (*24 GHz Order*); *see also* 47 C.F.R. § 101.538(a)(2).

[178] *See 24 GHz Order*, 15 FCC Rcd at 16967, para. 77; *see also* 47 C.F.R. § 101.538(a)(1).

[179] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

[180] *See* 13 C.F.R. § 121.201, NAICS code 517410.

[181] *Id*.

[182] *See* 13 C.F.R. § 121.201, NAICS code 517919.

[183] U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications".

[184] *See* 13 C.F.R. § 121.201, NAICS code 517410.

[185] *See id*. An additional 38 firms had annual receipts of $25 million or more.

[186] U.S. Census Bureau, 2007 NAICS Definitions, "517919 Other Telecommunications", http://www.census.gov/naics/2007/def/ND517919.HTM.

[187] *See* 13 C.F.R. § 121.201, NAICS code 517919.

this total, 2,346 firms had annual receipts of under $25 million.[188] Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

57. **Cable and Other Program Distribution.** Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[189] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.[190] According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.[191] Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.[192] Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

58. **Cable Companies and Systems**. The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[193] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[194] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[195] Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.[196] Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order.

59. **Cable System Operators**. The Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[197] The Commission has determined that an

[188] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517919" (issued Nov. 2010).

[189] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition), http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.

[190] 13 C.F.R. § 121.201, NAICS code 517110.

[191] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010).

[192] *See id*.

[193] *See* 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *See Implementation of Sections of the 1992 Cable Television Consumer Protection and Competition Act: Rate Regulation*, MM Docket Nos. 92-266, 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 para. 28 (1995).

[194] These data are derived from R.R. BOWKER, BROADCASTING & CABLE YEARBOOK 2006, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

[195] *See* 47 C.F.R. § 76.901(c).

[196] WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

[197] 47 U.S.C. § 543(m)(2); *see also* 47 C.F.R. § 76.901(f) & nn.1–3.

operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[198] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[199] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[200] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

60. **Open Video Services**. The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[201] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[202] OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."[203] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.[204] Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.[205] Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order. In addition, we note that the Commission has certified some OVS operators, with some now providing service.[206] Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.[207] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

61. **Internet Service Providers**. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as

[198] 47 C.F.R. § 76.901(f); *see FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

[199] These data are derived from R.R. BOWKER, BROADCASTING & CABLE YEARBOOK 2006, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

[200] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules.

[201] 47 U.S.C. § 571(a)(3)-(4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Annual Report, 24 FCC Rcd 542, 606, para. 135 (2009) (*Thirteenth Annual Cable Competition Report*).

[202] *See* 47 U.S.C. § 573.

[203] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.

[204] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010).

[205] *See id*.

[206] A list of OVS certifications may be found at http://www.fcc.gov/mb/ovs/csovscer.html.

[207] *See Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[208] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.[209] According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.[210] Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more.[211] Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year.[212] Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more.[213] Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

62. **Internet Publishing and Broadcasting and Web Search Portals**. Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that "primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals)."[214] The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees.[215] According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year.[216] Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more.[217] Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

63. **Data Processing, Hosting, and Related Services**. Entities in this category "primarily … provid[e] infrastructure for hosting or data processing services."[218] The SBA has developed a small

[208] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition), http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.

[209] 13 C.F.R. § 121.201, NAICS code 517110.

[210] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110" (issued Nov. 2010).

[211] *See id*.

[212] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171103 (issued Nov. 2010).

[213] *See id*.

[214] U.S. Census Bureau, "2007 NAICS Definitions: 519130 Internet Publishing and Broadcasting and Web Search Portals," http://www.naics.com/censusfiles/ND519130.HTM.

[215] *See* 13 C.F.R. § 121.201, NAICS code 519130.

[216] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 519130" (issued Nov. 2010).

[217] *Id*.

[218] U.S. Census Bureau, "2007 NAICS Definitions: 518210 Data Processing, Hosting, and Related Services", http://www.census.gov/naics/2007/def/NDEF518.HTM.

business size standard for this category; that size standard is $25 million or less in average annual receipts.[219] According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year.[220] Of these, 7,744 had annual receipts of under $ $24,999,999.[221] Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

64. **All Other Information Services**. The Census Bureau defines this industry as including "establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals)."[222] Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts.[223] According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year.[224] Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

65. In the Report and Order, we require that entities participating in the Phase II competitive bidding process and the Remote Areas Fund certify as to their financial and technical capabilities to provide the required services within the specified timeframe in the geographic area for which they seek support.[225]

66. The Commission also makes a procedural rule amendment to require all ETCs to file their section 54.313 and 54.314 reports and certifications in WC Docket No. 14-58.[226]

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

67. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or

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[219] *See* 13 C.F.R. § 121.201, NAICS code 518210.

[220] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 4, "Establishment and Firm Size: Receipts Size of Firms for the United States: 2007 NAICS Code 518210" (issued Nov. 2010).

[221] *Id*.

[222] U.S. Census Bureau, "2007 NAICS Definitions: 519190 All Other Information Services", http://www.census.gov/naics/2007/def/ND519190.HTM.

[223] *See* 13 C.F.R. § 121.201, NAICS code 519190.

[224] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 4, "Establishment and Firm Size: Receipts Size of Firms for the United States: 2007 NAICS Code 519190" (issued Nov. 2010).

[225] *See supra* Section III.B.

[226] *See supra* Section III.E; 47 C.F.R. §§ 54.313, 54.314.

reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[227]

68. The rules that we adopt in the Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, and Seventh Order on Reconsideration provide flexibility by streamlining certain processes for all carriers, including small entities. For example, the Commission permits entities that wish to participate in the Phase II competitive bidding process to seek ETC designation for the Phase II competitive bidding process and Remote Areas Fund *after* being notified they are winning bidders for the offer of the award of Phase II Connect America funding.[228] The Commission recognized that some qualified bidders, including small entities, may be hesitant to invest resources to apply for an ETC designation prior to the competitive bidding process without any sense of whether they are likely to be awarded Phase II support.

69. In the Order, we also remove a deterrent for all carriers, including small carriers, that wish to transfer or acquire parts of exchanges. We waive on our own motion the $7,990 application fee for carriers filing petitions for waiver of the study area boundary freeze for transfers at the sub-exchange level.[229] This change could be especially beneficial to small entities that may have found the application fee prohibitive. The Order also delays any support reductions associated with the rate floor rule over a multi-year period, giving carriers, including small carriers, more time to adjust to the requirement.[230]

70. The rules that we adopt for the Phase II competitive bidding process also provide flexibility for all participants, including small entities, to determine the most cost-effective way to serve areas where they are awarded support through the competitive bidding process. By permitting participants to select to bid on extremely high-cost areas, we permit participants to build integrated networks that span both types of areas in adjacent census blocks as appropriate.[231] And by providing a funding term of 10 years (subject to existing requirements and the availability of funds), we seek to stimulate greater interest in the competitive bidding process.[232]

71. We decline to adopt a transition period for competitive ETCs that receive support through the Phase II competitive bidding process because competitive ETCs, including small entities, have the ability to determine the level of support necessary to support an area through their bid, and thus a transition period is unnecessary.[233]

72. The Commission also takes steps to provide greater certainty to rate-of-return carriers, many of which are small entities. For example, in the Declaratory Ruling, the Commission clarifies its requirements for rate-of-return carriers relating to the extension of broadband services upon reasonable request.[234] And in the Seventh Order on Reconsideration, the Commission eliminates the HCLS benchmarking rule after finding that the rule unintentionally has encouraged carriers that were not subject to the benchmarks to believe that they too needed to limit their investment in broadband-capable networks.[235] In the Seventh Order on Reconsideration, the Commission also adopts a more measured

[227] 5 U.S.C. § 603.

[228] *See supra* Section III.B.

[229] *See supra* Section V.B.

[230] *See supra* Section V.A.

[231] *See supra* Section III.A.1.

[232] *See supra* Section III.A.2.

[233] *See supra* Section III.C.2.

[234] *See supra* Section IV.

[235] *See supra* Section VII.C.

transition for carriers that qualified for SNA based on investment.[236] In the *USF/ICC Transformation Order*, the Commission made the decision to eliminate and phase out SNA effective December 29, 2011.[237] Because there is a two year lag between when carriers qualify for SNA support and receive support, this decision precluded carriers that would have qualified for SNA support in 2010 and 2011, before the Commission's decision to eliminate SNA, from receiving SNA. We reconsider this decision and permit carriers that that would have qualified for SNA in 2010 or 2011 based on an increase in their investment (not due to line loss) to receive SNA.[238]

F. Report to Congress

73. The Commission will send a copy of the Report and Order, Declaratory Ruling, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[239] In addition, the Commission will send a copy of the Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order, Declaratory Ruling, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking (or summaries thereof) will also be published in the Federal Register.[240]

[236] *See supra* Section VII.A.

[237] *USF/ICC Transformation Order*, 26 FCC Rcd at 17757-58, paras. 250-52.

[238] *See supra* Section VII.A.

[239] 5 U.S.C. § 801(a)(1)(A).

[240] *See id*. § 604(b).

APPENDIX D

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on the first page of this document. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In the FNPRM, we propose measures to update and implement further the framework adopted by the Commission in 2011. We strive to adapt our universal service reforms to ensure those living in high-cost areas have access to services that are reasonably comparable to services offered in urban areas. Consistent with that goal, in the FNPRM we propose to revise our current broadband performance obligations to require minimum speeds of 10 Mbps downstream to ensure that the services delivered using Connect America funds are reasonably comparable to the services enjoyed by consumers in urban areas of the country and seek comment on whether to increase the upstream speed requirement to something higher than 1 Mbps.[4] The FNPRM also proposes to apply uniformly the same performance obligations to all recipients of Phase II support and to rate-of-return carriers.[5] In addition, we seek to further develop the record on the ability of Phase II recipients to satisfy their obligations using any technology or a combination thereof – whether wireline or wireless, fixed or mobile, terrestrial or satellite – that meets the performance standards for Phase II.[6] The FNPRM also proposes to provide financial incentives for recipients of Phase II support to accelerate their network deployment.[7]

3. The Commission proposes to apply the same usage allowances and latency benchmarks that the Bureau implemented for price cap carriers that will accept the offer of model-based support in the state-level commitment process to ETCs that will receive support through a competitive bidding process.[8]

4. To target our finite universal service funds most effectively, the FNPRM proposes to exclude from eligibility for Phase II support those areas that are served by *any* provider that offers voice

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[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id*.

[4] *See supra* Section. VIII.A.

[5] *Id.* In this FNPRM, we use the term "Phase II" to refer to Connect America Fund Phase II, and distinguish it from Mobility Fund Phase II.

[6] *Id.*

[7] *Id.*

[8] *Id.*

and broadband services meeting the Commission's service obligations – whether those providers are subsidized or unsubsidized.[9]

5. The FNPRM seeks comment on several proposals regarding ETC designation. It proposes to require entities that are winning bidders for the offer of Phase II support in the competitive bidding process to apply for ETC designation within 30 days of public announcement of winning bidders. It also proposes to adopt a rebuttable presumption that a state commission lacks jurisdiction over an entity seeking ETC designation if it fails to initiate a proceeding within 60 days.[10]

6. The FNPRM seeks comment on the amount of frozen support to provide to incumbents that decline the offer of model-based support where no other provider wishes to serve, and on the obligations associated with such support.[11] It proposes to eliminate or modify the requirement that a price cap carrier certify that all of its frozen support is used to build and operate a broadband –capable network used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor.[12] The FNPRM also proposes to define the public interest obligations that would apply to recipients of frozen support in the non-contiguous areas of the United States.[13] We also propose several minor changes and clarifications regarding the implementation of the transition to model-based support to ease the administration of Connect America Phase II.[14]

7. The FNPRM seeks comment on specific proposals for the design of the Phase II competitive bidding process that will occur in areas where price cap carriers decline model-based support.[15]

8. The FNPRM also addresses significant developments that have occurred since the adoption of the *USF/ICC Transformation Order* in the marketplace for mobile wireless services. Given commercial deployment of 4G Long Term Evolution (LTE), we propose to retarget the focus of Mobility Fund Phase II to extend 4G LTE to those areas of the country where it is not and, to the best of our knowledge, will not be available in the foreseeable future and would preserve existing mobile voice and broadband service where it would not otherwise exist without government support.[16] The FNPRM also proposes to maintain existing support levels (i.e., 60 percent of baseline support) for wireless competitive ETCs for whom competitive ETC support exceeds one percent of their wireless revenues until a date certain after the auction for Mobility Fund Phase II support, and to eliminate support for wireless competitive ETCs for whom high-cost support is one percent or less of their wireless revenues. The FNPRM seeks comment on whether to take a different approach for wireline competitive ETCs and asks whether their phase-down in support should be determined by the timing of the Phase II competitive bidding process.[17] The FNPRM also proposes to freeze support for carriers serving remote areas in Alaska, many of which are small entities, as of December 31, 2014, and to begin their phase-down in

[9] *See supra* Section VIII.C.

[10] *See supra* Section VIII.D.

[11] *See supra* Section VIII.E.

[12] *Id.*

[13] *See supra* Section VIII.E.3.

[14] *See supra* Section VIII.E.4.

[15] *See supra* Section VIII.G.

[16] *See supra* section VIII.H.

[17] *See supra* section VIII.I.

support on a date certain after the Mobility Fund Phase II auction or Tribal Mobility Fund Phase II auction.[18]

9. In the FNPRM, we also focus on developing and implementing a "Connect America Fund" for rate-of-return carriers.[19] As a short term measure, we propose to apply the effect of the annual rebasing of the cap on support known as high-cost loops support (HCLS) equally on all recipients of HCLS.[20] As another near term reform, we also propose to prohibit recovery of new investment occurring on or after January 1, 2015, through either HCLS or interstate common line support (ICLS) in areas that are served by a qualifying competitor that offers voice and broadband service meeting the Commission's standards.[21] We propose that such rate-of-return carriers, many of which are small entities, document their compliance with this requirement in the course of an audit or other inquiry, and to create a safe harbor that an area is presumed unserved if the rate-of-return carrier announces an intention to make new investment and no other provider notifies the rate-of-return carrier that it serves the area.

10. As a longer term measure, we are seeking comment on limiting recovery of new investment through HCLS or ICLS as of a date certain, in conjunction with implementation of a Connect America Fund for rate-of-return carriers.[22] We propose to adopt a stand-alone broadband support mechanism that meets defined parameters and seek to develop further the record on various industry proposals. Building on a proposal recently submitted by ITTA, we propose to provide rate-of-return carriers the option of participating in a two-step transition to Phase II model-based support and seek comment on alternative rate regulation measures and specific implementation issues.[23] We also seek comment in the FNPRM on providing one-time funding for middle mile projects on Tribal lands in 2015.[24]

11. Finally, the FNPRM proposes to codify a broadband certification requirement for recipients of funding that are subject to broadband performance obligations, seeks comment on specific levels of support reduction for non-compliance with service obligations, and proposes to modify our rules regarding reductions in support when parties miss filing deadlines in order to better calibrate the support reduction to coincide with the period of noncompliance.[25]

B. Legal Basis

12. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 2, 4(i), 5, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 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), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429.

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[18] *Id.*

[19] *See supra* Section VIII.J.

[20] *See supra* Section VIII.J.1.

[21] *Id.*

[22] *See supra* Section VIII.J.2.

[23] *See supra* Section VIII.J.3.

[24] *See supra* Section VIII.J.4.

[25] *See supra* Section VIII.K.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

13. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[26] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[27] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[28] A small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[29]

14. **Small Businesses**. Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.[30]

15. **Wired Telecommunications Carriers**. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[31] According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.[32] Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more.[33] Thus, under this size standard, the majority of firms can be considered small.

16. **Local Exchange Carriers (LECs)**. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[34] According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[35] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[36] Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the FNPRM.

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[26] *See* 5 U.S.C. § 603(b)(3).

[27] *See* 5 U.S.C. § 601(6).

[28] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[29] *See* 15 U.S.C. § 632.

[30] *See* SBA, Office of Advocacy, "Frequently Asked Questions," http://www.sba.gov/advo/stats/sbfaq.pdf (accessed Dec. 2010).

[31] 13 C.F.R. § 121.201, NAICS code 517110.

[32] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110" (issued Nov. 2010).

[33] *See id*.

[34] 13 C.F.R. § 121.201, NAICS code 517110.

[35] *See Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

[36] *See id*.

17. **Incumbent Local Exchange Carriers (incumbent LECs)**. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[37] According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[38] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[39] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the FNPRM.

18. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[40] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[41] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

19. **Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[42] According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[43] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.[44] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[45] In addition, 72 carriers have reported that they are Other Local Service Providers.[46] Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.[47] Consequently, the Commission estimates that most providers of competitive local exchange

[37] *See* 13 C.F.R. § 121.201, NAICS code 517110.

[38] *See Trends in Telephone Service* at Table 5.3.

[39] *See id*.

[40] 5 U.S.C. § 601(3).

[41] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a); *see also* 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 C.F.R. § 121.102(b).

[42] *See* 13 C.F.R. § 121.201, NAICS code 517110.

[43] *See Trends in Telephone Service* at Table 5.3.

[44] *See id.*

[45] *See id*.

[46] *See id*.

[47] *See id*.

service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

20. **Interexchange Carriers (IXCs)**. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[48] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[49] Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[50] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

21. **Prepaid Calling Card Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[51] According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[52] Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.[53] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

22. **Local Resellers**. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[54] According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[55] Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.[56] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the FNPRM.

23. **Toll Resellers**. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[57] According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[58] Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.[59] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the FNPRM.

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[48] *See* 13 C.F.R. § 121.201, NAICS code 517110.

[49] *See Trends in Telephone Service* at Table 5.3.

[50] *See id.*

[51] *See* 13 C.F.R. § 121.201, NAICS code 517911.

[52] *See Trends in Telephone Service* at Table 5.3.

[53] *See id*.

[54] *See* 13 C.F.R. § 121.201, NAICS code 517911.

[55] *See Trends in Telephone Service* at Table 5.3.

[56] *See id*.

[57] *See* 13 C.F.R. § 121.201, NAICS code 517911.

[58] *See Trends in Telephone Service* at Table 5.3.

[59] *See id*.

24. **Other Toll Carriers**. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[60] According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[61] Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.[62] Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the FNPRM.

25. **800 and 800-Like Service Subscribers**.[63] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[64] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.[65] According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736.[66] We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

26. **Wireless Telecommunications Carriers (except Satellite)**. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.[67] Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.[68] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[69] For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.[70] Of this total, 1,368 firms had employment of 999 or

[60] *See* 13 C.F.R. § 121.201, NAICS code 517110.

[61] *See Trends in Telephone Service* at Table 5.3.

[62] *See id*.

[63] We include all toll-free number subscribers in this category, including those for 888 numbers.

[64] *See* 13 C.F.R. § 121.201, NAICS code 517911.

[65] *See Trends in Telephone Service* at Tables 18.7-18.10.

[66] *See id*.

[67] *See* 13 C.F.R. § 121.201, NAICS code 517210.

[68] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[69] 13 C.F.R. § 121.201, NAICS code 517210. The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[70] U.S. Census Bureau, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210" (issued Nov. 2010).

fewer employees and 15 had employment of 1000 employees or more.[71] Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.[72] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[73] Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

27. **Broadband Personal Communications Service**. The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years.[74] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[75] These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[76] No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[77] In 1999, the Commission re-auctioned 347 C, E, and F Block licenses.[78] There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35.[79] Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.[80] Of the 24 winning bidders, 16 claimed small business status and won

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[71] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "100 employees or more."

[72] *See Trends in Telephone Service* at Table 5.3.

[73] *See id*.

[74] *See generally Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); *see also* 47 C.F.R. § 24.720(b)(1).

[75] *See generally Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); *see also* 47 C.F.R. § 24.720(b)(2).

[76] *See, e.g.*, *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

[77] *See* FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997). *See also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436 (1997).

[78] *See C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (Wireless Tel. Bur. 1999).

[79] *See C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (Wireless Tel. Bur. 2001).

[80] *See Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (Wireless Tel. Bur. 2005).

156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.[81] Of the 14 winning bidders, six were designated entities.[82] In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.[83]

28. **Advanced Wireless Services**. In 2008, the Commission conducted the auction of Advanced Wireless Services (AWS) licenses.[84] This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710-1755 MHz and 2110-2155 MHz bands (AWS-1). The AWS-1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years ("small business") received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years ("very small business") received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status.[85] Four winning bidders that identified themselves as very small businesses won 17 licenses.[86] Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

29. **Narrowband Personal Communications Services**. In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less.[87] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[88] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.[89] A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for

[81] *See Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (Wireless Tel. Bur. 2007).

[82] *Id*.

[83] *See Auction of AWS-1 and Broadband PCS Licenses Rescheduled For August 13, 2008; Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78*, AU Docket No. 08-46, Public Notice, 23 FCC Rcd 7496 (Wireless Tel. Bur. 2008).

[84] *See id*. Auction 78 also included an auction of Broadband PCS licenses.

[85] *Id*. at 7521-22.

[86] *See Auction of AWS-1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78;* Public Notice, 23 FCC Rcd 12749 (Wireless Tel. Bur. 2008).

[87] *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS*, PP Docket No. 93-253, GEN Docket No. 90-314, ET Docket No. 92-100, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

[88] *See Announcing the High Bidders in the Auction of Ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674*, Public Notice, PNWL 94-004 (rel. Aug. 2, 1994); *Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787*, Public Notice, PNWL 94-27 (rel. Nov. 9, 1994).

[89] *Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) (*Narrowband PCS Second Report and Order*).

the three preceding years of not more than $40 million.[90] A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[91] The SBA has approved these small business size standards.[92] A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[93] Three of these claimed status as a small or very small entity and won 311 licenses.

30. **Paging (Private and Common Carrier)**. In the *Paging Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[94] A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards.[95] According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service.[96] Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees.[97] Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[98] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[99] A fourth auction of 9,603 lower and upper band paging licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.[100]

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[90] *Id.*

[91] *Id.*

[92] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from A. Alvarez, Administrator, SBA (Dec. 2, 1998) (*Alvarez Letter 1998*).

[93] *See Narrowband PCS Auction Closes*, Public Notice, 16 FCC Rcd 18663 (Wireless Tel. Bur. 2001).

[94] *See Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085–88, paras. 98–107 (1999) (*Paging Third Report and Order*)

[95] *See Alvarez Letter 1998*.

[96] *See Trends in Telephone Service* at Table 5.3.

[97] *See id*.

[98] *See Lower and Upper Paging Band Auction Closes*, Public Notice, 16 FCC Rcd 21821 (Wireless Tel. Bur. 2002).

[99] *See Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (Wireless Tel. Bur. 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

[100] *See Lower and Upper Paging Bands Auction Closes*, Public Notice, 25 FCC Rcd 18164 (Wireless Tel. Bur. 2010).

31. **220 MHz Radio Service – Phase I Licensees**. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees.[101] The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the FNPRM.

32. **220 MHz Radio Service – Phase II Licensees**. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[102] This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[103] A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[104] The SBA has approved these small business size standards.[105] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[106] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[107]

33. **Specialized Mobile Radio**. The Commission awards small business bidding credits in auctions for Specialized Mobile Radio ("SMR") geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years.[108] The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years.[109] The SBA has approved these small

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[101] *See* 13 C.F.R. § 121.201, NAICS code 517210.

[102] *See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997) (*220 MHz Third Report and Order*).

[103] *See id*. at 11068–69, para. 291.

[104] *See id*. at 11068–70, paras. 291–95.

[105] *See* Letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998) (*Alvarez to Phythyon Letter 1998*).

[106] *See Phase II 220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (Wireless Tel. Bur. 1998).

[107] *See Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (Wireless Tel. Bur. 1999).

[108] 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

[109] *Id*.

business size standards for the 800 MHz and 900 MHz SMR Services.[110] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996.[111] Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band.[112] The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[113] A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[114]

34. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[115] In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.[116] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

35. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees.[117] We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

36. **Broadband Radio Service and Educational Broadband Service**. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") (previously referred to as the Instructional Television Fixed Service ("ITFS")).[118] In connection with the 1996 BRS auction, the

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[110] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 10, 1999) (*Alvarez Letter 1999*).

[111] *FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas*, Public Notice, 11 FCC Rcd 18599 (WirelessTel. Bur. 1996).

[112] *Id*.

[113] *See Correction to Public Notice DA 96-586 "FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,"* Public Notice, 11 FCC Rcd 18637 (Wireless Tel. Bur. 1996).

[114] *See Multi-Radio Service Auction Closes*, Public Notice, 17 FCC Rcd 1446 (Wireless Tel. Bur. 2002).

[115] *See 800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced*, Public Notice, 15 FCC Rcd 17162 (Wireless Tel. Bur. 2000).

[116] *See 800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 1736 (Wireless Tel. Bur. 2000).

[117] *See generally* 13 C.F.R. § 121.201, NAICS code 517210.

[118] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the*
(continued...)

Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[119] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[120] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) a bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid.[121] In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses.[122] Auction 86 concluded with ten bidders winning 61 licenses.[123] Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

37. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[124] Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a

(Continued from previous page)
Communications Act – Competitive Bidding, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593 para. 7 (1995).

[119] 47 C.F.R. § 21.961(b)(1).

[120] 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard.

[121] 47 C.F.R. § 27.1218. *See also* "Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86," Public Notice, 24 FCC Rcd 8277, 8296 (Wireless Tel. Bur. 2009).

[122] *Id*. at 8280.

[123] *Auction of Broadband Radio Service Licenses Closes; Winning Bidders Announced for Auction 86*, Public Notice, 24 FCC Rcd 13572 (Wireless Tel. Bur. 2009).

[124] The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on EBS licensees.

combination of technologies."[125] The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.[126] Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.[127] Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the FNPRM.

38. **Lower 700 MHz Band Licenses**. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[128] The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[129] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[130] Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses, identified as "entrepreneur" and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[131] The SBA approved these small size standards.[132] The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders.[133] Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[134] The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[135] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[136] In 2005, the Commission

[125] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.

[126] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010).

[127] *See id*.

[128] *See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59),* GN Docket No. 01-74, Report and Order, 17 FCC Rcd 1022 (2002).

[129] *See id.* at 1087-88, para. 172.

[130] *See id*.

[131] *See id*. at 1088, para. 173.

[132] *See Alvarez Letter 1999*.

[133] *See Lower 700 MHz Band Auction Closes; Winning Bidders Announced*, Public Notice, 17 FCC Rcd 17272 (Wireless Tel. Bur. 2002).

[134] *Id*.

[135] *See Lower 700 MHz Band Auction Closes; Winning Bidders Announced*, Public Notice, 18 FCC Rcd 11873 (Wireless Tel. Bur. 2003).

[136] *See id.*

completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.[137]

39. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.[138] The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users.[139] An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008.[140] Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.[141]

40. **Upper 700 MHz Band Licenses.** In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz band licenses.[142] In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available.[143] Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

41. **700 MHz Guard Band Licensees**. In the *700 MHz Guard Band Order*, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[144] A "small business" is an entity that, together with its affiliates and controlling principals, has average gross

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[137] *Auction of Lower 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction No. 60*, Public Notice, 20 FCC Rcd 13424 (Wireless Tel. Bur. 2005).

[138] *Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephone*, *Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, Former Nextel Communications, Inc. Upper700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules*, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket Nos. 96-86, 01-309, 03-264, 06-169, PS Docket No. 06-229, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).

[139] *Id*.

[140] *See Auction of 700 MHz Band Licenses Closes et al.*, Public Notice, 23 FCC Rcd 4572 (Wireless Tel. Bur. 2008) (*Auction 73 Closure PN*).

[141] *See Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 92,* Public Notice, 26 FCC Rcd 10494 (Wireless Tel. Bur. 2011).

[142] *See 700 MHz Second Report and Order*.

[143] *See Auction 73 Closure PN* .

[144] *See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000) (*700 MHz Guard Band Order*).

revenues not exceeding $40 million for the preceding three years.[145] Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[146] An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[147] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[148]

42. **Cellular Radiotelephone Service**. Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico.[149] Bidding credits for designated entities were not available in Auction 77.[150] In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.[151]

43. **Private Land Mobile Radio ("PLMR")**. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[152] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[153]

44. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

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[145] *See id*. at 5343–45, paras. 106–10.

[146] *See id*.

[147] *See 700 MHz Guard Bands Auction Closes; Winning Bidders Announced*, Public Notice, 15 FCC Rcd 18026 (Wireless Tel. Bur. 2000).

[148] *See 700 MHz Guard Bands Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 4590 (Wireless Tel. Bur. 2001).

[149] *See Closed Auction of Licenses for Cellular Unserved Service Area Scheduled for June 17, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77*, AU Docket No. 08-32, Public Notice, 23 FCC Rcd 6670 (Wireless Tel. Bur. 2008).

[150] *Id*. at 6685.

[151] *See Auction of Cellular Unserved Service Area License Closes; Winning Bidder Announced for Auction 77*, Public Notice, 23 FCC Rcd 9501 (Wireless Tel. Bur. 2008).

[152] *See* 13 C.F.R. § 121.201, NAICS code 517210.

[153] *See generally* 13 C.F.R. § 121.201.

45. **Rural Radiotelephone Service**. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[154] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[155] In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons.[156] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

46. **Air-Ground Radiotelephone Service**. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[157] We will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons.[158] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the FNPRM.

47. **Aviation and Marine Radio Services**. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[159] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars.[160] In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[161] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards and may be affected by rules adopted pursuant to the FNPRM.

[154] The service is defined in 47 C.F.R. § 22.99.

[155] BETRS is defined in 47 C.F.R. §§ 22.757 and 22.759.

[156] 13 C.F.R. § 121.201, NAICS code 517210.

[157] *See* 47 C.F.R. § 22.99.

[158] *See* 13 C.F.R. § 121.201, NAICS code 517210.

[159] *See* 13 C.F.R. § 121.201, NAICS code 517210.

[160] *See generally Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853, 19884–88, paras. 64–73 (1998).

[161] *See id*.

48. **Fixed Microwave Services**. Fixed microwave services include common carrier,[162] private operational-fixed,[163] and broadcast auxiliary radio services.[164] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[165] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

49. **Offshore Radiotelephone Service**. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[166] There are approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for Cellular and Other Wireless Telecommunications services.[167] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[168]

50. **39 GHz Service**. The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of $40 million or less in the three previous calendar years.[169] An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[170] The SBA has approved these small business size standards.[171] The auction of the 2,173 39 GHz

[162] *See* 47 C.F.R. §§ 101 *et seq*. (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

[163] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[164] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[165] *See* 13 C.F.R. § 121.201, NAICS code 517210.

[166] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 C.F.R. §§ 22.1001–1037.

[167] *See* 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210).

[168] *See id*.

[169] *See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, PP Docket No. 93-253, Report and Order, 12 FCC Rcd 18600, 18661–64, paras. 149–51 (1997).

[170] *See id.*

licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the FNPRM.

51. **Local Multipoint Distribution Service**. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[172] The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[173] An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[174] The SBA has approved these small business size standards in the context of LMDS auctions.[175] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

52. **218-219 MHz Service**. The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[176] In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[177] A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[178] These size standards will be used in future auctions of 218-219 MHz spectrum.

53. **2.3 GHz Wireless Communications Services**. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small

(Continued from previous page)

[171] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

[172] *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, Reallocate the 29.5-30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689-90, para. 348 (1997).

[173] *See id.*

[174] *See id.*

[175] *See Alvarez to Phythyon Letter 1998*.

[176] *See generally Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

[177] *See generally Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999) (*218-219 MHz Report and Order and Memorandum Opinion and Order*).

[178] *See id*.

business" for the wireless communications services ("WCS") auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[179] The SBA has approved these definitions.[180] The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

54. **1670-1675 MHz Band**. An auction for one license in the 1670-1675 MHz band was conducted in 2003. The Commission defined a "small business" as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670-1675 MHz band license. Further, the Commission defined a "very small business" as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670-1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

55. **3650–3700 MHz band.** In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz).[181] As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

56. **24 GHz – Incumbent Licensees**. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons.[182] We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[183] and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

57. **24 GHz – Future Licensees**. With respect to new applicants in the 24 GHz band, the size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million.[184] "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has

[179] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS),* GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[180] *See Alvarez Letter 1998*.

[181] The service is defined in section 90.1301 *et seq*. of the Commission's Rules, 47 C.F.R. § 90.1301 *et seq*.

[182] *See* 13 C.F.R. § 121.201, NAICS code 517210.

[183] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[184] *See Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 para. 77 (2000) (*24 GHz Order*); *see also* 47 C.F.R. § 101.538(a)(2).

average gross revenues not exceeding $3 million for the preceding three years.[185] The SBA has approved these small business size standards.[186] These size standards will apply to a future 24 GHz license auction, if held.

58. **Satellite Telecommunications**. Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million.[187] The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of "Satellite Telecommunications" and "Other Telecommunications." Under the "Satellite Telecommunications" category, a business is considered small if it had $15 million or less in average annual receipts.[188] Under the "Other Telecommunications" category, a business is considered small if it had $25 million or less in average annual receipts.[189]

59. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[190] For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year.[191] Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999.[192] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the FNPRM.

60. The second category of Other Telecommunications "primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry."[193] For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.[194] Of this total, 2,346 firms had annual receipts of under $25 million.[195] Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

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[185] *See 24 GHz Order*, 15 FCC Rcd at 16967 para. 77; *see also* 47 C.F.R. § 101.538(a)(1).

[186] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

[187] *See* 13 C.F.R. § 121.201, NAICS code 517410.

[188] *Id*.

[189] *See* 13 C.F.R. § 121.201, NAICS code 517919.

[190] U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications".

[191] *See* 13 C.F.R. § 121.201, NAICS code 517410.

[192] *See id*. An additional 38 firms had annual receipts of $25 million or more.

[193] U.S. Census Bureau, 2007 NAICS Definitions, "517919 Other Telecommunications", http://www.census.gov/naics/2007/def/ND517919.HTM.

[194] *See* 13 C.F.R. § 121.201, NAICS code 517919.

[195] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517919" (issued Nov. 2010).

61. **Cable and Other Program Distribution.** Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[196] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.[197] According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.[198] Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.[199] Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the FNPRM.

62. **Cable Companies and Systems**. The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[200] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[201] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[202] Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.[203] Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the FNPRM.

63. **Cable System Operators**. The Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[204] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the

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[196] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition), http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.

[197] *See* 13 C.F.R § 121.201, NAICS code 517110.

[198] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010).

[199] *See id*.

[200] *See* 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *See Implementation of Sections of the 1992 Cable Television Consumer Protection and Competition Act: Rate Regulation*, MM Docket Nos. 92-266, 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 para. 28 (1995).

[201] These data are derived from R.R. BOWKER, BROADCASTING & CABLE YEARBOOK 2006, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

[202] *See* 47 C.F.R. § 76.901(c).

[203] WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

[204] 47 U.S.C. § 543(m)(2); *see also* 47 C.F.R. § 76.901(f) & nn.1–3.

aggregate.[205] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[206] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[207] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

64. **Open Video Services**. The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[208] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[209] OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."[210] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.[211] Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.[212] Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Notice. In addition, we note that the Commission has certified some OVS operators, with some now providing service.[213] Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.[214] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

65. **Internet Service Providers**. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data,

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[205] 47 C.F.R. § 76.901(f); *see FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

[206] These data are derived from R.R. BOWKER, BROADCASTING & CABLE YEARBOOK 2006, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

[207] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules.

[208] 47 U.S.C. § 571(a)(3)-(4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Annual Report, 24 FCC Rcd 542, 606, para. 135 (2009) (*Thirteenth Annual Cable Competition Report*).

[209] *See* 47 U.S.C. § 573.

[210] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.

[211] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010).

[212] *See id*.

[213] A list of OVS certifications may be found at http://www.fcc.gov/mb/ovs/csovscer.html.

[214] *See Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[215] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.[216] According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.[217] Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more.[218] Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year.[219] Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more.[220] Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

66. **Internet Publishing and Broadcasting and Web Search Portals**. Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that "primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals)."[221] The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees.[222] According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year.[223] Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more.[224] Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

67. **Data Processing, Hosting, and Related Services**. Entities in this category "primarily … provid[e] infrastructure for hosting or data processing services."[225] The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual

[215] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition), http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.

[216] 13 C.F.R. § 121.201, NAICS code 517110.

[217] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110" (issued Nov. 2010).

[218] *See id*.

[219] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171103 (issued Nov. 2010).

[220] *See id*.

[221] U.S. Census Bureau, "2007 NAICS Definitions: 519130 Internet Publishing and Broadcasting and Web Search Portals," http://www.naics.com/censusfiles/ND519130.HTM.

[222] *See* 13 C.F.R. § 121.201, NAICS code 519130.

[223] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 519130" (issued Nov. 2010).

[224] *Id*.

[225] U.S. Census Bureau, "2007 NAICS Definitions: 518210 Data Processing, Hosting, and Related Services", http://www.census.gov/naics/2007/def/NDEF518.HTM.

receipts.[226] According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year.[227] Of these, 7,744 had annual receipts of under $ $24,999,999.[228] Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

68. **All Other Information Services**. The Census Bureau defines this industry as including "establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals)."[229] Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts.[230] According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year.[231] Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

69. In this FNPRM, the Commission seeks public comment on additional steps for its comprehensive universal service reform. The transition to the reforms could affect all carriers including small entities, and may include new administrative processes. In proposing these reforms, the Commission seeks comment on various reporting and other compliance requirements that may apply to all carriers, including small entities. We seek comment on any costs and burdens on small entities associated with the proposed rules, including data quantifying the extent of those costs or burdens.

70. For example, in the FNPRM, the Commission seeks further comment on the design of the Phase II competitive bidding process in which small entities may participate.[232] It is likely that the rules the Commission ultimately adopts for the competitive bidding process will impose obligations on small entities deciding to participate.

71. In defining the areas eligible for Phase II support, the Commission seeks comment on excluding from eligibility areas served by any provider that offers voice and broadband meeting the Commission's requirements – regardless of whether the provider is subsidized or unsubsidized.[233] We seek comment on requiring competitors (including small entities) that wish to contest the eligibility of an area to certify to the Commission that they are able and willing to continue providing voice and broadband service meeting the Commission's requirements for a period of time, such as five years.

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[226] *See* 13 C.F.R. § 121.201, NAICS code 518210.

[227] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 4, "Establishment and Firm Size: Receipts Size of Firms for the United States: 2007 NAICS Code 518210" (issued Nov. 2010).

[228] *Id*.

[229] U.S. Census Bureau, "2007 NAICS Definitions: 519190 All Other Information Services", http://www.census.gov/naics/2007/def/ND519190.HTM.

[230] *See* 13 C.F.R. § 121.201, NAICS code 519190.

[231] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 4, "Establishment and Firm Size: Receipts Size of Firms for the United States: 2007 NAICS Code 519190" (issued Nov. 2010).

[232] *See supra* Section VIII.G.

[233] *See supra* Section VIII.C.

72. The Commission seeks comment on methods of providing funding recipients with increased flexibility in making their deployments. First, the Commission seeks comment on permitting Phase II recipients to specify that they are willing to deploy to less than 100 percent of locations in exchange for some lesser amount of funding.[234] In such a process, the recipients may be required to state the percent or number of locations that they are willing to serve. Second, the Commission seeks comment on requiring Connect America funding recipients to make a statement announcing their intent to deploy to unserved locations in partially served census blocks.[235] Such recipients may potentially also be required to send a copy of that statement to any provider currently shown on the National Broadband Map as serving that census block.

73. Moreover, the Commission seeks comment on near term measures for reforms to rate-of-return carriers' support mechanism.[236] As a part of this short-term reform, the Commission proposes adopting a rule that no new investment may be recovered through HCLS or ICLS as of a date certain when such investment occurs in areas that are already served by a competing provider of voice and broadband services meeting our requirements. In the FNPRM, the Commission proposes to require rate-of-return carriers, many of which are small entities, to be prepared to document with asset records and associated receipts that new investment for which recovery is sought through federal support mechanisms is occurring only in census blocks that are not served by other providers. It also proposes that rate-of-return carriers be required to announce an intention to make new investment and wait 90 days before such investment may properly be eligible for cost recovery through the universal service support mechanisms. The FNPRM also proposes a transition framework for rate-of-return carriers to elect to receive support based on a forward looking cost model.[237]

74. We anticipate that rate-of-return carriers are likely to be subject to other accountability measures depending on which reforms the Commission ultimately adopts. The Commission also seeks comment on setting aside $10 million of support for the construction of middle mile networks on Tribal lands.[238] If such a program is implemented and small entities choose to participate, they would be subject to the trial's rules, including any accountability obligations the Commission chooses to adopt after considering comments submitted in response to the FNPRM.

75. The Commission also seeks comment on requiring entities participating in the Phase II competitive bidding process to submit an application to become an ETC within 30 days of notification that they are the winning bidders for those areas where they have not already been designated as ETCs.[239] This proposal is intended to facilitate the ability of non-incumbent carriers, many of which are small entities, to participate in the Connect America Fund and the Remote Areas Fund. We also propose to adopt a rebuttable presumption that if a state commission fails to initiate an ETC designation proceeding within 60 days, the entity may file for ETC designation with the Commission and point to the lack of state action within the prescribed time period as evidence that the petitioner is not subject to the jurisdiction of a state commission.[240] The Commission also proposes to require winning bidders to submit proof to the Commission that they have filed the requisite ETC designation application within the required timeframe to the extent filed with a state commission.

[234] *See supra* Section VIII.B.

[235] *Id.*

[236] *See supra* Section VIII.J.1.

[237] *See supra* Section VIII.J.3.

[238] *See supra* Section VIII.J.4.

[239] *See supra* Section VIII.D.

[240] *Id.*

76. The Commission also seeks comment on several proposals related to the "uniform national framework for accountability" that was established in the *USF/ICC Transformation Order*.[241] We propose to codify a certification requirement for ETCs that are required to provide broadband service as a condition of receiving ongoing high-cost support in areas served by price cap and rate-of-return carriers. ETCs would be required to certify that the pricing of one of their broadband service plans is no more than the applicable benchmark specified by the Wireline Competition Bureau, or is no more than the non-promotional prices charged for comparable fixed wireline service in urban areas.[242] The Bureau also proposes a revised framework for reductions in support that ETCs will receive for failing to file their section 54.313 and 54.314 filings on time and seeks comment on what penalties it should impose for ETCs that do not meet the Commission's public service obligations.[243]

77. The Commission seeks comment on proposals for specific service obligations for carriers serving non-contiguous areas electing to continue to receive frozen support amounts.[244] We seek comment on how we can monitor for compliance with these obligations.

78. The Commission also proposes rules for Mobility Fund II, in which small entities might choose to participate.[245] The proposed rules would impose a number of obligations including the requirement that participating entities secure a letter of credit, the requirements for the contents of the applications to participate and for winning bidders, and various certifications and reporting requirements.[246]

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

79. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[247]

80. The FNPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may affect small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the FNPRM.

81. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the FNPRM, in reaching its final conclusions and taking action in this proceeding. The reporting, recordkeeping, and other compliance requirements in the FNPRM could have an impact on both small and large entities. The Commission believes that any impact of such requirements is outweighed by the accompanying public benefits. Further, these requirements are

[241] *USF/ICC Transformation Order*, 26 FCC Rcd at 17850, para. 573.

[242] *See supra* Section VIII.K.

[243] *Id.*

[244] *See supra* Section VIII.E.3.

[245] *See supra* Section VIII.H.

[246] *Id. See also supra* Appendix B, "Proposed Rules".

[247] 5 U.S.C. § 603(c)(1)–(c)(4).

necessary to ensure that the statutory goals of section 254 of the Act are met without waste, fraud, or abuse.

82. The Commission has made an effort to anticipate the challenges faced by small entities in complying with its rules. For example, when proposing new speed obligations, the Commission recognizes that ETCs, including small entities, may not be able to meet revised speed standards immediately.[248] Noting that rate-of-return carriers, which are often small entities, are required to deploy broadband upon reasonable request, the Commission emphasizes that rate-of-return carriers would only be required to meet the higher speed if the request for service is reasonable – meaning that the carrier could cost effectively extend voice and broadband-capable network to that location, given its anticipated end-user revenues and other sources of support. The Commission also seeks comment on the timeframe for rate-of-return carriers to upgrade their networks to a faster speed benchmark. Related to the other performance standards the Commission proposes to impose – particularly usage and latency standards – the Commission also requests that parties identify whether the requirements are too stringent and offer alternative proposals.

83. The Commission also seeks comment on how the obligations for carriers serving non-contiguous areas should be adjusted when determining support obligations for those that select frozen support in lieu of model-based support.[249]

84. The Commission proposes to allow Phase II recipients to meet their deployment obligations using any technology that meets the performance requirements.[250] If adopted, this would give participants, including small entities, additional flexibility in satisfying their obligations. The Commission also seeks comment on two potential measures that would provide all recipients of Phase II funding, both in the state-level commitment process and competitive bidding process, greater flexibility to satisfy their deployment obligations.[251] These include proposing to permit Phase II recipients to specify that they are willing to deploy to less than 100 percent of locations in their funded areas, with associated support reductions, and to allow Phase II recipients to substitute some number of unserved locations within partially served census blocks for locations within funded census blocks.

85. The Commission also proposes to retarget the focus of Mobility Fund Phase II to the U.S. population that will not have 4G LTE through commercial deployments and those areas where support is needed to preserve existing mobile voice and broadband service that would not otherwise exist without governmental support.[252] The FNPRM proposes adjusting downward the budget for a retargeted Mobility Fund II. While this could affect small mobile providers, we note that if Mobility Fund Phase II is retargeted as proposed, support could be available for small entities that are the only providers serving populations in portions of the country.

86. The Commission proposes targeted measures to maintain competitive ETC funding until after the Mobility Fund Phase II auction.[253] Thus, we propose to maintain 60 percent competitive ETC baseline support for those wireless ETCs whose competitive ETC support exceeds one percent of their wireless revenues, until a specified date after the Mobility Fund Phase II ongoing support. While we propose to eliminate competitive ETC support for wireless ETCs for whom high-cost support represents less than one percent of their wireless revenues, we note that such carriers can take advantage of the

[248] *See supra* Section VIII.A.

[249] *See supra* Section VIII.E.3.

[250] *See supra* Section VIII.A.

[251] *See supra* Section VIII.B.

[252] *See supra* Section VIII.H.

[253] *See supra* Section VIII.I.

waiver process if the elimination of support would result in consumers losing access to existing mobile voice or broadband service. The FNRPM also proposes to freeze competitive ETC support for competitive ETCs serving remote areas of Alaska, many of which are small entities, which would provide greater certainty to individual carriers regarding their support amounts. The FNRPM also proposes a delayed time table for phasing down that frozen support compared to other competitive ETCs.

87. The FNPRM proposes to exclude from eligibility for Phase II support those areas served by a provider that offers voice and broadband services meeting the Commission's requirements regardless of whether the competitor is subsidized or unsubsidized.[254] The Commission also seeks comment on excluding from eligibility providers that are offering qualifying service regardless of what technology is used to deliver that service. If adopted, these proposals could limit the overbuilding of areas served by other providers, some of which may be small entities.

88. For rate-of-return carriers, the Commission seeks comment on short-term and long-term reforms to ensure that funds provided to rate-of-return carriers are disbursed efficiently and in the public interest.[255] Recognizing the need to eliminate the inefficiencies of the universal service support mechanisms for rate-of-return carriers, the FNPRM proposes to modify the current HCLS mechanism by reducing the reimbursement percentages for all carriers and to limit the ability of rate-of-return carriers to recover new investment through HCLS in areas where other providers are offering voice and broadband. The Commission also proposes a funding mechanism that would provide support for rate-of-return carriers' broadband-only lines and seeks comment on various industry proposals for longer term reforms. The Commission anticipates taking into account the unique challenges faced by rate-of-return carriers when determining which reforms to adopt.

89. In the FNPRM, the Commission seeks comment on specific proposals for the design of the Phase II competitive bidding process and the rules for a retargeted Mobility Phase II.[256] The Commission asks a variety of questions about how these mechanisms should be designed, and proposes rules for Mobility Fund Phase II. The Commission anticipates that small entities will comment and provide data on the challenges they face and proposals for how to design the mechanisms to accommodate small entities. The Commission anticipates taking these comments and any alternatives proposed into consideration when making final decisions on how the mechanisms will be designed and what rules it will adopt for entities receiving support from these mechanisms.

90. The Commission proposes a broadband reasonably comparable rate certification on all ETCs that receive ongoing high-cost support in areas served by price cap carriers and rate-of-return carriers, but it also seeks comment on modifying the reduction in support for late filing.[257] Although the Commission notes that filing deadlines will be strictly enforced, it proposes to adjust the reduction of support for all ETCs, including small entities, and provide a grace period to ensure it is not unduly punitive given the nature of non-compliance. The Commission also seeks comment on support reductions it should impose for failure to meet its service obligations and considers alternatives that would give all ETCs, including small entities, an opportunity for cure before support reductions are imposed.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

91. None.

[254] *See supra* Section VIII.C.

[255] *See supra* Section VIII.J.

[256] *See supra* Sections VIII.G & H. *See also supra* Appendix B, "Proposed Rules".

[257] *See supra* Section VIII.K.

STATEMENT OF
CHAIRMAN TOM WHEELER

Re: *Connect America Fund*, WC Docket No. 10-90, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Universal Service Reform -- Mobility Fund*, WT Docket No. 10-208, *ETC Annual Reports and Certifications*, WC Docket No. 14-58.

Since my first day in this job, I have talked about broadband as the engine of the 21st century economy, and the need to ensure that the opportunities presented by broadband reach as far and wide as possible – regardless of whether you live in New York City or Rapid City, Fayetteville or Fairbanks. Our country will not achieve our massive potential if millions of our fellow citizens and businesses in rural America are being bypassed by the Internet revolution.

Chairman Genachowski took a number of important steps to address this issue during his tenure, not the least of which was the adoption of the Universal Service Fund/Intercarrier Compensation Transformation Order in 2011. That action, for the first time, explicitly aligned our universal service high-cost support mechanisms with the realities of 21st century networks.

With today's item, the Commission takes a series of important steps that move us further along the path set out by the Commission in 2011. In particular, we decide a number of outstanding issues regarding the Phase II competitive bidding process. For example:

- We establish a 10-year term of support for winners of the competitive bidding process;
- We include extremely high-cost areas in the competitive bidding process, to try to get broadband to those areas as quickly as possible;
- We streamline the Eligible Telecommunication Carrier designation process for parties that want to participate in the competitive bidding process; and
- We determine that price-cap carriers that decline model-based support may still participate in the competitive bidding process.

We also take stock of where we are and provide additional time to adjust to existing reforms. Congress set forth the principle that rates in rural areas should be reasonably comparable to those in urban areas. To implement this guidance, the Commission in 2011 decided not to subsidize unreasonably low retail rates. This is for the purpose of ensuring that the subsidies paid by all telephone subscribers go toward their intended purpose of offsetting the higher cost of rural construction, and not to unfairly charging one subscriber to subsidize artificially lower rates for another. We act today to phase in reductions in USF support in a way that gives rural providers more time to adjust, delaying the rule until January 2015, phasing it in over a multi-year period, and ensuring that the impact of the rule does not fall on Lifeline customers.

Even as we move forward with the framework adopted in 2011, we have a fiduciary duty to ratepayers and a statutory obligation to rural America to ensure that we are using Universal Service Fund dollars as effectively as possible to deliver reasonably comparable services. With that in mind, we propose raising the speed benchmark for support recipients, and we seek comment on re-targeting the mobility fund.

With respect to speeds, we simply cannot leave rural America behind. The data we have show that urban and suburban household increasingly have access to broadband at speeds above 10 Mbps. In light of our statutory duty to ensure that rural Americans have access to "reasonably comparable" services, it is incumbent upon us to look at whether we need to redefine our target and understand the costs and benefits of such a change.

Likewise, the marketplace has not been standing still in the mobile space. LTE is being deployed across the country, and we need to understand what that means for how we use the funds at our disposal. How do we know which areas are being served and whether those areas are getting service that is reasonably comparable to urban areas? How do we ensure that we are preserving service where it exists only due to government subsidies and extending service where it doesn't? We need answers to these questions so we can make informed decisions moving forward.

Finally, we are taking several enormous steps forward to address universal service for rate-of-return carriers.

I'm particularly pleased to note that we are eliminating the Quantile Regression Analysis ("QRA") benchmarks rule, which used what turned out to be an overly confusing formula to determine what expenses would be eligible for reimbursement from the Universal Service Fund. When our rules aren't working the way we expected, we have an obligation to fix them.

But eliminating the QRA does not mean that we are no longer concerned about some of the "race-to-the-top" incentives created by the existing structure. We need to get our best minds focused on trying to establish a Connect America Fund that encourages prudent investment and continued deployment of robust broadband networks throughout rural America.

The universal service program is one of the most important tools at our disposal to ensure that consumers and businesses in rural American have the same opportunities as their urban and suburban cousins to be active participants in the United States of the 21st century. In Phase I of the Connect America Fund, we were able to deploy broadband to over 1.6 million Americans who never had it before. As we move to Phase II, I have every confidence that we can build on that success, and today's item keeps that process moving in the right direction.

STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN

Re: *Connect America Fund*, WC Docket No. 10-90, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Mobility Fund*, WT Docket No. 10-208, *ETC Annual Reports and Certifications*, WC Docket No. 14-58.

For most Americans, going without their smartphone, tablet or access to the Internet for any length of time is difficult – indeed, most in this room can barely get through a Commission meeting without checking and sending email or contributing to social media accounts. What we too often take for granted, however, is that this engagement is one in which millions of Americans do without every single day – denying them the advantages and opportunities, access to broadband provides: getting a better education, utilizing advanced, remote, healthcare monitoring, finding the best job, working from home, maintaining connections with loved ones, and participating in civic engagement.

Congress directed this Commission to ensure that *all* Americans, including low income Americans, have access to advanced telecommunications and information services. In 2011, the FCC, after years of good faith efforts faltered, comprehensively reformed its universal service and intercarrier compensation regimes and put this country on a path to further close these divides.

This was no easy task for changes to any entitlement program are always difficult. But I am proud to have been part of a landmark decision that has already paved the way to connect over a million Americans with broadband for the first time, provide mobile coverage to tens of thousands of road miles, and connect over 50,000 people living on Tribal lands with access to mobile broadband. We also reformed intercarrier compensation in a manner that stopped the unpredictable declines in revenues and provided carriers with certainty and predictability regarding future revenues.

At the same time, I have always made clear that we should be open to make course corrections when appropriate. The *USF/ICC Transformation Order* is nearly 800 pages long and was bound to include policies, however well intended, that did not quite achieve our objective or take into account a market that developed differently than anticipated.

So I support today's item because it continues down the path of reform, while making needed adjustments and asking questions to ensure that we use universal service funds as prudently and efficiently as possible. There is no question that an item this broad in scope would include pieces I would have drafted differently but overall it strikes the right balance. I would like to take a moment to highlight a few aspects.

The Mobility Fund. I strongly supported the creation of the first universal service fund dedicated to mobility to ensure that consumers have access to mobile broadband services by providing ongoing support to providers in rural and high cost areas. I am pleased that Mobility Fund Phase I and Tribal Mobility Fund Phase I are in the process of connecting tens of thousands of previously unserved areas and populations.

Today's item proposes to retarget the Mobility Fund Phase II in light of marketplace developments. I appreciate the support of Chairman Wheeler and my colleagues to propose to retain a dedicated Mobility Fund focused on preserving service that exists today due to support from the universal service fund and extending service to areas unserved by 4G LTE. If the size of the refocused Mobility Fund II is less than the $500 million adopted in the *USF/ICC Transformation Order*, the item proposes to use unused funding to extend broadband through Connect America Phase II or the Remote Areas Fund. This proposal furthers our goal of ensuring that all Americans have access to advanced services, such as 4G LTE, while continuing to extend broadband through Connect America Fund.

At the same time, I was concerned about continuing to phase down competitive ETC support before the Commission finalizes a retargeted Mobility Fund Phase II. Without sufficient data on how small and regional carriers are using competitive ETC support today, continuing the phase down could put consumers at risk of losing mobile service, which is in tension with the directive in the statute for the Commission to set policies based on the "preservation and advancement, of universal service." For these reasons, I advocated including the pause in *USF/ICC Transformation Order.* I am once again grateful for the support of my colleagues to propose to retain the pause so that small and regional providers will have certainty about the opportunities of a retargeted Mobility Fund Phase II before the phase down continues.

Rate Floor. There has been a significant focus recently on the Commission's rate floor. Concerns have been raised about affordability in rural areas and I share them. But my concern rests not only with rural areas. We should also be asking *why* rates increased so unexpectedly in urban areas, where significant poverty levels exist and the cost of living tends to be higher.

Had the urban rate average stayed fairly constant, the rate floor would not have increased much above the current $14 and we would not even be having this debate. Coincidentally, urban rate increases occurred around the time that states deregulated their local end user rates. And, I note the highest monthly rates rest with the non-incumbent VoIPs, which typically are not regulated.

So, yes, concerns about the affordability of rates in rural **and urban** areas are valid – but the mechanism to address these concerns, I believe rests with our Lifeline program – not the program, which subsidizes the cost of networks in high cost areas without any regard to the wealth demographics of a given area.

Rate of Return Reforms. The item also reconsiders several rules from the *USF/ICC Transformation Order,* regarding reforms to rate of return carriers, including the safety net additive, for carriers that qualified due to investment, and the benchmark rule also known as the quantile regression.

While I agree that the benchmark rule did not necessarily achieve its intended goal of rewarding carriers that invested efficiently with additional support, I do have concerns about returning to the old HCLS "race to the top" rule, where carriers with the highest costs get support and carriers with lower costs receive little or no support. I want to thank Commissioner O'Rielly for working with my office on this issue and I appreciate the Chairman for addressing these concerns, with specific proposals to reform HCLS in the near term while seeking comment on a long-term solution for rate of return carriers consistent with the goals of the *USF/ICC Transformation Order* of expanding broadband while encouraging and rewarding increased efficiency.

Rate of return carriers often operate in the hardest to serve rural areas – such as Moncks Corner, South Carolina, where I spent many summers and weekends, and areas that need and benefit from broadband connectivity. I look forward to working with my colleagues in moving quickly to adopt near-term and long-term reforms.

Competitive Process/Phase II. The item makes significant progress adopting and proposing the rules for the Connect America Fund competitive bidding process. In particular, I support the decision to enable providers to receive ETC designation after being selected in the competitive bidding process. This retains the critical state role in the ETC process while encouraging the broad participation in the competitive process.

The Commission also seeks comment on aspects of the right of first refusal process, including whether the speed should evolve and also proposes public interest and broadband deployment obligations for insular areas that elect to continue to receive frozen support. Finally, I applaud the Wireline Competition Bureau's tireless work that culminated in the adoption of the cost model yesterday – a significant achievement in and of itself.

As I said when the Commission adopted the *USF/ICC Transformation Order*, this is a marathon, not a sprint and the progress we are making today will put us ever so close to the finish line, but we have more work to do.

I again thank the dedicated staff of the Wireline Competition Bureau, the Wireless Telecommunications Bureau, Rebekah Goodheart in my office, as well as the many other offices and Bureaus that worked so hard on this item.

STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL

Re: *Connect America Fund*, WC Docket No. 10-90, *Establishing Just and Reasonable Rates for Local Exchange Carriers,* WC Docket No. 07-135, *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, *Universal Service Reform — Mobility Fund,* WT Docket No. 10-208, *ETC Annual Reports and Certifications*, WC Docket No. 14-58.

Universal service is a cherished principle in communications. After all, it was back in 1934 when Congress first directed the Commission to make "communication by wire and radio" available "so far as possible, to all the people of the United States." And it was Congress who expanded on this notion by adding new principles to guide universal service policy in 1996. As a result, the duty to preserve and advance universal service is the law of the land.

Technology changes, but this basic legal principle does not. So I appreciate the work of my predecessors here at the Commission who more than two years ago sought to update our universal service policies from top to bottom. They refocused the fund from last century's technology on the broadband and wireless challenges today. They put it on a budget. And they increased accountability throughout. This was not easy—and I applaud their efforts.

But as I have said before, I am concerned that when you add the piece parts of our reform together—and they are manifold—what we have is extremely complex. I fear that this complexity can deny carriers dependent on this system the certainty they need to confidently invest in their network infrastructure. So when opportunities arise to simplify our rules in a manner that is fiscally sound, good for rural consumers, and bound to inspire investment—we need to seize them.

In many ways, we do that today. Over the last year, many rural carriers have argued that the uncertainty created by our regression model has hindered their ability to invest in their networks. Today we answer their pleas because we have determined they were right. So we eliminate it. This is good. In addition, we have made adjustments to allow those who relied on receiving safety net additive support under our prior rules and made significant network investments in 2010 and 2011 to receive that support. This is also good.

At the same time, we adopt an extensive Further Notice of Proposed Rulemaking that delves into the details of how we will implement the Connect America Fund, the Mobility Fund, and the transition of rural carriers to a broadband support mechanism. Back in 1996 Congress directed us to ensure that universal service evolves over time. In many ways, that is what our rulemaking does today. But I am sensitive that as we seek to evolve universal service policy we also can create more complexity and more uncertainty for broadband and wireless providers. Building networks takes time—and is not easy in our least populated communities. So as we move forward, I hope we can craft rules in a way that ultimately reduces complexity and uncertainty. Because if we do this right, we will connect America by providing better broadband and wireless service in rural America.

**STATEMENT OF
COMMISSIONER AJIT PAI
APPROVING IN PART AND DISSENTING IN PART**

Re: *Connect America Fund*, WC Docket No. 10-90, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *ETC Annual Reports and Certifications*, WC Docket No. 14-58.

In the *Universal Service Transformation Order*, the Commission performed the Heraclean task of reorienting the Universal Service Fund away from supporting telephone service and toward supporting broadband service. But no commissioner is the child of Zeus, so it is unsurprising that the Commission made some mistakes and left some labors unfinished. So here we are, reconsidering the *Transformation Order* for the *seventh* time. I welcome the continued collaboration with my colleagues, but I fear that some of today's decisions just set us up for reconsiderations eight, nine, and beyond. In particular, I strongly disagree with the Commission's decision to substantially increase many rural Americans' phone bills. I accordingly approve in part and dissent in part.

To start with the positive, today's order strikes the quantile regression analysis (QRA) benchmarks from our books.[1] As Chairman Wheeler likes to say, this is a big deal. I applaud him for tackling this challenge, even though the benchmarks had been unanimously adopted in the *Transformation Order*.

This has been a long and hard struggle. When I first questioned whether the QRA benchmarks were good policy in 2012, many, including some in this building, told me that eliminating them was a hopeless cause and incremental change was all that could be accomplished. But as the QRA benchmarks' impact became more apparent, the tide turned. A unanimous vote for adopting the benchmarks turned into a unanimous vote to repeal them.

As we recognize today, whatever the intended purpose of the QRA benchmarks, in practice they chilled the investment climate and impeded the deployment of broadband to rural Americans. Even the U.S. Department of Agriculture's Rural Utilities Service told us that carriers had stopped taking out loans to deploy broadband because of them. The QRA benchmarks introduced substantial uncertainty into the marketplace. Carriers had no idea what support they would be receiving from one year to the next. That's a big problem. Investing in rural America is not a one- or two-year decision but a ten- or twenty-year commitment. Therefore, our policies must reflect the unique challenges that rural carriers face when building their networks. Just as important, the QRA benchmarks were not designed to save the Fund a dollar, so keeping them on our books just meant further hardships for rural America with no federal benefit.

I am also pleased that my colleagues agreed with my suggestion to propose a stand-alone broadband funding mechanism for rate-of-return carriers serving the highest-cost reaches of our country.[2] Through a quirk of regulatory history, our rules offer universal service support to such carriers to build out broadband, but only when they bundle their broadband services with traditional telephone lines. That system has increasingly come under strain as consumers flee landlines in favor of wireless and over-the-top alternatives. Indeed, it has put some carriers to the Hobson's choice of offering stand-alone broadband—which urban consumers have and rural consumers want—and losing universal service support, or denying consumers that option, only to have them drop service altogether. The net result is

[1] *Order* at para. 131.

[2] *Id.* at para. 269.

that rural carriers hold back investment because they are unsure if they can deploy the services that consumers are demanding.

A stand-alone broadband mechanism should correct this vestige of our outdated rules. It would give consumers the real option of choosing whether they want to purchase broadband and telephone service from the same company. Removing this barrier will give carriers more assurance that legacy regulations won't prevent them from responding to consumer demand. This will increase broadband deployment. And all of this will be done within the existing budget, something everyone with a phone line can celebrate. For these reasons, I hope that we move forward quickly to adopt final rules implementing a stand-alone broadband mechanism.

Lastly, I welcome my colleagues' support in getting the second phase of the Connect America Fund back on track by fleshing out the mechanics of the competitive bidding process. Importantly, we adopt a rule that parties need not be eligible telecommunications carriers (ETCs) to bid[3] and seek comment on sunsetting such obligations after the term of support expires.[4] Such rules are especially important to induce new entrants to bid[5]—and maximizing participation here, as elsewhere, is the best way to ensure a successful auction. And we advance concrete proposals on how to structure the competitive bidding process, proposing to use a multi-round auction with package bidding, setting reserve prices for individual areas based on the Connect America Cost Model and in aggregate based on the budget.[6] I hope commenters will help us complete the task so that we can finalize these auction rules in the near term and commence the statewide elections and competitive bidding process within the next twelve months.

* * *

Unfortunately, I cannot support every aspect of the item. One particular problem is the Commission's reaffirmation of the "rate floor," an unfortunate legacy of the *Universal Service Transformation Order*. Under that policy, the FCC sets a minimum price that telephone companies can charge their customers for local telephone service—and penalizes those companies that do not comply with this government mandate.[7] And as a result of that policy, over one million rural Americans can expect their local telephone rates to increase by up to 46 percent as the rate floor rises from $14.00 to $20.46 per month.[8]

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[3] *Id.* at para. 43.

[4] *Id.* at para. 184.

[5] *See, e.g.*, Letter from Stephen E. Coran, Counsel for Wireless Internet Service Providers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, GN Docket No. 13-5, at 2–4 (Apr. 15, 2014); Letter from Thomas Cohen, Counsel for the American Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2–3 (Apr. 11, 2014).

[6] *See Order* at paras. 227–30. I am less sanguine about a "multi-step approach" to competitive bidding, *see* para. 231, which excludes any mention of evaluating bids based on their efficiency (i.e., choosing bids that cover the highest-cost areas for the least amount of funding) and which includes the option for bids that meet "relaxed performance standards" (i.e., choosing bids that don't offer 10 Mbps or even 4 Mbps down). I just hope that however we evaluate bids, we maximize the broadband bang we get for our universal service buck and do not consign rural America to inferior broadband service by design.

[7] Like several of our other high-cost rules, the rate floor rule explains what a carrier must do to receive support and the penalty for failure. *See* 47 C.F.R. § 54.318 (a)–(b). I am therefore baffled by the *Order*'s claim that "nothing in our rules requires carriers affected by the rate floor to adjust their local rates." *Order* at para. 80. Under the *Order*'s logic, are carriers not required to meet our high-cost filing deadlines? *See, e.g.*, 47 C.F.R. §§ 54.313(j), 54.314(d). Surely that cannot be so.

[8] *See* Petition for Extension of Time by ERTA, ITTA, NECA, NTCA, USTelecom, and WTA, WC Docket No. 10-90, at 5 (Mar. 11, 2014) (Rural Carrier Petition) ("[I]f the rate floor is raised as high $20, about 1.2 million

(continued...)

By design, the rate floor targets our farmers, our ranchers, our small-town entrepreneurs, and other rural Americans for a significant rate hike. It "will harm access to service for some of the most vulnerable consumers in rural America"[9] and "will impose a disproportionate burden on older Americans, who are much more likely to be living on fixed incomes."[10] In other words, the rate floor targets those very Americans who are still waiting for the economic recovery to arrive.

But it won't affect Washington, DC. Even though the local phone rate in the District of Columbia is $14.10, it's not subject to the rate floor.[11] As a consequence, the FCC will be directing rural Americans to pay 45 percent *more* for local phone service than those living in the nation's capital do. That's not a problem for residents of northwest Washington, but I doubt it seems fair to residents of northwest Montana.

Another result of the rate floor will be less broadband deployment. Line loss is an all-too-real problem for rural telephone companies today—about one in seven households with copper dropped their landline in 2012[12]—and government-mandated price increases are only likely to send more consumers off the network. That makes it harder for rural companies to plan for the future and invest in their networks. That creates yet another disincentive to offer stand-alone broadband since those same companies may have to compete with over-the-top providers not subject to the same government-mandated price increases. In short, that moves us in the wrong direction.[13]

(Continued from previous page)
customers will incur sudden rate increases."). The *Order* dismisses this concern on the ground that "not all carriers will raise rates to meet the rate floor." *Order* at para. 81. I cannot so blithely dismiss the well-grounded concern of one million consumers, especially when the evidence shows that carriers *are* raising rates to meet the rate floor. *See, e.g.*, Letter from Michael J. Jacobs, Legal Advisor to the Chief, Wireline Competition Bureau, FCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Apr. 2, 2014) (showing that the number of lines with rates below the previous rate floor dropped by 22,048, or 10 percent between July 1, 2013 and January 2, 2014).

[9] Letter from Jodie Griffin, Public Knowledge, Olivia Wein, National Consumer Law Center, Amalia Deloney, Center for Media Justice, Todd O'Boyle, Common Cause, Edyael Casaperalta, Center for Rural Strategies, and the Rural Broadband Policy Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (Apr. 15, 2014) (Public Knowledge et al. *Ex Parte* Letter).

[10] Letter from David Certner, Legislative Counsel and Legislative Policy Director, AARP, to Marlene H. Dortch, Secretary, FCC, at 2 (Apr. 15, 2014) (AARP *Ex Parte* Letter).

[11] *See* Wireline Competition Bureau, 2014 Urban Rate Voice Survey Results, http://go.usa.gov/kRBY (Apr. 18, 2014).

[12] *See* Statement of Commissioner Ajit Pai on the Release of the 2013 Local Telephone Competition Report (Nov. 26, 2013), *available at* http://go.usa.gov/kU4J.

[13] The *Order* relies on flawed accounting to suggest that to the extent a carrier raises its intrastate rates, it *must* spend an equal amount of universal service funds to deploy broadband-capable networks. *Order* at note 172. Not quite. Although federal law requires universal service support be used "for the provision, maintenance, and upgrading of facilities and services for which the support is intended," 47 U.S.C. § 254(e); 47 C.F.R. § 54.314, that's not a high bar for those receiving high cost loop support (HCLS). One way to meet this accounting requirement is to show that a rate-of-return carrier's intrastate rates plus its intrastate universal service support (i.e., HCLS) do not exceed its intrastate costs (i.e., $R + USF \leq C$). Recall that the HCLS program reimburses a rate-of-return carrier for up to 87–100 percent of its monthly intrastate costs *above* $42.85 per line. *See* NECA USF Filing Overview 2013 at 4 (Sept. 30, 2013). In other words, if a carrier receives x dollars in HCLS, it must have costs of at least $42.85 + x. Accordingly, a carrier receiving HCLS can always show that it meets the federal requirement without deploying more broadband so long as its rates are below $42.85 ($R + x \leq \$42.85 + x \rightarrow R \leq \$42.85$). And since those affected by the rate floor have rates far below $42.85 (and the rate floor is unlikely to exceed $42.85 in the foreseeable future), federal law does not compel additional broadband deployment. As such, it comes back to basic economics—and the *Order* does not contest that the rate floor will make it harder, not easier, to deploy broadband to rural America.

So what justifies mandating higher prices and less broadband deployment for rural America? Not the Communications Act.[14] It requires that telephone rates in rural areas be "reasonably comparable to rates" in urban areas and "affordable" to all consumers.[15] And until the *Universal Service Transformation Order*, those principles had consistently been interpreted to mean that our universal service policies should aim to reduce—not increase—the amount that rural consumers pay for telephone service.[16] Which is hardly surprising given that rates can hardly be made more "affordable" by increasing them.[17]

Moreover, the rate floor assumes that what's affordable in our country's largest cities is the same as what is affordable in the countryside.[18] But that's just not the case. Jobs pay more in the big cities. And families living there often have more disposable income. To illustrate, compare Washington, DC, where the monthly rate will remain $14.10, to Ouachita County, Arkansas, where we have mandated an increase up to $20.46. In DC, the median household income is $64,627; in Ouachita County, it's not even half that, $32,032. So what does that mean? One year of phone service in DC will cost $169.20, or about 0.26 percent of the median family's household income. But one year of phone service will cost the median Ouachita County family $245.52, so that family will need to spend 0.77 percent of their annual income on phone service, about three times as much as the family in Washington, DC. I cannot fathom how mandating such a result serves the public interest.[19]

Nor, as some have claimed, does the rate floor reduce excessive subsidies for basic phone service. Recall that the rate floor was expressly designed to increase rural rates *without* reducing the subsidies that carriers receive. So long as carriers raise their rates up to the rate floor, they receive the *same* subsidy. Even with rural consumers paying more, there's no savings to the Fund that could be used to decrease everyone's rates or deploy more broadband.[20]

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[14] The *Order* appears to agree and justifies the rate floor on the non-statutory principle of "fairness." *Order* at paras. 77, 86.

[15] 47 U.S.C. § 254(b)(1), (3).

[16] *See, e.g.*, 47 C.F.R. § 54.316 (2011) (requiring states to certify that state-set rates in rural areas were no higher than two standard deviations above the average urban rate).

[17] The *Order* oversimplifies when it states that "the Lifeline program [is] the primary means by which the Commission seeks to ensure that rates are affordable for low-income households." *Order* at para. 77. Until the rate floor came into effect, our high-cost policies had consistently aimed to reduce rates and accordingly make them more affordable for all consumers (not just the low-income consumers). Moreover, the rate floor seeks to displace state-set rates, despite our precedent that "states are better equipped to determine which additional factors can and should be used to measure affordability." *Federal-State Joint Board on Universal Service, Access Charge Reform*, CC Docket Nos. 96-45, 96-262, 14 FCC Rcd 8078, 8096, para. 38 (1999).

[18] As Arctic Slope points out, "a broad brush policy that ignores the totality of disparity between urban and rural America and instead focuses on one aspect of disparity is poorly conceived. For instance, in ASTAC's serving area, gasoline can exceed $10 a gallon, staples like milk $18 per gallon and electricity is $.29 per kilowatt hour, almost three times the national average of $.1029 per kilowatt hour. . . . For those who choose to live and work in rural America, there is no comprehensive comparability to urban areas where there is greater median income, better health care options, transportation and electrical grid infrastructure, faster and inexpensive broadband and advanced wireless communications." Letter from Steve Merriam, CEO, Arctic Slope Telephone Association Cooperative, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, at 1 (Apr. 16, 2014).

[19] Rather than explain the logic of such a result (one that could be replicated many times over), the *Order* observes that the high-cost mechanism historically distributes support "without consideration of . . . relative income levels." *Order* at para. 77. True enough, but eliminating the rate floor would end this absurd and arbitrary result while still distributing high-cost support without regard to income.

[20] To be fair, not all carriers may be able to increase their rates to keep pace with the ever-rising rate floor the Commission adopts today. As the rural carriers ably documented in seeking an extension of time to comply with this year's rate floor, many states cap yearly rate increases, which may make strict compliance with the rate-floor

(continued...)

So what justifies the rate floor policy? How should we respond to consumers like Tressa White of Ouachita County, Arkansas, who wrote the Commission to complain that her local telephone company is raising rates to meet our floor? She asked, what she will "be receiving because of this increase in my monthly rate."[21] In a word, Tressa, nothing. As the AARP puts it, the rate floor "is a punitive burden on those households that continue to purchase wireline telephone service, with the higher rates benefitting only the local telephone company."[22] Or as the National Tribal Telecommunications Association wrote, "asking . . . consumers to pay more for nothing in return is counterproductive to universal voice and broadband service goals."[23] As far as I can tell, the purpose of the rate floor is to increase rural telephone rates for the sake of having higher rural telephone rates.

I am not alone in thinking this policy makes no sense. Over the past few weeks, we've seen an outpouring of concern from all quarters about the continued implementation of the rate floor. Telephone companies like Pioneer in Kansas, Copper Valley in Alaska, and Frontier in West Virginia oppose the rate floor and the burden it will place on their customers.[24] The independent carrier associations in Colorado, Idaho, Nevada, Oregon, and Washington have called for a "moratorium" and a "re-examination of the public policy issues surrounding the urban rate floor concept."[25] A group of rural telecom associations has called on the FCC to "revisit the fundamental operation of the rate floor."[26] Public Knowledge, the National Consumer Law Center, the Center for Media Justice, Common Cause, the Center for Rural Strategies, and the Rural Broadband Policy Group have asked us to "hit the pause button, step back and examine whether the proposed rate floor changes and implementation plan serve the underlying reasons for creating a rate floor in the first place."[27]

Nor is this a partisan issue. Senator Mark Pryor of Arkansas has urged us to reconsider the rate floor, as has his colleague Senator John Boozman.[28] Alaska Senators Mark Begich and Lisa Murkowski and Congressman Don Young jointly have asked the FCC to freeze the rate floor and reexamine the underlying policy.[29] And Senator Jerry Moran of Kansas has reminded us that the rate floor "only makes

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mandate impossible. *See* Rural Carrier Petition at 3 n.12. But it is a strange thing to tout the monetary penalties we impose on carriers that do not comply with our mandate because states do not permit them to increase their rates as high or as quickly as the FCC would like.

[21] Tressa White Comments, WC Docket No. 10-90 (Apr. 21, 2014).

[22] AARP *Ex Parte* Letter at 3.

[23] National Tribal Telecommunications Association Comments at 6 (Mar. 31, 2014).

[24] *See* Pioneer Communications Reply at 4 (Mar. 31, 2014); Letter from David Dengel, CEO, Copper Valley Telephone Cooperative, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, at 1–2 (Apr. 16, 2014); Frontier Communications Reply at 2 (Mar. 31, 2014).

[25] *See* Comments of the Colorado Telecommunications Association, Idaho Telecom Alliance, Nevada Telecommunications Association, Oregon Telecommunications Association, and Washington Independent Telecommunications Association at 3 (Mar. 31, 2014).

[26] *See* Reply Comments by NTCA – the Rural Broadband Association, the National Exchange Carrier Association, Inc., the Eastern Rural Telecom Association, and WTA – Advocates for Rural Broadband at 4.

[27] Letter from Jodie Griffin, Public Knowledge, Olivia Wein, National Consumer Law Center, Amalia Deloney, Center for Media Justice, Todd O'Boyle, Common Cause, Edyael Casaperalta, Center for Rural Strategies, and the Rural Broadband Policy Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (Apr. 15, 2014).

[28] Letter from the Honorable John Boozman, U.S. Senator, to the Honorable Tom Wheeler, Chairman, FCC (Apr. 3, 2014); Letter from Mark Pryor, U.S. Senator, to the Honorable Tom Wheeler, Chairman, FCC (Mar. 26, 2014).

[29] Letter from the Honorable Mark Begich, U.S. Senator, Lisa Murkowski, U.S. Senator, and Don Young, U.S. Representative, to the Honorable Tom Wheeler, Chairman, FCC, at 3 (Apr. 21, 2014).

phone service less affordable in rural areas, where incomes are lower and families have fewer telecommunications options."[30]

Rural Americans aren't asking for free phones or free service. They're just asking the government not to mandate a 46 percent increase in their monthly bill. And when so many voices make such a reasonable request, it's very disappointing that the Commission's answer today is no. If we are trying to keep rural America in mind in everything that we do, our response should be different.

Yet the Commission moves forward, deciding today the rate floor will go into effect, albeit later than originally proposed. At least the delay is a good thing. By pushing back the first phase of the increase to January 1, 2015, the Commission has opened up a six-month window for us to reexamine this policy before it hits rural America.

That's especially important because the Commission released the rate-floor data and methodology just five days before the vote.[31] With six more months, we can respond to the request of our state counterparts—those with actual authority over local telephone rates—to let the public study and comment on the data and methodology before the rate floor takes effect.[32] That would be consistent with our past practice.[33] It also would give time to the Universal Service Administrative Company to collect data on the actual number of consumers that will be hit by the rate floor (information the *Order* expects will be collected this July).[34]

As such, I believe the Commission should reconsider the rate floor later this year with a more fulsome record—as a data-driven agency should. Such consideration will give us the opportunity to review, for example, whether it makes sense for rural rates in some states to "leapfrog the prevailing local telephone rates in the more urban areas of the state"[35] or "whether more localized survey data would better serve the goal of ensuring reasonably comparable service at reasonably comparable rates."[36] We can address whether the "FCC's rate floor requirement attempts to usurp State commission authority over

[30] Letter from the Honorable Jerry Moran, U.S. Senator, to the Honorable Tom Wheeler, Chairman, FCC (Apr. 22, 2014).

[31] *See* Wireline Competition Bureau, 2014 Urban Rate Voice Survey Methodology, http://go.usa.gov/kRZJ (Apr. 18, 2014); Wireline Competition Bureau, 2014 Urban Rate Voice Survey Results, http://go.usa.gov/kRBY (Apr. 18, 2014). The *Order* repeatedly suggests that the rate-floor methodology was established long ago. *See Order* at paras. 73, 82. But no one outside the Bureau knew the methodology before mid-April. For example, no one could have anticipated that the Bureau would cull 73 percent of census tracts from its statistically valid sample (362 out of 497 census tracts were dropped) nor that the Bureau would treat some unregulated rates differently from others (VoIP rates for incumbents are included, while VoIP rates for competitive providers are excluded). Similarly, no one could have anticipated that the Bureau would exclude charges for measured or messaged service entirely (services typically cheaper than unlimited local service) nor how the Bureau handled non-recurring charges (a question neither the 2013 order nor the recent guidance answered). While these after-the-fact decisions may be perfectly reasonable, they are not what was adopted last year and have not been subject to the notice-and-comment process.

[32] Petition of NARUC, WC Docket No. 10-90, at 7 (Apr. 15, 2014). I am disheartened that the *Order* now denies NARUC's petition. *See Order* at paras. 82, 353. The Commission never sought comment on that petition, the public has never had the opportunity to voice its opinion on that petition, and fully resolving that petition was not even a question at the April 2014 meeting when we adopted this *Order*.

[33] As NARUC points out, until April 18, "unlike prior surveys, there [was] no public access to the underlying data/methodology." Petition of NARUC, WC Docket No. 10-90, at 7 (Apr. 15, 2014).

[34] *Order* at paras. 75, 84.

[35] Washington Utilities and Transportation Commission Reply at 3 (Mar. 31, 2014).

[36] Public Knowledge et al. *Ex Parte* Letter at 2.

local rates,"[37] in contravention of the Act's stricture that the FCC shall not have jurisdiction over rates "for or in connection with intrastate communication service."[38] And we can decide whether states like West Virginia should have the "flexibility of preserving a low-cost basic tier of service to protect access to voice service for low-income and fixed income consumers" or if instead "[h]ampering a state's ability to protect its most vulnerable consumers erodes a key foundation of the network compact."[39]

So as the tide turned with the QRA benchmarks, I still hold out hope that it can be turned here. Just as tinkering around the edges wasn't good enough to save the QRA benchmarks, I don't believe that phasing in a big price hike for rural Americans will make this issue go away. I, for one, intend to keep making my voice heard.

Our decision with respect to the rate floor is all the more disappointing because today the Commission missed a chance to substantially reduce excessive subsidies in a manner that actually would have saved consumers money. Specifically, this item recognizes that wireless providers are deploying mobile broadband far more quickly, and far more extensively, than the Commission anticipated in the *Transformation Order*. Accordingly, the Commission does not need all the funding it has collected for the Mobility Fund Phase II in order to extend mobile broadband service to otherwise unserved areas including Tribal lands. I therefore proposed that we return up to $400 million a year to American consumers over the next five years. Rather than take this approach, however, the *Order* proposes to keep the majority of the Mobility Fund Phase II intact—not because it's needed for deployment or even for maintaining service but instead because that's how much regional wireless providers are getting, even when they are using that money to compete with private investment and duplicate each other's service areas.[40]

In sum, my proposals, taken together, would have cut unnecessary subsidies, protected rural Americans from substantial price increases, and lowered all consumers' phone bills. Unfortunately, today's item does the opposite. It leaves excessive subsidies untouched, raises rural Americans' phone rates by up to 46 percent, and doesn't return any money to American consumers.

* * *

I cannot square one last aspect of the *Order* with the Communications Act. Specifically, the *Order* finds it permissible to impose broadband common-carriage obligations on incumbent local exchange carriers (LECs). But it does so despite the fact that section 3 states that "telecommunications

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[37] Hot Springs Telephone Company and Ronan Telephone Company Reply at 1–2.

[38] 47 U.S.C. § 152(b). The item's chief defense on this point appears to be that the rate floor only "might have an incidental effect on [intrastate] rates" and thus does not amount to intrastate regulation. *Order* at note 183 (citing *Cable & Wireless PLC v. FCC*, 166 F.3d 1224, 1230 (D.C. Cir. 1999), and *Cellular Telecomms. Indus. Ass'n v. FCC*, 168 F.3d 1332, 1336 (D.C. Cir. 1999)). If that were true, this would be an easy case. But increased intrastate rates are hardly an incidental effect of the rate floor: Low intrastate rates are the trigger, carriers with such low rates are the target, withholding universal service funding from such carriers is the enforcement mechanism, and increased intrastate rates bring relief. The Commission has even amended its rules to give carriers additional time to raise their intrastate rates and additional ways to alert the Commission of rate increases. *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622, 5629, paras. 19–20 (2012). In short, increased intrastate rates are not merely incidental to the rate floor—they're the whole point.

[39] Public Knowledge et al. *Ex Parte* Letter at 3. The *Order* responds that states are "free" to "maintain intrastate rates significantly lower than the national urban average" so long as they do not do so "in a manner that would burden ratepayers nationwide." *Order* at para. 77. This is a strange claim given that, before the rate floor was imposed, a state's decision to increase or decrease rates had *absolutely no effect* on the universal service burdens of ratepayers nationwide. And it is especially odd given that rate floor's perverse incentive: A state with below-floor rates can now act to "burden ratepayers nationwide," and it does so by increasing rates, not maintaining them.

[40] *See Order* at paras. 243–47.

carrier shall be treated as a common carrier under [the Communications Act] *only to the extent* that it is engaged in providing telecommunications services."[41] And it does so without finding that the legacy universal service offered is in fact "sufficient" to meet these new obligations as required by section 254.[42] I accordingly cannot support this determination.

The "broadband public interest obligations," as the *Order* styles them, smack of common carriage. Incumbent LECs "must make . . . broadband service available at rates that are reasonably comparable to offerings of comparable broadband services in urban areas."[43] The *Transformation Order* spelled out the characteristics of that service in terms of speed,[44] latency,[45] and capacity,[46] and required annual compliance testing and reporting that the provisioned broadband met these metrics.[47] The incumbent LEC must either charge prices below a Commission-determined benchmark or geographically average its rates so that its rural rates do not exceed its urban rates[48]; either way, the incumbent LEC must report its prices to the Commission each year for review.[49] And rate-of-return LECs must specifically provide broadband "upon reasonable request" and "within a reasonable amount of time," an obligation the *Transformation Order* said was "similar to the voice deployment obligations many of these carriers are subject to today."[50] In other words, incumbent LECs cannot "make individualized decisions, in particular cases, whether and on what terms to deal,"[51] but instead must offer a specific service at reasonable rates to all consumers in its service territory (or at least those that reasonably request service) and file with the Commission a schedule of charges along with compliance information. Absent formal tariffs or reticulated accounting practices, it's hard to see how such an indiscriminate obligation to offer service could better map onto the definition of a common carrier: "It shall be the duty of every common carrier . . . to furnish such communication service upon reasonable request therefor" at rates that are "just and reasonable."[52]

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41 47 U.S.C. § 153(51) (emphasis added); *see also Verizon v. FCC*, 740 F.3d 623, 650 (D.C. Cir. 2014) ("We think it obvious that the Commission would violate the Communications Act were it to regulate broadband providers as common carriers.").

42 47 U.S.C. § 254(b)(5).

43 *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17695, para. 86 (2011) (*Universal Service Transformation Order*).

44 *Id.* at 17697, para. 94 (4 Mbps downstream, 1 Mbps upstream).

45 *Id.* at 17698, para. 96 ("sufficiently low . . . to enable use of real-time applications").

46 *Id.* at 17698–99, paras. 98–99 (at least 10 GB and "reasonably comparable to usage limits for comparable broadband offerings in urban areas").

47 47 C.F.R. § 54.313(a)(11).

48 *See Order* at para. 313 (proposing that ETCs certify that their rates comply with these standards).

49 47 C.F.R. § 54.313(a)(7).

50 *Universal Service Transformation Order*, 26 FCC Rcd at 17740–41, paras. 206–08.

51 *Verizon v. FCC*, 740 F.3d 623, 651 (D.C. Cir. 2014) (quoting *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 641 (D.C.Cir. 1976)).

52 47 U.S.C. § 201(a), (b). Contra the *Order*'s suggestion to the contrary, most common carriers "are free to set their own prices" and "may charge different rates to different end-user customers," *Order* at para. 125, so long as those rates and classifications are reasonable, *see* 47 U.S.C. § 201(b). The Commission has spelled out particular charges for only one set of common carriers (incumbent LECs), and even those carriers may offer rates below those specified in our rules in certain circumstances. *See, e.g.*, 47 C.F.R. Part 69, Subpart H (setting forth the Commission's pricing flexibility rules for special access services).

Moreover, the Commission cannot credibly claim that incumbent LECs "voluntarily assume[d]" these common-carriage obligations as conditions on the receipt of federal universal service subsidies.[53] At least since the passage of the Telecommunications Act of 1996, federal law has imposed on incumbent LECs telephone service obligations without the legal means to recover all the associated costs from their customers.[54] Indeed, the *Transformation Order* itself eliminated intercarrier compensation over time but prohibited incumbent LECs from recovering all of the lost revenue from customers, thus necessitating the creation of the CAF-ICC mechanism.[55] And if an incumbent LEC turned down high-cost support today, (a) it would still need to offer voice telephony and other telecommunications services at regulated (below-cost) rates,[56] (b) it would still need to negotiate, interconnect, offer unbundled access to its network, resale, and collocation, and notify the public of certain network changes as an incumbent,[57] and (c) it would still need to offer Lifeline service unless another ETC is present in the area.[58] And elsewhere, the *Order* is unable to state whether incumbents can escape *any* high-cost ETC obligations by relinquishing support.[59] In other words, incumbent LECs hardly "retain[] the ability to opt out of [their associated federal obligations] entirely by declining . . . federal universal service subsidies."[60]

Given all the obligations that incumbent LECs cannot escape and given that legacy support is calculated to enable each incumbent to meet its obligations, it is no wonder that the *Order* does not attempt to explain how adding new obligations but no new funding complies with the statutory

[53] *Order* at para. 120. My point is not, as the item implies, that "incumbent LECs are entitled to universal service subsidies," *Order* at para. 121, nor that all "regulatory obligations [of] incumbents" turn on the receipt of universal service support, *id.* at para. 122. It is instead that incumbent LECs, like all common carriers, are entitled to a reasonable opportunity to recover their costs, so the FCC cannot cap prices below cost unless it offers some other means of recovery. Our rules do in fact set end-user rates below cost for many incumbent LECs (including every incumbent that receives interstate common line support), *see* 47 C.F.R. § 69.104(n)(1) (capping a rate-of-return carrier's subscriber line charge even when its costs are higher). Thus, we must offer such carriers a means to recover their costs—and the only means we have offered is universal service funding. The *Order* does not dispute these facts or the conclusion that our tariffing rules would be confiscatory in many cases absent universal service support, but instead ignores them to rebut claims that no one has made.

[54] *See, e.g.*, 47 C.F.R. § 54.901 (providing rate-of-return carriers with interstate common line support to compensate for the portion of their common line revenue requirement that such carriers are prohibited from recovering from end users); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers et al.*, CC Docket No. 00-256 et al., Second Report and Order and Further Notice of Proposed Rulemaking, Fifteenth Report and Order, and Report and Order, 16 FCC Rcd 19613, 19664, para. 120 (2001) ("Interstate Common Line Support will provide support for rate-of-return carriers to the extent that [subscriber line charge] caps do not permit them to recover their common line revenue requirements.").

[55] *See Universal Service Transformation Order*, 26 FCC Rcd at 17958–61, paras. 852–53 (limiting incumbent LEC charges to end users while allowing access to universal service support); *compare id.* (allowing competitive LECs to increase end-user charges without constraint but disallowing access to additional universal service support).

[56] *See* 47 U.S.C. § 214.

[57] 47 U.S.C. § 254(c).

[58] *Order* at para. 197.

[59] *Id.* Accordingly, I cannot take seriously the *Order*'s suggestion that "price cap carriers have the option of declining legacy high-cost support if they do not want to comply with the broadband public interest conditions in the *USF/ICC Transformation Order*." *Order* at para. 120.

[60] *WWC Holding Co., Inc. v. Sopkin*, 488 F.3d 1262, 1274 (10th Cir. 2007). In contrast, applying these common-carriage obligations to the funds disbursed in CAF Phase I, CAF Phase II, and the various Mobility Funds is permissible because participation in any such fund is actually voluntary.

requirement that support be "sufficient . . . to preserve and advance universal service."[61] The Commission has repeatedly held that "the statutory principle of 'sufficiency' proscribes support in excess of that necessary to achieve the Act's universal service goals"[62]—so if incumbent LECs have received support sufficient, but no greater than necessary, to carry out their telephone common-carriage obligations, it is hard to see how the same amount of support could be sufficient to cover new broadband common-carriage obligations.[63] Perhaps if we had a stand-alone broadband mechanism in place for rate-of-return carriers it would be different, but today we only propose such reforms. We cannot ignore the statutory command of sufficiency in hopes that it will disappear, but that is what the *Order* appears to do.

For all these reasons, I approve in part and respectfully dissent in part.

[61] 47 U.S.C. § 254(b)(5); *see also* U.S. Telecom Petition for Reconsideration, WC Docket No. 10-90 et al., at 9–10 (Dec. 29, 2011) ("In essence, the Commission impermissibly bootstraps a broadband deployment and maintenance obligation onto carriers that only receive federal universal service for the provision of voice telephony service in their geographic serving areas, while turning a blind eye to the sufficiency of the support necessary to satisfy this obligation.").

[62] *See, e.g.*, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers; RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, 8839, para. 8 (2008), *upheld by Rural Cellular Association v. FCC*, 588 F.3d 1095, 1102–03 (D.C. Cir. 2009).

[63] Over two paragraphs, the *Order* reiterates the determination in the *Universal Service Transformation Order* that the overall budget for the Connect America Fund is sufficient and that market trends support this conclusion. *See Order* at para. 123–24. For what it's worth, I agree that the $4.5 billion budget is sufficient (indeed, the Fund is running a surplus today). But that determination says nothing about the sufficiency of the legacy support offered to each individual carrier to meet the new broadband common-carriage obligations. On that question, the *Order* has no response.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART AND CONCURRING IN PART**

Re: *Connect America Fund*, WC Docket No. 10-90, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *ETC Annual Reports and Certifications*, WC Docket No. 14-58.

There are many different views on how to meet our statutory obligation to preserve and advance universal service so that all consumers have access to reasonably comparable services at reasonably comparable rates. The fact that rational minds may differ is not surprising given the complexities of universal service policies and their importance to our Nation and its people.

The 2011 *USF/ICC Transformation Order* recognized these complexities and created a multi-part framework for tackling them. It established funding for fixed service, mobile service, and alternative technologies. It funded price cap carriers differently than rate-of-return carriers or mobile providers. And it phased in all of the reforms to give carriers and consumers time to adjust. I was not at the Commission in 2011, and I don't agree with every reform, but I commend those that were here for their courage to start us down those paths.

The question before us now is whether to continue down these paths or disruptively reverse course. Universal service was intended to evolve, so the Commission must periodically take stock of changes in technology and the marketplace to see whether adjustments are warranted. And we must remain mindful that we are dealing with scarce consumer-provided dollars. Each dollar we can save—by targeting funding to areas where there is no other provider and by making the programs more efficient—is a dollar that we can use to extend service to unserved areas or that we can return to consumers. Therefore, I am pleased that the Further Notice recognizes the strides that have been made by wireless and satellite providers and asks how we should modify our policies and funding accordingly.

It is also important that the Commission periodically review and replace rules that may have been well-intentioned but did not operate as envisioned. Therefore, I'm glad that the Order eliminates the QRA benchmarks and that the Further Notice seeks comment on replacement rules for rate-of-return carriers. Without the distraction of the QRA benchmarks, I hope that we will finally be able to move forward with a long-term Connect America Fund (CAF) for rate-of-return areas and finalize the QRA's replacement.

As we consider additional changes to the 2011 framework, however, we must weigh the benefits of continuing to fine tune our policies against the costs of upending plans and further delaying the remaining reforms. Many consumers throughout rural America are still waiting to see the benefits promised in 2011. Moreover, all of the universal service and intercarrier compensation reforms are intertwined. If we second guess too many of the individual reforms, I worry that we put at risk the entire package of reforms that took years to enact. With one notable exception, I think that today's item hits enough of the right chords for me to lend my support.

The one exception is that the Further Notice proposes to increase the broadband speed standard for all support recipients from the current 4 Mbps downstream to 10 Mbps downstream—*before* we've completed the task of ensuring that all consumers have access to 4 Mbps. I too want to get the most bang for our limited USF bucks and I want greater speeds for all Americans, especially rural citizens. However, raising the speed standard will come at a substantial cost and implementing it within the budget could entail significant tradeoffs for consumers.

In 2011, the Commission decided to cover more consumers with a basic level of broadband service rather than upgrade fewer consumers to a higher capacity service. The decision appears consistent with the statute, which calls for *universal* service. Additionally, the 4 Mbps standard that the Commission selected seems to be *reasonably* comparable to what is offered in urban areas. It is sufficient to enable people to send email, look for jobs, complete homework assignments, and even watch an occasional movie. For those that have dial-up service or no service at all, getting access to broadband can be a welcome improvement. And given the way that networks are constructed, delivering 4 Mbps to the very remote homes meant that most homes would have access to far greater speeds. However, the Commission seems ready to explore undoing that fundamental decision and more parts of rural America could remain unserved for a lot longer as a result.

For example, in price cap areas, raising the standard could shift funding towards upgrading existing broadband service—potentially in areas where there's another provider—rather than extending new broadband service in truly unserved areas. In addition, it could mean that some price cap carriers that would have quickly expanded broadband throughout their entire territories decide not to make statewide commitments to provide service, or that they scale back the percentage of locations they would be willing to serve. That puts increased pressure on the competitive bidding process and the Remote Areas Fund to ensure that people that are served today do not lose service in the future. In short, while the tradeoffs envisioned in the Further Notice may be necessary to accommodate increased speed obligations, I would have retained the current speed standard for now and avoided these tradeoffs altogether. Raising the speed standard is a questionable approach and potentially sends the wrong signals to providers, the markets, and most importantly, consumers. As a result, I must concur with this section of the Further Notice.

In addition, while not addressed in this item, I note that the CAF reserve is projected to exceed $1.5 billion, and is now growing at a rate of over $190 million per quarter.[1] That extra money has been coming out of the pockets of consumers—who are now paying 16.6 percent fees on their phone bills—for programs that will not be implemented for another year or two. I do not see the upside of maintaining such a large reserve while we continue to revise the programs, and I do see some real downsides. Having that much money on hand raises false hopes for creative funding ideas and spending. Once we have decided how to revise the programs to ensure that the money is well spent, I am hopeful that we will be in a position to review the budget, which is currently $4.5 billion a year, and consider reducing it to an appropriate spending level. In the meantime, we should at least stop overcharging consumers. Perhaps this is something we could consider in the next CAF item.

On the whole, I support today's item. I appreciate that the Chairman was willing to accommodate many of my suggestions, and I thank the staff for their good work and assistance.

[1] Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for Second Quarter 2014, at 9-11 (Jan. 31. 2014), http://www.usac.org/about/tools/fcc/filings/2014/Q2/USAC%202Q2014%20Federal%20Universal%20Service%20Mechanism%20Quarterly%20Demand%20Filing.pdf.