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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Rural Broadband Experiments	)	WC Docket No. 14-259
	)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: May 25, 2016 **Released: May 26, 2016**

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (45 days after date of publication in the Federal Register)

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

TABLE OF CONTENTS

I. INTRODUCTION

1. Over the last several years, the Commission has engaged in a modernization of its universal service regime to support networks capable of providing voice and broadband, including developing a new forward-looking cost model to calculate the cost of providing service in rural and high-cost areas. In 2015, 10 price cap carriers accepted an offer of Phase II support calculated by a cost model in exchange for a state-level commitment to deploy and maintain voice and broadband service in the high-cost areas in their respective states.[1] With this Report and Order (Order), the Commission now adopts rules to implement a competitive bidding process for Phase II of the Connect America Fund.

2. Specifically, building on decisions already made by the Commission, in this Order, we:

- Adopt public interest obligations for recipients of support awarded through the Phase II competitive bidding process, that will be known in advance of the auction and that will continue for the duration of the term of support, recognizing that competitive bidding is likely to be more efficient if potential bidders know what their performance standards will be before bids are made. In particular, we establish four technology-neutral tiers of bids available for bidding with varying speed and usage allowances, all at reasonably comparable rates, and for each tier will differentiate between bids that would commit to either lower or higher latency.
    - Our minimum performance tier requires that bidders commit to provide broadband speeds of at least 10 Mbps downstream and 1 Mbps upstream (10/1 Mbps) and offer at least 150 gigabytes (GB) of monthly usage.
    - Our baseline performance tier requires that bidders commit to provide at least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps) and offer a minimum usage allowance of 150 GB per month, or that reflects the average usage of a majority of fixed broadband

[1] Press Release, FCC, Carriers Accept Over $1.5 Billion in Annual Support from Connect America Fund to Expand and Support Broadband for Nearly 7.3 Million Rural Consumers in 45 States and One Territory (Aug. 27, 2015), https://apps.fcc.gov/edocs_public/attachmatch/DOC-335082A1.pdf.

customers, using Measuring Broadband America data or a similar data source, whichever is higher.

- Our above-baseline performance tier requires that bidders commit to provide at least 100 Mbps downstream and 20 Mbps upstream (100/20 Mbps) and offer an unlimited monthly usage allowance.
- Our Gigabit performance tier requires that bidders commit to provide at least 1 Gigabit per second (Gbps) downstream and 500 Mbps upstream and offer an unlimited monthly usage allowance.
- For each of the four tiers, bidders will designate one of two latency performance levels: (1) Low latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 100 milliseconds (ms), or (2) High latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 750 ms and, with respect to voice performance, demonstrate a score of four or higher using the Mean Opinion Score (MOS).

- Adopt the same interim service milestones for winning bidders in the Phase II auction as for price cap carriers that accepted Phase II model-based support.
- Finalize our decisions regarding areas eligible for the Phase II competitive bidding process.
- Establish a budget for the Phase II competitive bidding process of $215 million in annual support.
- Provide general guidance on auction design, with the specific details to be determined by the Commission at a future date in the *Auction Procedures Public Notice*, after further opportunity for comment. We will use weights to account for the different characteristics of service offerings that bidders propose to offer when ranking bids. We express our preference for a multi-round auction format and for setting the minimum biddable unit as a census block group containing any eligible census blocks. We conclude that reserve prices will not exceed support amounts determined by the Connect America Cost Model (CAM).
- Adopt a two-step application process, similar to Commission spectrum auctions and the Mobility Fund Phase I and Tribal Mobility Fund Phase I auctions. In the pre-auction short-form application, a potential bidder will need to establish its baseline financial and technical capabilities in order to be eligible to bid. In the long-form review process, winning bidders will be required to provide additional information regarding their qualifications. They will be required to obtain an acceptable letter of credit and designation as an eligible telecommunications carrier (ETC) before funding is authorized.
- Establish a baseline forfeiture for bidders that default before funding authorization.
- Establish a 180-day post-auction deadline for winning bidders to submit proof of their ETC designation during long-form review and forbear from the section 214(e)(5) service area conformance requirements.
- Adopt reporting requirements that will enable the Commission to monitor recipients' progress in meeting their interim deployment obligations, and a process by which the Wireline Competition Bureau (Bureau) or the Wireless Telecommunications Bureau will authorize the Universal Service Administrative Company (USAC) to draw on a letter of credit in the event of performance default.
- Adopt rules to establish the framework for the Remote Areas Fund, which will award support through a competitive bidding process to occur expeditiously after conclusion of the Phase II auction.

3. In the attached Further Notice, we begin the process of seeking comment on several specific procedures that will apply in the Phase II auction, including how to apply weights to the different levels of performance adopted in the Order, measures to achieve the public interest objective of ensuring appropriate support for all of the states, and measures to achieve the public interest objective of expanding broadband on Tribal lands. The forthcoming *Auction Comment PN* will seek comment on other auction procedures that must be resolved in order to conduct the auction, such as the number of rounds during which bids may be submitted, package bidding, and what information will be disclosed to participants during the bidding process.[2]

II. BACKGROUND

4. 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.[3] The Commission created the Connect America Fund and for the first time established an overall budget for the high-cost program.[4] 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.[5] The Commission provided for up to $1.8 billion to be spent annually to make broadband-capable infrastructure available to as many unserved locations as possible within areas served by price cap carriers, while sustaining voice and broadband-capable infrastructure in high-cost areas that would not be served absent support.[6] The Commission also adopted rules to apply generally for competitive bidding to award universal service support.[7]

5. In the *USF/ICC Transformation FNPRM*, the Commission sought comment on proposed rules governing the Phase II competitive bidding process, including options regarding basic auction design and the application process.[8] In the *April 2014 Connect America Order,* we adopted certain rules regarding participation in the competitive bidding process, the term of support, and the ETC designation process,[9] and issued an *FNRPM* that, among other things, proposed to use a multi-round auction.[10]

6. Subsequently, in July 2014, we adopted rules to implement a limited program to experiment with different aspects of a competitive bidding process, and, as part of that experiment, established an objective methodology for selecting projects among formal applications from those carriers

[2] Separate public notices may be released to seek comment on and/or to establish final auction procedures if that would more efficiently and effectively dispatch our business and fulfill our goals for the Phase II auction. *See* 47 U.S.C. § 154(j).

[3] *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 (2011) (*USF/ICC Transformation Order and/or FNPRM*) *aff'd sub nom., In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

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

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

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

[7] 47 CFR pt. 1, Subpt. AA. The Commission's rules in pt. 1, subpt. AA regarding competitive bidding for universal service support generally apply to the Phase II auction unless otherwise stated in this Order. *See* 47 CFR §§ 1.21000-1.21004.

[8] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18089-91, paras. 1208-19.

[9] *Connect America Fund et al*., WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7060-66, paras. 29-47 (2014) (*April 2014 Connect America Order and/or FNPRM*). In addition, we concluded that competitive ETCs awarded Phase II support through the competitive bidding process will cease to receive legacy phase-down support for those specific areas. *Id*. at 7068, para. 53.

[10] *Id.* at 7125, para. 230.

that would provide robust broadband to consumers in price cap areas.[11] We subsequently received applications for the projects in October 2015. Our experience conducting this experiment has informed us about the competitive interest to build networks to rural communities that will deliver services that far exceed the Commission's current performance standards, as well as the mechanics of conducting this type of competitive bidding process.[12]

7. On April 29, 2015, the Bureau announced the final details of the offer of model-based support to price cap carriers, setting an August 27, 2015 deadline to accept or decline the offer.[13] Ten carriers accepted over $1.5 billion in annual support to provide broadband to nearly 7.3 million consumers in 45 states and the Commonwealth of the Northern Mariana Islands.[14] Nearly $175 million in annual Phase II support was declined.[15]

III. PUBLIC INTEREST OBLIGATIONS

A. Performance Requirements

8. *Background*. In the *USF/ICC Transformation Order*, the Commission focused on speed, latency and usage as the three core characteristics that affect what consumers can do with their broadband service.[16] In the accompanying FNPRM, it sought comment on the performance obligations for those receiving support through the competitive bidding process. Among other things, it sought comment on potentially relaxing the minimum performance standards to expand the pool of technologies eligible to

[11] *See Connect America Fund; ETC Annual Reports and Certification*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014) (*Rural Broadband Experiments Order*).

[12] On December 5, 2014, and again on March 4, the Wireline Competition Bureau announced bidders provisionally selected for funding, subject to a post-selection review process. *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 14684 (WCB 2014); *Wireline Competition Bureau Announces Additional Provisionally Selected Bidders for Rural Broadband Experiments and Sets Deadlines for Submission of Additional Information*, WC Docket Nos. 10-90, 14-259, Public Notice, 30 FCC Rcd 2045 (WCB 2015).

[13] *Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 3905 (WCB 2015) (*Model-Based Support Offers Public Notice*).

[14] *See Wireline Competition Bureau Authorizes Frontier Communications Corporation to Receive Over $283 Million in Connect America Phase II Support to Serve 1.3 Million Rural Americans in 28 States*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 6310 (WCB 2015); *Wireline Competition Bureau Authorizes Windstream to Receive Over $174 Million in Connect America Phase II Support in 17 States*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 8245 (WCB 2015); *Wireline Competition Bureau Authorizes FairPoint to Receive Over $37 Million in Connect America Phase II Support in 14 States*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 8435 (WCB 2015); *Wireline Competition Bureau Authorizes the Micronesian Telecommunications Corporation to Receive Over $2.5 Million and Hawaiian Telcom, Inc. to Receive Over $4 Million in Connect America Phase II Support*, WC Docket No. 10-90, Public Notice, DA 30 FCC Rcd 8471 (WCB 2015); *Wireline Competition Bureau Authorizes Additional Price Cap Carriers to Receive Almost $950 Million in Phase II Connect America Support*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 8577 (WCB 2015); *Verizon Communications Inc. Conditionally Accepts Over $48.5 Million in Connect America Phase II Support in California and Texas*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 8594 (WCB 2015).

[15] Press Release, Carriers Accept Over $1.5 Billion in Annual Support from Connect America Fund to Expand and Support Broadband for Nearly 7.3 Million Rural Consumers in 45 States and One Territory (Aug. 27, 2015), http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0827/DOC-335082A1.pdf (*Phase II Model-Based Support Acceptance Press Release*).

[16] *USF/ICC Transformation Order*, 26 FCC Rcd at 17696, para. 90.

compete for support. It asked whether to limit the performance levels that providers could bid to offer, for instance with a "standard" broadband offering and a "higher quality" broadband offering.[17]

9. In the *December 2014 Connect America Order*, we adopted a minimum speed standard of 10 Mbps downstream and 1 Mbps upstream (10/1 Mbps) for price cap carriers accepting the offer of model-based support for a six-year term, but expressly decided that 10/1 Mbps should not be our end goal for recipients of support over a 10-year term. Rather, we concluded that recipients of support through the Phase II competitive bidding process should be required to meet an evolving broadband speed standard over the 10-year term.[18] Recognizing that competitive bidding is likely to be more efficient if potential bidders can predict what their performance obligations will be for the length of the term, however, we adopted a methodology for determining the minimum speeds that would be required by the end of the 10-year term.[19] Specifically, we concluded that the minimum speed would be based on the highest speed for service to fixed locations adopted by a majority of households, as reported in the most recent Form 477 data available at the time we next revisit the specific performance obligations.[20] We also encouraged parties receiving 10 years of support through the Phase II competitive bidding process to deploy future-proof networks that are capable of meeting future demand.[21]

10. In the *USF/ICC Transformation Order*, the Commission required recipients of high-cost universal service support to offer broadband service with latency suitable for real-time applications, such as voice over Internet protocol (VoIP), and with usage capacity reasonably comparable to that available in residential terrestrial fixed broadband offerings in urban areas, at reasonably comparable rates.[22] In the *Phase II Service Obligations Order*, the Bureau adopted minimum usage requirements and specified metrics for determining compliance with the Commission's latency requirements for price cap carriers accepting model-based support.[23] Specifically, the Bureau required price cap carriers to offer a minimum usage allowance over the course of Phase II's term that remains consistent with trends in usage for 80 percent of consumers using cable or fiber-based fixed broadband services, and adopted an initial 100 gigabyte (GB) per month minimum usage allowance, which acts as a floor.[24] In addition, the Bureau

[17] *Id*. at 18088, para. 1204.

[18] *Connect America Fund et al*., WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15655-56, para. 29 (2014) (*December 2014 Connect America Order*).

[19] *Id*.

[20] *Id*.

[21] *Id*.

[22] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17721, para. 147, 17726, para. 160, 17740, para. 206.

[23] *See Connect America Fund*, WC Docket No. 10-90, 28 FCC Rcd 15060, 15065-75, paras. 15-36 (WCB 2013) (*Phase II Service Obligations Order*).

[24] *See id.* at 15068, para. 18. The Bureau relied upon the then-most-current published Measuring Broadband America (MBA) data to specify the 100 GB usage allowance floor. *See* FCC, Office of Engineering and Technology and Consumer and Governmental Affairs Bureau, 2013 Measuring Broadband America Report at 48, http://transition.fcc.gov/cgb/measuringbroadbandreport/2013/Measuring-Broadband-America-feb-2013.pdf. That Measuring Broadband America analysis excluded users with extremely high data consumption profiles (over 160 GB per month) and extremely fast data rates (over 60 Mbps) that had relatively low subscription rates. *See id.* at 46-48. This year, the Bureau announced that the minimum usage allowance now is 150 GB, based on the most recent urban rate survey data.

When setting this standard in 2013, the Bureau also concluded that, in the alternative, a price cap carrier accepting model-based support would be in compliance with the usage allowance requirement in future years if its minimum allowance for Connect America funded locations is at least 100 GB and is at or above the usage level for 80 percent of all its broadband subscribers, including those that live outside of Phase II funded areas. *See Phase II Service Obligations Order*, 28 FCC Rcd at 15068, para. 18 ("Given the size and scale of most price cap carriers, it is

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adopted a 100 millisecond (ms) provider latency limit, and required price cap carriers accepting model-based support to certify that 95 percent or more of all peak period measurements of network round trip latency are at or below 100 ms.[25]

11. In the *April 2014 Connect America FNPRM*, the Commission proposed to apply the same usage allowances and latency standards that the Bureau adopted for price cap carriers accepting model-based support to recipients of Phase II support awarded through competitive bidding.[26] We also sought to develop more fully the record on allowing Phase II recipients to satisfy their obligations using any technology or combination thereof that meets the performance standards of Phase II.[27] We sought 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, while maintaining service and pricing standards established by the Bureau for the offer of model-based support.[28]

12. In response to the *April 2014 Connect America FNPRM*, many commenters, including price cap and rural carriers, and electric cooperatives and utilities, opposed relaxing performance standards for recipients of support in the Phase II competitive bidding process,[29] while many others, including wireless and satellite providers, supported relaxing the performance standards.[30]

13. Several parties proposed auction designs to accommodate bids that commit to offer tiers of service meeting different performance standards. For example, USTelecom proposed a two-stage auction with relaxed speed requirements in the second stage: winning bidders in the first stage would be required to provide service at 10/1 Mbps to all locations by year six, and 25/3 Mbps to 60 percent of locations by year ten; and, if funding remains, winning bidders in stage two would be required to provide 4/1 Mbps by year six, and 10/1 Mbps to 60 percent of locations by year ten.[31] ACA proposed bidding in four stages corresponding with the following tiers of network broadband performance: stage 1, networks

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reasonable to presume that their individual data would be consistent with national data, and this alternative will enable price cap carriers to anticipate how their usage allowances may change in the future.").

[25] *See id.* at 15070, paras. 22-23.

[26] *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7103-04, paras. 149-52.

[27] *Id.* at 7105, para. 154.

[28] *Id*.

[29] *See, e.g.*, Comments of the Independent Telephone & Telecommunications Alliance, WC Docket No. 10-90 et al., at 16-17 (filed Aug. 8, 2014) (ITTA Aug. 2014 Comments) (arguing that "less robust requirements for providers that are authorized to receive support pursuant to the competitive bidding process would contradict the Commission's statutory duty to ensure that consumers in hard-to-serve areas have access to reasonably comparable services at reasonably comparable prices"); Comments of the Rural Associations, WC Docket No. 10-90 et al., at 38 (filed Aug. 8, 2014) (Rural Associations Aug. 2014 Comments) (arguing there is no valid reason to relax the standards expected of support recipients in the context of competitive bidding or any other context); Comments of Utilities Telecom Council, WC Docket No. 10-90 et al., at 14-15 (filed Aug. 8, 2014) (UTC Aug. 2014 Comments) (supporting a "technology neutral approach" but "concerned as a practical matter that awarding support for wireless and satellite providers may draw funds away from terrestrial technologies that are better able to meet future demand for capacity and quality broadband services");.

[30] *See, e.g.*, Comments of CTIA – The Wireless Associations, WC Docket No. 10-90 et al., at 2-4 (filed Aug. 8, 2014) (CTIA Aug. 2014 Comments); Comments of DISH Network L.L.C., and Hughes Network Systems, LLC, WC Docket No. 10-90 et al., at 2-5 (filed Aug. 8, 2014) (DISH/Hughes Aug. 2014 Comments); Reply Comments of Satellite Broadcasting and Communications Association, WC Docket No. 10-90 et al. (filed Sept. 8, 2014) (SBCA Reply Comments).

[31] Letter from Robert Mayer, Vice President, Industry and State Affairs, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., Attach. at 1 (filed Apr. 10, 2015) (USTelecom Apr. 10, 2015 *Ex Parte* Letter).

capable of offering 1 Gbps/500 Mbps; stage 2, 100/20 Mbps; stage 3, 25/3 Mbps; stage 4, 10/1 Mbps.[32] WISPA also proposed four stages, but eliminated ACA's top speed tier, and added a lower tier requiring only 4/1 Mbps.[33] UTC proposed two tiers, with the top tier for fiber-to-the-home networks, and the second tier offering 25/3 Mbps.[34] Some parties urge us to allow bids to meet any a la carte combination of speed, latency, and capacity, with different weights for each unique combination.[35]

14. *Discussion*. Consistent with our previous decisions on performance requirements and the record in this proceeding, we now establish technology-neutral standards for the Phase II auction as described below.[36] We will accept bids for four service tiers with varying speed and usage allowances, and for each tier will differentiate between bids that would offer either lower or higher latency. The Commission has already decided that 10/1 Mbps should not be our end goal for support recipients over a 10-year term, and that is why we adopt a variety of service tiers for bids in the Phase II auction.[37] We are guided by the statutory goal in section 254 of ensuring that consumers in rural and high-cost areas of the country have access to advanced telecommunications and information services that are reasonably comparable to those services in urban areas, at reasonably comparable rates.[38] We expect and encourage participants to innovate and provide better service over the 10-year term.

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[32] Letter from Thomas Cohen, Counsel to American Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 4 (filed June 1, 2015) (ACA June 1, 2015 *Ex Parte* Letter).

[33] Letter from Stephen E. Coran, Counsel to the Wireless Internet Service Providers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 4 (filed June 30, 2015) (proposing top speed tier of 100 Mbps/20 Mbps) (WISPA June 30, 2015 *Ex Parte* Letter).

[34] Letter from Brett Kilbourne, Vice President and Deputy General Counsel, Utilities Telecom Council, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1, 3 (filed July 6, 2015) (UTC July 6, 2015 *Ex Parte* Letter). *See also* Letter from Michael R. Romano, Senior Vice President – Policy, NTCA – The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed July 23, 2015) (NTCA July 23, 2015 *Ex Parte* Letter) (commenting on ACA, USTelecom, UTC, and WISPA proposals). Subsequently UTC and NRECA proposed a weighting scheme that would provide the highest weight to bidders that proposed to offer download speeds exceeding 250 Mbps and unlimited data allowances. Letter from Brett Kilbourne, Vice President and Deputy General Counsel, Utilities Technology Council, and Martha A. Duggan, National Rural Electric Cooperative Assoc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed May 18, 2016).

[35] *See*, *e.g.*, Letter from L. Charles Keller, Counsel to Hughes Network Systems/Echostar Satellite Operating Companies, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 3, 2015); Letter from Stephen E. Coran, Counsel to WISPA, Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed May 18, 2016).

[36] *See* Comments of ADTRAN, WC Docket No. 10-90 et al., at 13-14 (filed Aug. 8, 2014) (urging Commission to apply to all technologies the same criteria for latency, capacity, and coverage, in addition to speed/throughput) (ADTRAN Aug. 2014 Comments). Phase II Auction recipients that fail to comply with these performance requirements will be subject to non-compliance measures, including, but not limited to, reductions in and recovery of support. *See* 47 CFR § 54.320; *infra* Section VIII.C (Measures for Non-Compliance).

[37] *See supra* para. 2.

[38] *See* 47 U.S.C. § 254(b)(3). Form 477 data (as of December 31, 2014) suggest that 277.3 million Americans (86 percent) have access to fixed 50 Mbps download broadband service or higher and 63 percent of these 277.3 million Americans reside in urban areas. *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*, GN Docket No. 15-191, 2016 Broadband Progress Report, 31 FCC Rcd 699, 711 n.85 (2016). The Report also found that, "Residential fixed broadband providers now offer service tiers of up to 1 Gbps in certain markets, with even faster services currently in development. Even outside these areas, download speed offerings by fixed terrestrial providers of 50 Mbps or more are common in urban and suburban markets. . . . The high-speed cable and fiber services that make up the majority of the fixed broadband market generally offer low latency, low packet loss, and consistent speeds, even during peak usage times. Further, these services are also high in capacity, meaning that they can handle more traffic without

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15. The following charts summarize our approach:

Performance Tier	Speed	Usage Allowance
Minimum	≥ 10/1 Mbps	≥150 GB
Baseline	≥25/3 Mbps	≥150 GB or U.S. median, whichever is higher
Above Baseline	≥100/20 Mbps	Unlimited
Gigabit	≥1 Gbps/500 Mbps	Unlimited

Latency	Requirement
Low Latency	≤ 100 ms
High Latency	≤ 750 ms & MOS of ≥4

16. The tiers set forth below are grounded in prior Commission Orders setting performance obligations requirements for speed and usage, as well as latency, that together must be met for the receipt of high-cost universal service support, and reflect the diversity of broadband offerings in the marketplace today.[39] We want to maximize the number of consumers served within our finite budget.[40] At the same time, we see the value to consumers in rural markets of having access to service during the 10-year term of support that exceeds our baseline requirements. We want to ensure that rural America is not left behind, and the consumers in those areas benefit from innovation and advances in technology. All things considered, we value higher speeds over lower speeds, higher usage allowances over lower usage allowances, and lower latency over higher latency. We also see the benefits to achieving our other universal service objectives if Phase II service provider will be able to provide broadband adequate to meet the needs of the entire community, including schools, libraries and rural health care providers, potentially reducing the overall cost of USF to consumers.

17. As discussed further below, all bids will be considered simultaneously, so that bidders that propose to meet one set of performance standards will be directly competing against bidders that propose to meet other performance standards.[41] We believe that this approach strikes a balance by providing sufficient granularity with respect to the performance characteristics of broadband offerings, while maintaining an auction design that will encourage a broad range of providers to participate in the auction.[42] We discuss our approach to ranking these service tiers below and seek comment in the Further Notice on auction procedures to assign weights to each tier and latency combination.

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becoming congested." *Id.* at 711, para. 27 (citations omitted). However, more than 39 percent of Americans living in rural areas lack access to 25 Mbps/3 Mbps speeds, compared to 4 percent of Americans living in urban areas. For fixed terrestrial service at slower speeds, 25 percent of rural Americans lack access to 10 Mbps/1 Mbps speeds compared to 2 percent of urban Americans. *Id.* at 731-32, para. 79 and Table 1.

[39] Our urban rate survey data indicate a wide range of offerings in urban areas. *See* Federal Communications Commission, 2016 Urban Rate Broadband Survey Results: Data, https://www.fcc.gov/file/3706/download.

[40] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17732, 18086, paras. 179, 1195.

[41] *See infra* paras. 84-85.

[42] *See* Letter from Thomas Cohen, Counsel to American Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed May 13, 2016) ("ACA believes that above all, to maximize participation, the Commission should construct an auction process that is relatively simple and straightforward, which thereby provides the certainty that will increase incentives for providers, especially smaller providers, to participate.
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18. We recognize that some commenters have expressed concerns that it is difficult to plan a network deployment not knowing the performance obligations that may exist at the end of the 10-year term.[43] Competitive bidding is likely to be more efficient if potential bidders know what their performance standards will be before bids are made. We find that establishing the service requirements now is preferable to doing so after support has been awarded, as it will provide more certainty for potential bidders. Winning bidders that comply with the performance requirements we establish today for each tier of service for the duration of the 10-year term will be deemed in compliance even if the Commission subsequently establishes different standards in a later proceeding (e.g., the standards that will apply when we award support through a Phase III auction after the six-year term of support for price cap carriers accepting the offer of model-based support).[44]

19. *Minimum Performance Tier.* As a minimum, we will consider bids that will meet standards for speed consistent with those applicable to the price cap carriers that accepted the offer of model-based support. Specifically, in the Phase II auction, we will allow for bids that offer at least 10/1 Mbps speeds and offer at least 150 GB of monthly usage.[45]

20. We do so in recognition that some bidders may not be able to meet the speed requirement we establish below for baseline performance in some areas. For example, there may be some areas where wireline telecommunications carriers—either incumbents or competitive carriers—may extend fiber closer to the end user but will only be able to provide 10/1 Mbps service. Providing flexibility for bidders to relax the speed standard where necessary will enable a broader range of providers to participate in the Phase II competitive bidding process.

21. We are not persuaded to further roll back the minimum speed for Phase II to 4/1 Mbps, as WISPA and USTelecom have suggested.[46] We found ample basis in the record for revising the minimum speed requirement to 10/1 Mbps, when we did so in December 2014,[47] and the most recent data indicate that a majority of Americans subscribe to speeds today that are higher than 10/1 Mbps.[48]

22. We recognize that wireless and satellite providers have argued that a minimum usage allowance of even 100 GB is unrealistic for spectrum-based networks that have capacity limitations, and

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Accordingly, should the Commission deem it appropriate to weigh bids by different performance characteristics, it should minimize complexity, which would invite greater participation."); Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed May 18, 2016) ("[T]he Commission should limit the number of weights (i.e., the number of service tiers or speed, usage, and latency thresholds) in order to limit complexity of the auction and the potential for unanticipated consequences.").

[43] *See, e.g.*, USTelecom April 10, 2015 *Ex Parte* Letter, Attach. at 2. When we adopted the 10/1 Mbps minimum speed requirement for price cap carriers accepting model-based support, we anticipated that we would initiate a proceeding to review performance standards no later than 2018. *December 2014 Connect America Order*, 29 FCC Rcd at 15655, para. 29.

[44] Of course, compliance with the performance requirements adopted herein does not relieve a provider of the obligation to comply with any and all otherwise applicable Commission regulations.

[45] *See Wireline Competition Bureau Announces Results of 2016 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for ETCs Subject to Broadband Public Interest Obligations*, WC Docket No. 10-90, DA 16-362, at 3 (WCB Apr. 5, 2016) (*2016 Urban Rate Survey*) (announcing 150 GB minimum usage allowance for 2016 for ETCs subject to broadband public interest obligations).

[46] *See* USTelecom April 10, 2015 *Ex Parte Letter*, Attach. at 1; WISPA June 30, 2015 *Ex Parte* Letter at 4.

[47] *December 2014 Connect America Order*, 29 FCC Rcd at 15650, para. 19.

[48] *See* Federal Communications Commission, 2016 Urban Rate Broadband Survey Results: Data, https://www.fcc.gov/file/3706/download.

that the standards should be set at levels that do not exclude spectrum-based services.[49] We note, however, that winning bidders will be free to offer an array of service plans, not all of which would provide the minimum 150 GB usage allowance. The 150 GB plan could thus be one of several offerings. We merely require that bidders must offer at least one service offering at a reasonably comparable rate that meets the minimum usage allowance.

23. Similarly, we are not persuaded that we should relax this requirement to permit bidders to provide only 50 GB of usage, as suggested by one commenter.[50] Winning bidders will be receiving support that will enable them to offer a service plan with the required usage allowance, and they will be free to offer other service plans with a lower usage allowance at a lower price, which may well prove attractive to consumers in the marketplace. We are requiring only that at least one offering in Phase II funded areas meets or exceeds all requirements.

24. *Baseline Performance Tier*. We now conclude that the baseline tier for the Phase II auction will be speeds of 25 Mbps downstream and 3 Mbps upstream. Our decision to establish this baseline performance standard for Phase II is based on the highest speed adopted by a majority of fixed broadband subscribers builds on the approach we adopted in December 2014.[51]

25. For usage, consistent with the approach recently adopted for rate-of-return carriers electing the voluntary path to the model, we require bidders in this baseline tier to offer over the course of the 10-year term a minimum usage allowance of 150 GB per month, or a usage allowance that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher, at a price that is reasonably comparable to similar offerings in urban areas.[52] We conclude that this standard will ensure that rural consumers will have available an offering that enables them to utilize their broadband connections in ways similar to consumers in urban areas, where fixed broadband services are widely available,[53] while our reasonable comparability

[49] *See, e.g.*, CTIA Aug. 2014 Comments at 3-4; DISH/Hughes Aug. 2014 Comments at 4; Comments of General Communications, Inc., WC Docket No. 10-90 et al., at 16 (filed Aug. 8, 2014) (GCI Aug. 2014 Comments); Reply Comments of the Rural Wireless Carriers, WC Docket No. 10-90 et al., at 55-56 (filed Sept. 8, 2014).

[50] Letter from Jennifer A Manner, Vice President, Regulatory Affairs, Hughes Network Systems, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed July 20, 2015) (proposing a minimum usage allowance requirement of 50 GB).

[51] *December 2014 Connect America Order*, 29 FCC Rcd at 15649, para. 16, n.30. We note that Form 477 data as of June 30, 2015, indicate that the median consumer download speed was 25 Mbps and the median consumer upload speed was 4 Mbps. *See* Federal Communications Commission, *Broadband Deployment Data from FCC Form 477*, https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477 (published June 2015 FCC Form 477 data). For administrative simplicity, we choose 25/3 Mbps as the baseline standard. The Commission also adopted 25/3 Mbps as the minimum speed for a subset of fully funded locations for rate-of-return carriers electing to receive Alternative Connect America Cost Model support. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., FCC 16-33, at 10, para. 20 (Mar. 30, 2016) (*2016 Rate-of-Return Reform Order*).

[52] *See 2016 Rate-of-Return Reform Order* at 13, para. 27 (adopting the same usage standard for rate-of-return carriers that elect model-based support). Wireline carriers, cable companies, electric cooperatives generally support requiring the same performance standards for all Phase II support recipients. *See* Comments of Windstream, WC Docket No. 10-90, at 6-7 (filed Aug. 8, 2014) (Windstream Aug. 2014 Comments) (arguing the Commission should adopt its proposal 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 the competitive bidding process; Comments of American Cable Association, WC Docket No. 10-90 et al., at 33 (filed Jan. 18, 2012) (ACA Jan. 2012 Comments). We conclude that price cap carriers may meet this baseline performance data usage allowance established for the Phase II auction support in lieu of meeting the standard described in the Bureau's *Phase II Service Obligations Order*. *Phase II Service Obligations Order*, 28 FCC Rcd at 15065-68, paras. 14-18.

benchmarks will ensure that usage allowance is provided at a price that is reasonably comparable to service offerings with similar usage allowances in urban areas.[54]

26. *Above-Baseline Performance Tier*. We also recognize that in some areas of the country, there may be bidders willing to deploy networks that will deliver performance that exceeds our baseline requirements for the Phase II auction. For a bid to qualify in this tier, the bidder must commit to deploying a network that is fully capable of offering speeds and usage allowances that exceed the baseline standards that we establish today for the Phase II auction to all locations. Consistent with proposals in the record,[55] we will accept bids from entities that propose to offer 100 Mbps downstream and 20 Mbps upstream throughout the 10-year term and require these bidders to offer an unlimited monthly usage allowance.

27. *Gigabit Performance Tier*. Finally, we establish a top performance tier for areas of the country in which there may be bidders willing to deploy networks that will deliver speeds that substantially exceed our baseline speed requirements for the Phase II auction. Specifically, we will consider bids from entities that commit to offer 1 Gbps downstream and 500 Mbps upstream and an unlimited monthly usage allowance.[56]

28. *Latency*. For each tier described above, bidders will designate one of two latency performance levels: (1) low latency or (2) high latency. Providing flexibility for bidders to designate their latency performance level for each of the given performance tiers set out above will enable a broader range of providers to participate in the Phase II competitive bidding process.

29. Recently, the Commission adopted a minimum latency requirement that 95 percent or more of all peak period measurements of network round trip latency are at or below 100 milliseconds for rate-of-return carriers that elect the voluntary path to model support.[57] That standard also applies to price cap carriers that accepted the Phase II offer of model-based support.[58] We require bidders that wish to submit low-latency bids to meet the same 100 millisecond latency standard.

30. However, we recognize that some bidders may not be able to meet that latency standard. For example high-earth orbit satellite providers cannot meet the latency requirement,[59] but may be willing

(Continued from previous page)

[53] We note that according to the Commission's 2015 Measuring Broadband America report, 80 percent of cable broadband subscribers used 156 GB or less per month. *See* Validated Data Sets – Measuring Broadband America 2015 – Statistical Averages, http://data.fcc.gov/download/measuring-broadband-america/2015/statistical-averages-2014%20v20151117.xlsx. We note that the median figure for cable subscribers was 67 GB per month. *Id.*

[54] We note that Phase II winners—just like the price cap carriers that accept model-based support—will be free to offer an array of service plans with varying usage allowances at various price points.

[55] *See* ACA June 1, 2015 Ex Parte Letter; WISPA June 30, 2015 Ex Parte Letter.

[56] *See* ACA June 1, 2015 Ex Parte Letter.

[57] *See 2016 Rate-of-Return Reform Order* at 14, para. 28.

[58] *See Phase II Service Obligations Order*, 28 FCC Rcd at 15068-72, paras. 19-25; *see also April 2014 Connect America FNPRM*, 29 FCC Rcd at 7103-04, paras. 149-52.

[59] *See, e.g.*, Letter from John P. Janka, Counsel to ViaSat, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 4 (filed Aug. 21, 2015) (ViaSat Aug. 21, 2015 *Ex Parte* Letter); Letter from Jennifer A. Manner, Vice President, Regulatory Affairs, Hughes Network Systems, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed June 2, 2015) (Hughes June 2, 2015 *Ex Parte* Letter) (recommending a threshold R-value of 52, computed with an allocation of 0 (zero) for the Advantage Factor (A) specified by the ITU formula); Letter from John P. Janka, Counsel to ViaSat, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed May 14, 2015); Letter from Jennifer A. Manner, Vice President, Regulatory Affairs, Hughes Network Systems, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed Mar. 27, 2015) (Hughes Mar. 27, 2015 *Ex Parte* Letter).

to offer higher speeds.[60] After full consideration of the record, we now conclude that bidders designating high latency performance will be required to meet a two-part standard for the latency of both their voice and broadband service: (1) requirement that 95 percent or more of all peak period measurements of network round trip latency are at or below 750 milliseconds,[61] and (2) with respect to voice performance, we require high latency bidders to demonstrate a score of four or higher using the Mean Opinion Score (MOS),[62] similar to the standard that the Commission adopted for one category of rural broadband experiments.[63]

31. We are not persuaded that we should eliminate altogether any millisecond measure of latency for Phase II support recipients. Some parties have urged the Commission to adopt alternative measures of service quality for recipients of Connect America Fund support, such as requiring voice service to be provided with an "R Factor" score at or above a minimum threshold value, and a web page loading time standard.[64] We decline to adopt an alternative approach that would only use a voice quality test for providers that cannot meet the 100 ms latency standard. We find that the better approach is to measure latency the same way for all providers, but for entities submitting high latency bids to set a higher benchmark and require a demonstration of MOS of four or higher.

32. We reject arguments that a 100 ms latency designation should apply only to "latency-sensitive traffic."[65] Low latency, that is, shorter delays, is essential for most network-based applications and critical for others, such as VoIP and other interactive and highly interactive applications.[66] Thus, requiring objectively measured latency performance standards is in line with network-based applications

[60] Letter from John P. Janka, Counsel to ViaSat, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2-3 (filed Feb. 2, 2016) (ViaSat Feb. 2, 2016 *Ex Parte* Letter).

[61] Letter from Jennifer A. Manner, Vice President, Regulatory Affairs, Hughes Network Systems, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed July 2015) (proposing a latency threshold for satellite broadband providers of 750 ms).

[62] Bidders committing to provide a MOS of four or higher should be prepared to submit laboratory testing consistent with International Telecommunication Union recommendations P.800. *See* International Telecommunication Union, Telecommunication Standardization Sector, Series P: Telephone Transmission Quality, Methods for objective and subjective assessment of quality, P.800 (Aug. 1996).

[63] *See* ViaSat Aug. 21, 2015 *Ex Parte* Letter at 5-7 (proposing, among other things, a MOS of 4). In the rural broadband experiments, the Commission relaxed the latency performance requirement for satellite providers proposing to serve only extremely high-cost census blocks. *Rural Broadband Experiments Order*, 29 FCC Rcd at 8780, para. 29. We recognized that satellite providers would not be able to satisfy the 100 ms latency standard that we established for the other two categories of experiments, because the satellite's distance from Earth makes achievement of the 100 ms provider latency round trip limit impossible. We determined that we would permit satellite providers to submit proposals for projects to serve only extremely high-cost census blocks and that a winning satellite provider may satisfy the requirements for quality of voice service by demonstrating it can provide voice service that meets a MOS of four or greater. No authorized rural broadband experiment bidder took advantage of this relaxed requirement.

[64] *See* ViaSat Aug. 21, 2015 *Ex Parte* Letter at 5-7 (proposing 25/3 Mbps speed requirement; usage allowances tied to urban rate survey; MOS of 4; packet loss of no more than 0.01 percent, and average one-way jitter of no more than 30 milliseconds for interactive, real-time applications); Hughes June 2, 2015 *Ex Parte* Letter (proposing web page loading time standard of 5 seconds (5,000 ms) and recommending a threshold R-value of 52, computed with an allocation of 0 (zero) for the Advantage Factor (A) specified by the ITU formula); Hughes Mar. 27, 2015 *Ex Parte* Letter.

[65] ViaSat Aug. 21, 2015 *Ex Parte* Letter at 7-8.

[66] *See e.g.*, Letter from Brett Kilbourne, Vice President and Deputy General Counsel, Utilities Technology Council, and Martha A. Duggan, National Rural Electric Cooperative Assoc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed May 18, 2016) (noting low latency is critical to support health care broadband applications, which will be increasingly important in rural America).

requirements and consumer-based perceptions of acceptable performance, particularly for voice services.[67]

33. At the same time, we are willing to entertain bids from entities that can only provide high latency, in the interest of making this auction as competitive as possible. For those providers offering high latency services, we emphasize the importance of providing quality voice services.[68] We particularly welcome solutions such as the terrestrial voice service suggested by Viasat. While we do not adopt the MOS scoring metric as a *substitute* for the milliseconds of latency requirement, we believe it can be used to help ensure quality voice service performance for bids designated high latency. Thus, as noted above, in addition to the metrics set forth above, we require that bidders that exhibit high latency must be prepared to demonstrate a MOS of four or higher throughout the term of support. We recognize that the MOS metric is a measure of perceived quality,[69] and require entities taking advantage of this standard to be prepared to submit testing results that are specific to their CAF-funded areas. Recipients must provide this level of voice quality to all consumers in CAF-funded areas, not just to a subset of locations.

34. Bidders in the Phase II competitive bidding process that seek to meet the higher latency standard will be free to bid on all areas that are eligible for Phase II competitive bidding; we will not limit them to bidding on census blocks that the cost model has determined are extremely high-cost. We do not want to preclude the possibility, however, of consumers in these areas gaining access to low latency service in the years ahead. We also would have concerns if consumers were widely dissatisfied with the quality of voice service associated with a double hop call. For that reason, the Commission reserves the option of including such areas in the auction that will occur shortly before the end of the six-year term of support for the price cap carriers that accept model-based support (i.e., before the end of 2020), if subscription levels in CAF-funded areas are more than 35 percent lower than the national average at that time.[70] The then-current recipient of support as well as other entities would be free to bid for support to meet whatever performance standards that will apply to that Phase III auction. Absent a decision by the Commission to include such areas in the Phase III auction, however, Phase II winning bidders that elect to provide high-latency service will receive support for a 10-year term.

35. We conclude that applicants seeking to deploy spectrum-based technologies that can meet the performance requirements will be eligible to bid in any tier.[71] To ensure that these bidders have

[67] We note ITU-T Y.1541 see Table 1 for the separate interactive and highly interactive Classes of Service. The stated latency times needed (IPTD – IP Packet Transfer Delay) are defined as 100 and 400ms, one-way, end to end. International Telecommunications Union, ITU-T Y.1541 at 9, Tbl. 1 (2011), https://www.itu.int/rec/T-REC-Y.1541-201112-I/en.

[68] See Letter from Michael R. Romano, Senior Vice President - Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed May 17, 2016).

[69] *See, e.g.,* Letter from Steven L. Goodman, Counsel to ADTRAN, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed May 26, 2015).

[70] If, for instance, the national average subscription rate for fixed connections was 70 percent, the benchmark would be 45.5%, and therefore this condition would be triggered if the recipient of support had a 45 percent penetration rate in its CAF-funded areas. We reserve the right to require bidders to provide subscription figures upon request.

[71] *See, e.g.*, Comments of Competitive Carriers Association, WC Docket No. 10-90 et al., at 18 (filed Aug. 8, 2014) ("[A]ny provider whether relying on wireline or wireless technology that meets the relevant performance requirements should be eligible for funding through a reverse auction."); CTIA Aug. 2014 Comments at 2-3 ("By allowing wireless providers to participate, and all participants to use wireless technology in their bidding plans, the Commission will allow for the more efficient provision of service in many rural and high-cost areas."); Comments of the Deere & Company, WC Docket No. 10-90 et al., at 6 (filed Aug. 8, 2014) ("Providers are in the best position to assess the needs of local customers and to choose among technologies that can best serve their needs."); Comments of the Rural Wireless Carriers, WC Docket No. 10-90 et al., at 38 (filed Aug. 8, 2014) (permitting mobile wireless providers to participate will "make the [Connect America] Phase II auction process more competitive by expanding the number of potential participants in the auction").

the capabilities to meet all standards, however, we will require bidders proposing to use spectrum-based technologies to demonstrate that they have the proper authorizations or licenses, if applicable, and access to spectrum, to reach the fixed locations within the areas for which they seek support.

36. We do not agree with commenters who argue that setting performance standards that could potentially exclude certain technologies disserves the public interest because it conflicts with the principle of competitive neutrality.[72] The principle of competitive neutrality does not preclude us from meeting other reasonable regulatory objectives, including as discussed above,[73] the statutory requirement to ensure reasonably comparable service. The adoption of these technology-neutral tiers of performance standards, which are designed to meet reasonable regulatory objectives, is not objectionable simply because some service providers cannot meet the standards for a particular tier.[74]

37. By soliciting bidders that make commitments to meet significantly higher performance standards, we further the goal of providing access to advanced telecommunications and information services in all regions of the nation.[75] By also entertaining bids from providers meeting service tiers that the Commission has previously established in other contexts, we help ensure that services in rural and high-cost areas are reasonably comparable to those services provided in urban areas at reasonably comparable rates, and that consumers in these areas will not be left behind.[76] Finally, we emphasize that to the extent there are eligible areas where there are no bidders willing to meet the standards for any of these tiers of service, we intend to take further action to ensure that those consumers are not left behind. As discussed below, we will proceed expeditiously to conduct a subsequent Remote Areas Fund auction with further relaxed standards.

B. Interim Deployment Obligations

38. *Background*. In the *USF/ICC Transformation Order FNPRM*, the Commission proposed that service milestones that apply to ETCs through a competitive process be the same as those that apply to price cap ETCs that accept a state-level commitment.[77]

39. In the *December 2014 Connect America Order*, the Commission recognized that recipients of support—including bidders in a competitive auction—will first need to complete an overall plan, undertake detailed engineering analyses in the field to plan the construction of particular routes and will likely then proceed incrementally to complete construction evenly over the course of the deployment. We adopted straight line interim milestones over the six-year term for price cap carriers accepting model-based support.[78] We required price cap carriers accepting model-based support to complete construction

[72] *See, e.g.*, CTIA Aug. 2014 Comments at 3; Reply Comments of Competitive Carriers Association, WC Docket No. 10-90 et al., at 11-14 (filed Sept. 8, 2014) (CCA Sept. 2014 Reply).

[73] *See supra* para. 14.

[74] *Rural Cellular Ass'n. v. FCC*, 588 F.3d 1095, 1104 (D.C. Cir. 2009).

[75] 47 U.S.C. § 254(b)(2).

[76] 47 U.S.C. § 254(b)(3).

[77] At that time, those price cap carriers were required to deploy 4/1 Mbps to 85% of locations by the end of year three of a five-year term of support. *See USF/ICC Transformation Order & FNPRM*, 26 FCC Rcd at 17726, 18089, paras. 161, 1207. In response to the *USF/ICC Transformation Order FNPRM*, ITTA argued that the auction winners should be subject to the same deployment milestones as price cap carriers accepting the offer of model-based support. Comments of Independent Telephone & Telecommunications Alliance, WC Docket No. 10-90 et al., at 15-16 (filed Jan. 18, 2012) (ITTA Jan. 2012 Comments). ACA, in contrast, argued that the build-out timeline for auction winners should be accelerated to two years. *See* ACA Jan. 2012 Comments at 4-5. *But see* Reply Comments of ADTRAN, WC Docket No. 10-90 et al., at 5-6 (filed Feb. 17, 2012) (opposing ACA request to accelerate deployment schedules). More recent comments did not address build-out terms separately from support terms.

[78] *December 2014 Connect America Order*, 29 FCC Rcd at 15657-59, paras. 36-37.

to 40 percent of the requisite number of locations in a state by the end of the third year, and 100 percent by the end of the sixth year. Although we required these price cap carriers to report their progress each year, we did not create an enforceable milestone for the first or second year of Phase II because of the time needed for planning associated with the deployment.[79]

40. *Discussion*. We now adopt the Commission's proposal to set the same service milestones for recipients of Phase II support awarded through the competitive bidding process as those that apply to price cap carriers that accept a state-level commitment. We require deployment to be completed within six years of funding authorization. In particular, as shown in the chart below, we require the entities authorized to receive Phase II auction support to complete construction and commercially offer service to 40 percent of the requisite number of locations in a state by the end of the third year of funding authorization, an additional 20 percent in the subsequent years, with 100 percent by the end of the sixth year.[80] We recognize these interim deployment milestones may not be appropriate for non-terrestrial providers or providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations.[81] We seek further comment on this issue in the Further Notice.

Service Milestones for Phase II Support Recipients Awarded Through Competitive Bidding[82]

Year 1	**%
Year 2	**%
Year 3	40%
Year 4	60%
Year 5	80%
Year 6	100%

41. When we adopted a 10-year term for Phase II support awarded through competitive bidding in April 2014, we did not intend to suggest that we also would provide those recipients 10 years to meet their build-out obligations.[83] Rather, we provided for a longer term in order to provide additional support to those who competed for such support. Given the importance of the availability of broadband in the 21st century, one of the Commission's policy goals is to accelerate the deployment of broadband-capable networks. Spreading the service milestones over the entire 10-year term would slow the availability of new broadband infrastructure in these high-cost areas. Most winning bidders will likely undertake projects that are smaller in scale than the state-wide commitments undertaken by price cap carriers and so should be able to complete construction and commercially offer service well before the end of the sixth year. Therefore, we do not believe it necessary to grant additional flexibility at this time.

[79] *Id*. at 15658, para. 36 n.86.

[80] A winning bidder may be awarded support in more than one state and the auction procedures may permit more than one bid in a state, but as discussed below, compliance with the build-out obligations will be measured on a statewide basis. *See infra* para. 46.

[81] *See*, *e.g*., Letter from Jennifer A. Manner, Vice President, Regulatory Affairs, Hughes Network Systems, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 11, 2015).

[82] These are deployment obligations, not reporting obligations. For more information about reporting obligations, *see infra* Section VIII.A (Monitoring Progress in Meeting Deployment Obligations).

[83] *See April 2014 Connect America Order*, 29 FCC Rcd at 7061-62, paras. 35-36.

C. Flexibility in Meeting Deployment Obligations

42. *Background*. In the *April 2014 Connect America FNPRM*, the Commission sought comment on permitting Phase II recipients to specify that they are willing to deploy to less than 100 percent of locations in their funded areas, with support reductions to the extent they elect to deploy to less than 100 percent of funded locations. Specifically, we asked whether 95 percent of funded locations would be an appropriate minimum.[84] In addition, we sought comment on allowing Phase II recipients to substitute some number of unserved locations within partially served census blocks for locations within funded census blocks.[85]

43. In the *December 2014 Connect America Order*, the Commission provided some flexibility in meeting deployment obligations to price cap carriers accepting model-based support, requiring them to deploy to at least 95 percent of the funded locations in a given state.[86] We required price cap carriers taking advantage of this flexibility to identify at least two percent of their eligible locations in a state by December 31, 2015, so that these census blocks could be included in the Phase II competitive bidding process.[87] At the end of the support term, price cap carriers that have deployed to at least 95 percent, but less than 100 percent, of the number of funded locations will be required to refund support based on the number of funded locations left unserved in the state.[88] The Commission found it reasonable to assume that many of the locations left unserved would have higher than average costs calculated by the model; therefore, the amount refunded will not be based on average support, but rather on one-half the average support for the top five percent of the highest cost funded locations nationwide.[89] In addition, for those carriers accepting model-based support, we declined to adopt the proposal to substitute unserved locations within partially served blocks for locations within funded census blocks, but indicated we would continue to explore this issue.[90]

44. *Discussion*. We conclude that recipients of support through a competitive bidding process should similarly have some flexibility in their deployment obligations to address unforeseeable challenges to meeting those obligations. In adopting flexibility in deployment obligations for price cap carriers accepting model-based support, we recognized that the "facts on the ground" when they are deploying facilities in a state may necessitate some flexibility regarding the number of locations.[91] Similar issues may be faced by recipients of support awarded through a competitive process. Most commenters supported providing some flexibility in the number of required locations.[92]

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[84] *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7108, para. 165.

[85] *See id*. at 7108-09, para. 167.

[86] *December 2014 Connect America Order*, 29 FCC Rcd at 15659-61, paras. 38-42.

[87] *Id.* at 15659-60, para. 39.

[88] *Id.* at 15660-61, para. 42.

[89] *Id*.

[90] *Id.* at 15661, para. 44. Price cap carriers can choose to substitute some extremely high-cost locations in adjacent census blocks for locations in funded census blocks. *See id*. at 15657, para. 33.

[91] *Id.* at 15659, para. 38.

[92] *See, e.g.*, UTC Aug. 2014 Comments at 19-20 (stating that the Commission should require 95 percent or higher locations to be served to discourage cherry-picking); Reply Comments of the National Rural Electric Cooperative Association, WC Docket No. 10-90 et al., at 8 (filed Sept. 8, 2014) (stating that it is not opposed to a five percent reduction in the percentage of locations served with a corresponding reduction in support); Comments of Wireless Internet Service Providers Association, WC Docket No. 10-90 et al., at 8 (filed Aug. 8, 2014) (WISPA Aug. 2014 Comments) (same); Letter from C. Douglas Jarrett, Counsel to the National Rural Electric Cooperative Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (filed Sept. 9, 2015) (NRECA and UTC Sept. 9, 2015 *Ex Parte* Letter) (same). *But see* Comments of the American Cable Association, WC Docket No. 10-90 et al., at 13 (filed Aug. 8, 2014) (stating there are two reasons not to provide flexibility to competitive bidding recipients) (continued….)

45. We find that requiring deployment to at least 95 percent of eligible locations is equally appropriate for recipients of Phase II support awarded through competitive bidding.[93] We recognize that for these Phase II recipients, as well as model-based support recipients, "there may be a variety of unforeseen factors, after the initial planning stage, that can cause significant changes as a network is actually being deployed in the field."[94] We therefore will require recipients of Phase II support awarded through competitive bidding to deploy to at least 95 percent of the funded locations in each state where they are receiving support. At the end of the support term, recipients that have deployed to at least 95 percent, but less than 100 percent, of the number of funded locations will be required to refund support based on the number of funded locations left unserved in that state. The amount refunded will not be based on average support, but on one-half the average support for the top five percent of the highest cost funded locations nationwide.[95]

46. We note that, consistent with the approach we adopted for the price cap carriers, compliance with the deployment obligations will be determined at the state-level for recipients of support through the competitive bidding process.[96] Thus, we will not be looking at whether 95 percent of the eligible locations in a census block have service, nor will we be looking at whether 95 percent of the eligible locations in a given project within a state have service. Regardless of how a bidder chooses to place its bids for support, for administrative convenience, support will authorized on a state-level basis, and the geographic areas in a state that are funded will represent the service territory for the ETC that is awarded support through the competitive bidding process.

47. We are not persuaded by commenters who argued we should provide more flexibility than we provided price cap carriers accepting model-based support.[97] Unlike the price cap carriers who are required to accept or decline the offer of model-based support at the state level, bidders in the Phase II competitive bidding process will be able to bid on smaller projects. Potential bidders are responsible for undertaking the necessary due diligence in advance of bidding to identify particularly problematic census blocks when they are preparing their bids and have the option of not including such blocks in their bids. Therefore, we see no reason to provide greater leniency in deployment obligations for recipients of support through the competitive bidding process.

48. Finally, we remain open to the possibility of allowing Phase II recipients to substitute some number of unserved locations within partially served census blocks for locations within funded census blocks.[98] In the *December 2014 Connect America Order*, we noted that all parties potentially interested in receiving Phase II support have an interest in building economically efficient networks, and

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(ACA Aug. 2014 Comments). ACA subsequently proposed that auction winners be required to build to 90 percent of locations in each census block. *See* ACA June 1, 2015 *Ex Parte* Letter at 7.

[93] If a recipient builds to less than 95% of eligible locations, it will be subject to the compliance measures adopted below. *See infra* Section VIII.A (Monitoring Progress in Meeting Deployment Obligations).

[94] *December 2014 Connect America Order*, 29 FCC Rcd at 15659, paras. 38. We also noted the customer location data utilized in the model reflected data at a particular point in time, and the precise number of locations in some funded census blocks is likely to change over time for a variety of reasons. *Id*.

[95] The Commission adopted the same measures to address non-compliance by all Phase II recipients. *See id*. at 15697, para. 148.

[96] Thus, for instance, if a non-incumbent bids for support to serve two distinct regions within a state, and ultimately is a winning bidder, its "service territory" would cover both areas for purposes of measuring compliance.

[97] *December 2014 Connect America Order*, 29 FCC Rcd at 15660, para. 40. *See, e.g.*, Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Mar. 1, 2016); ACA June 1, 2015 Ex Parte Letter at 7.

[98] We sought comment on this issue in the *April 2014 Connect America Order*, 29 FCC Rcd at 7108-09, para. 167.

those networks do not neatly align with census blocks.[99] We will continue to explore this issue, and encourage all stakeholders interested in receiving Phase II support to work together to propose for future Commission consideration an administratively feasible method for ensuring that unserved consumers in partially served census blocks are not left behind.

D. Accelerated Payment for Early Deployment

49. *Background*. In the *April 2014 Connect America Order*, the Commission adopted a 10-year term for Connect America Phase II support awarded through the competitive bidding process.[100] We proposed to provide financial incentives for recipients of Phase II support to accelerate their network deployment by disbursing funds on an accelerated timetable if a recipient completed its deployment ahead of the required timeframe.[101]

50. *Discussion*. After further considering the issue, we decline to adopt an accelerated payment option for recipients of Phase II support awarded through the competitive bidding process.[102] While a few commenters supported providing an option for accelerated payment, and we agree with the goal of encouraging faster deployment, we are not persuaded that we could implement this proposal within the annual available budget.[103] We are not convinced by ADTRAN's claim that the universal service fund should be no worse off, because the outlays will not increase, and could decrease slightly to the extent the Commission discounts the accelerated future payments to reflect the time value of money.[104] Even if annual support amounts were discounted, ADTRAN fails to recognize the impact on the fund if a significant number of support recipients took advantage of an accelerated payment option in the same year.[105] Although overall outlays over the 10-year term would not increase, if the Commission disburses an amount of Connect America funding that significantly exceeds its annual budget, we likely would have to increase the contribution factor and the burden on all ratepayers. In adopting the high-cost budget in the *USF/ICC Transformation Order*, the Commission explicitly sought to avoid "dramatic swings in the contribution factor."[106] We find that the potential risk of considerably exceeding our budget in a single year outweighs the benefits of encouraging early deployment with an accelerated payment option. Moreover, continuing monthly payments over the full 10-year term provides the Commission with a means of addressing non-compliance by withholding payments until non-compliance is cured, as discussed below.[107] We note that recipients will have other incentives to complete their deployment as quickly as possible, both to begin earning revenues from the new service offerings and to be in a position where they are no longer required to maintain a letter of credit, as discussed more fully below.[108]

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[99] *December 2014 Connect America Order*, 29 FCC Rcd at 15661, para. 44.

[100] *April 2014 Connect America Order*, 29 FCC Rcd at 7061-62, paras. 35-36.

[101] *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7107, para. 161.

[102] We note that the Commission did not adopt an accelerated payment option for price cap carriers accepting the offer of Phase II model-based support.

[103] *See, e.g.*, Comments of the National Rural Electric Cooperative Association, WC Docket No. 10-90 et al., at 8-9 (filed Aug. 8, 2014) (NRECA Aug. 2014 Comments) (supporting accelerated payment if it doesn't jeopardize the fund); UTC Aug. 2014 Comments at 17-18.

[104] ADTRAN Aug. 2014 Comments at 10.

[105] For example, if all Phase II support recipients completed deployment in year five, the Commission would be obligated to disburse six times the annual amount of Phase II support in that year (the amount that normally would be due in year five plus the amounts that would otherwise be provided in years six through ten).

[106] *USF/ICC Transformation Order*, 26 FCC Rcd at 17847, para. 559.

[107] *See infra* para. 190.

[108] *See infra* para. 123.

IV. ELIGIBLE AREAS

51. In this section, the Commission finalizes decisions regarding the areas that will be subject to bidding in the Phase II auction.[109] As a general matter, only census blocks lacking 10/1 Mbps service from any provider will be eligible for bidding,[110] with two limited exceptions.[111] We direct the Bureau to release a preliminary list of eligible census blocks based on the most recent FCC Form 477 data and to conduct a streamlined challenge process to identify the final list of eligible census blocks for the Phase II competitive bidding process. We also direct the Bureau to average costs at the census block level when generating the list of census blocks eligible for the Phase II competitive bidding process.

52. One of our objectives is to ensure that as many consumers as possible lacking 4/1 Mbps Internet access service become served through implementation of Phase II. We conclude it would not be an efficient use of the Phase II support to make eligible in the auction high-cost or extremely high-cost census blocks in the declined states where the price cap carrier already is providing 10/1 Mbps or better service.

A. Updating Census Block Eligibility to Reflect More Recent Broadband and Voice Coverage Data

53. *Background.* In the 2011 *USF/ICC Transformation FNPRM*, the Commission proposed that in states where the price cap carrier declines to make a state-level commitment, it would use the areas

[109] We note that census blocks that are served by price cap carriers that serve non-contiguous areas and elected to receive frozen support in lieu of model-based support for Phase II will not be eligible for the Phase II auction. Alaska Communications Systems, Virgin Islands Telephone Corporation, and Puerto Rico Telephone Company elected to receive frozen support in lieu of model-based support for Phase II. *See* Letter from Karen Brinkmann, Counsel to Alaska Communications Systems, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Jan. 2, 2015) (ACS Jan. 2, 2015 *Ex Parte* Letter); Letter from Russell M. Blau, Counsel to Virgin Islands Telephone Corporation d/b/a Innovative Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 29, 2014) (Vitelco Dec. 29, 2014 *Ex Parte* Letter); Letter from Thomas J. Navin, Counsel to Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 22, 2014) (PRTC Dec. 22, 2015 *Ex Parte* Letter).

[110] The Commission has already made a number of decisions regarding the areas that will be eligible for the Phase II competitive bidding process. In the *April 2014 Connect America Order*, the Commission decided to allow participants in the Phase II competitive bidding process to bid on any areas that the CAM has determined are extremely high-cost; i.e., their estimated cost exceeds the extremely high-cost threshold of $198.60. *April 2014 Connect America Order*, 29 FCC Rcd at 7060-61, paras. 30-33. Thus, there will be census blocks available for bidding in the Phase II auction throughout the country, not just the states where the price cap carrier declined support. Our preliminary estimate is that there are less than 200,000 locations in eligible census blocks with an average cost that exceeds the extremely high-cost threshold of $198.60. The specific number may change as we finalize the eligible census blocks based on the decisions adopted in this order.

In addition, the auction also will include those census blocks that price cap carriers accepting model-based support identified by December 31, 2015 where they do not intend to meet their deployment commitments, to the extent they lack 10/1 Mbps service. *December 2014 Connect America Order*, 29 FCC Rcd at 15659-60, para. 39.

[111] In the *December 2014 Connect America Order*, the Commission decided that all census blocks served by subsidized wireline competitors would be included in the Phase II competitive bidding process regardless of whether they are already served by 10/1 Mbps. *December 2014 Connect America Order*, 29 FCC Rcd at 15672, paras. 74-75. Those census blocks were removed from the offer of Phase II model-based support and will be included in the Phase II auction.

In addition, we will not include in the Phase II auction those census blocks lacking 10/1 Mbps service where the price cap carrier accepted and has deployed service using Phase I incremental support. Carriers will be reporting geocoded locations where Phase I incremental support was used on July 1, 2016. Soon thereafter, USAC will begin the process of validating the completion of those deployment obligations. We do not want to delay finalization of the eligible census block list for the Phase II auction while that process is underway.

identified by the Phase II cost model as eligible for support. It also sought comment on other approaches, including whether to include areas that are served, based on the most recently available data.[112]

54. One of our core objectives is to ensure that we do not provide support to overbuild unsubsidized competitors that are offering voice and broadband services meeting the Commission's requirements. The CAM used for the offer of model-based support incorporated June 2013 State Broadband Initiative (SBI) data to determine whether areas are served by competitors offering broadband that meets the Commission's requirements.[113] For the Phase II offer of model-based support to price cap carriers, the Bureau ran a challenge process whereby interested parties could submit evidence to challenge a census block's classification as served or unserved by an unsubsidized competitor based on SBI data.[114] For purposes of the offer of model-based support, the Commission also relied on Form 477 data to determine whether an unsubsidized competitor was offering voice service in the relevant census blocks, which interested parties were also permitted to challenge.[115]

55. In the *December 2014 Connect America Order*, the Commission decided that any areas served by an unsubsidized facilities-based territorial competitor that offers 10/1 Mbps would be ineligible for support in the Phase II competitive bidding process, concluding that it would be an inefficient use of Connect America support to provide funding in these areas. It stated, "We expect to update the list of census blocks that will be excluded from eligibility from the Phase II competitive bidding process based on the most current data available at the time shortly before that auction to take into account any new deployment that is completed in the coming year."[116]

56. *Discussion.* The coverage data used in the Phase II cost model for the offer of support to the price cap carriers reflects broadband coverage as it existed in June 2013, which now is nearly three years old. It would not be appropriate to place in the auction those areas that have become served through market forces in the intervening years. We therefore conclude that the Commission will rely on current Form 477 voice and broadband deployment data to prepare a preliminary list of census blocks that will be eligible for the Phase II competitive bidding process. Certified Form 477 data that indicate an area is or is not served will supersede the conclusions reached in the Phase II challenge process that the Bureau conducted for the offer of model-based support.[117]

57. We conclude that we will conduct a limited challenge process to ensure that support is not provided to overbuild areas where another provider already is providing voice and broadband service meeting the Commission's requirements.[118] We direct the Bureau to release a preliminary list of eligible census blocks based on June 2015 Form 477 data and to invite parties to comment within 21 days of publication if those areas have become served subsequent to the June 2015 Form 477 data collection with

[112] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18085-86, para. 1191.

[113] *USF/ICC Transformation Order,* 26 FCC Rcd at 17701, para. 103 n.168.

[114] *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211 (WCB 2013). Challenges were due in August 2014 and replies were due in November 2014.

[115] *Id.* at 7215-16, para. 10.

[116] *December 2014 Connect America Order*, 29 FCC Rcd at 15674, para. 80.

[117] *See generally Connect America Fund, Connect America Phase II Challenge Process*, WC Docket Nos. 10-90, 14-93, Order, 30 FCC Rcd 2718 (WCB 2015) (*Phase II Challenge Process Resolution Order)*. Accordingly, if an unsubsidized competitor that had unsuccessfully filed a challenge in the Phase II challenge process subsequently filed a Form 477 reflecting more recent deployment that is certified by an official of a company under the penalty of fines and imprisonment and reports an area is served, that area will be considered served for determining eligibility for the Phase II competitive bidding process.

[118] We note that our decision regarding this streamlined challenge process is limited to the Phase II competitive bidding process and does not prejudge what actions we may take in other contexts.

10/1 Mbps or greater service,[119] with a minimum usage allowance of 150 GBs at a rate meeting the Commission's reasonable comparability benchmark, with latency not exceeding 100 ms.[120]

58. The Bureau is not required to entertain challenges from parties seeking to establish that a block reported as served on a certified FCC Form 477 as of June 2015 or later is unserved. The Phase II challenge process was very time-consuming and administratively burdensome for all involved. We found that it was difficult for the incumbent provider to prove a negative—that a competitor is not serving an area, and we expect that incumbents would face similar problems with challenging Form 477 data that indicate that a competitor serves an area. We also observe that no party was able to demonstrate high latency by competitors in the Phase II challenge process, and very few providers prevailed in a challenge exclusively focused on a competitor's usage/price.[121]

59. The Commission has taken several steps that make the deployment data it collects through Form 477 data more reliable than the June 2013 SBI data that was utilized in version 4.3 of the CAM for purposes of the offer of Phase II support to price cap carriers. Unlike SBI data, the submission of Form 477 data is mandatory for filers, and filers must certify that the data are accurate, thereby promoting the submission of complete and accurate data.[122] Thus, entities should be making timely, accurate, and complete Form 477 filings as required by the Commission's rules; to the extent providers fail to indicate they serve a particular census block in FCC Form 477, there is no basis for protest if we then determine such an area is unserved for purposes of the Phase II auction. Moreover, whereas SBI data were collected using varied methodologies by the states, Form 477 data are collected through a single, uniform process, which reduces the potential for inconsistent data from one state to the next.[123] And while the SBI data were collected in pre-defined speed tiers, Form 477 filers offering fixed broadband service are required to report their advertised maximum speed for each technology they offer in each census block and distinguish between residential and nonresidential broadband, thereby allowing the Commission to more precisely determine which speeds are available in each census block.[124] Finally,

[119] Our decision today to require bidders to offer a baseline speed of 25/3 Mbps (or whatever speed has been adopted by a majority of fixed terrestrial broadband subscribers, if higher) in no way is inconsistent with our decision to exclude from the Phase II competitive bidding process areas that already have 10/1 Mbps service. The minimum requirement for purposes of the Connect America Fund is 10/1 Mbps. Recipients of support through the competitive bidding process will have years to extend facilities to offer higher speed broadband service. Furthermore, we believe it is most efficient to target support to those areas lacking 10/1 Mbps.

[120] *See infra* Section IV.D (Finalizing the List of Eligible Census Blocks).

[121] For the Phase II challenge process, to qualify as an unsubsidized competitor, an entity had to offer a service meeting the requisite speed that had a usage allowance of at least 100 GB and a latency of 100 ms or less, at rates that are reasonably comparable to rates for similar services in urban areas. *See Phase II Challenge Process Resolution Order*, 30 FCC Rcd at 2720-21, para. 7. We also note that data collected by the Commission through the Measuring Broadband America program suggest that latencies associated with most fixed broadband services are low enough to allow for real time applications, including VoIP. According to the 2015 Measuring Broadband America Report, average latencies ranged from 14 ms to 52 ms for all terrestrial technologies. *See* FCC Office of Engineering and Technology and Consumer and Governmental Affairs Bureau, 2015 Measuring Broadband America Fixed Broadband Report at 17, http://data.fcc.gov/download/measuring-broadband-america/2015/2015-Fixed-Measuring-Broadband-America-Report.pdf. In addition, data from the Commission's urban rate survey indicate that many fixed broadband providers offer unlimited data usage or usage allowances significantly greater than 150 GB per month. Federal Communications Commission, 2016 Urban Rate Broadband Survey Results: Data, https://www.fcc.gov/file/3706/download.

[122] *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Report and Order, 28 FCC Rcd 9887, 9898, para. 24 (2013).

[123] *Id.*

[124] *Id.* at 9905, para. 36.

the use of Form 477 data ensures consistency in the data used to determine the existence of voice and broadband in a given census block.

60. Given the improvements in the data collection, we conclude that it would not serve the public interest to entertain challenges from parties seeking to contest the reported status of a block as served for purpose of the Phase II competitive bidding process. Conducting a more resource-intensive challenge process would likely delay the implementation of the Phase II competitive bidding process. We note that we held the Phase II challenge process in 2014, and a number of parties took advantage of that opportunity to correct the SBI data.[125] We conclude in this instance it will be sufficient to rely on the certified FCC Form 477 filings and solicit comment on updated coverage through a streamlined challenge process.

61. While we conclude that eligibility of areas for support in the Phase II competitive bidding process will be determined at the census block level, this does not mean that the census block will be the minimum geographic unit for purposes of bidding in the Phase II auction.[126] As discussed below in our discussion of auction design, we expect the minimum biddable unit to be a census block group containing one or more eligible census blocks.[127]

B. Averaging Costs at the Census Block Level

62. *Background.* In the *USF/ICC Transformation Order*, the Commission directed the Bureau to calculate costs "at a granular level—the census block or smaller."[128] If a block is served by multiple carriers, wire centers, or splitters (Node2), the CAM adopted by the Bureau for purposes of the offer of Phase II model-based support calculated the costs associated with each carrier, wire center, or splitter separately, on a sub-census block basis.[129] This resulted in some census blocks having a combination of low-cost, high-cost, and/or extremely high-cost locations located within one census block. As a result, the number of funded locations in a census block was not necessarily the same as the number of locations in the block according to the U.S. Census.[130]

63. For the rural broadband experiments the Commission made eligible for support only the high-cost and extremely high-cost locations within such a census block, but required that rural broadband experiment recipients provide service to all locations within that census block.[131] We found that this made it challenging for potential bidders to evaluate how to bid on census blocks where not all locations that were located in the census block were eligible to receive support.

64. *Discussion.* We now conclude that the CAM should no longer calculate costs at the sub-block level, except in very limited circumstances. This will simplify the administration and oversight of compliance with Phase II obligations for parties awarded support through the competitive process. We therefore direct the Bureau to average costs at the census block level when generating the list of census blocks eligible for the Phase II competitive bidding process, except in the circumstance we describe below.

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[125] We note that parties challenged the classification of 3,856 census blocks in the states where price cap carriers declined model-based support as "unserved" or "served" in the Phase II challenge process.

[126] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18086, para. 1192 (seeking comment on the minimum geographic unit for the Phase II auction).

[127] *See infra* para. 89.

[128] *USF/ICC Transformation Order*, 26 FCC Rcd at 17735, para. 188.

[129] CostQuest Associates, Inc., Connect America Cost Model: Model Methodology at 16 n.16 (Dec. 22, 2014), https://transition.fcc.gov/wcb/CAM%20v.4.2%20Methodology.pdf.

[130] *See id.* at 12-13.

[131] *Rural Broadband Experiments Order*, 29 FCC Rcd 8775, 8776, paras. 13 n.34, 15.

65. For purposes of ongoing monitoring and oversight by the Commission, the relevant state commission, and the Tribal government, where applicable, we now conclude that it is preferable to require a winning bidder to serve all of the locations in a given census block, rather than some subset of those locations in a given block that are served by a given node to the extent possible. As a practical matter, bidders (and ultimate awardees of funding) may not know which locations in a given block are "funded" and therefore must be served, and which are not "funded" and do not have to be served. Accordingly, to simplify this issue for all parties concerned, we direct the Bureau to determine which census blocks are eligible by averaging costs at the census block level, to the extent possible, so that if a given census block is eligible for funding, the deployment obligation applies to all the locations in that census block.

66. For similar reasons, we will not include in the Phase II auction those census blocks that are served by multiple price cap carriers and where at least one price cap carrier has accepted Phase II model-based support. It would be difficult for bidders to formulate a bid for a partial census block, as they would need to distinguish between locations that will be served by a price cap carrier that accepted Phase II model-based support and thus would be ineligible for Phase II auction support, and which locations will be served by price cap carriers that declined the support and thus would be eligible for Phase II auction support.[132] Accordingly, for administrative simplicity, we direct the Bureau not to include such census blocks in the list of census blocks that are eligible for the Phase II auction.[133]

67. We also take this opportunity to clarify that extremely high-cost locations that are located in census blocks where the price cap carrier has accepted Phase II model-based support will not be eligible for Phase II auction support. In concluding that extremely high-cost areas would be eligible for bidding the Phase II auction, the Commission did not intend to make eligible extremely high-cost locations that are located within census blocks that are already receiving Phase II support.[134] Rather, it intended to include in the auction those extremely high-cost census blocks that were not eligible for the Phase II offer of model-based support.

68. As discussed above, the Commission has encouraged stakeholders to propose an administratively feasible method for ensuring that unserved consumers in partially served census blocks are not left behind.[135] We are open to addressing these relatively few cases after we determine which areas remain unserved after the Phase II auction, and who the neighboring providers are.

C. Eligibility of Census Blocks Served by Price Cap Carriers Offering Broadband at 10/1 Mbps Speeds or Higher

69. *Background.* In the *April 2014 Connect America FNPRM*, the Commission sought comment on whether to exclude 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.[136]

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[132] In some cases, there is no publicly available data source indicating where the boundary is between two adjacent price cap carriers, so a bidder would not know what portion of the census block it was obligated to serve. Some price cap carriers that submitted study area boundaries sought confidential treatment of information supplied by a third party data source. *See* Letter from Maggie McCready, Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed May 22, 2013); Letter from Vonda Long-Dillard, Associate Director, Federal Relations, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed July 25, 2013).

[133] Similarly, we will not include in the Phase II auction census blocks that are split between a price cap carrier and a rate-of-return carrier.

[134] *See April 2014 Connect America Order*, 29 FCC Rcd at 7060-61, paras. 30-32.

[135] *See supra* Section III.C (Flexibility in Meeting Deployment Obligations).

[136] *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7111, para. 175.

70. *Discussion.* We exclude census blocks that a price cap carrier already serves with speeds of at least 10/1 Mbps from the Phase II competitive bidding process. Given our finite budget and our objective of targeting support to areas that are unserved, we find that it furthers the public interest to exclude census blocks that are already served by price cap carriers at speeds that meet the Commission's current requirements.[137] We acknowledge that permitting competitive bidders to include such census blocks in their bids could encourage more providers to participate in the Phase II auction.[138] But we conclude on balance that to allow such entities to overbuild census blocks already served with broadband speeds of 10/1 Mbps would be an inefficient use of our finite budget.[139] While we recognize that all locations in a census block may not be served by the price cap carrier with broadband at speeds of 10/1 Mbps,[140] we prefer at this time to focus our finite budget on areas that lack *any* broadband provider that offers broadband at speeds that meet our requirements.[141]

71. We decline to permit price cap carriers in the declined territories to identify areas where they do not need support to be excluded from the Phase II competitive bidding process.[142] Such a process likely would delay the implementation of the Phase II competitive bidding process and would unfairly place a decision of whether an area goes to auction in the hands of the carrier that declined the offer of model-based support.[143] We conclude that the public interest is better served by distributing Phase II auction support as soon as possible so that unserved communities are able to receive broadband as quickly as possible.

D. Finalizing the List of Eligible Census Blocks

72. Consistent with the foregoing decisions, and prior Commission decisions, we direct the Bureau to take all necessary steps to determine the census blocks that will be eligible for the Phase II auction.[144] In particular, the Bureau shall determine which census blocks are served by unsubsidized competitors according to certified Form 477 data and thus ineligible for the Phase II competitive bidding

[137] Comments of AT&T, WC Docket No. 10-90 et al., at 48-49 (filed Aug. 8, 2014) (AT&T Aug. 2014 Comments); ITTA Aug. 2014 Comments at 17; CCA Sept. 2014 Reply at 24.

[138] *See, e.g.*, NRECA Aug. 2014 Comments at 11.

[139] We acknowledge that we removed from the offer of model-based support and made eligible for the Phase II auction census blocks served by subsidized competitors at any broadband speed. We did so to give competitive ETCs serving these census blocks the opportunity to compete for ongoing support in their high-cost areas regardless of whether the incumbent price cap carrier accepted or declined model-based support. *December 2014 Connect America Order*, 29 FCC Rcd at 15672, paras. 74-75. Here, price cap carriers have already had the opportunity to accept model-based support to serve these areas and have chosen to decline that support.

[140] NRECA Aug. 2014 Comments at 11; UTC Aug. 2014 Comments at 22.

[141] Our decision today does not foreclose the possibility that such areas will become available for bidding at a future date, if no provider is offering service meeting our then-current standards.

[142] USTelecom Aug. 2014 Comments at 11-12.

[143] *See* CCA Sept. 2014 Reply at 24 n.74 (stating that such a process would not be "objective").

[144] We note that the list of census blocks eligible for support in the Phase II auction will not precisely track the census blocks declined by the price cap carrier, because we are updating the coverage for unsubsidized competitors based on more recent certified FCC Form 477 data and averaging costs at the census block level. For instance, a block that contains low-cost and extremely high-cost locations was not included in the offer of model-based support, but may—when those costs are averaged—become a high-cost census block. Blocks that were excluded from the offer of model-based support because they were subject to a non-winning rural broadband experiment Category 1 bid will not be eligible for the Phase II auction to the extent current Form 477 data indicate the block now is served by an unsubsidized competitor. Similarly, the amount of support potentially available in the auction for a given state where the price cap carrier declined the offer will not be the same as the amount of declined support.

process.[145] The Bureau also shall add to the list any census blocks to which price cap carriers accepting model-based support indicated by December 31, 2015 that they do not intend to deploy,[146] and the census blocks included in non-winning rural broadband experiment bids submitted in category one by entities that met the Commission's financial and technical documentation submission requirements,[147] to the extent FCC Form 477 data indicate that such blocks are unserved with 10/1 Mbps broadband. To ensure that potential bidders are aware of the potential areas in the auction, we direct the Bureau to publish expeditiously a preliminary list of eligible census blocks using the June 2015 Form 477 data.[148] We invite parties to notify the Bureau within 21 days of publication of this preliminary list if any of the census blocks on the preliminary list became served after June 30, 2015. We delegate to the Bureau the task of conducting this streamlined challenge process.

73. The Bureau may subsequently update that list to the extent any corrections are made to the June 2015 Form 477 data or to reflect more recent Form 477 data, if publicly available. To the extent rate-of-return carriers identify census blocks that they will be unable to serve before the list is finalized, they also will be included.[149] The Bureau shall publish a final list of eligible census blocks based on publicly available Form 477 data no later than three months prior to the deadline for submission of short-form applications for the Phase II auction.

V. BUDGET

74. *Background.* In the *USF/ICC Transformation Order*, the Commission adopted a budget of $4.5 billion for the Connect America Fund.[150] As part of this budget, no more than $1.8 billion a year was made available for areas served by price cap carriers.[151]

75. In the *April 2014 Connect America FNPRM*, we proposed 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.[152]

76. Subsequently, in the *December 2014 Connect America Order*, the Commission removed from the offer of model-based support to price cap carriers the census blocks included in non-winning rural broadband experiment bids submitted in category one by entities that met the Commission's financial and technical documentation submission requirements, and the census blocks that are served by subsidized competitors providing voice and broadband at speeds of 3 Mbps/768 kbps or greater.[153]

77. In April 2015, the Wireline Competition Bureau announced that $1.675 billion annually in model-based Phase II support was available to price cap carriers for six calendar years to fund the

[145] The Commission decided that for purposes of the Phase II competitive bidding process, any area served by an unsubsidized competitor offering broadband at speeds of 10/1 Mbps or higher would be ineligible for the Phase II competitive bidding process. *December 2014 Connect America Order*, 29 FCC Rcd at 15674, para. 80.

In updating the coverage, the Bureau should take steps to ensure that census blocks that have recently become served by new unsubsidized competitors deploying FTTP are excluded from the auction.

[146] *See December 2014 Connect America Order*, 29 FCC Rcd at 15659-60, para. 39.

[147] *Id.* at 15676, para. 85.

[148] Form 477 data is collected twice a year; data as of June 30th is due by September 1st and data as of December 31st is due by the following March 1st. 47 CFR § 1.7002.

[149] *2016 Rate-of-Return Order* at 12, 68, paras. 26, 179.

[150] *USF/ICC Transformation Order*, 26 FCC Rcd at 17711, para. 126.

[151] *Id.*

[152] *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7125, para. 229.

[153] *December 2014 Connect America Order*, 29 FCC Rcd at 15672, 15675, paras. 74, 84.

deployment of voice and broadband-capable networks in the high-cost census blocks located in their service territories.[154] The Bureau did not include in the offer $33,989,229, the annual amount associated with census blocks removed from the offer of Phase II support, specifically, those served by subsidized wireline competitors and those subject to rural broadband experiments category one non-winning bids.[155]

78. In November 2015, the Commission released a Memorandum Opinion and Order concluding that certain census blocks in Missouri that had been challenged in the Phase II challenge process should have been classified as served and thus not eligible for Phase II model-based support.[156] The Commission directed the Bureau to adjust CenturyLink's Phase II model-based support in the state of Missouri consistent with this decision.[157]

79. *Discussion*. Now that the price cap carriers have responded to the offer of support, we can establish the budget for the Phase II auction. Nearly $175 million in support was declined.[158] To that figure, we will add the nearly $35 million in support that was removed from the offer as described above. We also add the nearly $3 million associated with the served Missouri census blocks that was subtracted from the Phase II model-based support amount that CenturyLink accepted in Missouri. For simplicity, we therefore now set the Phase II auction budget at $215 million in annual support (rounding up the sum of nearly $175 million, nearly $35 million, and nearly $3 million).

VI. PHASE II AUCTION

A. Basic Guidance on Auction Process

80. *Background*. In the *USF/ICC Transformation Order/FNPRM*, the Commission proposed to design a competitive bidding mechanism to distribute support in a way that "maximizes the extent of robust, scalable broadband service subject to the budget."[159] The Commission stated that its "objective is to distribute the funds it has available for price cap areas where the incumbent ETC declines to make a state-level commitment in such a way as to bring advanced services to as many consumers as possible in areas where there is no economic business case for the private sector to do so."[160]

81. In the *April 2014 Connect America FNPRM*, the Commission sought further comment to develop the record on specific aspects of the competitive bidding process, including reserve prices, package bidding, the use of a multi-round auction, the use of bidding credits to effectuate priorities to advance the Commission's objectives, such as for service that substantially exceeds the Commission's standards, and how to ensure that funding is allocated across various states.[161]

82. *Discussion.* Here we provide some basic guidance on choosing an auction design that will further our objectives for Connect America Phase II competitive bidding.

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[154] *Model-Based Support Offers Public Notice,* 30 FCC Rcd 3905; *USF/ICC Transformation Order*, 26 FCC Rcd at 17729, para. 171.

[155] *See* Connect America Cost Model v4.3 Results, Introduction Tab, https://www.fcc.gov/encyclopedia/connect-america-cost-model-illustrative-results (last visited May 25, 2016); *Model-Based Support Offers Public Notice*, 30 FCC Rcd at 3950 n.3.

[156] *Connect America Fund, Connect America Phase II Challenge Process*, WC Docket Nos. 10-90, 14-93, Memorandum Opinion and Order, 30 FCC Rcd 13039 (2015).

[157] *Id.* at 13046, para. 24.

[158] Carriers declined $174,914,534 in Phase II model-based support. *See Phase II Model-Based Support Acceptance Press Release*.

[159] *USF/ICC Transformation Order*, 26 FCC Rcd at 17732, para. 179.

[160] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18086, para. 1195.

[161] *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7124-25, paras. 227-32.

83. We have already adopted competitive bidding rules that allow for the subsequent determination of specific final auction procedures based on additional public input during the pre-auction process.[162] Those competitive bidding rules together with the additional rules we adopt today to establish Phase II winning bidders' performance obligations, eligible areas, and post-auction obligations and oversight establish the framework needed for the Commission to develop detailed auction procedures in the pre-auction process, including specific procedures for ranking bids based on bidders' performance requirement commitments, auction format, package bidding to enable bidders to aggregate eligible areas, and reserve prices.[163] Our decisions today are intended to narrow the scope of issues so that interested parties can focus constructively on the remaining details, while preserving our ability to make adjustments if circumstances or the record developed in the pre-auction process support such changes to assure that the auction will take place in a timely manner and fulfill the goals we establish in this Order.

84. *Ranking bids.* We now adopt an auction design in which bidders committing to different performance levels will compete head to head in the auction, with weights to take into account our preference for higher speeds over lower speeds, higher usage over lower usage allowances, and low latency over high latency. A number of commenters support a framework that provides an absolute preference to bidders deploying future proof networks,[164] while other commenters disagree.[165] After consideration of the record, we are not persuaded that one type of bid should be processed separately from another type, or that one type of bid should automatically be selected over another, regardless of the bid amount. Rather, all bids will be considered simultaneously, so that bidders that propose to meet one set of performance standards will be directly competing against bidders that propose to meet other performance standards. We conclude that the bids for entities committing to meet significantly higher speeds and/or usage than the baseline should be adjusted because we see the value to consumers in rural markets of having access to service during the 10-year term of support that significantly exceeds our baseline requirements. Likewise, we see value to rural consumers of having access to speeds and usage that meet our baseline requirements, rather than the minimum. We would prefer, to the extent possible, to ensure that consumers living in high-cost areas receive the level of universal service that we establish as

[162] 47 CFR pt. 1, subpt. AA. The rules provide for the ability to refine aspects of the auction process if the record developed during the pre-auction process reflects the need to do so. *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6707-08, para. 323 (2014).

[163] We also note the Wireless Telecommunications Bureau and the Wireline Competition Bureau may continue to establish final auction procedures in this proceeding concerning those matters that are typically handled under existing delegations of authority. *See* 47 CFR §§ 0.91, 0.131.

[164] *See, e.g.*, Comments of the Fiber to the Home Council Americas, WC Docket No. 10-90, at 7-8 (filed Aug. 8, 2014) (proposing that only those bidders who propose to deploy all-fiber networks should be able to participate in the initial bidding process, rather than conducting bidding within separate categories of service); UTC Aug. 2014 Comments at 25-26; Letter from Jack Richards, Counsel to Rural Organizations, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at Attach. (filed Feb. 16, 2016); NTCA July 23, 2015 *Ex Parte* Letter at 2-3; ACA June 1, 2015 *Ex Parte* Letter.

[165] *See, e.g.,* CCA Sept. 2014 Reply at 14-17 (arguing that the Commission should not give "extra credit" to wireline technologies); Letter from Stephen E. Coran, Counsel to WISPA, to Marlene H. Dortch, Secretary, FCC, WC Docket No 10-90, at 3-5 (filed Mar. 4, 2016) (proposing assigning points based on speed, usage, and latency); Letter from Tom Stroup, President, Satellite Industry Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 29, 2015) (noting that the Satellite Industry Association "has serious concerns about any CAF framework that would favor one technology over others"); Hughes Dec. 11, 2015 *Ex Parte* Letter at 3-4 (providing illustrative framework for bidding credits based on speed, data usage, latency, and build-out term); Letter from David A. LaFuria, Counsel to Smith Bagley, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 3, 2015) (urging the Commission not to provide bidding preferences for certain technologies); Letter from L. Charles Keller, Counsel to Hughes Network Systems, to Marlene H. Dortch, Secretary, FCC, WC Docket No 10-90, at 1 (filed Oct. 19, 2015) (urging Commission not to prioritize bidders based on broadband technology used).

our baseline expectation. We also would prefer consumers having access to low latency services over high latency services. We also note that when structuring the Phase II auction, we will keep in mind the Commission's objective of bringing service to as many consumers lacking 4/1 Mbps Internet access service as possible through the implementation of Phase II. We seek comment on the assignment and specific level of the weights in the Further Notice below.[166]

85. Bids will be scored relative to the reserve price for the areas subject to the bid with lower bids selected first, taking into accounts the weights, on which we seek comment in the Further Notice.[167] We conclude that this approach is more likely to ensure winning bidders across a wide range of states than selecting bids based on the dollar per location, which could result in support disproportionately flowing to those states where the cost to serve per location is, relatively speaking, lower than other states.[168] We decline to adopt an approach that would select bids on a dollar per location basis.[169]

86. *Appropriate Phase II Funding Across States*. We recognize the concerns that have been raised by states about the need for an efficient and equitable allocation of Phase II funds, particularly for those states in which a substantial amount of the offer of Phase II support was declined.[170] That an incumbent carriers declined the offer of support does not diminish our universal service obligation to connect consumers in areas that would have been reached had the offer been accepted and to provide sufficient universal service funds to do so. Accordingly, one of our objectives is to address these concerns. We seek comment on how best to design the Phase II auction in the Further Notice below. In addition, we recognize and applaud state-based initiatives to advance broadband deployment.[171] In the

[166] A number of commenters have submitted proposals for how bids could be weighted. *See, e.g.*, Letter from Brett Kilbourne, Utilities Telecom Council et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Mar. 14, 2016); Letter from Jennifer A. Manner, Vice President, Regulatory Affairs, Hughes Network Systems, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Mar. 4, 2016); Letter from Stephen E. Coran, Counsel to the Wireless Internet Service Providers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Mar. 4, 2016). *But see* ViaSat Apr. 14, 2016 *Ex Parte* Letter at 2 (noting "problems inherent in such 'points'-based approaches").

[167] To provide a simple example, assume two geographic areas – one with a reserve price of $100 and the other with a reserve price of $1000 in annual support. Assume further that Bidder A bids $90 for the first area, and Bidder B bids $750 for the second area. Bidder B's bid would be selected first, because it would be scored as 75 (percent) while Bidder A's bid would be scored as 90 (percent).

[168] *See, e.g.*, USTelecom Apr. 10, 2015 *Ex Parte Letter* at 1 & Attach. at 1 n.2 (suggesting that the Commission use a "Composite Efficiency Index" which "measures bids in relation to Connect America Cost Model-derived costs" and claiming that such an approach "allows rapid and objective rating and ranking of all bids, regardless of package size, support amount requested, or geographic location").

[169] *See, e.g.,* Letter from John P. Janka, Counsel to ViaSat, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Apr. 14, 2016) (ViaSat Apr. 14, 2016 *Ex Parte* Letter) (advocating an auction design "that would award funds to the bidder that can offer qualifying service with the lowest required subsidy").

[170] *See, e.g.*, Letter from Howard Zemsky, President and Chief Executive Officer, Empire State Development, and Audrey Zibelman, Chair, New York State Public Service Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 4-5 (filed Apr. 13, 2016) (New York Apr. 13, 2016 *Ex Parte* Letter); Letter from Sen. Charles E. Schumer, New York, to the Hon. Tom Wheeler, Chairman, FCC (filed May 11, 2016); Letter from Sen. Kirsten Gillibrand, New York, to the Hon. Tom Wheeler, Chairman, FCC (filed May 13, 2016); Letter from Sens. Roy Blunt and Claire McCaskill, Missouri, to the Hon. Tom Wheeler, Chairman, FCC (filed Feb. 25, 2016).

[171] *See, e.g.,* Letter from Karen Peterson, Director, Massachusetts Broadband Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1-2 (filed May 17, 2016) (describing MassBroadband 123 and describing state allocation of $50 million of funding to extend broadband to communities in Western Massachusetts); New York Apr. 13, 2016 *Ex Parte* Letter (describing New NY Broadband Program distributing up to $500 million in funding to unserved and underserved communities to construction next generation networks offering download speeds of 100 Mbps or better); Letter from Michael R. Peevey, President, California Public Utilities Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed Sept. 19, 2014) (continued….)

Further Notice, we also seek comment on how best to coordinate with such initiatives to achieve our universal service goals.

87. *Tribal lands*. The Commission recognizes its historic relationship with federally recognized Tribal Nations, has a longstanding policy of promoting Tribal self-sufficiency and economic development, and has developed a record of helping ensure that Tribal Nations and their members obtain access to communications services.[172] Telecommunications deployment on Tribal lands has historically been poor due to the distinct challenges in bringing connectivity to these areas.[173] The Commission has observed that communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population,[174] and that greater financial support therefore may be needed in order to ensure the availability of broadband on Tribal lands.[175] Accordingly, we seek to adopt mechanisms to advance broadband deployment on Tribal lands. We seek comment in the Further Notice on measures that we could take in the Phase II auction to further that objective.

88. *Auction format for collecting bids.* The record is mixed on whether to conduct a single or multi-round bid auction. USTelecom, WISPA, and UTC propose a multiple-round format, while ACA urges a single-round sealed bid auction.[176] We prefer a multi-round auction format for the Phase II auction, but we have not settled on the specific details of such an auction format. We note that when adopting the rules for the Mobility Fund Phase I and Tribal Mobility Fund Phase I auctions in the *USF/ICC Transformation Order*, the Commission observed that the question of whether to conduct multiple rounds of bidding is typically resolved in the auction procedures process.[177] Similarly, here, the

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(describing California Advanced Services Fund's $315 million to support unserved and underserved areas); Reply Comments of the Office of Broadband Deployment, Minnesota Department of Employment and Economic Development, WC Docket Nos. 10-90 & 14-58, at 1 (filed Sept. 17, 2014) (noting the Minnesota legislature appropriated $20 million for a broadband infrastructure grant program in 2014); Comments of the California Public Utilities Commission, WC Docket Nos. 10-90 & 14-58, at 3 (filed Sept. 2, 2014) (describing California Advanced Services Fund and California Broadband Council).

[172] *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080-81 (2000). *See also Federal-State Joint Board on Universal Service et al.,* CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12212-15, paras. 4-11(2000) (*2000 Tribal Order*); *see generally Improving Communications for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672 (2011) (*Native Nations NOI*) (reviewing Commission actions regarding Native Nations).

[173] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17818-19, para. 479. The *Mobility Fund NPRM* also noted that Tribal lands are often in rural, high-cost areas, and present distinct obstacles to the deployment of broadband infrastructure. *See Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716, 14727, para. 33 (2010) (*Mobility Fund NPRM*).

[174] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17818-19, para. 479. According to FCC Form 477 data (as of December 31, 2014), approximately 41 percent of Americans living on Tribal lands lack access to 25 Mbps/3 Mbps as compared to 10 percent of the U.S. population as a whole. *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*, GN Docket No. 15-191, 2016 Broadband Progress Report, 31 FCC Rcd 699, 732-33, paras. 79-80 and Table 2 (2016); *see also* Government Accountability Office, Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands, GAO 16-222 (Jan. 2016), http://www.gao.gov/assets/680/674906.pdf (Jan. 2016 GAO Tribal Broadband Report).

[175] *See id.*

[176] *See* NRECA and UTC Sept. 9, 2015 *Ex Parte* Letter at 2; UTC July 6, 2015 *Ex Parte* Letter at 1; WISPA June 30, 2015 *Ex Parte* Letter at 4; ACA June 1, 2015 *Ex Parte* Letter at 5; USTelecom Apr. 10, 2015 *Ex Parte* Letter at 2, Attach.

[177] *USF/ICC Transformation Order*, 26 FCC Rcd at 17803, para. 413.

specific auction design details will be adopted in a future *Auction Procedures Public Notice*, after the opportunity for further comment. Based on the information currently available to us, we expect that a multiple-round bid auction would enable bidders, better than a single-round bid auction, to make adjustments in their bidding strategies to facilitate a viable aggregation of geographic areas in which to construct networks and enable competition to drive down support amounts.

89. *Minimum geographic area for bidding.* We expect that the minimum geographic area for bidding will be a census block group containing one or more eligible census blocks, although we reserve the right to select census tracts when we finalize the auction design if necessary to limit the number of discrete biddable units. We conclude that defining bidding units based on census-determined areas is preferable to an approach that is grounded in the network topology of a particular type of service provider.[178] We conclude generally that it is desirable to ensure that all interested bidders, including small entities, have flexibility to design a network that matches their business model and the technologies they intend to use.[179] We are not persuaded that adopting a larger geographic unit, such as a county, would be the appropriate minimum unit for purposes of bidding. Such an approach could preclude entities that intend to construct a smaller network or that intend to bid to expand their existing networks. We also expect that as the size of the minimum geographic unit increases, the more challenges providers may face in putting together a bidding strategy that aligns with their intended network construction or expansion.

90. *Reserve prices.* We will use the CAM to set reserve prices for the Phase II auction. The reserve price for a minimum biddable unit will be no greater than the CAM-calculated support amount for that area, with a cap in the amount of support per location provided to extremely high cost census blocks. The record supports the Commission's proposal to utilize the CAM to establish reserve prices,[180] although some commenters suggest that the reserve price should be higher.[181] For example, ITTA argues that the reserve price should be set based on a model-derived amount plus an additional percentage because the cost of deploying is likely to be more where the price cap carrier did not elect the statewide commitment.[182] Our experience with the rural broadband experiments, however, indicates that there are providers willing to deploy broadband for support amounts less than the model-based amount. As with the auction design, the specific reserve prices will be adopted in a future *Auction Procedures Public Notice*, after the opportunity for further comment.

[178] Wire centers are based on the geographic footprint of incumbent local exchange carriers and may not be compatible with the construction or expansion plans of providers that offer alternative technologies. *See, e.g.*, Comments of Windstream Communications, Inc., WC Docket No. 10-90, at 21-22 (filed Jan. 18, 2012) (suggesting wire centers should be the minimum geographic unit subject to challenge from competitors); Reply Comments of the American Cable Association, WC Docket No. 10-90 et al., at 19-20 (filed Feb. 17, 2012) (arguing that adopting wire centers as the minimum geographic unit would burden non-price cap carriers and would not be a competitively neutral approach).

[179] *See, e.g.*, Comments of the Coalition for Rational Universal Service and Intercarrier Reform, WC Docket 10-90 et al., at 5 (filed Jan. 18, 2012); Frontier Jan. 2012 Comments at 14-15; Reply Comments of the Satellite Broadband Providers, WC Docket No. 10-90 et al., at 19 (filed Feb. 17, 2012) (Satellite Broadband Providers Feb. 2012 Reply).

[180] Most commenters addressing this issue support the Commission's proposal. *See, e.g.*, ACA Aug. 2014 Comments at 18-19; USTelecom Aug. 2014 Comments at 31; UTC Aug. 2014 Comments at 25-26; WISPA Aug. 2014 Comments at 10.

[181] *See* ITTA Aug. 2014 Comments at 25; Comments of the Rural Independent Competitive Alliance, WC Docket No. 10-90 et al., at 5-6 (filed Aug. 8, 2014) (RICA Aug. 2014 Comments).

[182] *See* ITTA Aug. 2014 Comments at 25.

B. Application Process

91. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission sought comment on using the same two-stage application process that was adopted for Mobility Fund Phase I.[183] A similar two-stage application process was also used for Phase I of the Tribal Mobility Fund.[184]

92. *Discussion.* Consistent with our approach in Mobility Fund Phase I and Tribal Mobility Fund Phase I, we adopt a two-stage application filing process for participants in the Phase II competitive bidding process.[185] Specifically, in the pre-auction "short-form" application, a potential bidder will need to establish its eligibility to participate, providing, among other things, basic ownership information and certifying to its qualifications to receive support.[186] After the auction, we would conduct a more extensive review of the winning bidders' qualifications to receive support through "long-form" applications. Such an approach balances the need to collect essential information with administrative efficiency, and will provide the Commission with assurance that interested entities are qualified to meet the terms and conditions of the Phase II competitive bidding process if awarded support. We note that each potential bidder has the sole responsibility to perform its due diligence research and analysis before proceeding to participate in the Phase II auction.[187]

93. Once the long-form application has been approved, a public notice will be released announcing that the winning bidder is ready to be authorized. At that time, the winning bidder will be required to submit, within a specified number of days, at least one letter of credit and an opinion letter from counsel that meets our requirements as described below. After those documents are approved, a public notice will be released authorizing the winning bidder to begin receiving Phase II auction support.[188]

94. Below, we discuss the requirements we adopt for the short-form and the long-form applications for the Phase II competitive bidding process. Consistent with the approach we took for the rural broadband experiments last year, we direct the Wireline Competition Bureau and the Wireless Telecommunications Bureau (Bureaus) to adopt the format and deadlines for the submission of

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[183] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17804, 18091, paras. 417-18, 1214, 1217.

[184] *Tribal Mobility Fund Phase I Auction Rescheduled for December 19, 2013; Notice and Filing Requirements and Other Procedures for Auction 902*, AU Docket No. 13-53, 28 FCC Rcd 11628, 11657-58, 11678-87, paras. 92-96, 177-203 (WCB and WTB 2013) (*Tribal Mobility Phase I Auction Procedures Public Notice*).

[185] ACA Jan. 2012 Comments at 14. Below, we adopt similar rules providing for a short-form application process to qualify entities eligible to bid and a long-form application to be filed by winning bidders in the Remote Areas Fund.

[186] As discussed more fully below, we conclude that any entity that files a short-form application to participate in the Phase II competitive bidding process will be considered "an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission" pursuant to section 503(b)(2)(B) of the Communications Act of 1934, as amended (the Act), and therefore subject to a forfeiture in the event of a default. 47 U.S.C. § 503(b)(2)(B).

[187] This is consistent with bidders' responsibility for Mobility Fund Phase I, Tribal Mobility Fund Phase I, and the rural broadband experiments. *See Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket 12-25, Public Notice, 27 FCC Rcd 4725, 4748-49, paras. 71-77 (WTB 2012) (*Mobility Fund Phase I Auction Procedures Public Notice*); *Tribal Mobility Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11655-56, paras. 81-87*; Wireline Competition Bureau Announces Application Process for Entities Interested in Participating in the Rural Broadband Experiments*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 10016, 10032-33, paras. 50-56 (*Rural Broadband Experiments Auction Procedures Public Notice*).

[188] The Commission has used similar procedures for Mobility Fund Phase I, Tribal Mobility Fund Phase I, and the rural broadband experiments. *See Mobility Fund Phase I Auction Procedures Public Notice*, 27 FCC Rcd at 4771, para. 170; *Tribal Mobility Fund Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11681, paras. 188*; Rural Broadband Experiments Auction Procedures Public Notice*, 30 FCC Rcd at 10037, para. 71.

documentation for the short-form and long-form applications, that are consistent with the Commission's universal service competitive bidding rules and Part 54 of the Commission's rules.[189]

1. Short-Form Application Process

95. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission sought comment on how to determine if an entity has sufficient resources and technical capability to satisfy Phase II obligations.[190] Prior to Mobility Fund Phase I and Tribal Mobility Fund Phase I auctions, the Commission required that each auction applicant provide information to establish its identity.[191] Applicants were also required to disclose and certify their ETC status and the source of the spectrum they planned to use to meet Mobility Fund obligations.[192]

96. In the rural broadband experiments, the Commission required applicants to provide certain information and submit a formal proposal that provided background information on the applicant and its qualifications to provide voice and broadband service, and its Lifeline offerings at the same time that it submitted bids, but it did not otherwise prequalify bidders.[193] In the *April 2014 Connect America Order*, the Commission adopted the requirement that all participants in the Phase II competitive bidding process 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.[194]

97. *Discussion.* We require all applicants for the Phase II competitive bidding process to provide basic information in their short-form applications that will enable the Commission to review each application to assess before an entity commits time and resources to participating in the auction whether the applicant is eligible to participate in the auction. In addition to making the financial and technical certification adopted in the *April 2014 Connect America Order*, the Commission's universal service competitive bidding rules will apply so that applicants will be required to provide information that will establish their identity, including disclosing parties with ownership interests and any agreements the applicant may have relating to the support to be sought through the Phase II competitive bidding process.[195]

98. We will also require all applicants to indicate the type of bids that they plan to make and describe the technology or technologies that will be used to provide service for each bid. Applicants will also be required to submit with their short-form applications any information or documentation required to establish their eligibility for any bidding weights or preferences that the Commission ultimately adopts. To the extent that an applicant plans to use spectrum to offer its voice and broadband services, it must

[189] 47 CFR §§ 1.21000 – 1.21004, pt. 54. Consistent with Mobility Fund Phase I and Tribal Mobility Fund Phase I, applicants will be able to make minor modifications to amend their applications or correct defects. *Mobility Fund Phase I Auction Procedures Public Notice*, 27 FCC Rcd at 4756-57, paras. 103-08; *Tribal Mobility Fund Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11666, paras. 122-27. 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. Applications to which major modifications are made after the deadline for submitting applications shall be dismissed. 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.

[190] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18087, para. 1200.

[191] *USF/ICC Transformation Order*, 26 FCC Rcd at 17804-05, para. 418; *Tribal Mobility Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11657-64, paras. 92-114.

[192] *USF/ICC Transformation Order*, 26 FCC Rcd at 17804-05, para. 418; *Tribal Mobility Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11657-64, paras. 92-114.

[193] *Rural Broadband Experiments Order*, 29 FCC Rcd at 8784-86, paras. 45-50.

[194] *April 2014 Connect America Order*, 29 FCC Rcd at 7066, para. 47.

[195] 47 CFR § 1.21001(b).

disclose whether it currently holds licenses for or leases spectrum. The applicant must demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and meet the minimum performance requirements to serve all of the fixed locations in eligible areas. Moreover, all applicants will be required to certify that they will retain their access to the spectrum for at least 10 years from the date of the funding authorization.

99. We do not expect that these requirements will impose an unreasonable burden on potential bidders. We had similar requirements for bidders in the rural broadband experiments, and we are not aware of any applicants having difficulty providing such baseline information. We anticipate that as they prepare to participate in the auction, applicants will already have firm plans for where they will bid and the technologies they will use to provide service to the areas for which they will bid. Unlike the applicants participating in the Mobility Fund auctions, participants will likely be proposing to use a wide variety of technologies to provide service meeting the Commission's requirements. Because not all participants will have ETC designations to provide service in their relevant service areas, it will be useful for the Commission to have some insight into the types of technologies that bidders intend to use to meet their obligations prior to the auction. The project descriptions are intended to provide the Commission with some assurance that the applicant has thought through how it intends to provision service if awarded support.

100. To provide additional assurance to the Commission that the entities that intend to bid in the auction have some experience operating networks or are otherwise financially qualified, we adopt several alternative prequalification requirements. First, we adopt a requirement that applicants certify in their short-form application that they have provided voice, broadband, and/or electric distribution or transmission services for at least two years and specify the number of years they have been operating, or they are the wholly-owned subsidiary of an entity that meets these requirements.[196] Applicants that have provided voice or broadband services must also certify that they have filed FCC Form 477s as required during that time period. Recognizing the electric utilities also have significant experience building and operating networks, we also will accept certifications from entities that have provided electric distribution or transmission services for at least two years (or their wholly-owned subsidiaries).[197] Applicants that have operated only an electric distribution or transmission network must submit qualified operating or financial reports for the relevant time period that they have filed with the relevant financial institution along with a certification that the submission is a true and accurate copy of the forms that were submitted to the relevant financial institution.[198] We will accept the Rural Utilities Service (RUS) Form 7, Financial

[196] ACA suggested that we require that a prospective bidder demonstrate that it has operated a voice and broadband network that meets the requirements we established for recipients of model-based support or require that they have filed Form 477 for the previous three years. *See* ACA June 1, 2015 *Ex Parte* Letter at 5 n.13. *But see* WISPA June 30, 2015 *Ex Parte* Letter at 3 (proposing that entities be required to demonstrate at least one year of operation). We conclude that requiring that an entity to have operated a network for more than a year will give us greater assurance that an entity has the qualifications to maintain a network. We conclude on balance that adopting a two-year operational requirement for bidders is reasonable, particularly when we offer an alternative for entities that cannot meet this requirement. Finally, we do not require entities to have operated both a voice network and a broadband network, because those entities may have made business decisions not to offer a certain service that are independent of their qualifications to offer such a service. *Id*.

We note that NTCA urges the Commission to require that interested bidders obtain an ETC designation prior to bidding. NTCA July 23, 2015 *Ex Parte* Letter at 8. We view this as an untimely petition for reconsideration of the Commission's prior decision that applicants in the Phase II competitive bidding process may obtain ETC designation after the announcement of winning bidders. *April 2014 Connect America Order*, 29 FCC Rcd at 7064-66, paras. 40-46.

[197] NRECA and UTC Sept. 9, 2015 *Ex Parte* Letter at 3.

[198] *See* Letter from C. Douglas Jarrett, Counsel to The National Rural Electric Cooperative Association and the Utilities Telecom Council, to Marlene H. Dortch, Secretary, FCC, WC Docket No 10-90, at 1-2 (filed Nov. 3, 2015); (continued….)

and Operating Report Electric Distribution; the RUS Form 12, Financial and Operating Report Electric Power Supply; the National Rural Utilities Cooperative Finance Corporation (CFC) Form 7, Financial and Statistical Report; the CFC Form 12, Operating Report; or the CoBank Form 7; or the functional replacement of one of these reports.[199] We conclude that if an entity can certify that it has provided voice, broadband, and/or electric distribution or transmission services for at least two years or that it is a wholly-owned subsidiary of such an entity, that will provide the Commission with sufficient assurance before the auction that an entity has at a minimum level demonstrated that it has the ability to build and maintain a network.[200]

101. Entities that meet the foregoing requirements will also submit audited financial statements from the prior fiscal year, including balance sheets, net income and cash flow, that have been audited by an independent certified public accountant with their short-form application. We are not persuaded that we should permit applicants to submit reviewed financial statements in lieu of audited financial statements.[201] While we acknowledge that the Commission collects in the section 54.313 annual report reviewed financial statements from privately held rate-of-return ETCs that are not RUS borrowers and are not audited in the normal course of business,[202] we conclude that the better approach for the Phase II auction is to require a financial audit. A financial review is a less fulsome review of an entity's financial health because it does not generally require the auditor to develop a detailed understanding of the internal controls environment and conduct more in-depth testing of individual transactions posted to the general ledger.[203] The need to ensure that every Phase II auction recipient is in good financial health is critical. Authorized Phase II recipients will be required to take on obligations with defined timelines, so it is important that we have insight into an entity's financial health to assess its ability to meet such obligations if awarded support. We conclude that the additional cost of obtaining audited financial statements is outweighed by the importance of assuring the financial health of Phase II auction recipients.

102. However, we conclude that to the extent an entity that otherwise meets these eligibility requirements does not already obtain an audit of its financial statements in the ordinary course of

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Letter from C. Douglas Jarrett, Counsel to The National Rural Electric Cooperative Association and the Utilities Telecom Council, to Marlene H. Dortch, Secretary, FCC, WC Docket No 10-90, at 2-3 (filed Oct. 5, 2015) (NRECA and UTC Oct. 5, 2015 *Ex Parte* Letter). Portions of these forms may be redacted so that only operating data is provided. *See id*.

[199] *Id.*

[200] We will not consider whether the entity has experience leveraging high-cost support. *See* NTCA July 23, 2015 *Ex Parte* Letter at 8. The fact that an entity has not received high-cost support in the past does not necessarily suggest that the entity is unqualified to bid in the Phase II auction. We conclude that the requirement we adopt here that an entity have operated *any* voice, broadband, or electric distribution or transmission network for at least two years provides the Commission with sufficient assurance that the entity is qualified to bid, and we will use the requirements that we adopt below for the long-form application to determine whether the network the entity proposes to build will be able to meet the relevant performance requirements before we authorize that entity to receive support.

[201] *See, e.g.*, Letter from Thomas Cohen, Counsel to the American Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 3 (filed Dec. 2, 2015).

[202] 47 CFR § 54.313(f)(2)(iii). *See also* Letter from John Kuykendall, Representative of Lennon Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 14-259, at 1 (Apr. 22, 2015) (suggesting that the Commission allow for the submission of CPA-reviewed financial statements in lieu of audited financial statements) (Lennon Telephone Co. Apr. 22, 2015 *Ex Parte* Letter). Letter from Thomas Cohen, Counsel to ACA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 3 (filed Nov. 13, 2015) (ACA Nov. 13, 2015 *Ex Parte* Letter) (suggesting that the Commission permit smaller providers to submit reviewed audited financial statements in lieu of audited financial statements).

[203] *Connect America Fund et al.,* WC Docket No. 10-90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549, 14552-53, para. 10 (2012).

business, we will permit that entity to wait until after it is announced as a winning bidder to submit audited financial statements. We will require such entities that do not already have audited financial statements to certify that they will submit the prior fiscal year's audited financial statements by the deadline during the long-form application process. We acknowledge that some potential bidders, particularly small entities, may be reluctant to bid in the Phase II auction because they do not want to pay the upfront costs of obtaining audited financial statements prior to finding out if they are winning bidders.[204] Because such entities will be required to demonstrate that they have provided a voice, broadband, or electric distribution or transmission service for two years, we conclude that this will give us reasonable assurance of an entity's financial health for permitting that entity to participate in the auction. We conclude that on balance, our interest in maximizing participation in the Phase II auction outweighs the potential risk of qualifying an experienced entity to participate in the Phase II auction without reviewing that bidder's audited financial statements, particularly given that we will have the opportunity to scrutinize the bidder's audited financial statements at the long-form application stage before authorizing that entity to begin receiving support.

103. We require winning bidders that take advantage of this option to submit their audited financials no later than the deadline for submitting their proof of ETC designation (which is within 180 days of public notice announcing winning bidders). We conclude that requiring winning bidders to submit their audited financials within the same timeframe as the ETC designations will help prevent unreasonable delays in authorizing Phase II auction support so that winning bidders can begin deploying broadband to unserved consumers. We expect that bidders will take steps to prepare for an audit once they have submitted their short-form application so that they can immediately start the process upon being named a winning bidder. If the audit process takes longer than 180 days, winning bidders will have the option of seeking a waiver of this deadline.[205] In considering such waiver requests, we direct the Bureau to determine whether an entity demonstrated in its waiver petition that it took steps to prepare for an audit prior to being named a winning bidder and that it took immediate steps to obtain an audit after being announced as a winning bidder.

104. We conclude that it is appropriate to adopt a base forfeiture of $50,000 for any entity that certifies in its short-form application that it will submit audited financials in its long-form application, but then ultimately defaults by failing to submit audited financial statements as required.[206] Such forfeiture would also be subject to adjustment upward or downward as appropriate based on the criteria set forth in our forfeiture guidelines.[207] We find that imposing such a forfeiture will create an incentive for bidders to

[204] Letter from Ross J. Lieberman, Senior Vice President of Government Affairs, American Cable Association and Stephen E. Coran, Counsel to the Wireless Internet Service Providers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2-3 (filed Dec. 17, 2015) (ACA/WISPA Dec. 17, 2015 *Ex Parte* Letter); Letter from Stephen E. Coran, Counsel to WISPA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (filed Nov. 23, 2015) (WISPA Nov. 23, 2015 *Ex Parte* Letter); ACA Nov. 13, 2015 *Ex Parte* Letter at 2-3.

[205] 47 CFR § 1.3. *See also* ACA/WISPA Dec. 17, 2015 *Ex Parte* Letter at 3 (claiming that it can take "as long as one year" to obtain audited financial statements).

[206] 47 U.S.C. § 503(b)(2)(B). The Act authorizes the Commission to assess common carriers, or applicants for any common carrier license, permit, certification or other instrument of authorization issued by the Commission, a forfeiture of up to $160,000 for each violation, or each day of a continuing violation, up to a statutory maximum of $1,575,000 for a single act or failure to act. *Id. See also* 47 CFR § 1.80(b); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (Enforcement Bur. 2013). We conclude that entities participating in the Phase II auction that are not yet common carriers will be considered applicants for a common carrier authorization issued by the Commission because they will be competing to become winning bidders and, ultimately eligible telecommunications carriers authorized to receive Phase II support. We note that this forfeiture will be imposed in lieu of the forfeiture we adopt below for other defaults. This forfeiture will be applied per defaulting entity rather than per bid or minimum geographic bidding unit.

[207] 47 CFR § 1.80(b)(8), note to paragraph (b)(8).

certify truthfully in their short-form applications that they will obtain audited financial statements if announced as a winning bidder and will also create an incentive for winning bidders to actually go out and obtain those audited financial statements rather than default.

105. We are not persuaded that we should adopt the alternative proposals suggested by ACA and WISPA including 1) requiring entities that are not audited in the ordinary course of business to make an upfront payment or deposit of $25,000 or 2) imposing a maximum forfeiture of $25,000 if an entity does not submit its audited financial statements as required.[208] First, we conclude that managing and tracking escrow arrangements would be too administratively burdensome and could potentially delay the auction. Second, we find that imposing a $25,000 upfront payment or maximum forfeiture would permit an entity to conduct a cost-benefit analysis that could encourage gaming. For example, an entity may decide it would be willing to pay $25,000 if it could preclude others from being winning bidders in certain areas and then default, or an entity may decide it is willing to pay $25,000 to default if it is ultimately unhappy with its winning bid. Instead, we conclude that adopting a $50,000 base forfeiture rather than a maximum forfeiture will make it more difficult for an entity to perform such a strict cost-benefit analysis because the forfeiture may be increased if it is determined that such gaming has taken place. According to some commenters, the cost of a financial statement audit can vary and generally start at $25,000.[209] We find that adopting a base forfeiture of $50,000 rather than $25,000 will further reduce the incentives for gaming. We also conclude a base forfeiture of $50,000 is large enough to create an incentive for bidders take their obligation to get audited financial statements seriously given that we will be relying upon the winning bidders' certifications in the short-form application in permitting those bidders to participate in the Phase II auction.

106. Recognizing that the foregoing requirements would preclude from participating in the Phase II auction entities that have less than two years of experience operating a voice, broadband and/or electric distribution or transmission network, we adopt an alternative pathway for those entities to be deemed qualified to bid in the auction. If an interested bidder cannot make the above certification that it has filed FCC Form 477 data as a voice or broadband provider for the previous two years or the identified alternative operating or financial forms for electric distribution or transmission providers, it may instead submit 1) audited financial statements for that entity from the three most recent consecutive fiscal years, including balance sheets, net income, and cash flow,[210] and 2) a letter of interest from a qualified bank with terms acceptable to the Commission that the bank would provide a letter of credit to the bidder if the bidder were selected for bids of a certain dollar magnitude.

107. For the latter group of potential bidders, we conclude that our interest in having a level of insight into the financial health of a potential Phase II auction bidder over a longer period of time is a necessary prequalification to bid, particularly because this subset of bidders will not able to demonstrate that they have operated and maintained a voice, broadband and/or electric distribution or transmission network for at least two years.

108. We also expect that a letter of interest from the bank will provide the Commission with an independent basis for some additional assurance regarding the financial status of the entity. We do not anticipate that this requirement will be onerous. We expect that interested bidders will already be

[208] *See, e.g.*, Letter from Ross J. Lieberman, Senior Vice President of Government Affairs, American Cable Association and Stephen E. Coran, Counsel to the Wireless Internet Service Providers Association, WC Docket No. 10-90, at 1 n.3 (filed Feb. 9, 2016) (ACA/WISPA Feb. 9, 2016 *Ex Parte* Letter); ACA/WISPA Dec. 17, 2015 *Ex Parte* Letter at 2-3; WISPA Nov. 23, 2015 *Ex Parte* Letter at 2.

[209] WISPA Nov. 23, 2015 *Ex Parte* Letter at 2; ACA Nov. 13, 2015 *Ex Parte* Letter at 3.

[210] *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787, para. 54. *See also* UTC July 6, 2015 *Ex Parte* Letter at 2 (suggesting that winning bidders be required to file three years of financials). Given the lack of operating history of such bidders, we do not extend the option of submitting audited financial statements during the long-form application stage to bidders that qualify pursuant to this second set of eligibility standards.

considering which banks they will use to meet the letter of credit requirement described below, and that they will have to find a bank that will be willing to issue them a letter of credit in order to ultimately be authorized to begin receiving support. But we caution potential bidders that we will carefully scrutinize such letters and reserve the right not to allow such applicants to bid if the letter of interest is too vague to assess the likelihood of a future bank commitment.

109. We recognize that by adopting these requirements, we are potentially precluding interested bidders that have not been in operation long enough to meet these requirements or that are unable to meet these requirements for other reasons.[211] By adopting alternative types of pre-qualification requirements, we will implement a more narrowly tailored approach that balances maximizing participation in the auction with furthering the statutory principles of providing access to advanced services to all regions in the county and ensuring that those living in rural, insular and high-cost areas have access to reasonably comparable services.[212] As stewards of the public's funding, it is our responsibility to implement safeguards to ensure that these funds are being used efficiently and effectively, and to protect consumers in rural and high-cost areas against being stranded without a service provider in the event a winning bidder defaults when another qualified competing bidder could have won the support instead.

110. Finally, we will also require interested bidders to identify in their short-form applications if they have already been designated as ETCs in the areas they intend to bid. Consistent with our decision to permit bidders to wait until they have been announced as winning bidders to obtain their ETC designation,[213] interested bidders will also be required to certify in their short-form applications that they acknowledge they must be designated as an ETC for the areas in which they will receive Phase II support before they are authorized to begin receiving such support.[214]

2. Post-Auction Long-Form Application Process

111. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission proposed to apply the same post-auction long-form application process it adopted for Mobility Fund Phase I to winning bidders for the Phase II competitive bidding process.[215] For Mobility Fund Phase I and Tribal Mobility Fund Phase I, within 10 business days of being announced as a winning bidder, bidders were required to submit a long-form application that included an ownership disclosure, documentation of ETC

[211] The principle of competitive neutrality does not require all competitors to be treated alike, but "only prohibits the Commission from treating competitors differently in 'unfair' ways." *Rural Cellular*, 588 F.3d at 1104. Moreover, neither the competitive neutrality principle nor the other section 254(b) principles impose inflexible requirements for the Commission's formulation of universal service rules and policies. Instead, the "promotion of any one goal or principle should be tempered by a commitment to ensuring the advancement of each of the principles" in section 254(b)." *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8803, para. 52 (1997) (*Universal Service First Report and Order*); *see also Qwest Corp. v. FCC*, 258 F.3d 1191, 1199 (10th Cir. 2001) (*Qwest I*) ("The FCC may balance the principles against one another, but must work to achieve each one unless there is a direct conflict between it and either another listed principle or some other obligation or limitation on the FCC's authority."); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000) ("We reiterate that predictability is only a principle, not a statutory command. To satisfy a countervailing statutory principle, therefore, the FCC may exercise reasoned discretion to ignore predictability."); *Rural Cellular*, 588 F.3d at 1103 ("The Commission enjoys broad discretion when conducting exactly this type of balancing.") (citing *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 971 (D.C.Cir.1999)). It does not violate competitive neutrality to adopt application requirements that some potential applicants are unable to meet, when those application requirements are narrowly tailored to advance the Commission's objectives.

[212] 47 U.S.C. §§ 254(b)(2) & (3).

[213] *April 2014 Connect America Order*, 29 FCC Rcd at 7064-66, paras. 40-45.

[214] Appx. A, 47 CFR § 54.315(a)(3).

[215] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18091, para. 1217.

designation, a description of spectrum access, a description of the network that would be constructed including a project schedule and project budget, a letter of credit commitment letter from an eligible issuing bank, and various other certifications.[216] After the Bureaus announced that they were ready to authorize a winning bidder for support, the winning bidder then had 10 business days to obtain a standby irrevocable letter of credit in an amount to cover the first disbursement of support plus an additional percentage to cover any default payment.[217]

112. The Commission took a different approach for the rural broadband experiments. There, the Commission required that provisionally selected bidders submit certain documentation to demonstrate that they had the technical and financial qualifications to complete their proposed projects.[218] Specifically, provisionally selected bidders were required to provide the most recent three consecutive years of audited financial statements, including balance sheets, net income, and cash flow.[219] They were also required to submit a description of the technology and system design they intended to use to deliver voice and broadband service, including a network diagram which had to be certified by a professional engineer.[220] A number of bidders sought waiver of these requirements, many of which the Bureau ultimately denied.[221] After the Bureau announced that it was ready to authorize a provisionally selected bidder to receive support, the winning bidder had 10 business days to obtain at least one standby irrevocable letter of credit that at a minimum had to cover the first disbursement of support.[222]

113. *Discussion*. Building on lessons learned from Mobility Fund Phase I, Tribal Mobility Fund Phase I, and the rural broadband experiments, we now adopt a number of requirements for the long-form and post-auction review process that will apply generally to recipients of Phase II and Remote Areas Fund support.[223]

a. Financial and Technical Requirements

114. Like the Mobility Fund Phase I and Tribal Mobility Fund Phase I auctions,[224] we will require that winning bidders submit a self-certification regarding their financial and technical qualifications with their long-form applications. They must also submit a certification that specifies that they will be able to meet all of the applicable public interest obligations for the relevant tiers, including the requirement that they offer service at rates that are equal or lower to the Commission's reasonable

[216] *Mobility Fund Phase I Auction Procedures Public Notice*, 27 FCC Rcd at 4769-75, paras. 160-82; *Tribal Mobility Fund Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11678-87, paras. 177-203.

[217] *USF/ICC Transformation Order*, 26 FCC Rcd at 17810, para. 444; *Mobility Fund Phase I Auction Procedures Public Notice*, 27 FCC Rcd at 4771-72, paras. 170-72; *Tribal Mobility Fund Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11681-82, paras. 188-91.

[218] *Rural Broadband Experiments*, 29 FCC Rcd at 8787, paras. 52-54.

[219] *Id.* at 8787, para. 54.

[220] *Id.*

[221] *See Connect America Fund, Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-259, Order, 30 FCC Rcd 772 (WCB 2015) (*RBE Financial and Technical Waiver Order*); *Connect America Fund, Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-259, Order, 30 FCC Rcd 2022 (WCB 2015); *Connect America Fund, Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-259, Order, 30 FCC Rcd 6257 (WCB 2015) (*Rural Broadband Experiments Denial Order*).

[222] *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788, para. 54.

[223] We retain discretion, however, to make adjustments for the Remote Areas Fund application process, based on our experience with the Phase II application process.

[224] *USF/ICC Transformation Order*, 26 FCC Rcd at 17801, para. 401; *Tribal Mobility Fund Auction Phase I Procedures Public Notice*, 28 FCC Rcd at 11679, para. 182.

comparability benchmarks for fixed wireline services offered in urban areas.[225] Due to the varying types of technologies that entities may use to fulfill their Phase II competitive bidding process obligations, we find that it is also reasonable to require winning bidders to submit a description of the technology and system design they intend to use to deliver voice and broadband service, including a network diagram which must be certified by a professional engineer.[226] The professional engineer must certify that the network is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements.[227] There must be sufficient capacity to meet customer demand at or above the prescribed levels during peak usage periods. Entities proposing to use wireless technologies also must provide a description of their spectrum access in the areas for which they seek support and demonstrate that they have the required licenses to use that spectrum if applicable. This documentation will enable Commission staff to have assurance from a licensed engineer that the proposed network will be able to fulfill the service obligations to which the bidders will have to commit. We remind potential applicants that filing deadlines will be strictly enforced, and that bidders should not presume that they may obtain a waiver absent extraordinary circumstances.[228]

115. We note that we required provisionally selected bidders in the rural broadband experiments to submit similar technical documentation, and the vast majority of provisionally selected bidders in the rural broadband experiments were able to meet these requirements.[229] Similarly, we are aware that RUS requires loan applicants to submit detailed network information as part of its application process.[230] We expect that potential bidders for the Phase II competitive bidding process will need to have already developed a network plan when making a decision about whether to participate in the auction. Accordingly, on balance we conclude that our interest in assessing, before an entity is authorized

[225] *See* 47 CFR 54.313(a)(12).

[226] For Mobility Fund Phase I and Tribal Mobility Fund Phase I, winning bidders were required to submit a detailed project description that described each specific phase of the project, e.g., network design, construction, deployment, and maintenance. *Mobility Fund Phase I Auction Procedures Public Notice*, 27 FCC Rcd at 4770, para. 165; *Tribal Mobility Fund Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11678-79, para. 183. For the rural broadband experiments, provisionally selected bidders were required to submit a description of the technology and system design used to deliver voice and broadband service, including a network diagram that had to be certified by a professional engineer. *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787, para. 54. *See also* WISPA June 30, 2015 *Ex Parte* Letter, at 3 (suggesting that the Commission should not require more detailed technical information until bidding is over); Letter from Brian McDermott, Counsel to Declaration Networks Group, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed May 13, 2015) (Declaration Networks Group May 13, 2015 *Ex Parte* Letter) (advocating that the Commission "maintain[] the technical, economic and engineering qualification requirements" from the rural broadband experiments).

[227] *See supra* Section III.A (Performance Requirements). An entity that engineers its network based on the assumption that only 40 percent of the customer base in the relevant area will subscribe will not be authorized.

[228] *See* 47 CFR § 0.406 ("Persons having business with the Commission should familiarize themselves with those portions of its rules and regulations pertinent to such business."). *See also, e.g.*, *Universal Service Contribution Methodology*, WC Docket No. 06-122, Order, 26 FCC Rcd 11213, 11215-16, para. 7 (WCB 2011) (declining to review rejection of company's late-filed revisions to form which were caused by company's misunderstanding of form instructions, because "[b]usinesses have a responsibility to familiarize themselves with the rules and regulations that are relevant to their industry").

[229] *RBE Financial and Technical Waiver Order*, 30 FCC Rcd at 777, para. 13 (noting that the "vast majority of provisionally selected bidders" were able to meet these requirements). We do not, however, automatically deem all rural broadband experiment provisionally selected bidders and next-in-line bidders technically qualified to receive support awarded through the Phase II auction. NRECA and UTC Oct. 5, 2015 *Ex Parte* Letter at 3. The qualification and performance standards we have adopted for the Phase II auction differ from those adopted for the rural broadband experiments.

[230] *See, e.g.*, 7 CFR §§ 1737.50, 1738.206(b).

to receive support, whether that entity is likely able to fulfill Phase II obligations outweighs any potential burdens this requirement may impose on bidders.

116. Similar to the requirements for Mobility Fund Phase I and Tribal Mobility Fund Phase I, we will require that winning bidders certify that they have available funds for all project costs that will exceed the amount of support that will be received from the Phase II auction authorization for the first two years of their support term and that they will comply with program requirements, including service milestones.[231] We anticipate that many bidders will need to obtain a loan or rely upon other sources of funding to cover the cost of building the network, with the ongoing support used to repay those construction loans. It therefore is imperative that winning bidders have a well-developed plan regarding financing for construction upon which they are ready to execute once the auction closes. Unlike Mobility Fund Phase I, where one time support was disbursed in conjunction with meeting deployment milestones, Phase II support will be provided over a 10-year period.[232] Therefore, we will also require that winning bidders describe in their long-form application how the required construction will be funded and include financial projections that demonstrate that they can cover the necessary debt service payments over the life of the loan. We also expect that prior to issuing a letter of credit, an issuing bank will be performing its own financial review of the winning bidder, which will provide an added assurance that it is financially qualified. And, as noted above, prior to funding authorization, winning bidders that are not required to submit audited financial statements in the short-form application will be required to submit the prior fiscal year's financial statements that have been audited by an independent certified public accountant.

117. Finally, as discussed more fully below, in the Phase II competitive bidding process, participants will be subject to a defined forfeiture if they fail to meet within defined time periods the Commission's requirements to be authorized to receive support.[233] We expect that subjecting bidders to such a forfeiture payment if they are unable to get a letter of credit or meet the Commission's other requirements will underscore the requirement that bidders must do their own due diligence about their financial capability to meet their obligations before they participate in the Phase II competitive bidding process.

b. Letters of Credit

118. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission sought comment on requiring all recipients of Connect America support to obtain a letter of credit to protect the government's interest in the funds it disburses.[234] For Mobility Fund Phase I, Tribal Mobility Fund Phase I, and the rural broadband experiments, bidders were required to obtain an irrevocable standby letter of credit before being authorized to receive support.[235]

119. *Discussion.* We adopt a letter of credit requirement for all winning bidders.[236] In the long-form application filing, we will require each winning bidder to submit a letter from a bank as

[231] *See Mobility Fund Phase I Auction Procedures Public Notice*, 27 FCC Rcd at 4772, para. 173; *Tribal Mobility Fund Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11682, para. 192. Below, we require that Phase II recipients make a similar certification in their 54.313 annual reports for the remaining years of the support term. *See infra* Section VIII.A (Monitoring Progress in Meeting Deployment Obligations).

[232] We note that relaxed performance bidders may have a term of support that is shorter than 10 years. *See supra* Section III.A (Performance Requirements).

[233] *See infra* Section VI.B.3 (Forfeiture).

[234] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18066, para. 1105.

[235] *USF/ICC Transformation Order*, 26 FCC Rcd at 17810, para. 444; *Tribal Mobility Fund Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11681-82, paras. 188-91; *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788, para. 55.

[236] *See, e.g.*, Comments of the United States Telecom Association, WC Docket Nos. 10-90, 14-259, at 2 (filed Mar. 30, 2015) (agreeing that letters of credit are "a useful tool to ensure that the funds issued are utilized for the purpose (continued….)

described below committing to issue a letter of credit. The winning bidder will be required to have its letter of credit in place before it is authorized to receive support. Our decision to require recipients to obtain a letter of credit is consistent with the requirements we have adopted for other competitive bidding processes we have conducted to distribute Connect America funds, where both existing providers and new entrants were required to obtain letters of credit. In response to what we learned in the rural broadband experiments, however, we make some adjustments to these requirements in an effort to reduce some of the cost associated with obtaining a letter of credit.

120. In the *USF/ICC Transformation Order* and in the *Rural Broadband Experiments Order*,[237] the Commission explained why letters of credit are an effective means for accomplishing our role as stewards of the public's funds by securing our financial commitment to provide Connect America support in the auction context. The Commission also explained why it did not adopt other approaches suggested in the record, such as relying on our existing accountability measures or adopting alternative methods of securing Connect America funds, for example performance or construction bonds, field inspections, or denials of certification.[238] We conclude that the same rationale applies here Letters of credit permit the Commission to immediately reclaim support that has been provided in the event the recipient is not furthering the objectives of universal service by complying with the Commission's rules or requirements. They also have the added advantage of minimizing the possibility that the support becomes property of a recipient's bankruptcy estate for an extended period of time, thereby preventing the funds from being used promptly to accomplish our goals. We find that commenters that have renewed requests for alternatives based on their experience with the rural broadband experiments, such as requiring a performance bond, placing money in escrow, or submitting financial statements in lieu of a letter of credit or considering an entity's history of receiving high-cost support or performance, have not demonstrated that their suggested alternatives offer the same level of protection of ratepayers' contributions to the universal service fund.[239]

121. Additionally, we remind bidders to become familiar with the letter of credit requirements we adopt below and consider potential issuing banks in a timely fashion. To the extent that a bidder is the recipient of a loan or grant from RUS, it should consult with RUS regarding the need to obtain a letter of credit if it is authorized to receive support *before* it submits a short-form application. We note that RUS' regulations generally require that recipients of RUS support obtain a first lien on the assets that are secured by certain broadband and telecommunications loan programs.[240] If a bank determines that it will need a first lien on an entity's assets as collateral for issuing a letter of credit, RUS and that bank will need to negotiate acceptable arrangements, such as an intercreditor agreement with that bank to share

(Continued from previous page)
for which they were intended") (USTelecom Mar. 2015 Comments); UTC July 6, 2015 *Ex Parte* Letter at 2 (suggesting that the Commission require that winning bidders obtain a letter of credit from a qualified bank).

[237] *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-12, paras. 444-51; *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788-89, paras. 56-57.

[238] *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-11, paras. 445-46; *Rural Broadband Experiments Order*, 29 FCC Rcd at8788-89, para. 56 & n.103.

[239] *See*, *e.g.*, Comments of the Wireless Internet Service Providers Association, WC Docket Nos. 10-90, 14-259, at 6 (filed Mar. 30, 2015) (WISPA Mar. 2015 Comments); Reply Comments of John Staurulakis, Inc., WC Docket Nos. 10-90, 14-259, at 4-5 (filed Apr. 13, 2015) (JSI Apr. 2015 Reply); Reply Comments of NTCA – The Rural Broadband Association, WC Docket No. 10-90 et al., at 2 (filed Apr. 13, 2015); ACA Nov. 13, 2015 *Ex Parte* Letter at 3-4; WISPA June 30, 2015 *Ex Parte* Letter at 3; Lennon Telephone Co. Apr. 22, 2015 *Ex Parte* Letter at 2, Attach.

[240] For RUS' Telecommunications Infrastructure Loan Program, RUS generally requires a first lien and RUS is statutorily required to ensure that the security is "reasonably adequate." 7 U.S.C. § 922; 7 CFR § 1735.22. For RUS' broadband loan program, RUS requires an exclusive first lien, although the first lien can be shared if acceptable terms are reached. 7 CFR § 1738.154. RUS is also statutorily required to ensure that the security is "commensurate to the risk involved with the loan." 7 U.S.C. § 950bb(h).

RUS' first lien status. RUS has set forth a number of standards that an intercreditor agreement will have to meet including having the bank impose specific obligations on the Phase II auction recipient, in order for RUS to sign on to an intercreditor agreement. To the extent required, it is in the best interest of entities to contact RUS and become familiar with those standards as soon as possible. In the event that the bidder's chosen issuing bank requires a first lien to issue a letter of credit, the bidder should ensure that it can comply with the additional obligations and that the issuing bank will be able to agree to those terms by the time the bidder will be required to submit a letter of credit commitment letter as described below.[241]

122. *Requirements for Letters of Credit.* Once the Commission has conducted its post-auction financial and technical review, we will require winning bidders to secure an irrevocable stand-by letter of credit before support will be authorized for disbursement. For each state which they are awarded support, winning bidders must submit a letter of credit or multiple letters of credit that cover all of the bids in that state.[242] The letter of credit must be issued in substantially the same form as set forth in the model letter of credit provided in Appendix B of this Order, by a bank that is acceptable to the Commission, as described in more detail below. If an entity fails to meet the required service milestones after it begins receiving support, then fails to cure within the requisite time period, and is unable to repay the support that is associated with its default in a timely manner,[243] the Bureau will issue a letter evidencing the failure and declaring a default.[244]

123. In response to concerns raised about the cost of maintaining a letter of credit for the entire support period, we will require that the letter of credit only remain open until the recipient has certified that it has deployed broadband and voice service meeting the Commission's requirements to 100 percent of the required number of locations, and USAC has validated that the entity has fully deployed its network.[245] We conclude that such an approach will help alleviate the costs of obtaining a letter of credit, particularly for entities that are able to build out their networks faster than the six year build-out period, while still protecting the Commission's ability to recover the funds in the event that the entity is not building out its network as required. This approach is consistent with the approach used for Mobility Fund Phase I and Tribal Mobility Fund Phase I, where an entity is required to maintain a letter of credit valued at the support that had been disbursed until the Commission verifies that the build-out has been completed.[246]

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[241] *See Connect America Fund; Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-259, Order, 30 FCC Rcd 10641 (WCB 2015).

[242] Compliance with build-out milestones will be reviewed on a state-wide basis. *See supra* para. 46. Accordingly, if a winning bidder chooses to obtain a letter of credit for each of its bids that are located in a state and defaults, either of the Bureaus will authorize a draw on all of the letters of credit covering all of the bids in that state.

[243] *See infra* Section VIII.C (Measures for Non-Compliance).

[244] *See id.*

[245] *See, e.g.*, Comments of CoBank, ACB, WC Docket No. 10-90, WT Docket No. 10-208, at 3 (filed Mar. 20, 2015) (CoBank Mar. 2015 Comments); Comments of the National Rural Electric Cooperative Association, WC Docket Nos. 10-90, 14-259, at 5-6 (filed Mar. 30, 2015) (NRECA Mar. 2015 Comments); WISPA Mar. 2015 Comments at 6; Reply Comments of American Cable Association, WC Docket Nos. 10-90, 14-259, at 3 (filed Apr. 13, 2015) (ACA Apr. 2015 Reply); JSI Apr. 2015 Reply at 3; Reply Comments of GVNW Consulting, Inc., WC Docket Nos. 10-90, 14-259, at 5 (filed Apr. 14, 2015) (GVNW Apr. 2015 Reply); Petition for Waiver of Alliance of Rural Broadband Applicants, WC Docket Nos. 10-90, 14-58, at 5-11 (filed Jan. 27, 2015) (ARBA Petition); Declaration Networks Group May 13, 2015 *Ex Parte* Letter at 1. We direct USAC to undertake the necessary validation contemporaneously with the relevant service milestones.

[246] *See, e.g.*, *USF/ICC Transformation Order*, 26 FCC Rcd at 17811, para. 447-48. We also modified the rural broadband experiment rules to require recipients to maintain a letter of credit until their build-out is complete and verified, rather than for their entire support term. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 31 FCC Rcd 2384, 2387-88, paras. 10-13 (WCB 2016) (*2016 Model-Based Support and RBE Letter of Credit*

(continued….)

124. We do not adopt the proposals that would reduce the amount of the letter of credit to cover only the support that is disbursed for the first two years unless an entity fails to meet the first service milestone or that would cover only the support that is disbursed in the coming year.[247] Both of these approaches would not permit the Commission to recover a significant portion of the public's funds that are disbursed to an entity in the event that the entity is not using the support for its intended purposes. We recognize that some entities may continue to operate partially-built networks even in the event of a default. However, as described below, we will only authorize USAC to draw on the letter of credit for the entire amount of the letter of credit if the entity does not repay the Commission for the support associated with its compliance gap.[248] If the entity fails to pay this support amount, we conclude that the risk that the entity will be unable to continue to serve its customers or may go into bankruptcy is more likely, and thus it is necessary to ensure that the Commission can recover the entire amount of support that it has disbursed.

125. *Letter of Credit Opinion Letter*. Consistent with our requirements for Mobility Fund Phase I, Tribal Mobility Fund Phase I, and the rural broadband experiments, winning bidders must also submit with their letter(s) of credit an opinion letter from legal counsel.[249] That opinion letter must clearly state, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the account party's bankruptcy estate, or the bankruptcy estate of any other Phase II competitive bidding process recipient-related entity requesting issuance of the letter of credit under section 541 of the Bankruptcy Code.[250]

126. *Issuing Bank Eligibility*. The letters of credit for winning bidders must be obtained from a domestic or foreign bank meeting the requirements adopted herein. The record suggests that entities, especially small entities, lack established relationships with banks that met the requirements we adopted for the rural broadband experiments, which can make it costly for such entities to obtain a letter of credit.[251] Moreover, some entities may intend to bid on smaller projects, and larger banks that met our requirements for the rural broadband experiments may be unwilling to issue letters of credit below a certain threshold.[252] Because these obstacles are also faced by rural broadband experiment participants and could potentially constrain participation in the Remote Areas Fund, we conclude that it serves the public interest to expand the pool of banks that are eligible to issue letters of credit for all recipients of

(Continued from previous page)
Order). We are not persuaded that by adopting an evolving speed standard for one category of bidders we are making it "impossible" for lenders to assess the winning bidders. *See* CoBank Mar. 2015 Comments at 3-4. Our expectation is that such bidders will deploy scalable networks that can offer higher speeds over time. *See supra* Section III.A (Performance Requirements).

[247] USTelecom Mar. 2015 Comments at 2; GVNW Apr. 2015 Reply at 5; Reply Comments of the Wireless Internet Service Providers Association, WC Docket Nos. 10-90, 14-259, at 2-3 (filed Apr. 13, 2015).

[248] *See infra* Section VIII.C (Measures for Non-Compliance).

[249] *Mobility Fund Phase I Auction Procedures Public Notice*, 27 FCC Rcd at 4771, para. 171; *Tribal Mobility Phase I Procedures Auction Public Notice*, 28 FCC Rcd at 11681, para. 189; *Rural Broadband Experiments Order*, 29 FCC Rcd at 8789, para. 58.

[250] 11 U.S.C. § 541.

[251] *See, e.g.*, WISPA Mar. 2015 Comments at 8; Comments of Computer 5, Inc., WC Docket Nos. 10-90, 14-259, at 1 (filed Feb. 20,2015) (Computer 5 Feb. 2015 Comments); GVNW Apr. 14 Reply at 3; ACA/WISPA Dec. 17, 2015 *Ex Parte* Letter at 4; ACA Nov. 13, 2015 *Ex Parte* Letter at 3.

[252] *See, e.g.*, WISPA Mar. 2015 Comments at 8; GVNW Apr. 14 Reply at 3; ACA Nov. 13, 2015 *Ex Parte* Letter at 3.

support authorized through competitive bidding to serve fixed locations, while maintaining objective criteria that will provide sufficient assurance that letters of credit issued by such banks will be honored.[253]

127. Specifically, we require generally that, for U.S. banks, the bank must be insured by the Federal Deposit Insurance Corporation (FDIC) and have a Weiss bank safety rating of B- or higher.[254] This will expand the number of eligible U.S. banks from fewer than 70 banks to approximately 3,600 banks.[255] Whereas banks that intend to participate in the commercial markets obtain credit ratings,[256] Weiss rates all banks that report sufficient data for Weiss to analyze. Importantly, Weiss is a subscription service and is not compensated by the banks that it rates.[257] Weiss offers an independent and objective perspective of the safety of the banks it rates based on capitalization, asset quality, profitability, liquidity, and stability indexes.[258] By requiring that the banks have a rating of at least B-, we ensure that the bank has a rating that at a minimum demonstrates that the bank "offers good financial security and has the resources to deal with a variety of adverse economic conditions."[259] And by requiring that U.S. issuing banks also be FDIC-insured, we have the added benefit of relying on the oversight of the FDIC and its protections.[260] We conclude that this approach achieves an appropriate balance between encouraging the participation in the auction, particularly small entities, and protecting the public funds. We expand the eligibility of banks to lower barriers to participation in the auction for entities that may not otherwise be

[253] *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Order et al., 29 FCC Rcd 1433, 1477, para. 128 (2014) (noting that rural broadband experiment support "will be conditioned on complying with all relevant universal service rules that the Commission has adopted or may adopt in the future in the relevant rulemaking proceedings . . . ."). *See also, e.g,* Comments of Computer 5, Inc., WC Docket Nos. 10-90, 14-259 (filed Feb. 20,2015) (Computer 5 Feb. 2015 Comments); NRECA Mar. 2015 Comments; NTCA—The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 14-58 (filed Jan. 23, 2015) (NTCA Jan. 23, 2015 *Ex Parte* Letter); Letter from Brett Kilbourne, Vice President and Deputy General Counsel, Utilities Telecom Council, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 14-58, at 2 (filed Feb. 2, 2015) (UTC Feb. 2, 2015 *Ex Parte* Letter).

[254] Letter from Thomas Cohen, Counsel to the American Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed May 2, 2016) (ACA/WISPA May 2, 2016 *Ex Parte* Letter). Weiss bank safety ratings are available at https://weissratings.com/banks. Although Weiss requires a monthly subscription fee of $4.97 a month to access ratings information, we conclude that because this fee is minimal and can be factored into participants' bids, it does not impose an undue burden on participants. *See* Weiss Ratings, "Sign Up," https://weissratings.com/account/signup (last visited May 25, 2016).

[255] ACA/WISPA May 2, 2016 *Ex Parte* Letter at 3.

[256] ACA/WISPA Feb. 9, 2016 *Ex Parte* Letter at 5.

[257] Weiss Ratings, "Why Weiss Ratings?," https://www.weissratings.com/why-weiss-ratings (last visited May 2, 2016); ACA/WISPA May 2, 2016 *Ex Parte* Letter at 2.

[258] Weiss Ratings, "Ratings Definitions," https://weissratings.com/help/rating-definitions (last visited Apr. 29, 2016); ACA/WISPA May 2, 2016 *Ex Parte* Letter at 2.

[259] Weiss Ratings, "Ratings Definitions," https://weissratings.com/help/rating-definitions (last visited Apr. 29, 2016). *See also* ACA/WISPA May 2, 2016 *Ex Parte* Letter at 2-3 & n.3 (noting that Weiss ratings are correlated with banks that meet the "Well-Capitalized" Prompt Corrective Action threshold under Basel III Capital Adequacy Standards, that requiring a B- or higher Weiss rating acts as a "*de facto* filter" on "Well-Capitalized" banks by "filtering out many lower-end (near junk-rated) investment grade banks," that banks that are "Well-Capitalized" and banks that have a Weiss rating of B- or higher have a "negligible" failure rate, and that most of the banks that have such a Weiss rating have experience with commercial lending); WISPA/ACA Feb. 9, 2016 *Ex Parte* Letter at 2, 6-8 (providing background on the Basel III "Well-Capitalized" threshold).

[260] *See* ACA/WISPA Feb. 9, 2016 *Ex Parte* Letter at 2 (noting that "[t]he FDIC undertakes a rigorous process to evaluate the liquidity and solvency of deposit-taking institutions," and "in the event that an FDIC-insured bank fails, the FDIC solicits bids from prospective acquiring institutions and is almost always able to re-open the bank under the new acquirer").

able to obtain a letter of credit from a smaller pool of banks, while also ensuring that we put in place adequate controls to protect the Fund by adopting alternative eligibility criteria that give us independent assurance of the safety and the soundness of the bank issuing a letter of credit.

128. In lieu of obtaining a letter of credit from a U.S. bank that meets these requirements, we will also permit entities to obtain letters of credit from CoBank or the National Rural Utilities Cooperative Finance Corporation (CFC) as long as these two entities retain assets that place them among the top 100 U.S. banks,[261] and they maintain a credit rating of BBB- or better from Standard & Poor's (or the equivalent from a nationally-recognized credit rating agency).[262] These entities are not traditional banks in that they do not accept deposits from members of the public.[263] Thus, these entities do not have a Weiss bank safety rating and are not FDIC-insured. However, we find that CFC and CoBank can be considered banks in the context of our program because they use their capital resources to make loans.[264]

129. CoBank has met the more stringent issuing bank eligibility requirements for the Mobility Fund and rural broadband experiments, and has issued a number of letters of credit for these programs. Although CoBank is not FDIC-insured, it is insured by the Farm Credit System Insurance Corporation, which we found provides protections that are equivalent to those indicated by holding FDIC-insured deposits.[265] As long as CoBank retains its standing with assets equivalent to a top 100 U.S. bank and a qualified credit rating, we see no reason to exclude CoBank from eligibility simply because it is not rated by Weiss.

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[261] The entity's assets will be 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.

[262] Given our decision to adopt a rule permitting all recipients of support authorized through competitive bidding to serve fixed locations to obtain letters of credit from CFC, we dismiss petitions from CFC and from RBE recipients seeking waiver of the RBE rules to obtain a letter of credit from CFC as moot. *See* National Rural Utilities Cooperative Finance Corporation and Rural Telephone Finance Cooperative Petition for Waiver, WC Docket Nos. 10-90, 14-58 at 6 (filed Jan. 21, 2015) (CFC and RTFC Jan. 2015 Petition); Allamakee-Clayton Electric Cooperative, Inc. Petition for Waiver, WC Docket Nos. 10-90, 14-58 (filed Jan. 30, 2015) (Allamakee Petition); Midwest Energy Cooperative, Inc. Petition for Waiver, WC Docket Nos. 10-90, 14-58 (filed Mar. 20, 2015) (Midwest Petition). We note that Allamakee and Midwest were able to secure letters of credit from alternative qualified banks and have been authorized to begin receiving rural broadband experiment support. *See Rural Broadband Experiment Support Authorized for Ten Winning Bids for Skybeam, LLC, Consolidated Communications Networks, Inc., Delta Communications LLC, and Allamakee-Clayton Electric Cooperative, Inc.*, WC Docket Nos. 10-90, 14-259, Public Notice, DA 15-897 (WCB rel. Aug. 7, 2015); *Rural Broadband Experiment Support Authorized for Winning Bids Submitted by Midwest Energy Cooperative D/B/A Midwest Connections and Northern Valley Communications, LLC*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 1106 (WCB 2016). Going forward, RBE participants will be subject to the new rule.

[263] Letter from John T. Nakahata, Counsel to the National Rural Utilities Cooperative Finance Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., Attach. at 7 (filed Mar. 24, 2015) (CFC Mar. 24, 2015 *Ex Parte* Letter); Comments of CoBank, WC Docket No. 10-90, at 4 (filed July 16, 2014) (CoBank July 2014 Comments).

[264] *Id.*; Letter from Kristine Laudadio Devine, Counsel to the National Rural Utilities Cooperative Finance Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed Nov. 13, 2015) (CFC Nov. 13, 2015 *Ex Parte* Letter). *See also Mobility Fund Phase I Waiver of Section 54.1007(a)(1) of the Commission's Rules*, WC Docket No. 10-90 et al., Order, 27 FCC Rcd 13457, 13460-61, para. 9 (WTB and WCB 2012) (*Mobility Fund CoBank Waiver Order*); CoBank July 2014 Comments at 4 (noting that CoBank "is an agricultural credit bank within the [Farm Credit System] that was established by the Farm Credit Act to meet the lending needs of agribusiness and utilities, including communications in rural America," and that Cobank "provides loans, leases, [letters of credit], and other financial services to vital industries across rural America").

[265] *Rural Broadband Experiments Order*, 29 FCC Rcd at 8790, para. 60; *Mobility Fund CoBank Waiver Order*, 27 FCC Rcd at 13460, para. 9.

130. CFC's assets also make it comparable to commercial depository banks that are in the top 100 based on total assets[266] and it has a credit rating from Standard & Poor's of A.[267] But because CFC is not a depository institution and it is not part of the Farm Credit System, it is not FDIC or FCSIC-insured.[268] Nevertheless, we conclude that CFC is uniquely situated and should be made eligible to the extent it retains its standing with assets equivalent to a top 100 U.S. bank and a qualified credit rating. CFC is "owned by, and exclusively serves" rural utility providers, and CFC manages and funds its affiliate, the Rural Telephone Finance Cooperative (RTFC), which lends primarily to telecommunications providers and affiliates across the nation.[269] As the largest non-governmental lender for rural utilities,[270] CFC has specialized institutional knowledge regarding the types of entities that we expect will participate in universal service competitive bidding to serve fixed locations and has demonstrated that it has significant and long-term experience in financing the deployment of rural networks.[271] A number of entities that participated in the rural broadband experiments and entities that have expressed interest in participating future competitive bidding have indicated that they have an established relationship with CFC.[272] This unique and longstanding role in rural network deployment coupled with CFC's significant participation in other rural federal government programs,[273] its substantial assets,[274] and its sustained

[266] *See* National Rural Utilities Cooperative Finance Corporation and Rural Telephone Finance Cooperative Petition for Waiver, WC Docket Nos. 10-90, 14-58 at 6 (filed Jan. 21, 2015). *See also* Comments of the National Rural Utilities Cooperative Finance Corporation, WC Docket Nos. 10-90, 14-58 (filed Mar. 30, 2015) (CFC Mar. 2015 Comments); CFC and RTFC Jan. 2015 Petition; Letter from John T. Nakahata, Counsel to the National Rural Utilities Cooperative Finance Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Oct. 28, 2015) (CFC Oct. 28, 2015 *Ex Parte* Letter); Letter from John T. Nakahata, Counsel to the National Rural Utilities Cooperative Finance Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed July 16, 2015) (CFC July 16, 2015 *Ex Parte*); CFC Mar. 24, 2015 *Ex Parte* Letter at Attach. (requesting that CFC be made eligible to issue letters of credit).

[267] CFC Mar. 24, 2015 *Ex Parte* Letter Attach. at 15.

[268] CFC and RTFC Jan. 2015 Petition at 5.

[269] *Id.* at 3-4; CFC Mar. 24, 2015 *Ex Parte* Letter Attach. at 5.

[270] CFC and RTFC Jan. 2015 Petition at 2.

[271] *Id.* at 3-4; CFC Mar. 2015 Comments at 1 (stating that CFC has operated for over 45 years).

[272] *See, e.g.*, CFC Nov. 13, 2015 *Ex Parte* Letter at 1-2 (noting that of RTFC's "nearly 500 rural telephone members," "80 currently have existing credit facilities backed by CFC"); CFC Oct. 28, 2015 *Ex Parte* Letter at 2-3 (noting that "more than 900 members" of the National Rural Electric Cooperative Association "use CFC" and "more than 200 borrow exclusively from CFC"). *See also* NRECA Mar. 2015 Comments at 2-4; GVNW Apr. 2015 Reply at 3-4; Reply Comments of Mescalero Apache Telecom, Inc., WC Docket No. 10-90 et al., at 2-3 (filed Feb. 9, 2015) (Mescalero Apache Telecom Feb. 2015 Reply); Allamakee Petition; Lake Region Electric Cooperative, Inc. Petition for Waiver, WC Docket Nos. 10-90, 14-58 (filed Mar. 24, 2015); Midwest Petition; Letter from Michael R. Romano, Senior Vice President—Policy, NTCA—The Rural Broadband Association to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, 14-58 (filed Nov. 6, 2015); UTC Feb. 2, 2015 *Ex Parte* Letter at 2; NRECA and UTC Sept. 9, 2015 *Ex Parte* Letter at 3-4; NTCA Jan. 23, 2015 *Ex Parte* Letter.

[273] For example, CFC has entered in bond purchase agreements totaling over $4.9 billion with the Federal Financing Bank in the Department of Treasury that are guaranteed by RUS and must submit "independently audited financial statements and independently determined credit ratings" and is "periodically" audited "for compliance with regulatory and contractual requirements" as part of this process. CFC Oct. 28, 2015 *Ex Parte* Letter at 2. CFC is also listed in the Rural Electrification Act as an eligible recipient of a federal guarantee for loans made for rural electric and telecommunications purposes and is a recognized letter of credit provider to the United States Department of Agriculture as part of its Rural Economic Development Loan and Grant Program. 7 U.S.C. § 936; CFC and RTFC Mar. 2015 Comments at 3, 8; CFC and RTFC Jan. 2015 Petition at 7-8; CFC Oct. 28, 2015 *Ex Parte* Letter at 2; UTC Feb. 2, 2015 *Ex Parte* Letter at 2.

[274] CFC and RTFC Jan. 2015 Petition at 6.

credit rating,[275] provides us with sufficient assurance that CFC has the qualifications to assess the financial health of potential bidders and honor the letters of credit that it issues at the request of these bidders, without the need for the independent oversight of CFC's safety and soundness that would be offered by FDIC or FCSIC insurance or a Weiss safety rating. We conclude that based on the totality of these circumstances, CFC is eligible to issue letters of credit despite the fact that it does not meet the FDIC and Weiss rating requirements.[276] We note that we are not adopting alternative eligibility requirements that would permit banks that are not FDIC or FCSIC-insured or that do not have a Weiss bank safety rating to issue letters of credit.[277] Instead we are concluding that, for purposes of providing security for winning bidders, a letter of credit from CFC provides assurances that are equivalent to those provided by banks meeting our general criteria, due to CFC's is uniquely extensive experience in financing rural networks, its significant participation in other federal government programs, and its long-standing relationship with a class of potential auction bidders.

131. For non-U.S. banks, we retain the same eligibility requirements that we adopted for the rural broadband experiments.[278] Accordingly, for non-U.S. banks, we require that the bank be among the 100 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). The bank must also have a branch in the District of Columbia or other agreed-upon location in the United States, have a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's, and must issue the letter of credit payable in United States dollars.

132. We are not persuaded that we should further expand the bank eligibility requirements to include all banks that are federally-insured.[279] If we were to permit entities to use any bank that is federally-insured, we would need to conduct a comprehensive review of every bank to determine whether it has adequate safety and soundness. Because the Commission lacks the expertise to conduct such a review and it would delay the authorization of winning bidders, we conclude that expanding the number of eligible U.S. banks to banks that are FDIC-insured and have a Weiss bank safety rating of B- or higher addresses the concerns of small entities while also using an objective and administratively feasible method to judge the financial security of a bank.[280] We also find that relying on an independent

[275] CFC reports that it "has earned 'A' or better credit on senior secured ratings since its initial issue in 1972." CFC Mar. 24, 2015 *Ex Parte* Letter Attach. at 15.

[276] Our decision to make CFC an eligible issuer is conditioned on CFC notifying us of any significant change to any of the showings it has made to us.

[277] CFC Nov. 13, 2015 *Ex Parte* Letter at 2-3; CFC Mar. 2015 Comments at 8-9.

[278] *Rural Broadband Experiments Order*, 29 FCC Rcd at 8790, para. 60.

[279] *See, e.g.*, WISPA Mar. 2015 Comments at 7-8; GVNW Apr. 2015 Reply at 2-3; Petition of NTCA – The Rural Broadband Association for Limited Waiver of Rural Broadband Experiment Letter of Credit Requirement, WC Docket No. 10-90 et al. (filed Feb. 3, 2015) (NTCA Feb. 2015 Petition).

[280] ACA/WISPA May 2, 2016 *Ex Parte* Letter at 3 (noting that "[b]ecause Weiss provides ready access to its ratings, the Commission can easily determine whether a bank meets this criterion"). For the same reasons, we dismiss in part and deny in part NTCA's petition for waiver of the requirement that provisionally selected bidders for rural broadband experiments obtain a letter of credit from a top 100 bank. NTCA Feb. 2015 Petition. We dismiss the petition as moot in part to the extent we have expanded the potential pool of issuing banks for rural broadband experiments by adopting expanded bank eligibility requirements applicable to all recipients of support to serve fixed locations. We deny in part NTCA's petition for waiver to the extent we do not waive the rural broadband experiment rules to permit RBE recipients obtain a letter of credit from any federally-insured bank because we do not find good cause supports this request. We conclude that by expanding bank eligibility requirements by rule, we have addressed NTCA's concerns regarding the difficulty some entities, particularly small entities, face in obtaining a letter of credit from top 100 banks, and that it serves the public interest to retain independent objective criteria we can use to verify a bank is financially stable.

evaluation of the safety and soundness of a bank that uses a rating based on a number of financial indices provides a more comprehensive view of a bank's financial viability than other proposals submitted in the record that would rely solely on the size of the bank or its capitalization.[281]

133. We note that winning bidders have flexibility in how they structure their letter of credit arrangements with issuing banks and may choose to obtain multiple letters of credit over the build-out period. Entities may negotiate all the terms of their letter of credit with the issuing bank, including the length of the letter of credit, so long as the letter of credit is available to USAC for the entire duration of the build-out period and it is at a minimum an annual letter of credit that follows the terms and conditions of the Commission's model letter of credit.[282] If a recipient has been issued a letter of credit from a bank that expires during the build-out period, that recipient must notify USAC immediately and an approved replacement letter of credit must be put in place before the letter of credit expires. If a bank fails so that it is no longer able to honor a letter of credit or if the bank no longer meets the eligibility requirements we adopt herein, the recipient must notify USAC and will have 30 days to secure a letter of credit from another issuing bank that meets our eligibility requirements. We also reserve the right to temporarily cease disbursements of monthly support until a recipient submits to us a new letter of credit that meets our requirements and note that winning bidders will be subject to non-compliance measures if they fail to obtain a new and acceptable letter of credit.

134. *Letter of Credit Commitment Letter.* As we required for the Mobility Fund Phase I, Tribal Mobility Fund Phase I, and the rural broadband experiments,[283] winning bidders will be required to submit a letter from an acceptable bank committing to issue an irrevocable stand-by letter of credit, in the required form, to that entity as part of the long-form process.[284] The commitment letter will at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit, found in Appendix B.

135. *Value of Letter of Credit*. When a winning bidder first obtains a letter of credit, it must be at least equal to the first year of authorized support. Before the winning bidder can receive its next year's support, it must modify, renew, or obtain a new letter of credit to ensure that it is valued at a minimum at the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year. We conclude that requiring recipients to obtain a letter of credit on at least an annual basis will help minimize administrative costs for USAC and the recipient rather than having to negotiate a new letter of credit for each disbursement.

136. Recognizing that the risk of a default will lessen as a recipient makes progress towards building its network, we find that it is appropriate to modestly reduce the value of the letter of credit in an effort to reduce the cost of maintaining a letter of credit as the recipient meets certain service milestones.[285] Specifically, once an entity meets the 60 percent service milestone that entity may obtain a new letter of credit or renew its existing letter of credit so that it is valued at 90 percent of the total

[281] WISPA/ACA Dec. 17, 2015 *Ex Parte* Letter at 4 (suggesting that the Commission expand the bank eligibility to include "Large Commercial Banks" as defined by the Federal Reserve); WISPA/ACA Feb .9, 2016 *Ex Parte* Letter at 6-8 (proposing the Commission expand the bank eligibility to include banks that meet the "Well-Capitalized" Prompt Corrective Action threshold under Basel III Capital Adequacy Standards).

[282] *See infra* Appx. B, "Illustrative Form of Letter of Credit".

[283] *Mobility Fund Phase I Auction Procedures Public Notice*, 27 FCC Rcd at 4770-71, para. 169; *Tribal Mobility Fund Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11680-81, para. 187; *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787-88, para. 54.

[284] The requirements that a bank must meet to be deemed acceptable are described above. *See also infra* Appx. B "Illustrative Form of Letter of Credit".

[285] We similarly moderately reduced the value of the letter of credit for rural broadband experiment recipients that have met their 85 percent service milestone. *2016 Model-Based Support and RBE Letter of Credit Order*, 31 FCC Rcd at 2388, para. 11.

support amount already disbursed plus the amount that will be disbursed the next year. Once the entity meets the 80 percent service milestone that entity may obtain a new letter of credit valued at 80 percent of the total support amount already disbursed plus the amount that will be disbursed the next year. We conclude that the benefit to recipients of potentially decreasing the cost of the letter of credit as it becomes less likely that a recipient will default outweighs the potential risk that if a recipient does default and is unable to cure, we will be unable to recover a modest amount of support.

137. We are not persuaded, however, that we should further reduce the value of the letter of credit so that it only covers 50 percent of the total of support disbursed throughout the build-out period.[286] We conclude that the approach we adopt is better calibrated to the potential risk of default because it takes into account the substantial performance of the recipient. While we acknowledge that reducing the value of the letter of credit to 50 percent of the amount of support disbursed would further reduce the costs for some recipients,[287] we find that on balance accomplishing our duty as stewards of the public's funds by ensuring that we can recover a substantial percentage of the support we disburse in the event that an entity is not using the support for its intended use outweighs the potential costs for participants.[288]

138. *Applicability to All Winning Bidders*. We are not persuaded that we should exempt existing ETCs that already receive high-cost support from the letter of credit requirement.[289] As we concluded in the *Rural Broadband Experiments Order*,[290] requiring all entities to obtain a letter of credit is a necessary measure to ensure that we can recover support from any recipient that cannot meet the build-out obligations for the Phase II competitive bidding process. Compliance with existing universal service rules does not necessarily guarantee that an entity is financially qualified to undertake the obligations of the Phase II competitive bidding process. Moreover, requiring all winning bidders to obtain a letter of credit ensures that all bidders are subject to the same default process if they do not meet the required service milestones.

139. *Costs of Letters of Credit*. We continue to believe that the advantages of letters of credit in ensuring that Connect America support can be quickly reclaimed to protect ratepayers' contribution to the universal service fund, and that the support is protected from being included in a bankruptcy estate, outweigh the potential costs of obtaining letter of credit.[291] While we understand that the requirement will impose costs on participants,[292] we expect that all entities will factor the cost of letters of credit into their bids. Moreover, we anticipate that our decision to tailor the requirement so that the letter of credit will remain open for only the build-out period and modestly reduce the value of the letter of credit as the recipient meets certain service milestones will lessen the cost of maintaining a letter of credit. We also expect that by expanding the pool of eligible issuing U.S. banks to approximately 3,600 and also permitting entities to obtain a letter of credit from CFC, a bank that has an established relationship with a number of small entities, [293] will potentially further reduce the costs of obtaining a letter of credit.

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[286] WISPA Mar. 2015 Comments at 6; ARBA Petition at 10-11; Letter from Stephen E. Coran, Counsel to Skybeam, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 14-259, at 2 (filed Mar. 19, 2015) (Skybeam Mar. 19, 2015 *Ex Parte* Letter).

[287] *See, e.g.*, ARBA Petition at 5-10.

[288] Letter from Michael D. Donnell, SJB LLC, WC Docket Nos. 10-90, 14-259, at 1 (filed Apr. 14, 2015).

[289] JSI Apr. 2015 Reply at 5; Lennon Telephone Co. Apr. 22, 2015 *Ex Parte* Letter at 2.

[290] *Rural Broadband Experiments Order*, 29 FCC Rcd at 8791-92, paras. 65-66.

[291] *Id.* at 8791, para. 64. We also conclude that our rationale for finding that letters of credit do not raise due process concerns is also applicable here. *Id.* at 8793, paras. 69-71.

[292] *See, e.g.*, USTelecom Mar. 2015 Comments at 3; WISPA Mar. 2015 Comments at 3-4; Skybeam Mar. 19, 2015 *Ex Parte* Letter at 2.

[293] *See supra* paras. 126-33. *See, e.g.*, CFC Mar. 2015 Comments at 4-6; NRECA Mar. 2015 Comments at 3-4; CFC Oct. 28, 2015 *Ex Parte* Letter at 2-3.

140. *Tribal Nations and Tribally-Owned Applicants*. For the same reasons we articulated in the *Rural Broadband Experiments Order*,[294] we recognize there may be a need for greater flexibility regarding letters of credit for Tribally-owned and -controlled winning bidders.[295] Thus, if any Tribal Nation or Tribally-owned and -controlled applicant for the Phase II competitive bidding process is unable to obtain a letter of credit, it may file a petition for a waiver of the letter of credit requirement. Waiver applicants must show, with evidence acceptable to the Commission, that the Tribal Nation is unable to obtain a letter of credit because of limitations on the ability to collateralize its real estate, that Phase II support will be used for its intended purposes, and that the funding will be used in the best interests of the Tribal Nation and will not be wasted. Tribal applicants could establish this showing by providing, for example, a clean audit, a business plan including firm financials with projections of how construction will be funded, provision of financial and accounting data for review (under protective order, if requested), or other means to assure the Commission that the winning project is a viable project.[296]

c. ETC Designation Documentation

141. Consistent with our decision to require winning bidders to obtain ETC designation from the relevant states or the Commission as applicable, as discussed more fully below we will also require entities to submit appropriate documentation in their long-form application of their ETC designation in all areas for which they will receive support within 180 days of being announced as a winning bidder.[297] In addition to submitting the relevant state or Commission orders, each winning bidder should provide documentation showing that the designated areas (e.g., census blocks, wire centers, etc.) cover its winning bid areas so that it is clear that the applicant has ETC status in each winning bid area. For example, the obligation may be satisfied by providing maps of the recipient's ETC designation area, map overlays of the winning bid areas, or charts listing designated areas. Additionally, we will require winning bidders to submit a letter with their documentation from an officer of the company certifying that their ETC designation for each state covers the relevant areas where the winning bidders will receive support. These requirements will help the Commission verify that each winning selected bidder is authorized to operate in the areas where it will be receiving support. We do not anticipate that this requirement will impose an unreasonable burden on winning bidders given that we expect they will conduct their own due diligence review to ensure that their existing or new ETC designations cover their awarded areas.

3. Forfeiture

142. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission sought comment on subjecting winning bidders to a default payment if they defaulted on their bid, including if they withdrew their bid after the close of the auction, failed to timely file a long-form application, they were

[294] *Rural Broadband Experiments Order*, 29 FCC Rcd at 8792, paras. 67-68.

[295] Tribally-owned bidders are defined to include (1) Tribes which are federally recognized American Indian Tribes and Alaska Native Villages; (2) consortia of Tribes; and (3) entities that are more than 50 percent owned and controlled by a Tribe or Tribes. *See Mobility Fund Phase I Auction Procedures Public Notice*, 27 FCC Rcd at 4754, para. 95 n.158; *Tribal Mobility Fund Phase I Procedures Public Notice*, 28 FCC Rcd at 11665, para. 119.

[296] We are not persuaded that we should eliminate the letter of credit requirement for all Tribal nations and Tribally-owned carriers. *See* Mescalero Apache Telecom Feb. 2015 Reply at 4-5, 7. No commenter has demonstrated that *all* Tribal Nations or Tribally-owned carriers would be unable to get a letter of credit due to limitations on the ability to collateralize their real estate, but we recognize that some may not be able to obtain a letter of credit because of these circumstances. Because there is no clear criteria for determining whether a Tribal nation or Tribally-owned carrier will be unable to obtain a letter of credit, by requiring this specific showing we provide a vehicle for such entities to inform the Commission that they are unable to meet the letter of credit requirement.

[297] The Commission has also required Mobility Fund Phase I, Tribal Mobility Fund Phase I, and rural broadband experiment provisionally selected bidders to submit documentation of their ETC designations. *USF/ICC Transformation Order,* 26 FCC Rcd at 17809, para. 439; *Tribal Mobility Fund Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11679, paras. 180-81; *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788, para. 54.

found to be ineligible or unqualified to be a recipient of support, or their long-form application was dismissed for any reason after the close of the auction.[298]

143. *Discussion.* We conclude that any entity that files a short-form application to participate in the Phase II competitive bidding process will be subject to a forfeiture in the event of a default before it is authorized to begin receiving support.[299] We will impose a forfeiture in lieu of a default payment.[300] Specifically, we conclude that a base forfeiture per violation of $3,000, subject to adjustment based on the criteria set forth in our forfeiture guidelines, is appropriate in these circumstances given that the failure to supply the required information will prevent the Bureau from assessing a winning bidder's qualifications.[301] A $3,000 base forfeiture amount is equivalent to the base forfeiture that is imposed for failing to file required forms or information with the Commission.[302] While, as we explain below, not all defaults will relate to the failure to submit the required forms or information, we conclude that for administrative simplicity and to provide bidders with certainty as to the base forfeiture that will apply for all pre-authorization defaults, it is reasonable to subject all bidders to the same $3,000 base forfeiture per violation.[303]

144. An entity will be considered in default and will be subject to forfeiture if it fails to timely file a long-form application or meet the document submission deadlines outlined above or is found ineligible or unqualified to receive Phase II support by the Bureaus on delegated authority, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of support. We note that a winning bidder will be subject to the base forfeiture for each separate violation of the Commission's rules. For purposes of the Phase II competitive bidding process, we define a violation as any form of default with respect to the minimum geographic unit eligible for bidding. In other words, there shall be separate violations for each geographic unit subject to a bid. That will ensure that each violation has a relationship to the number of consumers affected by the default, but is not unduly punitive. Such an approach will also ensure that the total forfeiture for a default is generally proportionate to the overall scope of the winning bidder's bid.[304] To ensure that the amount of the base forfeiture is not disproportionate to the amount of an entity's bid, we also limit the total base forfeiture to five percent of the bidder's total bid amount for the support term.[305] For the Mobility Fund and Tribal Mobility Fund, the

[298] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18090, para. 1218.

[299] 47 U.S.C. § 503(b)(2)(B). *See also supra* note 206 (concluding that entities participating in the Phase II auction will be considered applicants for a common carrier authorization issued by the Commission).

[300] *See* 47 CFR § 1.21004.

[301] 47 CFR § 1.80(b)(8), note to paragraph (b)(8).

[302] *Id*.

[303] In determining the final amount of the forfeiture, consistent with the Commission's rules, the Enforcement Bureau shall take into account the nature, circumstances, extent, and gravity of the violations. 47 CFR § 1.80(b)(8). We note that above we adopt a separate forfeiture that will apply only to entities that have demonstrated that they have two years' operating history and that certify they will submit their audited financials in their long-form application and then subsequently default by not submitting their audited financials. *See supra* Section VI.B.1 (Short0Form Applications Process). We conclude that a different forfeiture is appropriate under those circumstances given that we will be relying on the certifications of entities that they will be submitting their financial information during the long-form stage in qualifying them to participate in the auction.

[304] The Commission expects that census block groups will be adopted as the minimum geographic unit. *See supra* Section VI.A (Basic Guidance on Auction Process). A winning bidder will then violate the Commission's rules for each of the census block groups included in its defaulting bid. If a winning bidder defaults on a bid that includes 10 census block groups, that entity could be subject to a base forfeiture of $30,000 (10 census block groups multiplied by the base forfeiture of $3,000).

[305] This would occur in situations where the dollar amount associated with the bid is low. For example, assume Bidder A bids to serve 100 census block groups for $100,000 over the support term, only $10,000 in annual support (continued….)

Bureaus found that five percent of the total bid amount provided sufficient incentive for auction participants to fully inform themselves of the obligations associated with participation in the auctions without being unduly punitive.[306]

145. We find that by adopting such a forfeiture, we will impress upon recipients the importance of being prepared to meet all of our requirements for the post-selection review process and emphasize the requirement that they conduct a due diligence review to ensure that they are qualified to participate in the Phase II competitive bidding process and meet its terms and conditions.

VII. ETC DESIGNATION

146. In this section, we adopt more specific details related to the implementation of the ETC designation requirement for the Phase II competitive bidding process. First, we require winning bidders in the Phase II competitive bidding process to submit proof of their ETC designation within 180 days of the public notice announcing them as winning bidders. Second, we conclude that forbearance from the section 214(e)(5) service area conformance requirement for recipients of the Phase II competitive bidding process is appropriate and in the public interest.

A. ETC Designation Timing

147. *Background.* In the *April 2014 Connect America Order*, the Commission reaffirmed that recipients of Phase II Connect America support must obtain an ETC designation from either a state public utility commission pursuant to section 214(e)(2) of the Act, or, if the relevant state lacks jurisdiction over the entity, from the Commission pursuant to section 214(e)(6) of the Act.[307] To address concerns that the ETC requirement might be a barrier to participation in the Phase II competitive bidding process, the Commission concluded that it would permit entities to obtain ETC designation *after* the announcement of winning bidders for the offer of Phase II Connect America support.[308]

148. In the *April 2014 Connect America FNRPM*, the Commission proposed requiring winning bidders to submit an application to become an ETC within 30 days of the public notice announcing they are winning bidders for the Phase II competitive bidding process.[309] The Commission also proposed adopting a rebuttable presumption that a state commission lacks jurisdiction over an ETC designation petition if the state fails to initiate a proceeding within 60 days of receiving an ETC designation application and sought comment on a similar rebuttable presumption if the state fails to act within a specific period of time, such as within 90 days of initiating a proceeding.[310]

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for all of the census block groups. We would impose a base forfeiture of $5,000 (5% of $100,000) because otherwise the base forfeiture would be $300,000, three times the entire bid amount ($3,000 x 100 CBGs). In contrast, if Bidder B bids to serve 100 census block groups for $1,000,000 over the support term, we would impose a base forfeiture of $30,000 ($3,000 x 100 CBGs), which is 3% of the total bid.

[306] *Mobility Fund Phase I Auction Procedures Public Notice*, 27 FCC Rcd at 4777, para. 187; *Tribal Mobility Fund Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11692, para. 214.

[307] *April 2014 Connect America Order*, 29 FCC Rcd at 7064, para. 42. *See also* 47 U.S.C. §§ 214(e)(2), (e)(6).

[308] *April 2014 Connect America Order*, 29 FCC Rcd at 7064, paras. 42-43.

[309] *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7112, para. 181.

[310] *Id.* at 7112-13, para. 182. For the rural broadband experiments, the Commission required that provisionally selected bidders obtain an ETC designation for their service areas from the relevant states, or the Commission if applicable, within 90 days of the release of a public notice announcing them as provisionally selected bidders. The Commission also adopted a presumption that if a state failed to act on a pending application after 90 days, an entity could request that the Commission designate it as an ETC pursuant to section 214(e)(6). 47 CFR § 214(e)(6); *Rural Broadband Experiments Order*, 29 FCC Rcd at 8778-79, para. 23. The Commission noted that waiver of the 90-day timeframe would be appropriate if a winning bidder is able to demonstrate that it had engaged in good faith efforts
(continued….)

149. *Discussion.* As noted above, we will require winning bidders for the Phase II competitive bidding process to submit proof of their ETC designation as part of the long-form application process. Such proof must be submitted within 180 days of the public notice announcing them as winning bidders. Failure to obtain ETC status and submit the required documentation by the deadline is an event of default.

150. In the rural broadband experiments, we learned that while states have diligently pursued resolution of the ETC designation applications filed by rural broadband experiment provisionally selected bidders, a number of states were unable to make a final decision on an ETC designation within a 90-day timeframe, often due to state-specific procedural requirements or because the application was contested.[311] Of the 18 provisionally selected bidders that have been authorized or are still undergoing post-selection review, only nine were able to submit documentation of their ETC designations for all of their proposed service areas within the 90-day timeframe, and several of these entities had existing ETC designations that already covered their proposed service areas. We therefore conclude that it would not be appropriate to adopt a rebuttable presumption that a state commission lacks jurisdiction over a potential recipient of support merely because the state has failed to complete an ETC proceeding within 90 days of initiating such a proceeding.

151. We note that only a limited number of provisionally selected bidders were selected for the rural broadband experiments. In the Phase II competitive bidding process, there may be situations where there are multiple winning bidders in each state that do not already have an ETC designation, and we expect that states will need to have more time to address multiple petitions. On balance, we conclude that 180 days should provide states with enough time to consider ETC designation applications, without unreasonably delaying the authorization of Phase II support and commencement of broadband deployment to consumers lacking service.[312]

152. In the event the bidder is unable to obtain the necessary ETC designations within 180 days, we find that it would be appropriate to waive the 180-day timeframe if the bidder is able to demonstrate that it has engaged in good faith efforts to obtain an ETC designation, but the proceeding is not yet complete. A waiver of the 180-day deadline would be appropriate if, for example, an entity has an ETC application pending with a state and the state's next scheduled meeting at which it would consider the ETC application will occur after the 180-day window. This is consistent with the general approach we took in the rural broadband experiments.[313]

153. We decline to adopt a hard rule requiring a winning bidder to file an ETC application within a specified amount of time to be considered acting in good faith, because, as we found in the rural broadband experiments, there were various circumstances impacting the ability of individual bidders to

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to obtain an ETC designation by filing within 15 days of being announced a provisionally selected winner, but it had not received approval within the 90-day timeframe. *Id.* at 8778, para. 22 & n.52.

[311] *See, e.g.*, *Wireline Competition Bureau Announces Rural Broadband Experiment Support for 13 Provisionally Selected Bids is Ready to be Authorized*, Public Notice, 30 FCC Rcd 9978, 9980-81 (WCB 2015) (finding good cause to grant Skybeam's petition for waiver of the ETC designation deadline).

[312] The Pennsylvania Public Utility Commission suggests that we set a deadline of 270 days after the initiation of the proceeding for state commissions to grant or deny a petition. Reply Comments of the Pennsylvania Public Utility Commission, WC Docket No. 10-90 et al., at 8 (filed Sept. 8, 2014) (Pennsylvania PUC Sept. 2014 Reply). However, we note that a number of state commissions were able to designate ETCs for the rural broadband experiments in much less time and that adopting such a timeline could potentially delay the distribution of support for more than a year after the entity is announced as a winning bidder. Instead, we conclude that a 180-day timeframe will provide states with the incentive to act expeditiously. By providing a waiver opportunity for entities that are acting in good faith to seek an ETC designation in states that need more time, the Commission will account for the states that have procedural requirements or resource issues that make it difficult to issue a designation within 180 days.

[313] *Rural Broadband Experiments Order*, 29 FCC Rcd at 8778, para. 22 n.52.

file their ETC applications.[314] We expect that winning bidders will have an incentive to file their ETC applications expeditiously so that they can meet the requirements to begin receiving support as soon as possible. Instead, based on what we observed in the rural broadband experiments, when considering waivers of the 180-day timeframe for obtaining ETC designation, we will presume that an entity will have acted in good faith if the entity files its ETC application within 30 days of the release of the public notice announcing that it is a winning bidder.[315]

154. We are not persuaded that we need to take the further step of adopting a rebuttable presumption that a state lacks jurisdiction in the event that the ETC does not act on a petition within a certain amount of time or does not make a final decision on a petition within a certain amount of time.[316] A number of state commenters explained that they need varying amounts of time to handle ETC petitions based on their available resources, the complexity of the application, and whether it is contested.[317] We have found through our experience with the rural broadband experiments that while some states may need more time to initiate action and make a decision on applications, they are committed to acting diligently within the framework of their existing state processes to act on ETC requests to expand voice and broadband-capable networks to their residents. We saw no situations in the rural broadband experiments where a state refused to initiate action on a petition, took an unreasonable amount of time to declare that it did not have jurisdiction over a particular carrier, or delayed making a decision on an application for no legitimate reason.[318] And we note that any circumstances where a state will need more time due to procedural requirements or resource issues can be dealt with through the waiver process outlined above.

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[314] *See*, *e.g.*, DISH/Hughes Aug. 2014 Comments at 6; WISPA Aug. 2014 Comments at 10.

[315] Consistent with the rural broadband experiments, we delegate authority to the Wireline Competition Bureau to act on any such waivers. *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788, para. 54 n.95.

[316] *See*, *e.g.*, ACA Aug. 2014 Comments at 15; DISH/Hughes Aug. 2014 Comments at 5-6; USTelecom Aug. 2014 Comments at 24; UTC Aug. 2014 Comments at 23-24. We also do not at this time make any rules regarding state-imposed ETC obligations or permit winning bidders to default without penalty if states impose obligations on ETCs. *See* AT&T Aug. 2014 Comments at 50. AT&T does not provide any evidence regarding which state regulations are "inconsistent with the Commission's rules to preserve and advance universal service," or if the regulations relate to "additional definitions and standards to preserve and advance universal service," that the regulations do not "adopt specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms." 47 U.S.C. § 254(f). Absent a specific showing, we decline to preempt state obligations or permit winning bidders to refuse to follow state rules generally, and we also decline to impose a blanket prohibition on the methods states use to impose such obligations. To extent a winning bidder is subject to a state rule that it believes violates section 254(f) of the Act, it can file a petition with the Commission requesting preemption of that state rule. *Id*.

[317] *See, e.g.*, Comments of the California Public Utilities Commission, WC Docket No. 10-90 et al., at 6-8 (filed Aug. 8, 2014) (describing the process that the PUC takes to review ETC petitions with a typical review taking "close to, if not beyond, 90 days" and more complex petitions that "without question, would take more than the proposed 90-day period"); Reply Comments of the Massachusetts Department of Telecommunications and Cable, WC Docket No. 10-90 et al., at 4-5 (filed Sept. 8, 2014) (Massachusetts DTC Sept. 2014 Reply) (noting that "[t]iming is affected by the availability of staff resources; the [Massachusetts DTC's] docket and other agency duties; and other matters arising during the course of the proceeding, including issues that arise from FCC rule-making, intervention requests and oppositions, motion practice, discovery, and corresponding appeals"); Pennsylvania PUC Sept. 2014 Reply at 7 (describing how the PUC must provide appropriate due process for ETC designation petitions by providing the opportunity for comment and how "delays . . . inevitably ensue").

[318] We note that at least one entity encountered delays in obtaining a timely ETC designation due to a challenge by an incumbent rural telephone company. *See, e.g.*, Northeast Rural Services, Inc. Motion to Withdraw Census Blocks from Rural Broadband Experiment Awards and Motion to Dismiss ETC Waiver Petitions as Moot, WC Docket Nos. 10-90, 14-259 (filed Aug. 14, 2015) (NRS Aug. 14, 2015 Petition). We expect that our decision below to grant forbearance from the service redefinition process will help alleviate some of the delay that may be involved in granting an ETC designation petition in areas served by rural telephone companies. *See infra* Section VII.B (Forbearance from Service Area Redefinition Process).

Accordingly, to preserve the primary role that Congress gave the states in designating ETCs, we reaffirm that we will act on an ETC designation petition pursuant to 214(e)(6) "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."[319]

155. Due to our experience with the rural broadband experiments, we also continue to conclude that there is nothing in the record before us concerning the designation of ETCs that would warrant changing the existing framework by adopting rules requiring states to streamline their review of ETC petitions, or adopting a rebuttable presumption that states do not have jurisdiction over certain types of providers for purposes of the Phase II competitive bidding process.[320] The rural broadband experiments have shown us that obtaining an ETC designation from a state commission generally has not been too burdensome for most entities. Instead, most of the wide variety of entities that submitted bids and were provisionally selected did not face unreasonable delays in obtaining ETC designations. We note that a number of states acted on ETC applications that were submitted by WISPs, and only two states concluded that they lacked jurisdiction over particular providers, two that are WISPs that would provide VoIP service and one that is an electric company.[321] Accordingly, we are not persuaded that we should disturb the statutory construction giving states primary jurisdiction in designating ETCs. We also note that requiring that all entities seek ETC designation from the relevant states first rather than going straight to the Commission will ensure that all participants in the Phase II competitive bidding process must follow the same procedural requirements for submitting an application to obtain an ETC designation.[322]

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[319] *See* 47 U.S.C. §§ 214(e)(2), (e)(6); *Federal-State Joint Board on Universal Service et al.*, 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. 7 (2000) (*Twelfth Report and Order*).

[320] *See, e.g.*, Comments of the National Cable & Telecommunications Association, WC Docket No. 10-90 et al., at 12-13 (filed Jan. 18, 2012) (NCTA Jan. 2012 Comments); Satellite Broadband Providers Feb. 2012 Reply at 20; Reply Comments of ViaSat, Inc. WC Docket No. 10-90 et al., at 18-20 (filed Mar. 18, 2013).

[321] *See* Petition of BARConnects, LLC for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, WC Docket No. 09-197 et al., at 4-5 (filed Apr. 22, 2015) (noting that on March 18, 2015 BARConnects filed a request with the Virginia State Corporation Commission for an ETC designation in Virginia and that on March 30, 2015 the Virginia State Corporation Commission issued an order stating that it had not asserted jurisdiction over service providers like BARConnects and that the entity should seek designation from the FCC); Petition of SJB LLC d/b/a San Joaquin Broadband for Designation as an Eligible Telecommunications Carrier in the State of California, WC Docket No. 09-197 et al., at 5-6 (filed Mar. 5, 2015) (noting that on December 18, 2014 SJB LLC filed a request for an ETC designation in California, and that on February 23, 2015 the California Public Utilities Commission confirmed that it "has not asserted jurisdiction over WISPs, and is barred by state law from exercising jurisdiction over VoIP providers"); Petition of Declaration Networks Group, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Virginia, WC Docket No. 09-197 et al., at 5-6 (filed Jan. 21, 2015) (noting that on December 30, 2014 Declaration Networks Group filed a request with the Virginia State Corporation Commission for an ETC designation in Virginia and that on January 15, 2015 the Virginia State Corporation Commission issued an order stating that it had not asserted jurisdiction over service providers like Declaration Networks Group and that the entity should seek designation from the FCC).

[322] *See, e.g.*, Reply Comments of Independent Telephone & Telecommunications Alliance, WC Docket No. 10-90 et al., at 7 (filed Feb. 17, 2012) (ITTA Feb. 2012 Reply). This requirement does not affect the long-standing framework established by the Commission to determine whether a state commission or the FCC itself has jurisdiction to designate ETCs serving Tribal lands. *See Twelfth Report and Order,* 15 FCC Rcd at 12265-69, paras. 115-27, recon. sub nom. *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas et al.*, CC Docket No. 96-45, Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10958, 10964, para. 11 n.28 (2003) (*Tribal Recon. Order*). *See also Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas*, WC Docket No. 09-197, Memorandum Opinion and Order, 25 FCC Rcd 12388, 12393, para. 14 (continued….)

156. We also decline to automatically grant petitions after they have been pending with the states for a certain amount of time.[323] Determining whether an entity is qualified to become an ETC is a fact-intensive inquiry, and the more complex and contested petitions are likely to take more time.[324] It would be adverse to the public interest to forgo this inquiry into an entity's qualifications simply because an application is taking more time to review.[325]

B. Forbearance from Service Area Redefinition Process

157. *Background.* The Act and the Commission's current rules define the term "service area" and how it is established for each ETC. An ETC's "service area" is a geographic area within which an ETC has universal service obligations and may receive universal service support.[326] A carrier seeking to become an ETC typically requests designation in a specific service area, but it is the agency designating that carrier—either the FCC or the appropriate state commission—that establishes the ETC's service area.[327] Section 214(e)(5) of the Act requires that the competitive ETC's service area must conform to the rural telephone company's service area "unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board . . . establish a different definition of service area for such company."[328] Accordingly, if a commission wishes to designate a competitive ETC for an area that differs from a rural telephone company's existing service area, that rural service area must first be redefined under the process set forth under the Act.[329]

158. For the Mobility Fund Phase I auction, the Commission forbore from requiring that the service areas of an ETC conform to the service area of any rural telephone company serving the same area, pursuant to section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules.[330] Like

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(WCB 2010) (*Standing Rock I*); *Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas; Petition for Reconsideration of Standing Rock Telecommunications, Inc.'s Designation as an Eligible Telecommunications Carrier on the Standing Rock Sioux Reservation,* WC Docket No. 09-197, Memorandum Opinion and Order on Reconsideration, 26 FCC Rcd 9160, 9163, para 10 (2011) (*Standing Rock II*).

[323] *See, e.g.*, NCTA Jan. 2012 Comments at 13.

[324] *See* Rural Associations Aug. 2014 Comments at 62 ("[T]o the extent any ETC is a relatively new entity just recently formed to seek out and secure universal service dollars, the state may have legitimate, complex questions about the entity's financial, managerial, and technical capability to provide *sustainable* voice and broadband services that meet the Commission's (and the state's own) expectations with respect to reasonable price and service quality to consumers, as well as COLR responsibilities, in that jurisdiction.") (emphasis in original).

[325] *See, e.g.*, ITTA Feb. 2012 Reply at 5-6.

[326] *See* 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a).

[327] 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a). Prior to the *USF/ICC Transformation Order*, 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. *USF/ICC Transformation Order*, 26 FCC Rcd at 17825, para. 498. In reviewing a potential redefinition of a rural service area in evaluating a request for ETC designation, the Commission and the states traditionally have taken into account three factors recommended by the Federal-State Joint Board on Universal Service: cream skimming, the Act's special treatment of rural telephone companies, and the administrative burdens of redefinition. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, paras. 172-74 (1996) (*Federal-State Joint Board 1996 Recommended Decision*). A carrier "cream-skims" when it serves only those consumers that are least expensive to serve. *See Universal Service First Report and Order*, 12 FCC Rcd at 8881-82, para. 189.

[328] 47 U.S.C. § 214(e)(5); *see also* 47 CFR § 54.207(b).

[329] 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(c), (d).

[330] *Id.*; *Connect America Fund et al.*, WC Docket No. 10-90 et al., Second Report and Order, 27 FCC Rcd 7856 (2012). The Commission also granted forbearance from these requirements to petitioners for Lifeline-only ETC
(continued….)

Mobility Fund Phase I, some of the price cap carrier study areas that may become eligible for the Phase II competitive bidding process meet the statutory definition so that the carrier serving those study areas would be classified as a rural telephone company.

159. *Discussion.* We now conclude that forbearance from the section 214(e)(5) service area conformance requirement for recipients of the Phase II competitive bidding process is appropriate and in the public interest. As we discuss in more detail below, the Commission has decided that it is a more efficient use of Connect America support to provide support to only one provider in a given geographic area in exchange for that provider's commitment to offer service that meets the Commission's requirements throughout the funded area. If the rural telephone affiliate of a price cap carrier declines the offer of support and another entity is selected as the winning bidder to serve a portion of its area through the competitive bidding process, the incumbent will be replaced by the Phase II competitive bidding recipient in those areas, and the incumbent's legacy service area will no longer be a relevant consideration in determining where the winning bidder should be designated as an ETC.

160. Accordingly, for those entities that obtain ETC designations as a result of being selected as winning bidders for the Phase II competitive bidding process, we forbear from applying section 214(e)(5) of the Act and section 54.207(b) of our rules, insofar as those sections require that the service area of such an ETC conform to the service area of any rural telephone company serving an area eligible for Phase II support. We note that forbearing from the service area conformance requirement eliminates the need for redefinition of any rural telephone company service areas in the context of the Phase II competitive bidding process.[331] However, if an existing ETC seeks support through the Phase II competitive bidding process for areas within its existing service area, this forbearance will not have any impact on the ETC's pre-existing obligations with respect to other support mechanisms and the existing service area.

161. We conclude that forbearance is warranted in these limited circumstances. As we noted above, our objective is to distribute support to winning bidders as soon as possible so that they can begin the process of deployment new broadband to consumers in those areas. Case-by-case forbearance would likely delay our post-selection review of entities once they are announced as winning bidders. The Act requires the Commission to forbear from applying any requirement of the Act or our regulations to a telecommunications carrier if the Commission determines that: (1) enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest.[332] We conclude each of these statutory criteria is met for winning bidders of the Phase II competitive bidding process.

162. *Just and Reasonable.* We conclude that compliance with the service area conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is not necessary to ensure that the charges, practices, and classifications of carriers designated as ETCs in areas

(Continued from previous page)
designations where the circumstances met the applicable criteria. *Telecommunications Carriers Eligible for Universal Service Support; NTCH, Inc. Petition for Forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b); Cricket Communications, Inc. Petition for Forbearance*, WC Docket No. 09-197, Order, 26 FCC Rcd 13723 (2011).

[331] Accordingly, Commission rules regarding the redefinition process are inapplicable to petitions that are subject to this order. *See* 47 CFR § 54.207(c), (d).

[332] 47 U.S.C. § 160(a). *See also* 47 U.S.C. § 160(b) (directing the Commission, in "making the determination under subsection (a)(3) of this section, [to] consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services").

for which support is authorized through the Phase II competitive bidding process are just and reasonable and not unjustly or unreasonably discriminatory.[333] As discussed below, we find that the three factors traditionally taken into account by the Commission and the states when reviewing a potential redefinition of a rural service area pursuant to section 214(e)(5) of the Act no longer apply in the context of designating ETCs in areas for which support is authorized through a Phase II competitive bidding process. Moreover, all ETCs—whether rural ETCs or other entities designated as ETCs in areas eligible for Phase II competitive bidding support in order to receive such support—will continue to be subject to the requirements of the Act and of the Commission's rules that consumers have access to reasonably comparable services at reasonably comparable rates.[334] In fact, as we discuss below, the expansion of voice and broadband-capable networks into these unserved Phase II areas may expand the choice of telecommunications services for consumers living in areas located near the Phase II funded areas. The resulting competition is likely to help ensure just, reasonable, and nondiscriminatory offerings of services. For these reasons, we find that the first prong of section 10(a) is met.

163. *Consumer Protection.* We also conclude that it is not necessary to apply the service area conformance requirement to a winning bidder in the Phase II competitive bidding process to protect consumers.[335] Forbearance from the service area conformance requirement in these limited circumstances will not harm consumers currently served by the rural telephone companies in the relevant service areas. To the contrary, these consumers will benefit because an entity that replaces the incumbent rural telephone company as the only ETC receiving support to serve the area will be required to use its Phase II competitive bidding process support to expand voice and broadband-capable networks with service quality that meets the Commission's requirements. Moreover, Phase II recipients, like all ETCs, will be required to certify that they will satisfy applicable consumer protection and service quality standards in their service areas.[336] For these reasons, we find that the second prong of section 10(a) is met.

164. *Public Interest.* We conclude that it is in the public interest to forbear from the service area conformance requirement in these limited circumstances. As we explained above, by deciding to distribute Phase II support through a competitive bidding mechanism and eliminating the identical support rule, the Commission has set up a system under which only one ETC will receive support to serve Phase II eligible areas.[337] In circumstances where the incumbent declines the offer and does not win support (either because it does not bid, or is outbid by another provider), the Commission has decided that the competitive winner will replace the incumbent as the only provider that will be required to provide supported services in that area in exchange for receiving support. We note that if the incumbent price cap carrier chooses not to bid or loses in the competitive bidding process and is replaced by the Phase II auction winning bidder, it will no longer have the federal ETC obligation to provide voice service in that area and it can apply for permission to discontinue its provision of voice service through the section 214(a) discontinuance process,[338] and relinquish its ETC designation for those areas pursuant to section 214(e)(4).[339] Thus, a rural telephone carrier's service area is no longer a relevant consideration in determining where a Phase II competitive bidding process recipient should be designated as an ETC.

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[333] 47 U.S.C. § 160(a)(1).

[334] 47 U.S.C. § 254(b)(3); *see also, e.g.*, 47 CFR §§ 54.309, 54.313(a)(10), (12).

[335] 47 U.S.C. § 160(a)(2).

[336] 47 CFR § 54.313.

[337] *USF/ICC Transformation Order*, 26 FCC Rcd at 17732, 17830, paras. 179, 509.

[338] 47 U.S.C. § 214(a). We do not prejudge how the Commission will rule on any section 214 discontinuance application. The Commission's review of each application will be a separate, fact-specific inquiry under the statute and the Commission's implementing rules and policies.

[339] 47 U.S.C. § 214(e)(4). The Act states that a state commission or the FCC "shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one

(continued….)

165. Accordingly, the analysis that the relevant state and the Commission historically undertook when deciding whether to redefine a rural telephone carrier's service area is not applicable to the Phase II competitive bidding process. Past concerns that an ETC serving only a relatively low cost portion of a rural carrier's service area might cream skim by receiving per line support based on the rural carrier's cost of serving the entire area are not relevant to Phase II support, which will be awarded through a competitive process.[340] The incumbent rural telephone company will no longer be receiving support to serve the area won by another entity, the Phase II recipient's support will be based on the amount it bids to serve the area, and the Phase II recipient will be required to use its support to serve areas that the marketplace will not serve absent those subsidies. Because the service area redefinition analysis is not relevant to Phase II, it no longer serves the public interest for the states and the Commission to work together to define the service area of Phase II recipients serving rural telephone companies' service areas. We note that the actions we take today do not otherwise impact the state's primary role in designating ETCs.[341]

166. Similarly, the concerns about protecting rural carriers and avoiding the imposition of additional administrative burden on such carriers that led to the adoption of the service area conformance requirement nearly two decades ago are not applicable in these limited circumstances.[342] First, we note that the affected incumbent rural telephone companies are affiliated with price cap holding companies, which typically serve both rural and urban areas. Second, each incumbent rural telephone company will not be automatically replaced by a competitive provider. Each price cap carrier holding company had the opportunity to accept model-based support and be the sole Connect America-supported provider throughout its territory.[343] The price cap carrier holding company will also have the opportunity to compete so that Connect America support is provided to the most efficient provider. Only if the price cap carrier holding company chooses not to participate in the Phase II competitive bidding process or loses to a competitive carrier will it be replaced by a competitive provider as the sole recipient of Connect America support. Finally, we note that our decision to grant forbearance in these limited circumstances does not impose any additional administrative requirements on rural telephone companies.

167. We also note that requiring each Phase II recipient to conform its service areas to those of the rural telephone companies in the states they seek to serve could result in lengthy redefinition proceedings, which may delay our post-selection review of winning bidders and consequently delay our distribution of support and the deployment of advanced voice and broadband-capable networks. Some rural broadband experiment provisionally selected bidders found that it was time-consuming to obtain ETC designations in circumstances where the incumbent rural telephone company challenged their ETC

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eligible telecommunications carrier." *Id.* In December 2014, the Commission granted limited forbearance from the federal high-cost requirement that price cap carriers offer voice telephone service throughout their service areas pursuant to section 214(e)(1)(A) in three types of geographic areas (1) census blocks that are determined to be low-cost, (2) all census blocks served by an unsubsidized competitor as defined in our rules, offering voice and broadband at speeds of 10/1 Mbps, and (3) census blocks where a subsidized competitor—i.e., another ETC—is receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations. *See December 2014 Connect America Order*, 29 FCC Rcd at 15663-71, paras. 50-70.

[340] *See Universal Service First Report and Order*, 12 FCC Rcd at 8881-82, para. 189.

[341] *See* 47 § U.S.C. 214(e)(2).

[342] *See Federal-State Joint Board 1996 Recommended Decision*, 12 FCC Rcd at 180, paras. 173-74; *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1582, paras. 43-44 (2004).

[343] Some price cap carrier holding companies serving non-contiguous areas have also elected to receive frozen support in lieu of model-based support. *See* ACS Jan. 2, 2015 *Ex Parte* Letter; Vitelco Dec. 29, 2014 *Ex Parte* Letter; PRTC Dec. 22, 2015 *Ex Parte* Letter. The service obligations for these carriers remain pending.

petitions.[344] We expect that the forbearance we provide here will help accelerate the ETC designation process when applications are challenged because the state commission will not need to seek the Commission's agreement through a service redefinition process or wait 90 days for the service redefinition to be automatically granted if the Commission is unable to act within 90 days.[345]

168. Finally, we conclude that the forbearance in these limited circumstances will not harm competitive market conditions.[346] If anything, forbearance may enhance competition by introducing new service providers to the market. Price cap carriers that have an existing network and customers in the areas won by another entity may choose to continue to operate in those areas, albeit without subsidies. And as the Phase II recipient is building a network in its funded areas, it may also find that it has a business case to build its network and provide service to customers in surrounding areas, thereby increasing competition and providing more options for consumers.

VIII. ACCOUNTABILITY AND OVERSIGHT

169. In this section we adopt measures for ensuring that recipients of Connect America support to serve fixed locations awarded through a competitive bidding process use their support for its intended purposes. First, we adopt reporting requirements that will enable the Commission to monitor recipients' progress in meeting their deployment obligations. Second, we explain how the letter of credit requirement we adopt above will work with the existing support reduction framework we adopted in the *December 2014 Connect America Ord*er to calibrate support reductions to the extent of a recipient's non-compliance with its build-out obligations.[347] Finally, we clarify that for the section 54.314 certification, the relevant states or ETCs may certify that support was used for its intended purpose for a given year if it is set aside in an account dedicated specifically for upgrades necessary to meet the relevant requirements.[348]

A. Monitoring Progress in Meeting Deployment Obligations

170. *Background.* In the *USF/ICC Transformation Order*, the Commission required that all recipients of high-cost support file with their section 54.313 annual reports a progress report on their service quality improvement plans.[349] In the *December 2014 Connect America Order*, the Commission required all price cap carriers accepting model-based support to include in their annual progress reports a list of the geocoded locations to which they have newly deployed facilities capable of meeting the Commission's requirements and report the total amount of Connect America support, if any they used for capital expenditures in the previous calendar year.[350] In the *2016 Rate-of-Return Reform Order*, the Commission eliminated the requirement that price cap carriers file service quality improvement plans and annual updates.[351] The Commission also made a small adjustment to the Phase II model-based support reporting rules to require price cap carriers to report their deployment information no later than March 1st of each year and encouraged them to submit locations on a rolling basis to an online portal that the

[344] *See, e.g.*, NRS Aug. 14, 2015 Petition (requesting that the Commission withdraw certain census blocks from its bids after it experienced delays in obtaining an ETC designation in areas served by rural telephone companies).

[345] 47 CFR § 54.207(c).

[346] 47 U.S.C. § 160(b) (directing the Commission, "[i]n making the determination under subsection (a)(3) of this section, [to] consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services").

[347] *December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-54.

[348] 47 CFR § 54.314.

[349] 47 CFR § 54.313(a)(1); *USF/ICC Transformation Order*, 26 FCC Rcd at 17852, para. 580.

[350] *December 2014 Connect America Order*, 29 FCC Rcd at 15688-90, paras. 125-28.

[351] *2016 Rate-of-Return Reform Order* at 82, para. 220.

Commission directed the Bureau to work with USAC to develop.[352] The Commission adopted similar location reporting requirements for rate-of-return carriers.[353]

171. Above, we adopted service milestones for recipients of Phase II competitive bidding process support and established a six-year deployment schedule.[354] In the *December 2014 Connect America Order*, the Commission adopted non-compliance measures for all Phase II recipients that fail to meet established service milestones.[355] An entity that fails to meet the required service milestones will be subject to support reductions that are calibrated to the extent of the ETC's non-compliance.[356]

172. *Discussion.* We conclude that the public interest will be served by adopting reporting requirements for recipients of support to serve fixed locations awarded through a competitive bidding process comparable to that adopted for price cap carriers accepting model-based support and rate-of-return carriers.[357] These reporting obligations will enhance our ability to monitor the use of Connect America support and ensure that it is being used for its intended purposes. Specifically, we require such recipients of support to submit annually the number and list of the geocoded locations to which they are offering broadband meeting the requisite requirements with Connect America support in the prior 12-month period.[358] Because we anticipate that recipients will use a variety of technologies and it would be useful to understand what types of networks ETCs are deploying so that we can monitor the use of Connect America support, we also require that the list specify the types of technology (e.g., fixed wireless, fiber) that is being used to offer service to each location.

173. The first location list will be due by the last business day of the second calendar month following the one-year anniversary of support authorization and must reflect the number and list of geocoded locations (if any) where the recipient already was offering service meeting the Commission's requirements and all new locations (if any) where the recipient was offering service meeting the requisite requirements by the end of the first year.[359] Phase II auction recipients will then be required to submit a

[352] *Id.* at 81-82, paras. 218-19.

[353] *Id.* at 77-80, paras. 209-13.

[354] *See supra* Section III.B (Interim Deployment Obligations).

[355] *December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-54.

[356] *Id.*

[357] *See* 47 CFR §§ 54.313(e), 54.316. *See also 2016 Rate-of-Return Reform Order* at 77-83, paras. 209-23; *December 2014 Connect America Order,* 29 FCC Rcd at 15688-89, para. 125. Ultimately, from a reporting perspective all recipients of Connect America support subject to broadband public interest obligations will be subject to the same framework, although the specific details of reporting implementation may vary. This section does not apply to recipients of the rural broadband experiments. We adopted separate reporting requirements for those recipients that continue to apply. *Rural Broadband Experiments Order*, 29 FCC Rcd at 8795-97, paras. 76-85.

[358] For the price cap carriers accepting the offer of model-based Phase II support, and rate-of-return carriers electing the voluntary path to the model-based support, we set a support term based on the calendar year because all of the companies were or will be authorized for funding within a relatively short time. In contrast, we recognize that funding authorizations for auction winners may occur on a rolling basis as long-form application review is completed, and therefore the beginning of the term of support for winning bidders will not necessarily be the same for all winning bidders. We delegate authority to the Bureau to specify the format of these required reports and adjust the timing of submission, as necessary for administrative efficiency. The Bureau will announce the specific deadlines when funding is authorized.

[359] In the *2016 Rate-of-Return Reform Order*, recognizing that some providers have a number of customers that do not have postal addresses that easily can be geocoded with readily available applications, we directed the Bureau to work with USAC to develop a means of accepting alternative information in such instances. We also delegated authority to the Bureau to act on individual requests for waiver of this requirement in those cases where parties can demonstrate other unique circumstances that make compliance with the geocoding requirement for a subset of locations impracticable. *2016 Rate-of-Return Reform Order* at 79, para. 212 n.465.

list of locations where they are newly offering service by the last business day of the second calendar month following each subsequent support year until they have met the final service milestone.[360] Phase II auction recipients will be free—and indeed, encouraged—to submit information on a rolling basis throughout the year to the online portal, as soon as service is offered, so as to avoid filing all of their locations at the deadline. A best practice would be to submit the information no later than 30 days after service is initially offered to locations in satisfaction of deployment obligations, to avoid any potential issues with submitting large amounts of information at year end.

174. We will also require that Phase II auction recipients file certifications that they have met their interim service milestones and are meeting the requisite public interest obligations by the last business day of the second calendar month following each relevant service milestone. As noted above, if an entity is able to build out its network more quickly to offer service and close-out its letter of credit before the final build-out deadline, it may notify the Commission at any time that it has met its final service milestone, and submit its final build-out certification and location list at that time. This notification will trigger USAC's verification that the build-out has been completed.[361]

175. We find that collecting this information from recipients of support to serve fixed locations awarded through the competitive bidding process serves the public interest for the same reasons as collecting this information from price cap carriers and rate-of-return carriers accepting model-based support. As recommended by the Government Accountability Office, the Commission and USAC will analyze the data and determine how Connect America support is being used to "improve broadband availability, service quality, and capacity."[362] As we have already decided, these data will also be made publicly available at a granular level and in a user friendly manner.[363] We find that the benefits in collecting this information outweigh any potential burdens on the recipients in reporting these data, given that we expect that recipients will be already collecting such data for their own business purposes, to certify that they have met service milestones, and to be prepared to respond to compliance reviews that we direct USAC to undertake. These auction recipients that fail to file their location lists and build-out certifications by the required deadline will be subject to the support reduction scheme in section 54.316(c) of the Commission's rules.[364]

176. We will also require these auction support recipients to certify each year after they have met their final service milestone that the network they operated in the prior year meets the Commission's

[360] The support year starts on the anniversary date of authorization and ends 12 months from that date. For example, if an ETC is authorized to begin receiving support September 1, 2017, its first support year would end August 31, 2018 and its first location list would be due October 31, 2018. If an ETC is authorized to begin receiving support September 15, 2017, its first support year would end September 14, 2018 and its first location list would be due November 30, 2018. If an ETC is authorized to begin receiving support September 29, 2017, its first support year would end September 28, 2018 and its first location list would be due November 30, 2018. While this schedule may result in some ETCs having more time to file their locations than others at the end of each support year, we find that the administrative convenience of standardizing the location submission dates so that they are at the end of the month outweighs any potential burdens, particularly given that we expect that ETCs will be submitting locations on a rolling basis throughout the support year.

[361] *See supra* Section VI.B.2.b (Letters of Credit).

[362] *See* Government Accountability Office, FCC Should Improve the Accountability and Transparency of High-Cost Program Funding GAO 14-587 (July 2014), http://www.gao.gov/assets/670/664939.pdf.

[363] In the *Rate-of-Return Reform Order*, we directed USAC to "provide the public with the ability to easily view and download non-confidential high-cost information, including non-confidential information collected on the Form 481 and the geocoded location information . . . for both individual carriers and in aggregated form." *Rate-of-Return Reform Order*, at 82, para. 221. That requirement extends to the information that will be collected from entities awarded support through the competitive bidding process.

[364] *See* 47 CFR § 54.316(c).

performance requirements.[365] Phase II auction recipients will continue to receive support after they have met their service milestones. This requirement will ensure that the Commission is able to monitor that Phase II auction recipients are continuing to use their Phase II auction support for its intended use, and they are continuing to offer service meeting the relevant minimum requirements. Because at this point in their support terms, Phase II auction recipients will no longer be filing their build-out certifications and locations lists, we conclude that it is reasonable to collect this certification in recipients' annual section 54.313 reports due July 1st that Phase II auction recipients will already be filing each year.[366]

177. We conclude that the benefit to the Commission in being able to track the progress of Phase II recipients and monitor their use of the public's funds outweighs the potential costs that will be imposed on recipients. We expect that Phase II auction recipients will already be tracking their progress and their expenses before they have to meet their first service milestone and then monitoring their network's performance after their build-out is completed to meet the terms and conditions of Phase II auction support. Accordingly, we do not anticipate that these additional reporting requirements will impose unreasonable costs on recipients.

178. We will also require recipients of Phase II competitive bidding support to identify the total amount of Phase II support, if any, that they used for capital expenditures in the previous calendar year.[367] We will collect this information in recipients' annual section 54.313 reports, recognizing that recipients will be required to file annual reports throughout their support term.[368] As we concluded in the *December 2014 Connect America Order*,[369] the benefit to the Commission of being able to determine how recipients are using Phase II funding outweigh any potential burden on those recipients in submitting this information given that we expect they will track their capital expenditures for Phase II in the regular course of business. Such information also may help the Commission determine whether alternative approaches are necessary to maintain universal service at the conclusion of the term of Phase II support. We note that all Phase II auction recipients should begin filing their section 54.313 annual reports starting the year after they begin receiving support. If they have not begun to offer service and have no customers at this time, they will be able to indicate this in the report.

179. Finally, we will require that in each section 54.313 annual report that is filed by Phase II recipients during their support term, they will be required to certify that they have available funds for all

[365] We note that Phase II recipients may be subject to additional reporting requirements once a specific methodology for testing speed and latency are adopted. *See* 47 CFR § 54.313(a)(11); *Wireline Competition Bureau, Wireless Telecommunications Bureau, and the Office of Engineering and Technology Seek Comment on Proposed Methodology for Connect America High-Cost Universal Service Support Recipients to Measure and Report Speed and Latency Performance to Fixed Locations*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 12623 (WCB et al. 2014) (*Connect America Broadband Performance Measurement Public Notice*).

[366] 47 CFR § 54.313.

[367] *See December 2014 Connect America Order*, 29 FCC Rcd at 15689, para. 127; 47 CFR § 54.313(e). We note that RUS will be requiring its borrowers to use no less than a certain percentage of each annual payment received from the Commission for the construction of new facilities if the bank that is issuing the winning bidder's letter of credit wishes to share a security arrangement with RUS.

[368] We note that the Commission has already adopted certain additional requirements for all Phase II recipients' section 54.313 reports that we reiterate apply to Phase II auction recipients, including the requirement that they report the number, names, and addresses of community anchor institutions to which the eligible telecommunications carrier newly began providing access to broadband service in the preceding calendar year and that they certify that they bid in response to requests for certain E-rate broadband services. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17854, para. 587; *Modernizing the E-rate Program for Schools and Libraries; Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15564-66, paras. 66-69 (2014). Phase II recipients, like all ETCs, are also required to have the relevant state submit on its behalf, or self-certify if applicable, the section 54.314 certification. 47 CFR § 54.314.

[369] *December 2014 Connect America Order*, 29 FCC Rcd at 15689, para. 127.

project costs that will exceed the amount of support that will be received from the authorization stemming from the Phase II auction for the next calendar year.[370] This will give the Commission assurance that Phase II recipients have obtained enough funding to meet their Phase II obligations and also underscore Phase II recipients' obligation to conduct a due diligence review of their finances to ensure that they can meet their obligations.

[370] Phase II recipients will not be required to make this certification in the annual report that is due the July 1st after their support terms have ended.

180. We provide as an example, an illustrative chart of the reporting requirements for a bidder in the baseline performance tier that begins to receive support in September 1, 2017 and takes the entire six years to build-out its network:

Support Term Year	Reporting Obligations and Deadlines
Year One: Sept. 1, 2017 to Aug. 31, 2018	Due by July 1, 2018: FCC Form 481, including capex spent if any (reporting on 2017) and available funds certification (pertaining to 2019) Due by Oct. 31, 2018: First location list indicating locations where service meeting the Commission's requirements at time of authorization is already offered and locations where service newly offered in the first support year
Year Two: Sept. 1, 2018 to Aug. 31, 2019	Due by July 1, 2019: FCC Form 481, including capex spent (reporting on 2018) and available funds certification (pertaining to 2020) Due by Oct. 31, 2019: List of locations where service newly offered in second support year
Year Three: Sept. 1, 2019 to Aug. 31, 2020	Due by July 1, 2020: FCC Form 481, including capex spent (reporting on 2019) and available funds certification (pertaining to 2021) Due by Oct. 30, 2020: List of locations where service newly offered in third support year; 40% build-out certification
Year Four: Sept. 1, 2020 to Aug. 31, 2021	Due by July 1, 2021: FCC Form 481, including capex spent (reporting on 2020) and available funds certification (pertaining to 2022) Due by Oct. 30, 2021: List of locations where service newly offered in fourth support year; 60% build-out certification
Year Five: Sept. 1, 2021 to Aug. 31, 2022	Due by July 1, 2022: FCC Form 481, including capex spent (reporting on 2021) and available funds certification (pertaining to 2023) Due by Oct. 31, 2022: List of locations where service newly offered in fifth support year; 80% build-out certification
Year Six: Sept. 1, 2022 to Aug. 31, 2023	Due by July 1, 2023: FCC Form 481, including capex spent (reporting on 2022) and available funds certification (pertaining to 2024) Due by Oct. 31, 2023: List of locations where service newly offered in sixth support year; 100% build-out certification
All Subsequent Years	Due by following July 1: FCC Form 481, including capex spent and service performance requirement certification (reporting on the previous calendar year) and available funds certification (pertaining to next calendar year; not required in annual report due the July 1st after the support term has ended)

181. We direct USAC to review, for these entities that are authorized to receive support after the Phase II competitive bidding process, compliance with deployment obligations and the Commission's

public interest obligations at the state level—that is, whether the carrier is meeting interim and final service obligations for the total number of locations required for each state.[371] As we concluded in the *December 2014 Connect America Order*,[372] conducting compliance reviews at the state level would be less administratively burdensome for the Commission, USAC, and recipients of Phase II support than at the census block level.

182. Finally, we clarify that price cap carriers that choose to use Phase II model-based support to deploy to locations in extremely high-cost census blocks may not use Phase II model-based support to serve extremely high-cost census blocks that an authorized Phase II auction recipient will be required to serve. In the *USF/ICC Transformation Order*, the Commission gave price cap carriers the flexibility to use Phase II model-based support to serve census blocks that are above the extremely high-cost threshold to meet their commitment to serve a set number of locations.[373] When the Commission provided this flexibility to meet deployment obligations, it did not contemplate funding two different carriers to deploy broadband to the same extremely high cost location. Permitting price cap carriers to use model-based support to deploy to such extremely high-cost census blocks would be inconsistent with the Commission's objective for Phase II of targeting support in the most efficient and effective manner.[374] Accordingly, once a Phase II winning bidder has been authorized to begin receiving Phase II support to serve an extremely high-cost census block, a price cap carrier will not be able to count locations that are located in that census block towards its remaining Phase II model-based support service milestones.

183. We direct USAC to review the geocoded locations lists that are submitted by the price cap carriers regarding deployment to verify that no extremely high-cost locations are located in census blocks where a Phase II auction recipient has been authorized to begin receiving support. In other words, as of the date of authorization for another entity to serve a census block, that census block is no longer eligible for substitution of locations. If USAC determines that a price cap carrier has included such locations in its list to count towards its build-out obligation, that price cap carrier will be deemed to have not met the relevant Phase II model-based support build-out obligation and will be subject to the applicable non-compliance measures.[375]

184. As ETCs comply with the new public interest and reporting requirements and broadband public interest obligations in this Order, we will continue to monitor their behavior and performance. Based on that experience, we may make additional modifications as necessary to our reporting requirements.

B. Section 54.314 Certifications

185. *Background*. Pursuant to section 54.314, states, or ETCs not subject to state jurisdiction, must annually certify "that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[376]

186. *Discussion*. We clarify that for the section 54.314 certification, using high-cost support (i.e. Connect America Fund support) for the intended purpose in a given calendar year may include setting aside the high-cost support received but not spent in that calendar year in an account dedicated

[371] We emphasize that for purposes of this requirement, a recipient must be commercially offering service; it would not be in compliance if network construction has occurred but service is not being offered.

[372] 47 CFR § 54.320(d); *December 2014 Connect America Order*, 29 FCC Rcd at 15661, 15689, paras. 43 n.97, 128.

[373] *USF/ICC Transformation Order*, 26 FCC Rcd at 17729, para. 171 n.279.

[374] *Id.* at 17727, para. 165.

[375] *See, e.g.*, *December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-54; 47 CFR § 54.316(a).

[376] 47 CFR § 54.314(a). If an ETC is designated by the Commission, it must self-certify. 47 CFR § 54.314(b).

specifically for upgrades necessary to meet the relevant high-cost requirements.[377] All high-cost recipients should be prepared to demonstrate to a state making such a certification on their behalf, or to the Commission or USAC upon request, that any unspent high-cost support was kept in such an account until it was spent.

187. The Commission previously has recognized that the first task for any major network upgrade is to complete an overall plan and then undertake detailed engineering analyses in the field to plan the construction of particular routes.[378] Depending on the timing of funding authorization for recipients of high-cost support, it is possible that in the initial year of support, an ETC may not be able to spend the funding that is disbursed. Moreover, with any network upgrade, construction over the course of the deployment timetable will be dependent on the availability of necessary equipment, fiber, and construction crews. In some cases, weather may require construction projects to be deferred over the winter into the following spring. We also have acknowledged that a price cap carrier may not deploy new facilities in every state in every year of the Phase II term.[379] Accordingly, we conclude that it is permissible for high-cost recipients to certify or have the relevant states certify on their behalf that they have used their support for its intended purpose if they have set aside a portion or all of the high-cost support in a given year in an account dedicated to future high-cost improvements, as described above.[380]

C. Measures for Non-Compliance

188. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission sought comment on adopting the same performance default process for the Phase II competitive bidding process that it adopted for Mobility Fund Phase I.[381] For Mobility Fund Phase I, the Commission required that in the event of a default, a recipient would be required to repay all of the support that it had received plus an additional performance default of 10 percent of total support for which the recipient is eligible.[382] In the *December 2014 Connect America Order*, the Commission adopted a framework for reporting and support reductions for all recipients of Phase II Connect America support that fail to meet the requisite service milestones.[383] Specifically, the framework was adopted to calibrate support reductions to the extent of an ETC's non-compliance with service milestones.[384] We subsequently extended that framework to rate-of-return carriers in the recent *Rate-of-Return Reform Order*.[385]

189. *Discussion.* We adopt the process by which the Wireline Competition Bureau or the Wireless Telecommunications Bureau will authorize USAC to draw on the letter of credit to recover all of the support that has been disbursed in the event that the Phase II competitive bidding process recipient does not meet the relevant service milestones. In the *December 2014 Connect America Order*, the Commission determined that USAC would recover support from ETCs associated with their compliance

[377] 47 CFR § 54.314. This clarification applies to all high-cost recipients, and not just to those that are authorized to receive support through the Phase II competitive bidding process.

[378] *December 2014 Connect America Order*, 29 FCC Rcd at 15658, para. 36.

[379] *See id.* at 15658-59, para. 37.

[380] We conclude that this reasoning also applies to recipients of rural broadband experiment support who are required to meet defined build-out milestones, but may receive support too late in the year to begin using their support to construct, maintain, or operate a network that meets their respective obligations.

[381] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18091, para. 1218.

[382] *USF/ICC Transformation Order*, 26 FCC Rcd at 17814, para. 461; *Mobility Fund Phase I Auction Procedures Public Notice*, 27 FCC Rcd at 4777-78, para. 189-92.

[383] *December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-54.

[384] *Id.* at 15694, para. 142.

[385] *Rate-of-Return Reform Order* at 30-31, 67, paras. 78, 174.

gap in three separate circumstances.[386] If after six months, the ETC fails to repay in full, either the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter authorizing USAC to draw on the letter of credit to recover 100 percent of the support that has been disbursed to the ETC.

190. First, for interim milestones, if the ETC has a compliance gap of 50 percent or more of the number of locations that the ETC is required to offer service to by the relevant interim milestone (i.e., Tier 4 status),[387] USAC will withhold 50 percent of the ETC's monthly support for that state, and the ETC will be required to file quarterly reports. If, after having 50 percent of support withheld for six months, the ETC has not reported that it has a compliance gap of less than 50 percent (i.e., the ETC is eligible for Tier 3 or lower or is in compliance), USAC will withhold 100 percent of the ETC's support for the state and will commence recovery action for a percentage of support that is equal to the ETC's compliance gap plus 10 percent of the ETC's support that has been paid to that point. At this point, this ETC will have six months to pay back the amount of support that USAC seeks to recover. If at the end of six months the ETC has not fully paid back the support, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect and USAC will draw on the letter of credit to recover all of the support that has been disbursed to the ETC. If at any point during the six-year period for deployment the ETC reports that it is eligible for Tier 1 status, the ETC will have its support fully restored including any support that had been withheld, USAC will repay any funds that were recovered, and the ETC will move to Tier 1 status.

191. Second, if an ETC misses the final milestone, it must identify by what percentage the milestone has been missed.[388] It will then have 12 months from that date to come into full compliance with the milestone. If it does not come into full compliance within 12 months, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter and USAC will recover an amount of support that is equal to 1.89 times the average amount of support per location received in the state over the six-year period for the relevant number of locations the ETC has failed to offer service to, plus 10 percent of the ETC's total Phase II support received in the state over the six-year period for deployment. At this point, the ETC will have six months to repay the support USAC seeks to recover. If at the end of six months the ETC has not fully paid back the support, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the letter of credit to recover all of the support that has been disbursed to the ETC.

192. Third, if after the build-out has been verified and the ETC closes its letter of credit it is determined that the ETC does not have sufficient evidence to demonstrate that it is offering service to the total number of required locations, USAC will recover an amount of support that is equal to 1.89 times the average amount of support per location received in the state over the six-year period for the relevant number of locations for which the ETC has failed to produce sufficient evidence, plus 10 percent of the ETC's total support received in that state over the six-year time period.[389] Because the ETC's build-out will have already been verified before it may close its letter of credit, we do not find it necessary to require that the ETC continue to keep its letter of credit open in the event that the ETC does not repay the Commission after it is found to be lacking evidence. Instead, we note that if the ETC does not repay the Commission after six months it may be subject to additional non-compliance measures, including forfeitures.

[386] *Id.* at 15695-98, paras. 147-49.

[387] 47 CFR § 54.320(d)(1)(iv)(B). *See also December 2014 Connect America Order*, 29 FCC Rcd at 15698, para. 150 (explaining the different tiers).

[388] 47 CFR § 54.320(d)(2).

[389] 47 CFR § 54.320(d)(3).

193. We conclude that drawing on the letter of credit in the event that the ETC fails to repay the support that USAC is instructed to recover will ensure that the Commission will be able to recover the support in the event that the ETC is unable to pay. We note that through the support reduction framework the Commission adopted in the *December 2014 Connect America Order*, the ETC will have a number of opportunities to cure before the Commission will seek to recover the support that is associated with the compliance gap. And the Commission will only recover 100 percent of the support that has been disbursed in those cases where the ETC is unable to repay the support associated with its compliance gap. Because an ETC that is unable to repay the support is also unlikely to be able to meet its obligations to use the support to offer service meeting the Commission's requirements, recovering 100 percent of the support will allow the Commission to re-award the support through an alternative mechanism to an ETC that will be able to meet its obligations.

194. Finally, we note that Phase II auction recipients may also be subject to other sanctions for non-compliance with the terms and conditions of high-cost funding, including, but not limited to potential revocation of ETC designation and suspension or debarment.[390] Phase II auction recipients will also be subject to any non-compliance measures that are adopted in conjunction with a methodology for high-cost recipients to measure and report speed and latency performance to fixed locations.[391]

IX. REMOTE AREAS FUND

195. *Background*. In the *USF/ICC Transformation Order*, the Commission recognized that some areas of the country would be particularly difficult and expensive to serve. The Commission adopted a budget of at least $100 million for the Remote Areas Fund to address remote areas where the cost of deploying traditional terrestrial networks is extremely high.[392] It sought comment on how to structure implementation of the Remote Areas Fund in the accompanying FNPRM.[393] Among other things, it sought comment on whether to implement the Remote Areas Fund as a portable consumer subsidy, a competitive bidding process, or a competitive procurement; how to define remote areas; eligibility requirements for providers; and measures to ensure accountability and oversight.

196. *Discussion*. While we previously decided to include census blocks that are deemed to be extremely high-cost in the Phase II auction,[394] we recognize that not all of those areas will receive bids. Moreover, we recognize that there may not be winning bidders for all of the high-cost census blocks in the declined states that are included in the Phase II auction. At the same time, we also recognize that in the intervening period, it is possible that some areas will become served through market forces and will not require ongoing support from the universal service fund. We now adopt a framework and rules herein to ensure the Commission moves expeditiously to implement a Remote Areas Fund for those areas that remain unserved with broadband after the Phase II auction. These areas will comprise, in effect, the "remote areas" where we will target Remote Areas Fund support. Our objective is to bring broadband to these unserved areas across the country as soon as possible.

197. We conclude that we will award support for the Remote Areas Fund through a competitive bidding process, with providers receiving support to serve defined areas that remain unserved

[390] 47 CFR§ 54.320(c).

[391] *See Connect America Broadband Performance Measurement Public Notice,* 29 FCC Rcd 12623; *December 2014 Connect America Order*, 29 FCC Rcd at 15694, para. 140 n.311.

[392] *USF/ICC Transformation Order*, 26 FCC Rcd at 17838, para. 534. In the *April 2014 Connect America Order*, the Commission decided to include extremely high-cost blocks in the Phase II auction. It stated, "We believe it would be the most efficient use of Phase II funding 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." *April 2014 Connect America Order*, 29 FCC Rcd at 7060-61, para. 31.

[393] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18093-18108, paras. 1225-95.

[394] *April 2014 Connect America Order*, 29 FCC Rcd at 7060-61, paras. 30-33.

with broadband service meeting the Commission's public interest obligations, determined based on the most recent publicly available FCC Form 477 data available prior to the opening of the filing window for short-form applications. For several reasons, we conclude that it will be most efficient to award support from the Remote Areas Fund to serve a designated area through a competitive bidding process, rather than as a portable consumer subsidy. We expect that the competitive process will drive down the amount of support awarded to serve these remote locations, enabling us to utilize our Remote Areas funding most effectively. We also believe this approach will best provide incentives for providers to deploy broadband-capable infrastructure in these remote areas. We recognize the need for service providers to have some assurance that there will be sufficient demand in these remote areas to warrant making the necessary investments to extend service, and by awarding support to serve a given area, bidders will be able to aggregate demand sufficiently to warrant the investments necessary to serve such areas. We note that a number of bidders in the rural broadband experiments were ultimately authorized to begin receiving support in category 3 which was limited to bids for only extremely high-cost census blocks,[395] suggesting that these bidders were able to put together bids that enabled them to make a business case to serve the highest cost areas.[396] Lastly, by moving swiftly to auction support from the Remote Areas Fund utilizing many of the same processes and procedures established for the Phase II auction, we will bring service to consumers more quickly than would likely be the case if we were to adopt an approach that has never been implemented to date in the high-cost program.[397] We do not rule out the possibility of implementing some form of a portable consumer subsidy at a future date, however, should there remain areas after the Remote Areas Fund auction that remain unserved.[398]

198. The areas eligible for the Remote Areas Fund auction will generally be those areas not subject to winning bids in the Phase II auction that are not served with voice and 10/1 Mbps broadband according to the most recently published FCC Form 477 data that are available prior to the opening of the expedited filing window for applicants for the Remote Areas Fund auction.[399] We direct the Bureau to publish the list of eligible areas within 60 days after the announcement of winning bidders in the Phase II auction. We reserve the right to make further adjustments to the eligible areas based on lessons learned from the Phase II auction, however, and our progress in implementing other Connect America Fund reforms in the intervening period.

199. Our goal is to commence the Remote Areas Fund auction within a year of the close of the Phase II Auction. The specific dates and deadlines will be announced in a *Remote Areas Fund Auction Procedures Public Notice* after the Phase II auction.

200. We intend that the Remote Areas Fund auction will occur as soon as feasible after the Phase II auction, providing for a limited period of time in between so that applicants that may wish to

[395] *Rural Broadband Experiments Order*, 29 FCC Rcd at 8780, para. 28.

[396] Federal Communications Commission, Summary of Authorized Rural Broadband Experiment Projects (2016), https://transition.fcc.gov/wcb/RBEOverviewChart.xlsx.

[397] One issue that would need to be resolved, for instance, with a portable consumer subsidy is how to ensure that a given household does not receive subsidized service from more than one provider.

[398] There was significant support in the record received in response to the 2011 *USF/ICC Transformation FNPRM* for some form of a portable consumer subsidy. *See, e.g.*, Comments of AT&T, WC Docket No. 10-90 et al., at 36 (filed Jan. 18, 2012); Comments of Satellite Broadband Providers, WC Docket No. 10-90 et al., at 8-9 (filed Jan. 18, 2012); Comments of the Wireless Internet Service Providers, WC Docket No. 10-90 et al., at 9-10 (filed Jan. 18, 2012).

[399] The Remote Areas Fund auction also will include any census blocks identified by rate-of-return carriers by a date specified by public notice where they do not plan to extend 10/1 Mbps service, to the extent not included in the Phase II auction. *2016 Rate-of-Return Reform Order* at 12, 68, paras. 26, 179. We also intend to include in the Remote Areas Fund auction those census blocks lacking 10/1 Mbps service where Phase I incremental support was provided.

participate in both auctions may plan and prepare for the Remote Areas auction taking into account winning bids in the Phase II auction. Bidders qualified to bid in the Phase II auction will be able automatically to participate in this subsequent auction without having to file another short-form application, so long as there is no material change in any information filed in their Phase II short-form application.

201. Consistent with the rules established for the rules for the Phase II competitive bidding process, we will not require bidders to be ETCs in order to bid in the Remote Areas Fund auction. Rather, they may obtain ETC designation after being selected as a winning bidder. We find this will serve the public interest for the same reasons previously stated when we adopted these measures for Phase II.[400] Similarly, we adopt the same timelines for submitting proof of ETC designation for Remote Areas Fund winning bidders for the same reasons stated above for the Phase II auction.[401]

202. Similarly, we adopt rules providing for a short-form application process to qualify entities eligible to bid and a long-form application to be filed by winning bidders that are similar in substance to the rules adopted above for the Phase II auction.[402] As we stated above, this approach will balance the need to collect essential information with administrative efficiency and will provide the Commission with assurance that interested participants are qualified to meet the terms and conditions of the Remote Areas Fund, if authorized to receive support. We delegate authority to the Bureaus to adjust the format and timing of the Remote Areas Fund applications based on experience gained with the implementation of the Phase II auction. Our goal is to conduct the Remote Areas Fund auction generally utilizing the same format and procedures adopted for the Phase II auction, although we recognize that some adjustments may need to be made.

203. As a general matter, support from the Remote Areas Fund will be awarded on similar terms and subject to the same rules as Phase II support awarded through the Phase II auction. We expect that recipients will be subject to the same interim and final service milestones as Phase II auction winners, although we reserve the right to make adjustments if necessary to encourage auction participation. Recipients will be subject to the same reporting obligations as Phase II recipients and subject to the same measures for non-compliance.[403] We expect, however, that it may be necessary to relax performance standards for the Remote Areas Fund. We may make further adjustments as needed, based on what we learn from the Phase II auction.

204. We do not decide at this time a number of issues that will need to be resolved before we can implement the Remote Areas Fund, including the public interest obligations for recipients of support, the term of support for the Remote Areas Fund, and whether to disburse support on a per-subscriber basis or a per-location basis. We will decide those issues once we observe the outcome of the Phase II auction.

X. FURTHER NOTICE OF PROPOSED RULEMAKING

205. Pursuant to our existing rules for competitive bidding for universal service support, "[d]etailed competitive bidding procedures shall be established by public notice prior to the commencement of competitive bidding."[404] With this Further Notice, we begin the process of seeking comment on several specific procedures that will apply in the Phase II auction. We seek comment on three discrete sets of issues relating to the process for determining winning bidders: (1) how to apply weights to the different levels of performance adopted in the Order above; (2) measures to achieve the

[400] *See April 2014 Connect America Order*, 29 FCC Rcd at 7064-66, paras. 40-45.

[401] *See supra* Section VI.B.2 (Post-Auction Long-Form Application Process).

[402] We incorporate by reference the discussion and reasoning set forth above in Section VI.B (Application Process).

[403] We incorporate by reference the discussion and reasoning set forth above in Section VIII (Accountability and Oversight).

[404] 47 CFR § 1.21003(a).

public interest objective of ensuring appropriate support for all of the states; and (3) measures to achieve the public interest objective of expanding broadband on Tribal lands. The forthcoming *Auction Comment PN* will seek comment on other auction procedures that must be resolved in order to conduct the auction, such as the number of rounds during which bids may be submitted, package bidding, and what information will be disclosed to participants during the bidding process.[405] We also seek comment on issues relating to interim deployment milestones for non-terrestrial providers or providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations.

A. Comparing Bids of Differing Performance Levels

206. In today's Order, we adopt four technology-neutral performance tiers with varying speed and usage allowances, and for each tier permit bidders to designate either low or high latency. We also conclude that all bids will be considered simultaneously, so that bidders that propose to meet one set of performance standards will be directly competing against bidders that commit to meet other performance standards. To implement this framework, we have decided to use weights to take into account the differing attributes of different types of service performance.

207. In light of the decisions reached in today's Order, we now seek to further develop the record on how bids should be weighted in order to achieve our overarching goal of providing households in the relevant high-cost areas with access to high quality broadband services, while making the most efficient use of finite universal service funds. We recognize that setting appropriate weights is of crucial importance to achieving this goal as well as having a successful Phase II auction. Thus, we seek comment on weights today in order to expedite our ability to adopt auction procedures regarding the comparison of bids.

208. In the Order above, we conclude that we see the value to consumers in rural markets of having access to service during the 10-year term of support that exceeds our baseline requirements. We want to ensure that rural America is not left behind, and the consumers in those areas benefit from innovation and advances in technology. All things considered, we value higher speeds over lower speeds, higher usage allowances over lower usage allowances, and lower latency over higher latency. We also see the benefits to achieving our other universal service objectives if Phase II service provider will be able to provide broadband adequate to meet the needs of the entire community, including schools, libraries and rural health care providers.

209. The Order concludes that we will use the Connect America Cost Model (CAM) to establish reserve prices, and that bids will be scored relative to the reserve price for the areas subject to the bid, with lower bids selected first, taking into account the weights on which we are seeking comment. Specifically, we will divide the annual amount of support per location requested per bid by the model-based support amount per location to determine an initial cost-effectiveness score for a particular bid, i.e., a numeral that represents the relationship of the bid to the reserve price set for the geographic area that is subject to the bid.

210. We propose procedures to assign a weight to each service tier as well as the high and low latency designations that would alter the initial cost-effectiveness score of each bid.[406] As described below, we propose to adopt procedures for weights that would take into account the relative benefits to

[405] As noted in the Order, several public notices may be released to establish auction procedures if that would more efficiently fulfill our goals for the Phase II auction.

[406] For instance, if the reserve price for a particular geography was $100 per location, and a bidder chose to bid $80 per location, the initial cost-effectiveness score would be 80. If the bidder proposed to offer a particular service that had a weight of "50", the adjusted score for the bid would then become 30 (80-50=30). If that bidder is competing against another bidder that bids $60 for the same geography, with a service that has a weight of 25, the second bidder would have a score of 35 (60-25=35). In this example, the first bidder would win even though it bid a higher amount per location, because its bid would be weighted downward according to the proposed service offering.

consumers of the various service tiers.[407] We seek comment on these proposals and any other alternatives. Are there other ways to compare bids, given our stated goals for this auction?

211. We thus propose to establish weights for specific types of bids that represent the relative benefits of service that provides higher speeds, higher usage allowances, and/or lower latency over service that meets lower requirements for participation in the Phase II auction. Under such a scheme, a bid closer to the reserve price but for higher performance levels could be selected based on its "weighted score" – its score that will be compared to other bids once weights are applied to its "cost-effective score" – even if another bidder seeks less actual support to provide the minimum level of service.

212. We seek comment on what specific value of weights should be applied to each of the four tiers of service. We seek comment on whether weights should be set relative to the baseline service tier, or relative to the minimum requirements for this auction. We also seek comment on what specific value of weights should be applied to low and high latency designations for each of the four tiers. In particular, how should those tier weights be adjusted in light of low and high latency designations? Should a weight for latency be applied in the same fashion across all of the speed/usage tiers? Ultimately, we seek to establish weights that provide rural consumers with the highest quality service while making efficient use of universal service funds. In designing weights to achieve this goal, we do not predetermine which bidder will win if competing head to head with another bidder for a given area. We instead intend to provide a means for numerically comparing the bids received based on the value to rural consumers of having access to different service levels using the finite budget of this auction.

213. We seek comment on whether, and, if so, how, the Commission should consider subscribership data for broadband services of varying performance levels and expected costs per subscribed location in establishing weights for the Phase II auction. For example, we seek comment on potentially using the Commission's Form 477 data to inform our decision regarding weights in the Phase II auction. Should national market share data, based on the Commission's Form 477 data, inform our setting of weights?

214. We recognize, however, that these national market shares are a function of both availability and consumer preferences for certain services, and that more recent data may show different trends. For that reason, national shares would not necessarily reflect subscribership of these services where they are actually the only broadband choice deployed. Of course, the eligible areas in the Phase II auction are, by definition, those areas lacking 10 Mbps/1 Mbps service. We seek comment on whether, and, if so, how, to account for both variation in deployment across geographic areas and consumer tastes in setting procedures for weights used to compare bids. For example, could analysis be performed using FCC Form 477 subscription and deployment data or other data sources to predict the expected subscribership rate for a particular performance level offering of speed, usage, and latency in a given geographic area if that were the only offering available to every household? How could such analysis inform the weights adopted for the Phase II auction? We are also guided by the statutory goal of ensuring consumers in rural and high-cost areas have access to services "that are reasonably comparable to those services provided in urban areas,"[408] How should this objective inform our weights? Could the Commission analyze its Form 477 data on broadband deployment and subscription in urban areas in setting weights for different performance tiers? Are there other objective metrics or data sources we can rely on to inform the specific numerical weights we will apply to bids?

215. A number of parties have submitted various proposals for how to weigh bids with differing performance obligations. For example, WISPA proposed that "[b]idders would begin the auction process with 100 points" and "could gain additional points, or bidding credits" by exceeding

[407] We note that several commenters in the record generally agree with this approach; they merely differ in their proposals for the specific weights and what should be viewed as the baseline requirement.

[408] *See* 47 U.S.C. § 254(b)(3).

baseline performance criteria.[409] Hughes suggested specific weights for different services levels, with no weight applied to a 10/1 speed tier, and higher weights for faster speeds and usage that exceeded baseline requirements. It proposed a 25 percent weight for low-latency offerings.[410] The Utilities Technology Council and National Rural Electric Cooperative Association proposed weights that would translate into a weight of 50 for the gigabit service tier, a weight of 35 for the above-baseline service tier, no weight for the baseline service tier, and a negative 25 weight for the minimum service tier, as well as a negative 25 weight for high-latency offerings.[411] We seek comment on these proposals in light of the specific performance obligation tiers and latency framework we adopt in the Order and our decision to use weights to adjust the cost-effectiveness score of individual bids. We also seek comment on any alternative weighting proposals.

216. We do not intend to adopt auction procedures that would apply an additional weight to the bid depending on the percentage of available funds bid in a census block, as suggested by one commenter.[412] We already have decided that bids will be compared in the first instance based on the ratio of the bid amount divided by the reserve price. The weighting system that we seek comment on today would effectively adjust that bid price for purposes of comparison.

B. Access to Appropriate Phase II Levels for All States

217. In this Further Notice, we next seek comment on measures to achieve the public interest objective of ensuring appropriate support for all of the states. In the Order, we recognize the concerns

[409] For speed, it proposed a baseline of 25/3 Mbps: one level of credit would be awarded to those bidders that commit to offer speeds of 50/5 Mbps and a higher level of credit would be provided to those that commit to offer speeds of 100/25 Mbps. For usage, it proposed a credit for those committing to offer a data allowance that is at least 150 percent of the average cap employed by the top five reporting participants for fixed broadband in the Measuring Broadband America program and a higher level credit if the bidder committed to a data usage allowance that is 200 percent of that figure. It also proposed a credit for levels of latency lower than 100 ms. Letter from Stephen E. Coran, Counsel to the Wireless Internet Service Providers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 at 3-4 (filed Mar. 4, 2016). WISPA did not propose specific values for each level of bidding credit but rather presented its framework to show the relative weights to be applied if the applicant exceeds the Commission's baseline.

[410] In particular, Hughes proposed that the baseline tier be 10 Mbps downstream, 50 GB of usage, and 800 ms of latency, with bidding credits for each individual factor that exceeded that standard (a maximum of 25 percent credit for each attribute—speed, usage, and latency—totaling up to 75 percent). For instance, under the Hughes proposal, a bidder that committed to provide more than 20 Mbps of speed and 100 GB of usage would receive a bidding credit of 50 percent; a bidder proposing also to provide low latency would receive a 75 percent bidding credit. Letter from Jennifer A. Manner, Vice President, Regulatory Affairs, Hughes Network Systems, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 at 1-2 (filed Mar. 4, 2016).

[411] UTC and NTECA proposed that the baseline be set at 25 Mbps downstream, 100 GB of usage, and less than 100 ms of latency. Thus, under their proposal, a low latency gigabyte tier bid would have a weight of 50, while a high latency gigabyte tier bid would have a weight of 25; a low latency "exceeds baseline" tier bid would have a weight of 35, while a high latency "exceeds baseline" tier bid would have a weight of 10; a low latency baseline bid would have a weight of 0, while a high latency baseline bid would have a weight of -25; and a low latency minimum tier bid would have a weight of -25, while a high latency minimum tier bid would have a weight of -50. Letter from Brett Kilbourne, Vice President and Deputy General Counsel, Utilities Technology Council, and Martha A. Duggan, National Rural Electric Cooperative Assoc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed May 18, 2016). *See also* Letter from Brett Kilbourne, Utilities Telecom Council, Martha A. Duggan, National Rural Electric Cooperative Assoc., and Michael Romano, NTCA-The Rural Broadband Assoc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 at 4-5 (filed Mar. 14, 2016).

[412] Letter from Brett Kilbourne, Vice President and Deputy General Counsel, Utilities Technology Council, and Martha A. Duggan, National Rural Electric Cooperative Assoc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. at 2 (filed May 18, 2016).

raised by those states where significant amounts of Phase II funding were declined (declined states).[413] Specifically, we recognize that we are making available $2.15 billion in support in the Phase II auction, of which approximately $1.05 billion was originally offered to particular states as part of the Phase II state-wide election process.[414] And we recognize that where incumbent carriers declined the offer of support does not diminish our universal service obligation to connect consumers in areas that would have been reached had the offer been accepted and to provide sufficient universal service funds to do so. We seek to design a Phase II auction that achieves an efficient and equitable distribution across the states for Phase II Connect America funding, recognizing the relative characteristics of individual states. We seek comment generally on how to address these concerns in line with our universal service objectives. We seek comment on the ideas set forth below and also invite commenters to identify any additional or alternative measures we could take to address these concerns.

218. To begin with, we recognize and applaud state initiatives to advance broadband deployment and access to unserved and underserved consumers.[415] We seek further comment on how best to coordinate with such initiatives to achieve our universal service goals.

219. With respect to equitable distribution among states, we first seek comment on establishing weights that would provide a preference to such declined states or other auction design procedures for the comparison of bids to ensure equitable funding to such states. We also seek comment on adopting weights to provide a preference for those states that have made a meaningful commitment to advance broadband, such as the state initiatives mentioned above.[416] If the Commission were to adopt such weights for either purpose, at what value should such weights be set? Are there other auction procedures that could be used that would be simple to administer and help achieve our objectives?

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[413] *See supra* para. 86. There are 20 states where a price cap carrier declined model-based support to serve high-cost locations within certain census blocks. However, in a number of states the incumbents collectively accepted the vast majority of support, and the declined amounts and associated locations were *de minimis*. For instance, in six states, while small amounts of funding were declined by one of the incumbents, the other incumbents accepted more than 97 percent of the Phase II offer of support for that state. Presently we are inclined to find that the proposals that follow would not, if adopted, be applied to those states, but seek comment on that view.

[414] In particular, declined support from the Phase II offer of model-based support would have been provided over six years ($175 million annually times six equals $1.05 billion), while the Phase II auction will be providing support over ten years ($215 million annually times 10 equals $2.15 billion).

[415] *See, e.g.,* Letter from Karen Peterson, Director, Massachusetts Broadband Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al.at 1-2 (filed May 17, 2016) (describing MassBroadband 123 and describing state allocation of $50 million of funding to extend broadband to communities in Western Massachusetts); Letter from Howard Zemsky, President and Chief Executive Officer, Empire State Development, and Audrey Zibelman, Chair, New York State Public Service Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1-2 (filed Apr. 13, 2016) (New York Apr. 13, 2016 *Ex Parte* Letter) (describing New NY Broadband Program distributing up to $500 million in funding to unserved and underserved communities to construction next generation networks offering download speeds of 100 Mbps or better); Letter from Michael R. Peevey, President, California Public Utilities Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Sept. 19, 2014) (describing California Advanced Services Fund's $315 million to support unserved and underserved areas); Reply Comments of the Office of Broadband Deployment, Minnesota Department of Employment and Economic Development, WC Docket Nos. 10-90 & 14-58, at 1 (filed Sept. 17, 2014) (noting the Minnesota legislature appropriated $20 million for a broadband infrastructure grant program in 2014); Comments of the California Public Utilities Commission, WC Docket Nos. 10-90 & 14-58, at 3 (filed Sept. 2, 2014) (describing California Advanced Services Fund and California Broadband Council).

[416] *See* New York Apr. 13, 2016 *Ex Parte* Letter at 4-5 (suggesting bidding credits for entities that have funding commitments from state-funded programs); Reply Comments of the Office of Broadband Development Minnesota Department of Employment and Economic Development, WC Docket Nos. 10-90, 14-58 (filed Sept. 17, 2014) (supporting the concept of a bidding credit for bidders that receive non-Federal governmental funding). *But see* Comments of the American Cable Association, WC Docket Nos. 10-90, 14-58 (filed Sept. 2, 2014) (opposing a bidding credit for applicants that obtain support from non-Federal sources).

220. Second, we seek comment on creating a 'backstop' of funds that could be used, if necessary, to ensure an equitable distribution of funding to declined states. For example, the Commission could conduct the Phase II auction initially with $1.75 billion of the total $2.15 billion Phase II budget. If a state falls short of winning aggregate bids that total to a set percentage of the amount previously declined in the state by the incumbent price cap carrier, the remaining $400 million could be allocated to the remaining next-in-line bidders in just those states, on a lowest bid score basis. If the Commission were to adopt such an approach, what percentage of the declined amount should be used as the trigger amount? Should we adopt an 80 percent trigger? Or a higher or lower trigger? Alternatively, should next-in-line bidders in those specific states be selected on a lowest cost basis?

221. Third, we seek comment on viewing the problem of ensuring adequate service to all rural Americans holistically, so any state allocated less funding in the Phase II auction will almost certainly need more support from the Remote Areas Fund. We could, for example, reserve funding in the Remote Areas Fund in direct proportion to any shortfall between the funding declined in the statewide election process and the amount allocated in the Phase II auction.[417] A holistic approach may balance the concerns for efficiency in the Phase II auction with our concern for ensuring that every state's rural residents are given the opportunity to access broadband at reasonably comparable speeds to urban areas. If we adopted this approach, should we guarantee all the funding declined for a state is allocated there between the Phase II auction and the Remote Areas Fund, or only some proportion? If the latter, how should we choose that amount?

222. Fourth, we seek comment on setting a ceiling for the aggregate total of winning bids in any given state to prevent a substantial redistribution of Phase II funds among states. For example, the Commission could adopt auction procedures that would help ensure that winning bids in a given state do not exceed more than 125 percent of the amount declined by the incumbent price cap carriers in that state. If the Commission were to adopt such a ceiling, what would be the right level for such a ceiling?

223. Finally, we seek comment on adopting alternative auction procedures designed to help ensure that declined states receive all or substantially all of the funds declined by the incumbent carrier. Such procedures would help ensure that, following the Phase II auction, declined states would be in the same or substantially the same position they would have been in had the incumbent carrier accepted support. For example, the Commission could establish procedures to prioritize selection of bids for declined states until a specified floor is met, assuming sufficient bidding in the declined state.[418] If the Commission were to adopt such a floor, should the floor be set at 100 percent of the declined amount? Or should it be set at 95 or 90 percent or some other percentage of declined support?

224. We seek comment on advantages and disadvantages of each of these alternatives as well as any other alternatives commenters suggest. Commenters should explain how each of the approaches they advocate would affect the efficiency of the Phase II auction. Which mechanism or combination of mechanisms might best advance our objective of ensuring that all states have access to appropriate levels of Phase II funding overall? In considering mechanisms to ensure appropriate support to all of the states, should we focus on the amount of funding that was declined by the incumbent carriers, the number of locations that would have been served had the incumbent carrier accepted the Phase II offer of support, or the overall amount of Phase II support provided to the state?

[417] So if total declined support for a state was $50 million and that state received winning bids totaling $40 million through the auction, then $10 million or some proportion thereof could be reserved for that state in the Remote Areas Fund.

[418] *See* New York Apr. 13, 2016 *Ex Parte* Letter at 5.

C. Access to Service on Tribal Lands

225. We also seek to further develop the record on how to advance our policy objective of extending broadband to unserved Tribal lands through the Phase II auction.[419] We recognize the historic challenges of serving Tribal lands and the low level of broadband service deployment on Tribal lands. Here, we seek comment on several possible auction procedures that could advance our goal of expanding access to broadband on Tribal lands.

226. In prior universal service competitive bidding processes, the Commission adopted a Tribal bidding credit. In Mobility Fund Phase I and Tribal Mobility Fund Phase I, Tribal bidders could apply a 25 percent credit to bids.[420] In the rural broadband experiments, bids proposing to serve only Tribal lands could apply a 25 percent credit.[421]

227. We seek comment on adopting such a Tribal-specific weight in the Phase II auction and how such a weight should be designed to further our objective of advancing broadband deployment on Tribal lands. Should the Commission adopt a weight that would lower the effective score of Tribal entities that bid (thereby making their bids more like to succeed)? Or should we adopt a weight that would apply to any bid seeking to serve Tribal lands? If a bid is seeking to serve a combination of Tribal lands and non-Tribal lands, should we apply a Tribal weight? If so, how would that weight be applied across the bid so as not to benefit bids that seek to serve only a *de minimis* number of Tribal locations? To the extent that a weight is applied to a bid that contains both Tribal and non-Tribal census blocks, should the weight be apportioned by number of locations in the relevant areas or by the geography (square miles) of the relevant areas? Is there some other procedure for Tribal weights that would be simple to administer?

228. One goal of a Tribal-specific weight could be to make it more likely a bidder proposing to serve Tribal lands would be selected by lowering its bid score. Another goal could be to make it more likely that we have bidders willing to bid on Tribal lands. A score-lowering weight alone may not achieve the goal of incentivizing providers to bid on Tribal lands. As the Commission has noted in the 2011 *USF/ICC Transformation Order*, greater financial support may be necessary in order to ensure the availability of broadband on Tribal lands.[422] We therefore also seek comment on any alternative auction procedures that could be adopted to further our goals of advancing deployment on Tribal lands.

D. Limited Adjustments to Interim Deployment Milestones

229. Finally, as noted in the Order, the interim deployment milestones adopted above may not be appropriate for non-terrestrial providers or other providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations.[423] Here, we seek comment on how to address this issue. Some parties have made proposals in the record to address this issue. For instance, a satellite provider may already have launched the satellite on which it will rely to provide the broadband service and need only to deploy customer premises equipment.[424] In that circumstance, the interim

[419] Recently, the GAO released a report recommending that the Commission take additional steps to achieve the strategic objective of making broadband available to households on tribal lands. Government Accountability Office, Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands, GAO 16-222 at 30 (Jan. 2016), http://www.gao.gov/assets/680/674906.pdf (Jan. 2016 GAO Tribal Broadband Report).

[420] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17823 para. 490; 47 CFR § 54.1004(c).

[421] *Connect American Fund et al.*, Report and Order and Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8784, paras. 43-44 (2014).

[422] *USF/ICC Transformation Order*, 26 FCC Rcd at 17818-19, para. 479.

[423] *See supra* Section III.B (Interim Deployment Obligations).

[424] *See*, *e.g.*, Letter from Jennifer A. Manner, Vice President, Regulatory Affairs, Hughes Network Systems, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 11, 2015) ("Hughes has no objection to (continued….)

deployment milestones would provide more time than needed to begin offering service to consumers. We seek comment on the proposal in the record and any alternative ways to address the issue. How should interim deployment milestones be modified, if at all, for providers that have already deployed significant amounts of infrastructure necessary to meet the service commitments? What specific milestones should the Commission adopt in the alternative so as to be able to monitor compliance with deployment obligations? As we evaluate such alternatives, we remain mindful of our goals of promoting universal service efficiently while maintaining the financial integrity of the fund.

XI. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

230. 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,[425] 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*.

B. Congressional Review Act

231. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[426]

C. Final Regulatory Flexibility Act

232. 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 on small entities. The FRFA is set forth in Appendix C.

D. Initial Paperwork Reduction Act Analysis

233. 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. This analysis is found in Appendix D. The FNPRM seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the Federal Register inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. § 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

(Continued from previous page)
satellite-based awardees being required to serve any location in their award areas in a reasonably quick timeframe throughout the term of the award (*e.g.*, with 14 days from the date of customer request").

[425] Small Business Paperwork Relief Act of 2002, Public Law 107-198, 116 Stat 729 (2002); *see* 44 U.S.C. § 3506(c)(4).

[426] *See* 5 U.S.C. § 801(a)(1)(A).

E. Ex Parte Presentations

234. *Permit-But-Disclose*. The proceeding this Second FNPRM initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[427] 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. Comment Filing Procedures

235. *Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, 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). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking 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 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.

[427] 47 CFR §§ 1.1200 *et seq.*

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

236. *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).

237. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the FNPRM in order to facilitate our internal review process.

238. *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.

XII. ORDERING CLAUSES

239. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, and 503 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, 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 503, 1302, and sections 1.1, 1.427, and 1.429 of the Commission's rules, 47 CFR §§ 1.1, 1.427, and 1.429, that this Report and Order 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 those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the Federal Register of OMB approval. 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.

240. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 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, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR §§ 1.1, 1.421, 1.427, and 1.429, NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this Further Notice of Proposed Rulemaking.

241. IT IS FURTHER ORDERED that, pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, the Petition for Waiver filed by NTCA—The Rural Broadband Association on Feb. 3, 2015 is DISMISSED AS MOOT IN PART and DENIED IN PART to the extent described herein.

242. IT IS FURTHER ORDERED that, pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, the Petition for Waiver filed by The National Rural Utilities Cooperative Finance Corporation and the Rural Telephone Finance Cooperative on Jan. 21, 2015 is DISMISSED AS MOOT.

243. IT IS FURTHER ORDERED that, pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, the Petition for Waiver filed by Allamakee-Clayton Electric Cooperative, Inc. on Jan. 30, 2015 is DISMISSED AS MOOT.

244. IT IS FURTHER ORDERED that, pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, the Petition for Waiver filed by Midwest Energy Cooperative, Inc. on March 20, 2015 is DISMISSED AS MOOT.

245. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 CFR Part 54, IS 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 contain information collections subject to PRA review SHALL BECOME EFFECTIVE immediately upon announcement in the Federal Register of OMB approval and an effective date.

246. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order 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).

247. 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 and Further Notice of Proposed Rulemaking, including 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 CFR part 54 to read as follows:

Part 1- Practice and Procedure

1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79, et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

2. Amend § 1.21001 to revise paragraphs (b) and (c) to read as follows:

* * * * *

(b) * * *

(6) Certification that the applicant is in compliance with all statutory and regulatory requirements for receiving the universal service support that the applicant seeks, or, if expressly allowed by the rules specific to a high-cost support mechanism, a certification that the applicant acknowledges that it must be in compliance with such requirements before being authorized to receive support;

* * * * *

Part 54- Universal Service

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.309 to revise paragraph (a) to read as follows:

§ 54.309 Connect America Fund Phase II Public Interest Obligations.

(a) Recipients of Connect America Phase II support are required to offer broadband service 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. For purposes of determining reasonable comparable usage capacity, recipients are presumed to meet this requirement if they meet or exceed the usage level announced by public notice issued by the Wireline Competition Bureau. For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the applicable benchmark to be announced annually by public notice issued by the Wireline Competition Bureau, or no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in the state or U.S. Territory where the eligible telecommunications carrier receives support.

(1) Recipients of Connect America Phase II model-based support are required to offer broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream.

(2) Recipients of Connect America Phase II support awarded through a competitive bidding process are required to offer broadband service meeting the performance standards required in bid tiers based on performance standards.

(i) Winning bidders meeting the minimum performance tier standards are required to offer broadband service at actual speeds of 10 Mbps downstream and 1 Mbps upstream and to offer at least 150 gigabytes of monthly usage.

(ii) Winning bidders meeting the baseline performance tier standards are required to offer broadband service at actual speeds of at least 25 Mbps downstream and 3 Mbps upstream and offer a minimum usage allowance of 150 GB per month, or that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher, and announced annually by public notice issued by the Wireline Competition Bureau over the 10-year term

(iii) Winning bidders meeting the above-baseline performance tier standards are required to offer broadband service at actual speeds of at least 100 Mbps downstream and 20 Mbps upstream and offer an unlimited monthly usage allowance.

(iv) Winning bidders meeting the Gigabit performance tier standards are required to offer broadband service at actual speeds of at least 1 Gigabit per second downstream and 500 Mbps upstream and offer an unlimited monthly usage allowance.

(iv) For each of the tiers in sections (i) through (iv), bidders are required to meet one of two latency performance levels: (A) Low latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 100 milliseconds, and (B) High latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 750 ms and, with respect to voice performance, demonstrate a score of four or higher using the Mean Opinion Score (MOS).

* * * * *

3. Amend § 54.310 to revise paragraph (c) as follows:

§ 54.310 Connect America Fund for Price Cap Territories – Phase II.

* * * * *

(c) Deployment Obligation. Recipients of Connect America Phase II model-based support must complete deployment to 40 percent of supported locations by December 31, 2017, to 60 percent of supported locations by December 31, 2018, to 80 percent of supported locations by December 31, 2019, and to 100 percent of supported locations by December 31, 2020. Recipients of Connect America Phase II awarded through a competitive bidding process must complete deployment to 40 percent of supported locations by the end of the third year, to 60 percent of supported locations by the end of the fourth year, to 80 percent of supported locations by the end of the fifth year, and to 100 percent of supported locations by the end of the sixth year. Compliance shall be determined based on the total number of supported locations in a state.

(1) For purposes of meeting the obligation to deploy to the requisite number of supported locations in a state, recipients of Connect America Phase II model-based support 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(a) and (a)(1) for those locations and provided that the total number of locations covered is greater than or equal to the number of supported locations in the state.

(2) Recipients of Connect America Phase II support may elect to deploy to 95 percent of the number of supported locations in a given state with a corresponding reduction in support computed based on the average support per location in the state times 1.89.

* * * * *

4. Amend § 54.313 to revise paragraph (e) as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(e) In addition to the information and certifications in paragraph (a) of this section, the following requirements apply to Phase II and Remote Areas Fund recipients:

(1) Any price cap carrier that elects to receive Connect America Phase II model-based support shall provide:

(i) On July 1, 2016 a list of the geocoded locations already meeting the § 54.309 public interest obligations at the end of calendar year 2015, and the total amount of Phase II support, if any, the price cap carrier used for capital expenditures in 2015.

(ii) On July 1, 2017 and every year thereafter ending July 1, 2021, the following information:

(A) The number, names, and addresses of community anchor institutions to which the eligible telecommunications carrier newly began providing access to broadband service in the preceding calendar year;

(B) The total amount of Phase II support, if any, the price cap carrier used for capital expenditures in the previous calendar year; and

(C) A certification that it bid on category one telecommunications and Internet access services in response to all FCC Form 470 postings seeking broadband service that meets the connectivity targets for the schools and libraries universal service support program for eligible schools and libraries (as described in § 54.501) located within any area in a census block where the carrier is receiving Phase II model-based support, and that such bids were at rates reasonably comparable to rates charged to eligible schools and libraries in urban areas for comparable offerings.

(2) Any recipient of Phase II or Remote Areas Fund support awarded through a competitive bidding process shall provide:

(i) Starting the first July 1st after receiving support until the July 1st after the recipient's support term has ended:

(A) The number, names, and addresses of community anchor institutions to which the eligible telecommunications carrier newly began providing access to broadband service in the preceding calendar year;

(B) The total amount of support, if any, the recipient used for capital expenditures in the previous calendar year; and

(C) A certification that it bid on category one telecommunications and Internet access services in response to all FCC Form 470 postings seeking broadband service that meets the connectivity targets for the schools and libraries universal service support program for eligible schools and libraries (as described in § 54.501) located within any area in a census block where the carrier is receiving support awarded through auction, and that such bids were at rates reasonably comparable to rates charged to eligible schools and libraries in urban areas for comparable offerings.

(ii) Starting the first July 1st after receiving support until the July 1st after the recipient's penultimate year of support, a certification that the recipient has available funds for all project costs that will exceed the amount of support that will be received for the next calendar year.

(iii) Starting the first July 1st after meeting the final service milestone in § 54.310(c) of this chapter until the July 1st after the Phase II recipient's support term has ended, a certification that the Phase II-funded network that the Phase II auction recipient operated in the prior year meets the relevant performance requirements in § 54.309 of this chapter, or that the network that the Remote Areas Fund recipient operated in the prior year meets the relevant performance requirements for the Remote Areas Fund.

* * * * *

5. Add § 54.315 to Subpart D to read as follows:

§ 54.315 Application Process for Phase II Support Distributed through Competitive Bidding.

(a) Application to participate in competitive bidding for 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 Phase II auction 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 qualified to meet the public interest obligations of § 54.309 for each relevant tier and in each area for which it seeks support;

(3) Disclose its status as an eligible telecommunications carrier to the extent applicable and certify that it acknowledges that it must be designated as an eligible telecommunications carrier for the area in which it will receive support prior to being authorized to receive support;

(4) Indicate the tier of bids that the applicant plans to make and describe the technology or technologies that will be used to provide service for each tier of bid;

(5) Submit any information required to establish eligibility for any bidding weights adopted by the Commission in an order or public notice;

(6) To the extent that an applicant plans to use spectrum to offer its voice and broadband services, demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and deliver the minimum performance requirements to serve all of the fixed locations in eligible areas, and certify that it will retain its access to the spectrum for at least 10 years from the date of the funding authorization; and

(7) Submit specified operational and financial information.

(i) Submit a certification that the applicant has provided a voice, broadband, and/or electric transmission or distribution service for at least two years or that it is a wholly-owned subsidiary

of such an entity, and specifying the number of years the applicant or its parent company has been operating, and submit the financial statements from the prior fiscal year that are audited by a certified public accountant. If the applicant is not audited in the ordinary course of business, in lieu of submitting audited financial statements it must certify that it will provide financial statements from the prior fiscal year that are audited by a certified independent public accountant by a specified deadline during the long-form application review process.

(A) If the applicant has provided a voice and/or broadband service it must certify that it has filed FCC Form 477s as required during this time period.

(B) If the applicant has operated only an electric transmission or distribution service, it must submit qualified operating or financial reports that it has filed with the relevant financial institution for the relevant time period along with a certification that the submission is a true and accurate copy of the reports that were provided to the relevant financial institution.

(ii) If an applicant cannot meet the requirements in subsection (a)(7)(i), in the alternative it must submit the audited financial statements from the three most recent fiscal years and a letter of interest from a bank meeting the qualifications set forth in subsection (c)(2), that the bank would provide a letter of credit as described in subsection (c) to the bidder if the bidder were selected for bids of a certain dollar magnitude.

(b) Application by winning bidders for Phase II auction support.

(1) Deadline. As provided by public notice, winning bidders for Phase II auction support shall file an application for Phase II auction support no later than the number of business days specified after the public notice identifying them as winning bidders.

(2) Application contents. An application for Phase II auction 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 qualified to meet the public interest obligations of § 54.309 for each tier in which it is a winning bidder and in each area for which it seeks support;

(iii) Certification that the applicant will meet the relevant public interest obligations for each relevant tier, including the requirement that it will offer service at rates that are equal or lower to the Commission's reasonable comparability benchmarks for fixed wireline services offered in urban areas;

(iv) A description of the technology and system design the applicant intends to use to deliver voice and broadband service, including a network diagram which must be certified by a professional engineer. The professional engineer must certify that the network is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements in § 54.309;

(v) Certification that the applicant will have available funds for all project costs that exceed the amount of support to be received from the Phase II auction for the first two years of its support term and that the applicant will comply with all program requirements, including service milestones;

(vi) A description of how the required construction will be funded, including financial projections that demonstrate the applicant can cover the necessary debt service payments over the life of the loan, if any;

(vii) Certification that the party submitting the application is authorized to do so on behalf of the applicant; and

(viii) Such additional information as the Commission may require.

(3) No later than the number of days provided by public notice, the applicant shall submit a letter from a bank meeting the eligibility requirements outlined in subsection (c) committing to issue an irrevocable stand-by letter of credit, in the required form, to the winning bidder. The letter shall at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit.

(4) No later than 180 days after the public notice identifying them as a winning bidder, bidders that did not submit audited financial statements in their short-form application pursuant to subsection (a)(7)(i) must submit the financial statements from the prior fiscal year that are audited by a certified independent public accountant.

(5) No later than 180 days after the public notice identifying it as a winning bidder, the applicant shall certify that it is an eligible telecommunications carrier in any area for which it seeks support and submit the relevant documentation supporting that certification.

(6) 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 Phase II auction after the winning bidder submits a letter of credit and an accompanying opinion letter as described in subsection (c), in a form acceptable to the Commission. Each such winning bidder shall submit a letter of credit and accompanying opinion letter as required by subsection (c), in a form acceptable to the Commission no later than the number of business days provided by public notice.

(vii) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive Phase II auction support.

(c) Letter of credit. Before being authorized to receive Phase II auction support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission.

(1) Value. Each recipient authorized to receive Phase II support shall maintain the standby letter of credit or multiple standby letters of credit in an amount equal to at a minimum the amount of Phase II auction support that has been disbursed and that will be disbursed in the coming year, until the Universal Service Administrative Company has verified that the recipient met the final service milestone as described in § 54.310(c) of this chapter.

(i) Once the recipient has met its 60 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.

(ii) Once the recipient has met its 80 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 80 percent of the total support that has been disbursed plus the amount that will be disbursed in the coming year.

(2) 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 insured by the Federal Deposit Insurance Corporation, and

(B) That has a bank safety rating issued by Weiss of B- or better; or

(ii) CoBank, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iii) The National Rural Utilities Cooperative Finance Corporation, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iv) Any non-United States bank

(A) That 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 a BBB- or better rating by Standard & Poor's; and

(D) Issues the letter of credit payable in United States dollars

(3) A winning bidder for Phase II auction 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.

(4) Authorization to receive Phase II auction support is conditioned upon full and timely performance of all of the requirements set forth in this section, and any additional terms and conditions upon which the support was granted.

(i) Failure by a Phase II auction support recipient to meet its service milestones as required by § 54.310 will trigger reporting obligations and the withholding of support as described in § 54.320(c) of this chapter. Failure to come into full compliance within 12 months will trigger a recovery action by the Universal Service Administrative Company. If the Phase II recipient does not repay the requisite amount of support within six months, the Universal Service Administrative Company will be entitled to draw the entire amount of the letter of credit and may disqualify the Phase II auction support recipient from the receipt of Phase II auction support or additional universal service support.

(ii) The default will be evidenced by a letter issued by the Chief of the Wireline Competition Bureau or the Wireless Telecommunications 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.

6. Amend § 54.316 to revise paragraphs (a) and (b) to read as follows:

§ 54.316 Broadband deployment reporting and certification requirements for high-cost recipients.

(a) *Broadband Deployment Reporting*. Rate-of Return ETCs, ETCs that elect to receive Connect America Phase II model-based support, and ETCs awarded support to serve fixed locations through a competitive bidding process shall have the following broadband reporting obligations:

* * * * *

(4) Recipients subject to the requirements of § 54.310(c) shall report the number of locations for each state and locational information, including geocodes, where they are offering service at the requisite speeds. Recipients of Phase II Auction support and Remote Areas Fund support shall also report the technology they use to serve those locations.

(b) *Broadband Deployment Certifications* Rate-of Return ETCs, ETCs that elect to receive Connect America Phase II model-based support, and ETCs awarded support through a competitive bidding process shall have the following broadband deployment certification obligations:

* * * * *

(4) Recipients of Connect America Phase II auction support shall provide: By the last business day of the second calendar month following each service milestone in § 54.310(c), a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations specific in § 54.309 to the required percentage of its supported locations in each state as set forth in § 54.310(c).

(5) Recipients of Remote Areas Fund support shall provide: By the last business day of the second calendar month following each service milestone specified by the Commission, a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations to the required percentage of its supported locations in each state.

(c) *Filing deadlines.* 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 designations, it must submit the annual reporting information as set forth below.

(1) Price cap carriers that accepted Phase II model-based support and rate-of-return carriers must submit the annual reporting information required by March 1 as described in paragraphs (a) and (b) of this section. Eligible telecommunications carriers that file their reports after the March 1 deadline shall receive a reduction in support pursuant to the following schedule:

(i) An eligible telecommunications carrier that files after the March 1 deadline, but by March 9, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier that files on or after February 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction;

(iii) *Grace period.* An eligible telecommunications carrier that submits the annual reporting information required by this section after March 1 but before March 5 will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to section 54.313(a)(8) in their report due July 1 of the prior year have not missed the March 1 deadline in any prior year.

(2) Recipients of support to serve fixed locations awarded through a competitive bidding process must submit the annual reporting information required by the last business day of the second calendar month following the relevant support years as described in paragraphs (a) and (b) of this section. Eligible telecommunications carriers that file their reports after the deadline shall receive a reduction in support pursuant to the following schedule:

(i) An eligible telecommunications carrier that files after the deadline, but within seven days of the deadline, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier that filed on or after the eighth day following the deadline will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction;

(iii) *Grace period.* An eligible telecommunications carrier that submits the annual reporting information required by this section within three days of the deadline will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to section 54.313(a)(8) in their report due July 1 of the prior year have not missed the deadline in any prior year.

7. Add Subpart J to read as follows:

Subpart J - Remote Areas Fund

§ 54.801 Use of competitive bidding for Remote Areas Fund

The Commission will use competitive bidding, as provided in part 1, subpart AA of this chapter, to determine the recipients of Remote Areas Fund support and the amount of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

§ 54.802 Geographic areas eligible for Remote Areas Fund support

Remote Areas Fund support may be made available for census blocks identified as eligible by public notice.

§ 54.803 Provider eligibility

(a) Any eligible telecommunications carrier is eligible to receive Remote Areas Fund support in eligible areas.

(b) An entity may obtain eligible telecommunications carrier designation after public notice of winning bidders in the Remote Areas Fund auction.

(c) To the extent any entity seeks eligible telecommunications carrier designation prior to public notice of winning bidders for Remote Areas Fund support, its designation as an eligible telecommunications carrier may be conditional subject to the receipt of Remote Areas Fund support.

§ 54.804 Application process

(a) Any entity qualified to bid in the Phase II auction pursuant to § 54.315(a) shall be pre-qualified to bid in the Remote Areas Fund auction, subject to the requirement that there be no material change in any information previously submitted in the application to bid for Phase II support.

(b) In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, any applicant to participate in competitive bidding for Remote Areas Fund 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 qualified to meet the public interest obligations established for Remote Areas Fund support;

(3) Disclose its status as an eligible telecommunications carrier to the extent applicable and certify that it acknowledges that it must be designated as an eligible telecommunications carrier for the area in which it will receive support prior to being authorized to receive support;

(4) Describe the technology or technologies that will be used to provide service for each bid;

(5) Submit any information required to establish eligibility for any bidding weights adopted by the Commission in an order or public notice;

(6) To the extent that an applicant plans to use spectrum to offer its voice and broadband services, demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and deliver the minimum performance requirements to serve all of the fixed locations in eligible areas, and certify that it will retain its access to the spectrum for the term of support; and

(7) Submit specified operational and financial information.

(i) Submit a certification that the applicant has provided a voice, broadband, and/or electric transmission or distribution service for at least two years or that it is a wholly-owned subsidiary of such an entity, and specifying the number of years the applicant or its parent company has been operating, and submit the financial statements from the prior fiscal year that are audited by a certified

public accountant. If the applicant is not audited in the ordinary course of business, in lieu of submitting audited financial statements it must certify that it will provide financial statements from the prior fiscal year that are audited by a certified independent public accountant by a specified deadline during the long-form application review process.

(A) If the applicant has provided a voice and/or broadband service it must certify that it has filed FCC Form 477s as required during this time period.

(B) If the applicant has operated only an electric transmission or distribution service, it must submit qualified operating or financial reports that it has filed with the relevant financial institution for the relevant time period along with a certification that the submission is a true and accurate copy of the reports that were provided to the relevant financial institution.

(ii) If an applicant cannot meet the requirements in subsection (a)(7)(i), in the alternative it must submit the audited financial statements from the three most recent fiscal years and a letter of interest from a bank meeting the qualifications set forth in subsection (c)(2), that the bank would provide a letter of credit as described in subsection (c) to the bidder if the bidder were selected for bids of a certain dollar magnitude.

(c) Application by winning bidders for Remote Areas Fund support.

(1) Deadline. As provided by public notice, winning bidders for Remote Areas Fund support shall file an application for Remote Areas Fund support no later than the number of business days specified after the public notice identifying them as winning bidders.

(2) Application contents. An application for Remote Areas Fund 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 qualified to meet the public interest obligations for Remote Areas Fund support in each area for which it seeks support;

(iii) Certification that the applicant will meet the relevant public interest obligations, including the requirement that it will offer service at rates that are equal or lower to the Commission's reasonable comparability benchmarks for fixed wireline services offered in urban areas;

(iv) A description of the technology and system design the applicant intends to use to deliver voice and broadband service, including a network diagram which must be certified by a professional engineer. The professional engineer must certify that the network is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements for Remote Areas Fund support;

(v) Certification that the applicant will have available funds for all project costs that exceed the amount of support to be received from the Remote Areas Fund for the first two years of its support term and that the applicant will comply with all program requirements, including service milestones;

(vi) A description of how the required construction will be funded, including financial projections that demonstrate the applicant can cover the necessary debt service payments over the life of the loan, if any;

(vii) Certification that the party submitting the application is authorized to do so on behalf of the applicant; and

(viii) Such additional information as the Commission may require.

(3) No later than the number of days provided by public notice, the applicant shall submit a letter from a bank meeting the eligibility requirements outlined in subsection (c) committing to issue an irrevocable stand-by letter of credit, in the required form, to the winning bidder. The letter shall at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit.

(4) No later than 180 days after the public notice identifying them as a winning bidder, bidders that did not submit audited financial statements in their short-form application pursuant to subsection (a)(7)(i) must submit the financial statements from the prior fiscal year that are audited by a certified independent public accountant.

(5) No later than 180 days after the public notice identifying it as a winning bidder, the applicant shall certify that it is an eligible telecommunications carrier in any area for which it seeks support and submit the relevant documentation supporting that certification.

(6) 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 Remote Areas Fund support after the winning bidder submits a letter of credit and an accompanying opinion letter as described in subsection (c), in a form acceptable to the Commission. Each such winning bidder shall submit a letter of credit and accompanying opinion letter as required by subsection (c), in a form acceptable to the Commission no later than the number of business days provided by public notice.

(vii) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive Remote Areas Fund support.

(c) Letter of credit. Before being authorized to receive Remote Areas Fund support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission.

(1) Value. Each recipient authorized to receive Remote Areas Fund support shall maintain the standby letter of credit or multiple standby letters of credit in an amount equal to at a minimum the amount of Remote Areas Fund support that has been disbursed and that will be disbursed in the coming year, until the Universal Service Administrative Company has verified that the recipient met the final service milestone as described in § 54.310(c) of this chapter.

(i) Once the recipient has met its 60 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.

(ii) Once the recipient has met its 80 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 80 percent of the total support that has been disbursed plus the amount that will be disbursed in the coming year.

(2) The bank issuing the letter of credit shall be acceptable to the Commission. A bank that is acceptable to the Commission is:

(2) 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 insured by the Federal Deposit Insurance Corporation, and

(B) That has a bank safety rating issued by Weiss of B- or better; or

(ii) CoBank, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iii) The National Rural Utilities Cooperative Finance Corporation, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iv) Any non-United States bank

(A) That 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 a BBB- or better rating by Standard & Poor's; and

(D) Issues the letter of credit payable in United States dollars

(3) A winning bidder for Remote Areas Fund 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.

(4) Authorization to receive Remote Areas Fund support is conditioned upon full and timely performance of all of the requirements set forth in this section, and any additional terms and conditions upon which the support was granted.

(i) Failure by a Remote Areas Fund support recipient to meet its service milestones as required by § 54.310 will trigger reporting obligations and the withholding of support as described in § 54.320(c) of this chapter. Failure to come into full compliance within 12 months will trigger a recovery action by the Universal Service Administrative Company. If the Remote Areas Fund recipient does not repay the requisite amount of support within six months, the Universal Service Administrative Company will be entitled to draw the entire amount of the letter of credit and may disqualify the Remote Areas Fund support recipient from the receipt of Remote Areas Fund support or additional universal service support.

(ii) The default will be evidenced by a letter issued by the Chief of the Wireline Competition Bureau or the Wireless Telecommunications 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.

§ 54.805 Remote Areas Fund public interest obligations

[reserved]

§ 54.805 Remote Areas Fund reporting obligations

Recipients of Remote Areas Fund support shall be subject to the reporting obligations set forth in § 54.313.

APPENDIX B

Illustrative Form of Letter Of Credit

[Subject to Issuing Bank Requirements]
No. _____

[Name and Address of Issuing Bank]

[Date of Issuance]

[AMOUNT]

[EXPIRATION DATE]

BENEFICIARY
[USAC]

[Address]

LETTER OF CREDIT PROVIDER
[Winning Bidder Name]

[Address]

Ladies and Gentlemen:

We hereby establish, at the request and for the account of [Winning Bidder], in your favor, as required under the Report and Order, adopted on May 25, 2016, issued by the Federal Communications Commission ("FCC") in the matter of [Connect America Fund, WC Docket 10-90] (the "Order"), our Irrevocable Standby Letter of Credit No. _____, in the amount of [State amount of Letter of Credit in words and figures. NOTE: The amount of the Letter of Credit shall increase/additional letter(s) of credit shall be issued as additional funds are disbursed pursuant to the terms of the Order], expiring at the close of banking business at our office described in the following paragraph, on [the date which is ___ years from the date of issuance/ or the date which is one year from the date of issuance, provided the Issuing Bank includes an evergreen clause that provides for automatic renewal unless the Issuing Bank gives notice of non-renewal to USAC by a nationally recognized overnight delivery service, with a copy to the FCC, at least sixty days but not more than 90 days prior to the expiry thereof], or such earlier date as the Letter of Credit is terminated by [USAC] (the "Expiration Date"). Capitalized terms used herein but not defined herein shall have the meanings accorded such terms in the Order.

Funds under this Letter of Credit are available to you against your draft in the form attached hereto as Annex A, drawn on our office described below, and referring thereon to the number of this Letter of Credit, accompanied by your written and completed certificate signed by you substantially in the form of Annex B attached hereto. Such draft and certificates shall be dated the date of presentation or an earlier date, which presentation shall be made at our office located at [BANK ADDRESS] and shall be effected either by personal delivery or delivery by a nationally recognized overnight delivery service. We hereby commit and agree to accept such presentation at such office, and if such presentation of documents appears on its face to comply with the terms and conditions of this Letter of Credit, on or prior to the Expiration Date, we will honor the same not later than the first banking day after presentation thereof in

accordance with your payment instructions. Payment under this Letter of Credit shall be made by [check/wire transfer of Federal Reserve Bank of New York funds] to the payee and for the account you designate, in accordance with the instructions set forth in a draft presented in connection with a draw under this Letter of Credit.

Partial drawings are not permitted under this Letter of Credit. This Letter of Credit is not transferable or assignable in whole or in part.

This Letter of Credit shall be canceled and terminated upon receipt by us of the [USAC's] certificate purportedly signed by two authorized representatives of [USAC] in the form attached as Annex C.

This Letter of Credit sets forth in full the undertaking of the Issuer, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except only the certificates and the drafts referred to herein and the ISP (as defined below); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificates and such drafts and the ISP.

This Letter of Credit shall be subject to, governed by, and construed in accordance with, the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (the "ISP"), which is incorporated into the text of this Letter of Credit by this reference, and, to the extent not inconsistent therewith, the laws of the State of New York, including the Uniform Commercial Code as in effect in the State of New York. Communications with respect to this Letter of Credit shall be addressed to us at our address set forth below, specifically referring to the number of this Letter of Credit.

[NAME OF BANK]

[BANK SIGNATURE]

ANNEX A

Form of Draft

To: [Issuing Bank]

DRAWN ON LETTER OF CREDIT No: _____

AT SIGHT

PAY TO THE ORDER OF [USAC] BY [CHECK/WIRE TRANSFER OF FEDERAL RESERVE BANK OF NEW YORK]

FUNDS TO: _____

_____

_____

Account (_____)

AS [PHASE II AUCTION REPAYMENT]

[AMOUNT IN WORDS] DOLLARS AND NO/CENTS

$[AMOUNT IN NUMBERS]

Universal Service Administrative Company

By:_____
Name:
Title:

ANNEX B

Draw Certificate

The undersigned hereby certifies to [Name of Bank] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the "Letter of Credit") issued by the Bank in favor of the Universal Service Administrative Company ("USAC") and (b) [paragraph ___] of the Report and Order, adopted on May 25, 2016, issued by the Federal Communications Commission in the matter of [Connect America Fund, WC Docket 10-90] (the "Order"), pursuant to which [Name of Winning Bidder] (the "LC Provider") has provided the Letter of Credit (all capitalized terms used herein but not defined herein having the meaning stated in the Order), that:

[The [Name of Winning Bidder] has [describe the event that triggers the draw],and is evidenced by a letter signed by the Chief of the [Wireline Competition Bureau] or [his/her] designee, dated _ , 20__ , a true copy of which is attached hereto.] Accordingly, a draw of the entire amount of the Letter of Credit No. _____ is authorized.]

OR

[USAC certifies that given notice of non-renewal of Letter of Credit No. _____ and failure of the account party to obtain a satisfactory replacement thereof, pursuant to the Order, USAC is entitled to receive payment of $_____ representing the entire amount of Letter of Credit No. _____.]

IN WITNESS WHEREOF, the undersigned has executed this certificate as of [specify time of day] on the ____ day of _____, 20__.

Universal Service Administrative Company

By: _____
Name:
Title:

ANNEX C

Certificate Regarding Termination of Letter of Credit

The undersigned hereby certifies to [Name of Bank] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the "Letter of Credit") issued by the Bank in favor of the Universal Service Administrative Company ("USAC"), and (b) paragraph [____] of the Report and Order adopted on May 25, 2016, issued by the Federal Communications Commission ("FCC") in the matter of [Connect America Fund, WC Docket 10-90] (the "Order"), (all capitalized terms used herein but not defined herein having the meaning stated or described in the Order), that:

(1) [include one of the following clauses, as applicable]

(a) The Order has been fulfilled in accordance with the provisions thereof; or

(b) [LC Provider/Winning Bidder] has provided a replacement letter of credit satisfactory to the FCC.

(2) By reason of the event or circumstance described in paragraph (1) of this certificate and effective upon the receipt by the Bank of this certificate (countersigned as set forth below), the Letter of Credit is terminated.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the ____ day of _____, 20__.

Universal Service Administrative Company

By:_____
Name:
Title:

By:_____
Name:
Title:

COUNTERSIGNED:

Federal Communications Commission

By: _____
Name:
Its Authorized Signatory

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 Rulemaking* adopted in November 2011 (*USF/ICC Transformation FNPRM*) and the *Further Notice of Proposed Rulemaking* adopted in April 2014 (*April 2014 Connect America FNPRM*).[2] The Commission sought written public comment on the proposals in the *USF/ICC Transformation FNPRM* and *April 2014 Connect America FNPRM*, including comment on the IRFAs. The Commission did not receive any relevant comments in response to these IRFAs. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

2. Over the last several years, the Commission has engaged in a modernization of its universal service regime to support networks capable of providing voice and broadband, including developing a new forward-looking cost model to calculate the cost of providing service in rural and high-cost areas. In 2015, 10 price cap carriers accepted an offer of Phase II support calculated by a cost model in exchange for a state-level commitment to deploy and maintain voice and broadband service in the high-cost areas in their respective states.[4] With this Report and Order (Order), the Commission now adopts rules to implement a competitive bidding process for Phase II of the Connect America Fund.

3. Specifically, building on decisions already made by the Commission, in this Order, we:

- Adopt public interest obligations for recipients of support awarded through the Phase II competitive bidding process, that will be known in advance of the auction and that will continue for the duration of the term of support, recognizing that competitive bidding is likely to be more efficient if potential bidders know what their performance standards will be before bids are made. In particular, we establish four technology-neutral tiers of bids available for bidding with varying speed and usage allowances, all at reasonably comparable rates, and for each tier will differentiate between bids that would commit to either lower or higher latency.
    - Our minimum performance tier requires that bidders commit to provide broadband speeds of at least 10 Mbps downstream and 1 Mbps upstream (10/1 Mbps) and offer at least 150 gigabytes (GB) of monthly usage.
    - Our baseline performance tier requires that bidders commit to provide at least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps) and offer a minimum usage allowance of 150 GB per month, or that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher.

[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; *April 2014 Connect America Order and/or FNPRM,* 29 FCC Rcd at 7216-44, paras. 1-91.

[3] *See* 5 U.S.C. § 604.

[4] Press Release, FCC, Carriers Accept Over $1.5 Billion in Annual Support from Connect America Fund to Expand and Support Broadband for Nearly 7.3 Million Rural Consumers in 45 States and One Territory (Aug. 27, 2015), https://apps.fcc.gov/edocs_public/attachmatch/DOC-335082A1.pdf.

  - Our above-baseline performance tier requires that bidders commit to provide at least 100 Mbps downstream and 20 Mbps upstream (100/20 Mbps) and offer an unlimited monthly usage allowance.
  - Our Gigabit performance tier requires that bidders commit to provide at least 1 Gigabit per second (Gbps) downstream and 500 Mbps upstream and offer an unlimited monthly usage allowance.
  - For each of the four tiers, bidders will designate one of two latency performance levels: (1) Low latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 100 milliseconds (ms), or (2) High latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 750 ms and, with respect to voice performance, demonstrate a score of four or higher using the Mean Opinion Score (MOS).
- Adopt the same interim service milestones for winning bidders in the Phase II auction as for price cap carriers that accepted Phase II model-based support.
- Finalize our decisions regarding areas eligible for the Phase II competitive bidding process.
- Establish a budget for the Phase II competitive bidding process of $215 million in annual support.
- Provide general guidance on auction design, with the specific details to be determined by the Commission at a future date in the *Auction Procedures Public Notice*, after further opportunity for comment. We will use weights to account for the different characteristics of service offerings that bidders propose to offer when ranking bids. We express our preference for a multi-round auction format and for setting the minimum biddable unit as a census block group containing any eligible census blocks. We conclude that reserve prices will not exceed support amounts determined by the Connect America Cost Model (CAM).
- Adopt a two-step application process, similar to Commission spectrum auctions and the Mobility Fund Phase I and Tribal Mobility Fund Phase I auctions. In the pre-auction short-form application, a potential bidder will need to establish its baseline financial and technical capabilities in order to be eligible to bid. In the long-form review process, winning bidders will be required to provide additional information regarding their qualifications. They will be required to obtain an acceptable letter of credit and designation as an eligible telecommunications carrier (ETC) before funding is authorized.
- Establish a baseline forfeiture for bidders that default before funding authorization.
- Establish a 180-day post-auction deadline for winning bidders to submit proof of their ETC designation during long-form review and forbear from the section 214(e)(5) service area conformance requirements.
- Adopt reporting requirements that will enable the Commission to monitor recipients' progress in meeting their interim deployment obligations, and a process by which the Wireline Competition Bureau (Bureau) or the Wireless Telecommunications Bureau will authorize the Universal Service Administrative Company (USAC) to draw on a letter of credit in the event of performance default.
- Adopt rules to establish the framework for the Remote Areas Fund, which will award support through a competitive bidding process to occur expeditiously after conclusion of the Phase II auction.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no relevant comments filed that specifically addressed the rules and policies proposed in the *USF/ICC Transformation FNPRM* IRFA and the *April 2014 Connect America FNPRM* IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010,[5] which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

6. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

D. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply

7. 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.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[8] 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.[9]

8. **Small Businesses**. Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA.[10]

9. **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.[11] According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.[12] Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more.[13] Thus, under this size standard, the majority of firms can be considered small.

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[5] 5 U.S.C. § 604(a)(3).

[6] *See* 5 U.S.C. § 603(b)(3).

[7] *See* 5 U.S.C. § 601(6).

[8] *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."

[9] *See* 15 U.S.C. § 632.

[10] *See* SBA, Office of Advocacy, "Frequently Asked Questions," https://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf (accessed Dec. 2014).

[11] 13 CFR § 121.201, NAICS code 517110.

[12] 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).

[13] *See id*.

10. **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.[14] According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[15] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[16] 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.

11. **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.[17] According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[18] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[19] 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

12. 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."[20] 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.[21] 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.

13. **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.[22] According to Commission data, 1,442 carriers reported that they were engaged in the provision of either

[14] 13 CFR § 121.201, NAICS code 517110.

[15] *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*).

[16] *See id*.

[17] *See* 13 CFR § 121.201, NAICS code 517110.

[18] *See Trends in Telephone Service* at Table 5.3.

[19] *See id*.

[20] 5 U.S.C. § 601(3).

[21] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (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 CFR § 121.102(b).

[22] *See* 13 CFR § 121.201, NAICS code 517110.

competitive local exchange services or competitive access provider services.[23] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.[24] 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.[25] In addition, 72 carriers have reported that they are Other Local Service Providers.[26] Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.[27] 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.

14. **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.[28] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[29] Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[30] 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.

15. **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.[31] According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[32] Of these, we estimate that all 193 have 1,500 or fewer employees and none have more than 1,500 employees.[33] 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.

16. **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.[34] According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[35] Of these, an estimated 211 have 1,500 or fewer employees and

[23] *See Trends in Telephone Service* at Table 5.3.

[24] *See id.*

[25] *See id*.

[26] *See id*.

[27] *See id*.

[28] *See* 13 CFR § 121.201, NAICS code 517110.

[29] *See Trends in Telephone Service* at Table 5.3.

[30] *See id.*

[31] *See* 13 CFR § 121.201, NAICS code 517911.

[32] *See Trends in Telephone Service* at Table 5.3.

[33] *See id*.

[34] *See* 13 CFR § 121.201, NAICS code 517911.

[35] *See Trends in Telephone Service* at Table 5.3.

two have more than 1,500 employees.[36] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Order.

17. **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.[37] According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[38] Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.[39] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Order.

18. **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.[40] According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[41] Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.[42] 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.

19. **800 and 800-Like Service Subscribers**.[43] 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.[44] 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.[45] 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.[46] 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.

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[36] *See id*.

[37] *See* 13 CFR § 121.201, NAICS code 517911.

[38] *See Trends in Telephone Service* at Table 5.3.

[39] *See id*.

[40] *See* 13 CFR § 121.201, NAICS code 517110.

[41] *See Trends in Telephone Service* at Table 5.3.

[42] *See id*.

[43] We include all toll-free number subscribers in this category, including those for 888 numbers.

[44] *See* 13 CFR § 121.201, NAICS code 517911.

[45] *See Trends in Telephone Service* at Tables 18.7-18.10.

[46] *See id*.

20. **Wireless Telecommunications Carriers (except Satellite)**. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.[47] Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.[48] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[49] For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.[50] Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more.[51] 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.[52] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[53] 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.

21. **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.[54] 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.[55] These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[56] 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.[57] In 1999, the

[47] *See* 13 CFR § 121.201, NAICS code 517210.

[48] U.S. Census Bureau, 2012 NAICS Definitions, "517211 Paging," http://www.census.gov/econ/isp/sampler.php?naicscode=517210&naicslevel=6#; U.S. Census Bureau, 2012 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications," http://www.census.gov/econ/isp/sampler.php?naicscode=517210&naicslevel=6#.

[49] 13 CFR § 121.201, NAICS code 517210. The now-superseded, pre-2007 CFR citations were 13 CFR § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[50] 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).

[51] *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."

[52] *See Trends in Telephone Service* at Table 5.3.

[53] *See id*.

[54] *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 CFR § 24.720(b)(1).

[55] *See generally Broadband PCS Auction Order*; *see also* 47 CFR § 24.720(b)(2).

[56] *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).

[57] *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).

Commission re-auctioned 347 C, E, and F Block licenses.[58] 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.[59] 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.[60] 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 Auction 71.[61] Of the 14 winning bidders, six were designated entities.[62] In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.[63]

22. **Advanced Wireless Services**. In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses.[64] 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.[65] Four winning bidders that identified themselves as very small businesses won 17 licenses.[66] 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.

23. **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.[67] Through these auctions, the

[58] *See C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (WTB 1999).

[59] *See C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (WTB 2001).

[60] *See Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (WTB 2005).

[61] *See Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (WTB 2007).

[62] *Id*.

[63] *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 (WTB 2008).

[64] *See id*. Auction 78 also included an auction of Broadband PCS licenses.

[65] *Id*. at 7521-22.

[66] *See Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78,* Public Notice, 23 FCC Rcd 12749 (WTB 2008).

[67] *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).

Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[68] 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*.[69] 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.[70] 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.[71] The SBA has approved these small business size standards.[72] A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[73] Three of these claimed status as a small or very small entity and won 311 licenses.

24. **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.[74] 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.[75] According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service.[76] Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees.[77] 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.[78] 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.[79] 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

[68] *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).

[69] *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*).

[70] *Id.*

[71] *Id.*

[72] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998) (*Alvarez Letter 1998*).

[73] *See Narrowband PCS Auction Closes*, Public Notice, 16 FCC Rcd 18663 (WTB 2001).

[74] *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*)

[75] *See Alvarez Letter 1998*.

[76] *See Trends in Telephone Service* at Table 5.3.

[77] *See id*.

[78] *See id.*

[79] *See Lower and Upper Paging Band Auction Closes*, Public Notice, 16 FCC Rcd 21821 (WTB 2002).

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.[80] 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.[81].

25. **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.[82] 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.

26. **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.[83] 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.[84] 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.[85] The SBA has approved these small business size standards.[86] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[87] 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.[88]

[80] *See Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (WTB 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.

[81] *See Auction of Lower and Upper Paging Bands Licenses Closes*, Public Notice, 25 FCC Rcd 18164 (WTB 2010).

[82] *See* 13 CFR § 121.201, NAICS code 517210.

[83] *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*).

[84] *See id*. at 11068–69, para. 291.

[85] *See id*. at 11068–70, paras. 291–95.

[86] *See* Letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998) (*Alvarez to Phythyon Letter 1998*).

[87] *See Phase II 220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (WTB 1998).

[88] *See Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (WTB 1999).

27. **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.[89] 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.[90] The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services.[91] 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.[92] 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.[93] 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.[94] 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.[95]

28. 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.[96] 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.[97] 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.

29. 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.[98] 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.

30. **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

[89] 47 CFR §§ 90.810, 90.814(b), 90.912.

[90] 47 CFR §§ 90.810, 90.814(b), 90.912.

[91] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (Aug. 10, 1999) (*Alvarez Letter 1999*).

[92] *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 (WTB 1996).

[93] *Id*.

[94] *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 (WTB 1996).

[95] *See Multi-Radio Service Auction Closes*, Public Notice, 17 FCC Rcd 1446 (WTB 2002).

[96] *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 (WTB 2000).

[97] *See 800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 1736 (WTB 2000).

[98] *See generally* 13 CFR § 121.201, NAICS code 517210.

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")).[99] In connection with the 1996 BRS auction, the 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.[100] 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.[101] 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.[102] In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses.[103] Auction 86 concluded with 10 bidders winning 61 licenses.[104] 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.

31. 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.[105] 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

[99] *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).

[100] 47 CFR § 21.961(b)(1).

[101] 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.

[102] 47 CFR § 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 (WTB 2009).

[103] *Id*. at 8280.

[104] *Auction of Broadband Radio Service Licenses Closes; Winning Bidders Announced for Auction 86*, Public Notice, 24 FCC Rcd 13572 (WTB 2009).

[105] 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.

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."[106] 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.[107] Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.[108] Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

32. **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.[109] 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.[110] 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.[111] 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.[112] The SBA approved these small size standards.[113] 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.[114] Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[115] 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.[116] 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.[117] In 2005, the Commission

[106] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition), http://www.census.gov/econ/isp/sampler.php?naicscode=517110&naicslevel=6.

[107] 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).

[108] *See id*.

[109] *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).

[110] *See id*. at 1087-88, para. 172.

[111] *See id*.

[112] *See id*. at 1088, para. 173.

[113] *See Alvarez Letter 1999*.

[114] *See Lower 700 MHz Band Auction Closes; Winning Bidders Announced*, Public Notice, 17 FCC Rcd 17272 (WTB 2002).

[115] *Id*.

[116] *See* Lower 700 MHz Band Auction Closes*; Winning Bidders Announced*, Public Notice, 18 FCC Rcd 11873 (WTB 2003).

[117] *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.[118]

33. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.[119] 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.[120] An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008.[121] 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.[122]

34. **Upper 700 MHz Band Licenses.** In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz band licenses.[123] In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available.[124] 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).

35. **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.[125] A "small business" is an entity that, together with its affiliates and controlling principals, has average gross

[118] *Auction of Lower 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction No. 60*, Public Notice, 20 FCC Rcd 13424 (WTB 2005).

[119] *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. 94-102, 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*).

[120] *Id*.

[121] *See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, 23 FCC Rcd 4572 (WTB 2008) (*Auction 73 Closure Public Notice*).

[122] *See Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 92*, Public Notice, 26 FCC Rcd 10494 (WTB 2011).

[123] *700 MHz Second Report and Order*.

[124] *See Auction 73 Closure Public Notice*.

[125] *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.[126] 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.[127] An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[128] 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.[129]

36. **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.[130] Bidding credits for designated entities were not available in Auction 77.[131] 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.[132]

37. **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.[133] 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.[134]

38. 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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[126] *See id*. at 5343–45, paras. 106–10.

[127] *See id*.

[128] *See 700 MHz Guard Band Auction Closes; Winning Bidders Announced*, Public Notice, 15 FCC Rcd 18026 (WTB 2000).

[129] *See 700 MHz Guard Bands Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 4590 (WTB 2001).

[130] *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 (WTB 2008).

[131] *Id*. at 6685.

[132] *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).

[133] *See* 13 CFR § 121.201, NAICS code 517210.

[134] *See* generally 13 CFR § 121.201.

39. **Rural Radiotelephone Service**. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[135] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[136] 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.[137] 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.

40. **Air-Ground Radiotelephone Service**. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[138] 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.[139] 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.

41. **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.[140] Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[141] 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.[142] 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.[143] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them

[135] The service is defined in 47 CFR § 22.99.

[136] BETRS is defined in 47 CFR §§ 22.757 and 22.759.

[137] 13 CFR § 121.201, NAICS code 517210.

[138] *See* 47 CFR § 22.99.

[139] *See* 13 CFR § 121.201, NAICS code 517210.

[140] *See* 13 CFR § 121.201, NAICS code 517210.

[141] U.S. Census Bureau, 2012 Economic Census, Sector 51, 2012 NAICS code 517210, https://bhs.econ.census.gov/ec12/in-51/in-51_form_default.html.

[142] *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).

[143] *See id*.

qualify as "small" businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Order.

42. **Fixed Microwave Services**. Fixed microwave services include common carrier,[144] private operational-fixed,[145] and broadcast auxiliary radio services.[146] 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.[147] 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.

43. **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.[148] 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.[149] Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[150] 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.

44. **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.[151] An additional size standard for "very small business" is: an entity that, together with

[144] *See* 47 CFR §§ 101 *et seq*. (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

[145] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 CFR 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.

[146] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR 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.

[147] *See* 13 CFR § 121.201, NAICS code 517210.

[148] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 CFR §§ 22.1001-22.1037.

[149] *Id*.

[150] U.S. Census Bureau, 2012 Economic Census, Sector 51, 2012 NAICS code 517210, https://bhs.econ.census.gov/ec12/in-51/in-51_form_default.html.

[151] *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).

affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[152] The SBA has approved these small business size standards.[153] The auction of the 2,173 39 GHz 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.

45. **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.[154] 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.[155] 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.[156] The SBA has approved these small business size standards in the context of LMDS auctions.[157] 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.

46. **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.[158] 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.[159] 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.[160] These size standards will be used in future auctions of 218-219 MHz spectrum.

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[152] *See id.*

[153] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

[154] *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).

[155] *See id.*

[156] *See id.*

[157] *See Alvarez to Phythyon Letter 1998*.

[158] *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).

[159] *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*).

[160] *See id.*

47. **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 with average gross revenues of $15 million for each of the three preceding years.[161] The SBA has approved these definitions.[162] 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.

48. **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.

49. **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).[163] 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.

50. **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.[164] 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.[165] 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[166] 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.

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[161] *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).

[162] *See Alvarez Letter 1998*.

[163] The service is defined in section 90.1301 *et seq*. of the Commission's Rules, 47 CFR § 90.1301 *et seq*.

[164] 13 CFR § 121.201, NAICS code 517210.

[165] U.S. Census Bureau, 2012 Economic Census, Sector 51, 2012 NAICS code 517210, https://bhs.econ.census.gov/ec12/in-51/in-51_form_default.html.

[166] 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.

51. **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.[167] "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.[168] The SBA has approved these small business size standards.[169] These size standards will apply to a future 24 GHz license auction, if held.

52. **Satellite Telecommunications**. Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million.[170] 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.[171] Under the "Other Telecommunications" category, a business is considered small if it had $25 million or less in average annual receipts.[172]

53. 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."[173] For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year.[174] Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999.[175] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Order.

54. 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."[176] For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.[177] Of

[167] *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 CFR § 101.538(a)(2).

[168] *See 24 GHz Order*, 15 FCC Rcd at 16967, para. 77; *see also* 47 CFR § 101.538(a)(1).

[169] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

[170] *See* 13 CFR § 121.201, NAICS code 517410.

[171] *Id*.

[172] *See* 13 CFR § 121.201, NAICS code 517919.

[173] U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications".

[174] *See* 13 CFR § 121.201, NAICS code 517410.

[175] *See id*. An additional 38 firms had annual receipts of $25 million or more.

[176] U.S. Census Bureau, 2012 NAICS Definitions, "517919 Other Telecommunications," http://www.census.gov/econ/isp/sampler.php?naicscode=517919&naicslevel=6.

[177] *See* 13 CFR § 121.201, NAICS code 517919.

this total, 2,346 firms had annual receipts of under $25 million.[178] Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

55. **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."[179] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.[180] According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.[181] Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.[182] Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

56. **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.[183] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[184] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[185] 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.[186] Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order.

57. **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."[187] The Commission has determined that an

[178] 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).

[179] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition), http://www.census.gov/econ/isp/sampler.php?naicscode=517110&naicslevel=6.

[180] 13 CFR § 121.201, NAICS code 517110.

[181] 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).

[182] *See id*.

[183] *See* 47 CFR § 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).

[184] 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.

[185] *See* 47 CFR § 76.901(c).

[186] 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.

[187] 47 U.S.C. § 543(m)(2); *see also* 47 CFR § 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.[188] Industry data indicate that, of 1,076 cable operators nationwide, all but 10 are small under this size standard.[189] 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,[190] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

58. **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.[191] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[192] OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."[193] 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.[194] Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.[195] 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.[196] Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.[197] 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.

59. **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

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[188] 47 CFR § 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).

[189] 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.

[190] 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.

[191] 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*).

[192] *See* 47 U.S.C. § 573.

[193] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers," http://www.census.gov/econ/isp/sampler.php?naicscode=517110&naicslevel=6.

[194] 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).

[195] *See id*.

[196] A list of OVS certifications may be found at http://www.fcc.gov/encyclopedia/current-filings-certification-open-video-systems.

[197] *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."[198] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.[199] According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.[200] Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more.[201] 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.[202] Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more.[203] Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

60. **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)."[204] The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees.[205] According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year.[206] Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more.[207] Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

61. **Data Processing, Hosting, and Related Services**. Entities in this category "primarily … provid[e] infrastructure for hosting or data processing services."[208] The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual

[198] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition), http://www.census.gov/econ/isp/sampler.php?naicscode=517110&naicslevel=6.

[199] 13 CFR § 121.201, NAICS code 517110.

[200] 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).

[201] *See id*.

[202] 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).

[203] *See id*.

[204] U.S. Census Bureau, "2012 NAICS Definitions: 519130 Internet Publishing and Broadcasting and Web Search Portals," http://www.census.gov/econ/isp/sampler.php?naicscode=519130&naicslevel=6.

[205] *See* 13 CFR § 121.201, NAICS code 519130.

[206] 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).

[207] *Id*.

[208] U.S. Census Bureau, "2012 NAICS Definitions: 518210 Data Processing, Hosting, and Related Services," http://www.census.gov/econ/isp/sampler.php?naicscode=518210&naicslevel=6.

receipts.[209] According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year.[210] Of these, 7,744 had annual receipts of under $ $24,999,999.[211] Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

62. **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)."[212] 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.[213] According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year.[214] 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.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

63. In the Order we adopt today, we establish four technology-neutral tiers of bids available for bidding with varying speed and usage allowances, and for each tier will differentiate between bids that would offer either lower or higher latency. All bidders must offer a service at rates that are within a reasonable range of rates for comparable fixed wireline services offered in urban areas

64. Once a winning bidder is authorized to begin receiving Phase II auction support, it will have six years to deploy a voice and broadband-capable network meeting the relevant public interest obligations to the required number of locations included in its bid. Phase II auction recipients will also be required to meet interim service milestones. They will have to complete construction to 40 percent of the requisite number of locations in a state by the end of the third year of funding authorization, an additional 20 percent in subsequent years, with 100 percent by the end of the sixth year. Phase II recipients that at the end of their support term have deployed to at least 95 percent, but less than 100 percent of the number of funded locations will be required to refund support based on the number of funded locations left unserved in the state. The amount refunded will be based on one-half the average support for the top five percent of the highest cost funded locations nationwide.

65. Entities that are interested in participating in the Phase II auction will be required to file a short-form application in order to establish their eligibility to participate. In their short-form applications, they will be required to submit any information or documentation required to establish their eligibility for any bidding credits the Commission adopts. If applicants are already ETCs they will need to identify themselves as such and all applicants will be required to submit a certification acknowledging that they must be designated as an ETC for the area in which they will receive support prior to being authorized to

[209] *See* 13 CFR § 121.201, NAICS code 518210.

[210] 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).

[211] *Id*.

[212] U.S. Census Bureau, "2007 NAICS Definitions: 519190 All Other Information Services", http://www.census.gov/econ/isp/sampler.php?naicscode=519190&naicslevel=6.

[213] *See* 13 CFR § 121.201, NAICS code 519190.

[214] 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).

begin receiving support. Applicants will be required to submit a certification of their financial and technical capabilities to provide the required service in the required timeframe and information that establishes their identity, including disclosing parties with ownership interests and any agreements the applicants may have relating to the support to be sought through the Phase II auction. Applicants will also be required to indicate the type of bid they intend to place and describe the technology or technologies that will be used to provide service for each category of bid. If an applicant plans to use spectrum, it must also provide additional details about its spectrum access, including demonstrating that it has the proper authorizations, if applicable, and access and that the spectrum resources will be sufficient to cover peak network usage and deliver the minimum performance requirements.

66. Applicants will also be required to certify in their short-form application that they have provided voice, broadband, and/or electric transmission or distribution services for at least two years or they are the wholly-owned subsidiary of such an entity, and specify the number of years they have been operating. Applicants that have provided voice or broadband services must also certify that they have filed FCC Form 477s as required during that time period. Applicants that have operated only an electric distribution or transmission network must submit qualified operating or financial reports for the relevant time period that they have filed with the relevant financial institution along with a certification stating that those submissions are the true and accurate copies of the submissions made to the relevant financial institution. Applicants that are able to demonstrate that they have operated such a network for at least two years will also be required to submit the prior fiscal year's audited financial statements. Applicants that meet these requirements but that do not audit their financial statements in the ordinary course of business can instead certify that they will submit their audited financial statements for the prior fiscal year during the long-form application review process if they are selected as a winning bidder. A winning bidder that fails to submit its audited financial statements during the long-form application stage will be subject to a forfeiture. If applicants cannot meet these requirements, in the alternative, applicants may instead submit audited financial statements from the three most recent consecutive fiscal years and a letter from interest from a qualified bank that the bank would provide a letter of credit to the bidder if the bidder were selected for bids of a certain dollar magnitude. The short-form application may also include additional certifications or requirements that are adopted in an auction procedures public notice.

67. Within a specified number of days of the release of a public notice announcing an entity as a winning bidder, that winning bidder will be required to file a long-form application. In this long-form application, winning bidders will be required to submit a self-certification regarding their financial and technical qualifications and a self-certification that specifies that that they will be able to meet all of the applicable public interest obligations for the relevant categories, including the requirement that they offer service at rates that are equal or lower to the Commission's reasonable comparability benchmarks for fixed wireline services offered in urban areas. Winning bidders will also be required to submit a description of the technology and system design they intend to use to deliver voice and broadband service, including a network diagram which must be certified by a professional engineer. The professional engineer must certify that the network is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements. Winning bidders proposing to use wireless technologies must also provide certain information related to their spectrum access and licenses if applicable.

68. Winning bidders will also have to certify in their long-form applications that they have available funds for all project costs that will exceed the amount of support that will be received from the Phase II auction for the first two years of their support term and that they will comply with program requirements, including service milestones. They will also have to describe how the required construction will be funded and include financial projections that demonstrate that they can cover the necessary debt service payments over the life of the loan. The long-form application may also include additional certifications or requirements that are adopted in an auction procedures public notice.

69. Within the number of days specified by public notice, the winning bidder will be required to submit a letter of credit commitment letter from a qualified bank as part of the long-form application process. Within 180 days of being announced as a winning bidder, winning bidders that demonstrated in

their short-form application that they had provided a voice, broadband and/or electric distribution or transmission service for at least two years and did not submit their audited financials during the short-form application process, must submit their audited financial statements for the prior year. Within 180 days of an entity being announced as a winning bidder, the winning bidder will be required to submit appropriate documentation in its long-form application of its ETC designation in all areas for which it will receive support, documentation showing that the designated areas cover the bid areas, and a letter from an officer of the company certifying that the ETC designation covers the relevant areas where the winning bidder will receive support.

70. After the Commission has reviewed the winning bidder's long-form application and has determined that it is qualified to be authorized to begin receiving Phase II support, a public notice will be released stating that the winning bidder is ready to be authorized. At that point, the winning bidder will have the number of days specified by public notice to submit an irrevocable standby letter of credit from a bank that meets the Commission's requirements and an opinion letter from legal counsel. After the letter of credit and opinion letter are approved a public notice will be released authorizing the winning bidder to begin receiving Phase II auction support. Phase II recipients will be required to maintain an open and renewed letter of credit until USAC has verified that their build-outs are complete.

71. If an entity that files a short-form application defaults, it will be subject to a forfeiture. An entity will be considered in default if it fails to timely file a long-form application or meet document submission deadlines, is found ineligible or unqualified to receive Phase II support by the Bureaus on delegated authority, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of the support.

72. Once a Phase II recipient has been authorized to begin receiving support, it will be required to report certain information to the Commission so that the Commission can track the progress of Phase II recipients and monitor their use of the public's funds before and after they meet service milestones. Specifically, each year Phase II auction recipients will be required to submit by the last business day of the second calendar month following each support year a list of the geocoded locations and the total number of locations to which they have newly offered service meeting the requisite requirements with Connect America support in the prior year. The first list they submit, will also include a list of all of the locations where the recipient already offers service meeting the Commission's requirements before receiving support. Carrier are encouraged to submit their locations on a rolling basis to an online portal that will be developed by the Bureau and USAC, 30 days from the date of deployment. By the last business day of the second calendar month following the end of certain support years, recipients will also be required to submit certifications that they have met the relevant interim service milestones.

73. Like all recipients of Connect America support, all Phase II recipients are also required to file section 54.313 annual reports and section 54.314 certifications. In addition to other information required to be submitted in the section 54.313 annual reports, Phase II recipients will be required to identify the total amount of Connect America Phase II support they used for capital expenditures in the previous year and certify that they have available funds for all project costs that will exceed the amount of support that will be received from the Phase II auction for the next calendar year. After they have met the final service milestone, recipients will also be required to certify in their section 54.313 annual reports that the network they operated in the prior year met the Commission's performance requirements.

74. Analogous application and reporting requirements also are adopted for recipients of support awarded through the Remote Areas Fund auction.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

75. 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 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.[215]

76. We have taken a number of steps to ensure that small entities have the opportunity to participate in the Phase II auction. For example, we adopt different performance standards for bidders to maximize the types of entities that can participate in the Phase II auction. Recognizing that not all entities, including some small entities, will be able to meet the baseline performance standards we adopt, we permit entities to choose to meet minimum performance requirements. Although the Commission will rank bids using weights and minimum performance bidders are not guaranteed a 10-year support term under certain circumstances, we do not restrict the geographic area where entities placing bids for relaxed standards can bid.

77. Because the Phase II challenge process was a resource-intensive process for all entities involved, we have also decided to rely on Form 477 data and conduct a more streamlined challenge process to determine areas that are eligible for the Phase II auction. This means that competitors, who can be small entities, that qualify as an unsubsidized competitor will only have to file a Form 477 as they are already required to do to ensure that the areas they serve are not overbuilt and may submit comments within 30 days of the publication of the preliminary eligible census block list if they have built out since they have submitted June 2015 Form 477 data.

78. We expect that the minimum geographic area for bidding will be a census block group containing one or more eligible census blocks. We found adopting a larger minimum geographic unit would preclude entities from participating in the Phase II auction, including small entities that intend to construct a smaller network or edge out their networks. We expect that the auction design adopted by the Commission in the *Auction Procedures Public Notice* will similarly account for the needs of small entities.

79. Based on lessons learned from the rural broadband experiments and in response to comments submitted by participating entities, including small entities, we also adopt requirements for the short-form and long-form applications that will maximize the number and types of entities that can participate. For example, in the rural broadband experiments, we required that provisionally selected bidders submit three years of audited financials. A number of entities, including small entities, could not meet this requirement because they had not been in business for three years or they claimed audited financials were prohibitively expensive. For the Phase II auction and the Remote Areas Fund, we will require that applicants certify in their short-form application that they have provided voice, broadband, and/or electric distribution or transmission services for at least two years or that they are the wholly-owned subsidiary of such an entity. Applicants that have provided voice or broadband services must also certify that they have filed FCC Form 477s as required during that time period and submit their audited financial statements from the prior fiscal year. Applicants that have operated only an electric distribution or transmission network must submit qualified operating or financial reports. As an alternative, we also permit applicants that have demonstrated that they have operated a network for two years but do not audit their financial statements in the ordinary course of business, many which may be small companies, to wait to submit audited financial statements until the long-form application review process. This will allow such applicants to avoid the cost of obtaining an audit if they are not ultimately announced as winning bidders. Also, by requiring only one year of audited financials, we reduce the cost of this requirement for entities that have already demonstrated that they are able to maintain a voice, broadband, and/or electric distribution or transmission network for two years.

80. Recognizing that these requirements may preclude entities, including small entities, that have not operated a voice, broadband, and/or electric distribution or transmission network for two years, we also provide the alternative of letting applicants instead submit three year of audited financials and a

[215] 5 U.S.C. § 603.

letter of interest from a qualified bank that the bank would provide a letter of credit to the bidder if the bidder were selected for bids of a certain dollar magnitude. We concluded that our interest in having some level of insight into the financial health over a significant period of time of applicants that lack an operating history outweigh the costs of obtaining three years of financial statements for this subset of entities.

81. Additionally, we have taken steps to reduce the costs of the letter of credit requirement for the recipients of support awarded through a competitive bidding process to serve fixed locations in response to claims from entities, particularly small entities, that the letter of credit requirement for the rural broadband experiments was prohibitively expensive. First, we only require that recipients maintain an open irrevocable standby letter of credit until it has been verified that they have met the final service milestone; in the rural broadband experiments the letter of credit originally had to be open and renewed for the entire support term. Second, recipients can modestly reduce the value of their letters of credit as they have made substantial progress in building out their networks by meeting certain service milestones. Third, we have modified our issuing bank eligibility requirements for all recipients of support authorized through competitive bidding to serve fixed locations. We have expanded the pool of eligible U.S. banks and made the National Rural Utilities Cooperative Finance Corporation (CFC) an eligible issuing bank. This will potentially reduce the costs and other challenges of obtaining a letter of credit for entities that lack established business relationships with larger banks.

82. We note that the reporting requirements we adopt are tailored to ensuring that support is used for its intended purpose and so that we can monitor the progress of recipients in meeting their service milestones. We find that the importance of monitoring the use of the public's funds outweighs the burden of filing the required information on all entities, including small entities, particularly because much of the information that we require they report is information we expect they will already be collecting to ensure they comply with the terms and conditions of support and they will be able to submit their location data on a rolling basis to help minimize the burden of uploading a large number of locations at once.

G. Report to Congress

83. The Commission will send a copy of the Report and Order, 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.[216] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRA (or summaries thereof) will also be published in the Federal Register.[217]

[216] 5 U.S.C. § 801(a)(1)(A).

[217] *See id*. § 604(b).

APPENDIX D

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided on this Report and Order (Order). The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the Further Notice 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 Order, we adopt public interest obligations for recipients of support awarded through the Phase II competitive bidding process that will be known in advance of the auction and that will continue for the duration of the term of support, recognizing that competitive bidding is likely to be more efficient if potential bidders know what their performance standards will be before bids are made. In particular, we establish four technology-neutral tiers of bids available for bidding with varying speed and usage allowances, all at reasonably comparable rates, and for each tier will differentiate between bids that would commit to either lower or higher latency. The Order provides general guidance on auction design, with certain details to be determined by the Commission at a future date in the *Auction Procedures Public Notice*, after further opportunity for comment.

3. Separately, with the Further Notice, we begin the process of seeking comment on several specific procedures that will apply to the Phase II auction. We seek comment on three discrete sets of issues relating to the process for determining winning bidders: (1) how to apply weights to the different levels of performance adopted in the Order above; (2) measures to achieve the public interest objective of ensuring appropriate support for all of the states; and (3) measures to achieve the public interest objective of expanding broadband on Tribal lands. We also seek comment on issues relating to interim deployment milestones for non-terrestrial providers or providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations.

1. Comparing Bids of Differing Performance Levels.

4. In today's Order, we adopt four technology-neutral performance tiers with varying speed and usage allowances, and for each tier permit bidders to designate either low or high latency. We also conclude that all bids will be considered simultaneously, so that bidders that propose to meet one set of performance standards will be directly competing against bidders that propose to meet other performance standards. To implement this framework, we have decided to use weights to take into account the differing attributes of different types of service performance.

5. The Further Notice seeks comment on how bids should be weighted in order to achieve our overarching goal of providing households in the relevant high-cost areas with access to high quality broadband services, while making the most efficient use of limited universal service funds. We recognize that setting appropriate weights is of crucial importance to achieving this goal and implementing a successful Phase II auction. Thus, we seek comment on weights in the Further Notice in order to expedite

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, 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] *Id.*

our ability to adopt auction procedures regarding the comparison of bids. A number of parties have submitted various proposals for how to weigh bids with differing performance obligations. In the Further Notice, we seek comment on these proposals and how we should consider them in light of the performance obligation tiers and latency framework we adopt in the Order. We also seek comment on any alternative weighting proposals.

6. The Further Notice proposes to adopt procedures that would assign a weight to each service tier as well as the high and low latency designations that would alter the initial cost-effectiveness score of each bid. The Further Notice proposes to adopt procedures for weights that would take into account the relative benefits to consumers of higher speeds, higher usage allowances, and lower latency. We seek comment on these proposals and any other alternatives. The Further Notice also seeks comment on what specific value of weights should be applied to each tier of service, and whether any of the different service tiers should be valued equivalently. We also seek comment on whether weights should be set relative to the baseline service tier, relative to the minimum requirements for this auction, or other approaches. We also seek comment on potentially using the Commission's Form 477 data or other subscribership data including costs per subscriber location in setting weights.

2. Access to Appropriate Phase II Levels for All States

7. The Further Notice also seeks comment on measures to achieve the public interest objective of ensuring appropriate support for all of the states. In the Order, we recognize the concerns raised by those states where significant amounts of Phase II funding were declined (declined states). We seek comment in the Further Notice generally on how to address these concerns in line with our universal service objectives.

8. We first seek comment in the Further Notice on establishing weights that would provide a preference to declined states or other auction design procedures for the comparison of bids to ensure equitable funding to such states. We also seek comment on adopting weights to provide a preference for those states that have made a meaningful commitment to advance broadband. We seek comment on creating a funding 'backstop' that could be used, if necessary, to ensure an equitable distribution of funding to declined states. We also seek comment on putting in place additional or subsequent measures to make up any shortfall from the declined amounts that remain following the Phase II auction. We seek comment on adopting an auction procedure that sets a ceiling for the aggregate total of winning bids in any given state to prevent a substantial redistribution of Phase II funds among states. If the Commission were to adopt such a ceiling, what would be the appropriate level? Finally, we seek comment on adopting auction procedures intended to ensure that declined states receive all or substantially all of the funds declined by the incumbent carrier.

3. Access to Service on Tribal Lands

9. In the Further Notice, we act to further develop the record on how to advance our policy objective of extending broadband to unserved Tribal lands. We recognize the historic challenges of serving Tribal lands and the low deployment of broadband service on Tribal lands. We seek comment on several auction procedures that could advance our goal of expanding access to broadband on Tribal lands.

10. We seek comment on adopting a Tribal-specific weight in the Phase II auction and how such a weighting should be designed to further our objective of advancing broadband deployment on Tribal lands. We seek comment on whether to provide a weight to the bids of all or a subset of entities bidding on Tribal lands and we seek comment whether all or part of the area bid on must be Tribal lands for the bidder to receive a Tribal-specific weight. We also seek comment in the Further Notice on any alternative auction procedures that could be adopted to further our goals of advancing broadband deployment on Tribal lands.

4. Limited Adjustments to Interim Deployment Milestones

11. In the Further Notice, we seek comment on how to address interim deployment milestones for non-terrestrial providers or other providers that have already deployed the infrastructure

they intend to use to fulfill their Phase II obligations. We seek comment on how interim deployment milestones should be modified, if at all, for providers that have already deployed significant amounts of infrastructure necessary to meet the service commitments and on what specific milestones should the Commission adopt in the alternative so as to be able to monitor compliance with deployment obligations.

B. Legal Basis

12. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 2, 4(i), 5, 10, 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, 1.3, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR §§ 1.1, 1.3, 1.421, 1.427, and 1.429.

C. Description and Estimate of the Number of Small Entities to Which the Rules Would 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.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[6] 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 Small Business Administration (SBA).[7]

1. Total Small Entities

14. Our proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards.[8] First, nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA, which represents 99.7% of all businesses in the United States.[9] In addition, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[10] Nationwide, as of 2007, there were approximately 1,621,215 small organizations.[11] Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[12] Census Bureau data for 2011 indicate that there were 90,056

[4] *See* 5 U.S.C. § 603(b)(3).

[5] *See* 5 U.S.C. § 601(6).

[6] *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."

[7] *See* 15 U.S.C. § 632.

[8] *See* 5 U.S.C. §§ 601(3)-(6).

[9] *See* SBA, Office of Advocacy, *Frequently Asked Questions*, http://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf.

[10] 5 U.S.C. § 601(4).

[11] Indep. Sector, The New Nonprofit Almanac and Desk Reference (2010).

[12] 5 U.S.C. § 601(5).

local governmental jurisdictions in the United States.[13] We estimate that, of this total, as many as 89,327 entities may qualify as "small governmental jurisdictions."[14] Thus, we estimate that most governmental jurisdictions are small.

2. Broadband Internet Access Service Providers

15. Any rules adopted pursuant to the Further Notice will apply to broadband Internet access service providers. The Economic Census places these firms, whose services might include Voice over Internet Protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,[15] which has an SBA small business size standard of 1,500 or fewer employees.[16] These are also labeled "broadband." The latter are within the category of All Other Telecommunications,[17] which has a size standard of annual receipts of $32.5 million or less.[18] These are labeled non-broadband. According to Census Bureau data for 2007, there were 3,188 firms in the first category, total, that operated for the entire year.[19] Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more.[20] For the second category, the data show that 2,383 firms operated for the entire year.[21] Of those, 2,346 had annual receipts below

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[13] *See* SBA, Office of Advocacy - Frequently Asked Questions, https://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf (last visited Mar. 4, 2016). U.S. Census Bureau, Statistical Abstract of the United States: 2012, Section 8, page 267, tbl. 429, https://www.census.gov/compendia/statab/2012/tables/12s0429.pdf/ (data cited therein are from 2007).

[14] The 2011 Census data for small governmental organizations are not presented based on the size of the population in each organization. As stated above, there were 90,056 local governmental organizations in 2011. As a basis for estimating how many of these 90,056 local organizations were small, in 2011 we note that there were a total of 729 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. *See* U.S. Census Bureau, American Fact Finder, http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml (last visited Mar. 4, 2016). If we subtract the 729 cities and towns that exceed the 50,000 population threshold, we conclude that approximately 89,327 are small.

2007 U.S. Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 local governmental organizations in 2007. If we assume that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,095. As a basis of estimating how many of these 89,476 local government organizations were small, in 2011, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. City and Town Totals Vintage: 2011 – U.S. Census Bureau, http://www.census.gov/popest/data/cities/totals/2011/index.html. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small. U.S. Census Bureau, Statistical Abstract of the United States: 2012, Section 8, page 267, tbl. 429, https://www.census.gov/compendia/statab/2012/tables/12s0429.pdf/ (data cited therein are from 2007).

[15] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers," http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012%20NAICS%20Search.

[16] 13 CFR. § 121.201, NAICS code 517110.

[17] U.S. Census Bureau, 2012 NAICS Definitions, "517919 All Other Telecommunications,", http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2012%20NAICS%20Search.

[18] 13 CFR § 121.201, NAICS code 517919.

[19] 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).

[20] *See id.*

[21] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 5179191 (rel. Nov. 19, 2010) (receipts size).

$32.5 million per year. Consequently, we estimate that the majority of broadband Internet access service provider firms are small entities.

16. The broadband Internet access service provider industry has changed since this definition was introduced in 2007. The data cited above may therefore include entities that no longer provide broadband Internet access service, and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband Internet access service. We note that, although we have no specific information on the number of small entities that provide broadband Internet access service over unlicensed spectrum, we include these entities in our Initial Regulatory Flexibility Analysis.

3. Wireline Providers

17. *Incumbent Local Exchange Carriers* (*Incumbent LECs*). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LEC services. The closest applicable 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.[22] According to Commission data,[23] 1,307 carriers reported that they were incumbent LEC providers.[24] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[25] Consequently, the Commission estimates that most providers of incumbent LEC service are small businesses that may be affected by rules adopted pursuant to the Further Notice.

18. *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.[26] 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.[27] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.[28] 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.[29] In addition, 72 carriers have reported that they are Other Local Service Providers.[30] Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.[31] 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 Further Notice.

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[22] 13 CFR § 121.201, NAICS code 517110.

[23] Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*).

[24] *See Trends in Telephone Service* at tbl. 5.3.

[25] *See id*.

[26] 13 CFR § 121.201, NAICS code 517110.

[27] *See Trends in Telephone Service* at tbl.5.3.

[28] *See id.*

[29] *See id*.

[30] *See id*.

[31] *See id*.

19. 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."[32] 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.[33] 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.

20. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. 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.[34] According to Commission data,[35] 359 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by rules adopted pursuant to the Further Notice.

21. *Operator Service Providers* (*OSPs*). Neither the Commission nor the SBA has developed a small business size standard specifically for operator 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.[36] According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees.[37] Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by rules adopted pursuant to the Further Notice.

22. *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.[38] According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[39] Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.[40] 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 Further Notice.

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[32] 5 U.S.C. § 601(3).

[33] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (filed 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." 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

[34] 13 CFR § 121.201, NAICS code 517110.

[35] *Trends in Telephone Service*, tbl. 5.3.

[36] 13 CFR § 121.201, NAICS code 517110.

[37] *Trends in Telephone Service*, tbl. 5.3.

[38] *See* 13 CFR § 121.201, NAICS code 517911.

[39] *See Trends in Telephone Service* at Table 5.3.

[40] *See id*.

23. *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.[41] According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[42] Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.[43] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Further Notice.

24. *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.[44] According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[45] Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.[46] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Further Notice.

25. *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.[47] According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[48] Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.[49] 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 Further Notice.

26. *800 and 800-Like Service Subscribers*.[50] 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.[51] 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.[52] 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.[53] We do not have data specifying the number of these subscribers that are not independently

[41] *See* 13 CFR § 121.201, NAICS code 517911.

[42] *See Trends in Telephone Service* at Table 5.3.

[43] *See id*.

[44] *See* 13 CFR § 121.201, NAICS code 517911.

[45] *See Trends in Telephone Service* at Table 5.3.

[46] *See id*.

[47] *See* 13 CFR § 121.201, NAICS code 517110.

[48] *See Trends in Telephone Service* at Table 5.3.

[49] *See id*.

[50] We include all toll-free number subscribers in this category, including those for 888 numbers.

[51] *See* 13 CFR § 121.201, NAICS code 517911.

[52] *See Trends in Telephone Service* at Tables 18.7-18.10.

[53] *See id*.

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.

4. Wireless Providers – Fixed and Mobile

27. The broadband Internet access service provider category covered by this Further Notice may cover multiple wireless firms and categories of regulated wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband Internet access service, the proposed actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

28. *Wireless Telecommunications Carriers (except Satellite*). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[54] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[55] For the category of Wireless Telecommunications Carriers (except Satellite), census data for 2007 show that there were 1,383 firms that operated for the entire year.[56] Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more.[57] Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of wireless firms are small.

29. *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 with average gross revenues of $15 million for each of the three preceding years.[58] The SBA has approved these definitions.[59]

30. *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

[54] U.S. Census Bureau, 2012 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2012%20NAICS%20Search.

[55] 13 CFR § 121.201, NAICS code 517210 (2012 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[56] 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).

[57] *See id.*

[58] *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).

[59] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

for the previous two years.[60] 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.[61] 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.[62] These size standards will be used in future auctions of 218-219 MHz spectrum.

31. *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 with average gross revenues of $15 million for each of the three preceding years.[63] The SBA has approved these definitions.[64] 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.

32. *1670–1675 MHz Services*. This service can be used for fixed and mobile uses, except aeronautical mobile.[65] An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

33. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[66] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[67] According to Commission data, 413 carriers reported that they were engaged in wireless telephony.[68] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[69] Therefore, a little less than one third of these entities can be considered small.

34. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a "small business" for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three

[60] *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).

[61] *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*).

[62] *See id*.

[63] *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).

[64] *See Alvarez Letter 1998*.

[65] 47 CFR § 2.106; *see generally* 47 CFR §§ 27.1-27.70.

[66] 13 CFR § 121.201, NAICS code 517210.

[67] *Id*.

[68] *Trends in Telephone Service*, tbl. 5.3.

[69] *Id.*

previous calendar years.[70] For F-Block licenses, an additional small business size standard 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.[71] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[72] 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 claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks.[73] On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22.[74] Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

35. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status.[75] 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. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.[76] On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.[77] Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses.[78] On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78.[79] Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.[80]

36. *Specialized Mobile Radio Licenses*. The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar

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[70] *See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule*; WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824, 7850-52, paras. 57-60 (1996) (*PCS Report and Order*); *see also* 47 CFR § 24.720(b).

[71] *See PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

[72] *See Alvarez Letter 1998*.

[73] *See Broadband PCS, D, E and F Block Auction Closes*, Public Notice, Doc. No. 89838 (rel. Jan. 14, 1997).

[74] *See C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (WTB 1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Fourth Report and Order, 13 FCC Rcd 15743, 15768, para. 46 (1998).

[75] *See C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (2001).

[76] *See Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (2005).

[77] *See Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (2007).

[78] *Id*.

[79] *See Auction of AWS-1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78*, Public Notice, 23 FCC Rcd 12749 (WTB 2008).

[80] *Id.*

years.[81] The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[82] The SBA has approved these small business size standards for the 900 MHz Service.[83] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. 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. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 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.[84] A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[85]

37. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band and qualified as small businesses under the $15 million size standard.[86] In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.[87] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

38. In addition, there are numerous incumbent site-by-site SMR licenses 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 service 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, which is the SBA-determined size standard.[88] We assume, for purposes of this analysis, that all of the remaining extended implementation authorizations are held by small entities, as defined by the SBA.

39. *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.[89] The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40

[81] 47 CFR § 90.814(b)(1).

[82] *Id*.

[83] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (filed Aug. 10, 1999) (*Alvarez Letter 1999*).

[84] *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, 18 FCC Rcd 18367 (WTB 1996).

[85] *See Multi-Radio Service Auction Closes*, Public Notice, 17 FCC Rcd 1446 (WTB 2002).

[86] *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 (2000).

[87] *See 800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 1736 (2000).

[88] *See generally* 13 CFR § 121.201, NAICS code 517210.

[89] *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) (*Channels 52–59 Report and Order*).

million for the preceding three years.[90] 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.[91] Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—"entrepreneur"—which is 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.[92] The SBA approved these small size standards.[93] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[94] A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[95] 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.[96] On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

40. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.[97] An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block.[98] Twenty winning bidders, claiming 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) won 49 licenses. Thirty-three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

41. *Upper 700 MHz Band Licenses*. In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz licenses.[99] On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were

[90] *See id.* at 1087-88, para. 172.

[91] *See id*.

[92] *See id.*, at 1088, para. 173.

[93] *See Alvarez Letter 1999*.

[94] *See Lower 700 MHz Band Auction Closes*, Public Notice, 17 FCC Rcd 17272 (WTB 2002).

[95] *See id.*

[96] *See id.*

[97] *Service Rules for the 698–746, 747–762 and 777–792 MHz Band; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; 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. Upper 700 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; Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule*, WT Docket Nos. 07-166, 06-169, 06-150, 03-264, 96-86, PS Docket No. 06-229, CC Docket No. 94-102, Second Report and Order, 22 FCC Rcd 15289, 15359 n. 434 (2007) (*700 MHz Second Report and Order*).

[98] *See Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (WTB 2008).

[99] *700 MHz Second Report and Order*, 22 FCC Rcd 15289.

available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block.[100] The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

42. *700 MHz Guard Band Licensees*. In 2000, in the *700 MHz Guard Band Order*, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[101] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[102] 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.[103] SBA approval of these definitions is not required.[104] An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000.[105] 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.[106]

43. *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.[107] Bidding credits for designated entities were not available in Auction 77.[108] 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.[109]

44. *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

[100] *See Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (WTB 2008).

[101] *See Service Rules for the 746–764 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) (*746–764 MHz Band Second Report and Order*).

[102] *See id.* at 5343, para. 108.

[103] *See id.*

[104] *See id.* at 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[105] *See 700 MHz Guard Bands Auction Closes: Winning Bidders Announced*, Public Notice, 15 FCC Rcd 18026 (WTB 2000).

[106] *See 700 MHz Guard Bands Auction Closes: Winning Bidders Announced*, Public Notice, 16 FCC Rcd 4590 (WTB 2001).

[107] *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 (WTB 2008).

[108] *Id*. at 6685.

[109] *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).

category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[110] 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.[111]

45. 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.

46. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[112] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[113] 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.[114] 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.

47. *Air-Ground Radiotelephone Service*. The Commission has previously used 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.[115] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million.[116] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[117] These definitions were approved by the SBA.[118] In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning

[110] *See* 13 CFR § 121.201, NAICS code 517210.

[111] *See generally* 13 CFR § 121.201.

[112] The service is defined in 47 CFR § 22.99.

[113] BETRS is defined in 47 CFR §§ 22.757 and 22.759.

[114] 13 CFR § 121.201, NAICS code 517210.

[115] 13 CFR § 121.201, NAICS codes 517210.

[116] *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services*, *Biennial Regulatory Review—Amendment of Parts 1*, *22*, *and 90 of the Commission's Rules*, *Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service*, WT Docket Nos. 03-103, 05-42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28-42 (2005).

[117] *Id.*

[118] *See* Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission (filed Sept. 19, 2005).

bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

48. *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.[119] Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[120] 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.[121] 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.[122] 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 Further Notice.

49. *Advanced Wireless Services (AWS) (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3))*. For the AWS-1 bands,[123] the Commission has defined a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS-2 and AWS-3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS-1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS-2 or AWS-3 bands but proposes to treat both AWS-2 and AWS-3 similarly to broadband PCS service and AWS-1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.[124]

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[119] *See* 13 CFR § 121.201, NAICS code 517210.

[120] 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.

[121] *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).

[122] *See id*.

[123] The service is defined in section 90.1301 *et seq*. of the Commission's Rules, 47 CFR § 90.1301 *et seq*.

[124] *See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, Report and Order, 18 FCC Rcd 25162, Appx. B (2003), *modified by Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, Order on Reconsideration, 20 FCC Rcd 14058, Appx. C (2005); *Service Rules for Advanced Wireless Services in the 1915–1920 MHz*, *1995–2000 MHz*, *2020–2025 MHz* (continued….)

50. *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). 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.

51. *Fixed Microwave Services*. Microwave services include common carrier,[125] private-operational fixed,[126] and broadcast auxiliary radio services.[127] They also include the Local Multipoint Distribution Service (LMDS),[128] the Digital Electronic Message Service (DEMS),[129] and the 24 GHz Service,[130] where licensees can choose between common carrier and non-common carrier status.[131] At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 135 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—i.e., an entity with no more than 1,500 persons.[132] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[133] 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 36,708 common carrier fixed licensees and up to 59,291 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.

52. *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

(Continued from previous page)
and 2175–2180 MHz Bands; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket Nos. 04-356, 02-353, Notice of Proposed Rulemaking, 19 FCC Rcd 19263, Appx. B (2005); *Service Rules for Advanced Wireless Services in the 2155–2175 MHz Band*, WT Docket No. 07-195, Notice of Proposed Rulemaking, 22 FCC Rcd 17035, Appx. (2007).

[125] *See* 47 CFR Part 101, Subparts C and I.

[126] *See* 47 CFR Part 101, Subparts C and H.

[127] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. 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 TV pickups, which relay signals from a remote location back to the studio.

[128] *See* 47 CFR Part 101, Subpart L.

[129] *See* 47 CFR Part 101, Subpart G.

[130] *See id.*

[131] *See* 47 CFR §§ 101.533, 101.1017.

[132] 13 CFR § 121.201, NAICS code 517210.

[133] 13 CFR § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

Gulf of Mexico.[134] 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.[135] Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[136] 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.

53. *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.[137] 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.[138] The SBA has approved these small business size standards.[139] The auction of the 2,173 39 GHz 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 Further Notice.

54. *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)).[140] In connection with the 1996 BRS auction, the 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.[141] 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.[142]

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[134] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 CFR §§ 22.1001-22.1037.

[135] *Id*.

[136] 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.

[137] *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).

[138] *See id.*

[139] *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).

[140] *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, PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[141] 47 CFR § 21.961(b)(1).

[142] 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 of 1500 or fewer employees.

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.

55. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.[143] The Commission offered three levels of bidding credits: (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) received 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) received 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) received a 35 percent discount on its winning bid.[144] Auction 86 concluded in 2009 with the sale of 61 licenses.[145] Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

56. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[146] Thus, we estimate that at least 2,336 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."[147] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[148] According to Census Bureau data for 2007, there were a total of 996 firms in this category that operated for the entire year.[149] Of this total, 948 firms had annual receipts of under $10 million, and 48 firms had receipts of $10 million or more but less than $25 million.[150] Thus, the majority of these firms can be considered small.

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[143] 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, AU Docket No. 09-56, *Public Notice*, 24 FCC Rcd 8277 (2009).

[144] *Id.* at 8296 para. 73.

[145] Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period, *Public Notice*, 24 FCC Rcd 13572 (2009).

[146] 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.

[147] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers," (partial definition), http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012.

[148] 13 CFR § 121.201, NAICS code 517110.

[149] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Receipts by Enterprise Employment Size for the United States: 2007, NAICS code 517510 (rel. Nov. 19, 2010).

[150] *Id*.

57. *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.[151] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[152] 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*.[153] 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.[154] 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.[155] The SBA has approved these small business size standards.[156] A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[157] Three of these claimed status as a small or very small entity and won 311 licenses.

58. *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.[158] 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.[159] According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service.[160] Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees.[161] Consequently, the Commission estimates that the majority

[151] *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).

[152] *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).

[153] *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*).

[154] *Id.*

[155] *Id.*

[156] *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*).

[157] *See Narrowband PCS Auction Closes*, Public Notice, 16 FCC Rcd 18663 (Wireless Tel. Bur. 2001).

[158] *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*)

[159] *See Alvarez Letter 1998*.

[160] *See Trends in Telephone Service* at Table 5.3.

[161] *See id*.

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.[162] 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.[163] 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.[164] 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.[165]

59. *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.[166] 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 Further Notice.

60. *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.[167] 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.[168] 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.[169] The SBA has approved these small business size standards.[170] Auctions of

[162] *See id.*

[163] *See Lower and Upper Paging Band Auction Closes*, Public Notice, 16 FCC Rcd 21821 (Wireless Tel. Bur. 2002).

[164] *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.

[165] *See Auction of Lower and Upper Paging Bands Licenses Closes*, Public Notice, 25 FCC Rcd 18164 (Wireless Tel. Bur. 2010).

[166] *See* 13 CFR § 121.201, NAICS code 517210.

[167] *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*).

[168] *See id*. at 11068–69, para. 291.

[169] *See id*. at 11068–70, paras. 291–95.

[170] *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*).

Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[171] 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.[172]

5. Satellite Service Providers

61. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $30 million or less in average annual receipts, under SBA rules.[173] The second has a size standard of $30 million or less in annual receipts.[174]

62. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing 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."[175] For this category, Census Bureau data for 2007 show that there were a total of 570 firms that operated for the entire year.[176] Of this total, 530 firms had annual receipts of under $30 million, and 40 firms had receipts of over $30 million.[177] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

63. The second category of Other Telecommunications comprises, *inter alia*, "establishments 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."[178] For this category, Census Bureau data for 2007 show that there were a total of 1,274 firms that operated for the entire year.[179] Of this total, 1,252 had annual receipts below $25 million per year.[180] Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

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[171] *See Phase II 220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (Wireless Tel. Bur. 1998).

[172] *See Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (Wireless Tel. Bur.1999).

[173] 13 CFR § 121.201, NAICS Code 517410.

[174] 13 CFR § 121.201, NAICS Code 517919.

[175] U.S. Census Bureau, 2012 NAICS Definitions, "517410 Satellite Telecommunications," http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517410&search=2012.

[176] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 517410 (rel. Nov. 19, 2010).

[177] *Id*.

[178] U.S. Census Bureau, 2012 NAICS Definitions, "517919 All Other Telecommunications," http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2012.

[179] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 517410 (rel. Nov. 19, 2010).

[180] *Id*.

6. Cable Service Providers

64. Because section 706 requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

65. *Cable and Other Program Distributors*. 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."[181] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[182] According to Census Bureau data for 2007, there were a total of 2,048 firms in this category that operated for the entire year.[183] Of this total, 1,393 firms had annual receipts of under $10 million, and 655 firms had receipts of $10 million or more.[184] Thus, the majority of these firms can be considered small.

66. *Cable Companies and Systems.* The Commission has also 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.[185] Industry data that there are currently 4,600 active cable systems in the United States.[186] Of this total, all but nine cable operators are small under the 400,000 subscriber size standard.[187] In addition, under the Commission's rules, a "small

[181] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers," (partial definition), http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012.

[182] 13 CFR § 121.201, NAICS code 517110.

[183] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 517110 (rel. Nov. 19, 2010).

[184] *Id*.

[185] 47 CFR § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[186] *See* Federal Communications Commission, Cable Operations and Licensing System, https://apps.fcc.gov/coals/ (last visited Mar. 4, 2016).

CTA, Industry Data, Number of Cable Operating Companies (June 2012), http://www.ncta.com/Statistics.aspx (visited Sept. 28, 2012). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. *See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, 10505-06, para. 24 (2013) (*15th Annual Competition Report)*.

[187] *See* SNL Kagan Interactive, Media & Communications Data – Cable MSOs, http://www.snl.com/Sectors/Media/MediaCommunicationsOverview.aspx (last visited Mar. 3, 2016).

See SNL Kagan, "Top Cable MSOs – 12/12 Q", http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc. We note that, when applied to an MVPD operator, under this size standard (i.e., 400,000 or fewer subscribers) all but 14 MVPD operators would be considered small. *See* NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), http://www.ncta.com/industry-data. The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. *See Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, Report (continued….)

system" is a cable system serving 15,000 or fewer subscribers.[188] Current Commission records show 4,945 cable systems nationwide.[189] Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

67. *Cable System Operators*. The Communications Act of 1934, as amended, 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."[190] 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 aggregate.[191] Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard.[192] 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,[193] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

68. 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.[194] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[195] OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."[196] 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.[197] Of this total, 939 firms had

(Continued from previous page)
and Order, 26 FCC Rcd 17222, 17245-46, para. 37 (2011) (*CALM Act Report and Order*) (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

[188] 47 CFR § 76.901(c).

[189] The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on Aug. 28, 2013. A cable system is a physical system integrated to a principal headend.

[190] 47 U.S.C. § 543(m)(2); *see* 47 CFR § 76.901(f) & nn.1-3.

[191] 47 CFR § 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).

[192] *See* NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), http://www.ncta.com/industry-data.

[193] 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. *See* 47 CFR § 76.909(b).

[194] 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*).

[195] *See* 47 U.S.C. § 573.

[196] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.

[197] 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).

employment of 999 or fewer employees, and 16 firms had employment of 1,000 employees or more.[198] Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Further Notice. In addition, we note that the Commission has certified some OVS operators, with some now providing service.[199] Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.[200] 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.

7. Electric Power Generators, Transmitters, and Distributors

69. *Electric Power Generators*, *Transmitters*, *and Distributors.* The Census Bureau defines an industry group comprised of "establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer."[201] The SBA has developed a small business size standard for firms in this category: "A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours."[202] Census Bureau data for 2007 show that there were 1,174 firms that operated for the entire year in this category.[203] Of these firms, 50 had 1,000 employees or more, and 1,124 had fewer than 1,000 employees.[204] Based on this data, a majority of these firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

70. In the Further Notice, we begin the process of seeking comment on several specific procedures that will apply in the Phase II auction. We seek comment on three discrete sets of issues relating to the process for determining winning bidders: (1) how to apply weights to the different levels of performance adopted in the Order above; (2) measures to achieve the public interest objective of ensuring appropriate support for all of the states; and (3) measures to achieve the public interest objective of expanding broadband on Tribal lands. We also seek comment on issues relating to interim deployment milestones for non-terrestrial providers or providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations.

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[198] *See id*.

[199] A list of OVS certifications may be found at http://www.fcc.gov/mb/ovs/csovscer.html.

[200] *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.

[201] U.S. Census Bureau, 2002 NAICS Definitions, "2211 Electric Power Generation, Transmission and Distribution," http://www.census.gov/epcd/naics02/def/NDEF221.HTM (last visited Oct. 21, 2009).

[202] 13 CFR § 121.201, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122, n. 1.

[203] *See* U.S. Census Bureau, American FactFinder, Utilities: Subject Series - Establishment and Firm Size: Summary Statistics by Revenue Size of Firms for the United States: 2007, NAICS code 221122, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_22SSSZ5&prodType=table (last visited February 18, 2016).

[204] *See id*.

71. First, the Commission seeks comment on how to apply weights to the different levels of performance adopted in the Order. As part of the weighting process, bidders should not need to provide additional information beyond their bid.

72. Second, the Commission also seeks comment on measures to achieve the public interest objective of ensuring appropriate support for all of the states. To the extent that these procedures require bidders to identify whether they qualify, bidders will have to provide that information to the Commission.

73. Third, the Commission seeks comment on several auction procedures that could advance our goal of expanding access to broadband on Tribal lands. Similarly, to the extent that these procedures require bidders to identify whether they qualify, bidders will have to provide that information to the Commission.

74. Fourth, the Commission seeks comment on issues relating to interim deployment milestones for non-terrestrial providers or providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations. Alternative interim milestones could require entities to report deployment information at different or accelerated intervals.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

75. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (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 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.[205] We expect to consider all of these factors when we have received substantive comment from the public and potentially affected entities.

76. *Comparing Bids of Different Performance Levels*. The Commission does not expect the submission of additional information from bidders in order to score weighted bids. In the Further Notice, we specifically seek comment on the weighting proposals of a number of industry groups, and we will take into account any concerns that these groups and subsequent commenters may have regarding any additional burden on carriers, particularly small entities. We expect to consider whether any burden from these procedures would be outweighed by the benefit of furthering the Commission's goal to provide households in the relevant high-cost areas with access to high quality broadband services in the most efficient way possible.

77. *Access to Appropriate Phase II Levels for All States*. We do not expect that any weighting factors or other processes adopted to ensure appropriate support for all states will increase the administrative burden on bidders. To the extent that these procedures require bidders to identify whether they qualify, such as whether a bidder is submitting a bid in a declined state, bidders should readily have access to the necessary information.

78. *Access to Service on Tribal Lands*. Similarly, we do not expect that any weighting factors or other processes adopted to advance our goal of expanding access to broadband on Tribal lands will increase the administrative burden on bidders. To the extent that these procedures require bidders to identify whether they qualify, such as whether a bidder is submitting a bid to serve Tribal lands, bidders should readily have access to the necessary information.

79. *Limited Adjustments to Interim Deployment Milestones*. Interim deployment milestones for non-terrestrial providers or providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations could require entities to report deployment information at different or

[205] 5 U.S.C. § 603(c).

accelerated intervals than other Phase II recipients. However, such entities could complete deployment reporting sooner than other providers. All high-cost recipients are subject to narrowly tailored reporting obligations in order to enable the Commission to determine how high-cost support is being used to improve broadband availability, service quality, and capacity.

80. More generally, the Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Further Notice and this IRFA, in reaching its final conclusions and taking action in this proceeding. The proposals and questions laid out in the Further Notice were designed to ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different actions and methods.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

None.

STATEMENT OF
CHAIRMAN TOM WHEELER

Re: *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Rural Broadband Experiments*, WC Docket No. 14-259.

Next month, I will be travelling to Kentucky for the second time this year. On my first trip in February, I visited the town of McKee where there is now fiber to every home and business in the county and they've adopted the nickname, "Silicon Holler." In Hazard, Kentucky, I had the privilege to meet a former coal miner who is now working as a coder in the innovation economy. I am grateful for these chances to learn first-hand about digital opportunities and connectivity challenges in rural communities. I also appreciate these opportunities to spread the word about the Commission's recent efforts to expand broadband access in rural America, because it's a story we should be proud to tell. With today's Order establishing rules for $2 billion in targeted investments in broadband deployment, that positive story gets even better for rural America.

Before the adoption of the modernization Order in 2011, which established the Connect America Fund, the Universal Service Fund was outdated and inefficient. Today, it's the opposite – a fiscally responsible program focused on broadband that targets resources where they are most needed, with the flexibility to keep pace with market changes. As a result of these modernizations and reforms, the Universal Service Fund is now a key part of the solution to our nation's digital divide problem.

Last year, the nation's largest carriers accepted $9 billion from the new Connect America Fund to expand broadband to 7.3 million rural Americans. And this March, the FCC reformed its broadband support for the nation's smallest carriers, which will provide $20 billion over the next 10 years.

But our reforms go beyond simply repurposing support for telephone service to ensure broadband access. They crack down on waste and aim to maximize efficiency. There is no more proven tool for driving efficiency then competition.

Today's new rules would allocate more than $2 billion over the next decade in Connect America Fund support for rural broadband through competitive bidding. The item establishes rules of the road for an auction that will harness market forces to allocate funding to expand broadband in targeted rural areas where the need is greatest. The auction seeks to expand service to unserved areas in states where the "price-cap" carriers declined last year's Connect America Fund offer. Also included in the auction are additional locations with extremely high deployment and operating costs. Ultimately, the power of competitive bidding will hopefully spark robust broadband deployment and quality service offerings across rural America in the most cost-efficient way possible.

Recognizing the diverse challenges inherent in deploying broadband in rural America, the Order sets robust yet flexible standards for broadband deployment. To encourage a broad range of bidders in the auction, we establish technology-neutral performance tiers with varying levels of speed, usage allowances, and latency. More bidders means a more competitive auction. And that's a good thing. But those bidders should compete on both cost *and* performance. To ensure that rural Americans, like those in McKee Kentucky, can benefit from the innovation and advances in technology available in urban areas, we will give more weight to bids that offer better performance.

To promote accountability, the Order establishes network buildout requirements and reporting obligations to enable the Commission to monitor the progress of deployment. The new rules also create a framework for a Remote Areas Fund auction in extremely high cost areas that receive no bids in this auction.

Today's Order is just the first step. We also begin the process of seeking comment on auction procedures in a Further Notice focused on key issues. We ask about how best to weight bids to ensure that rural consumers are not left behind but have the opportunity to receive the highest quality broadband service possible within our finite universal service budget. We ask about ways to design the auction to

advance broadband deployment on tribal land. And, we ask about the concerns that Senator Schumer and others have raised about the equitable allocation of CAF funds among the states, particularly those states in which an incumbent price cap carrier declined to accept a substantial offer of support. In my view, such a decision by a price cap carrier in no way diminishes our universal service obligations to provide support to connect the unserved communities in those states. We also ask about ways to coordinate our Phase II efforts with state-based initiatives to advance broadband deployment. We take these concerns seriously and, as the record develops, will be actively engaged in the process of finding the best approach.

Thank you to the Wireline Competition Bureau for their tireless work on this item.

STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN

Re: *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Rural Broadband Experiments*, WC Docket No. 14-259.

When will my community have broadband? For the nearly seven years I have served as an FCC Commissioner, this refrain is one I too often hear as I travel beyond the Beltway. For consumers stuck in the digital darkness, every day is another full of denied opportunities. And while I have been proud to support the FCC's laudable actions taken since the National Broadband Plan was released, the fact remains that change has yet to come for the tens of millions of consumers who still lack access.

Today, it pleases me to say we are taking another step to turn shades of digital darkness and despair into beacons of light and connected opportunities. According to the Center for Public Integrity, families in our nation's higher poverty areas are nearly five times more likely not to have access to broadband speeds of 25 Mbps/3 Mbps, than those residing in the most affluent areas. These are areas of persistent poverty – communities that would actually benefit the most from connectivity – and they are populated by those who are cut off from job opportunities, and remain at a marked disadvantage, when it comes to education, healthcare, government services and civic participation.

I have met consumers so desperate for connectivity that they literally beg for broadband to be deployed in their community because they know all too well that they are stuck on the wrong side of the digital divide. They long for a fair chance to improve their communities and their lives with access to broadband . . . something all of us here, I venture to say, take for granted.

It is clear that connecting these areas will not happen overnight but what our experiences show is that closing these disparities will require both public-private partnerships and public-public partnerships with our federal, state and local colleagues. So, I am pleased that today's item recognizes the important role states play in universal service. In addition, the Further Notice seeks comment on how to ensure that communities across our nation, particularly in states where incumbent carriers declined Connect America Fund Phase II support have access to much needed funding to connect those unserved areas. State and local leaders know their communities best, and should be encouraged to partner with the FCC to bridge opportunity divides.

The Order also encourages smaller entrants to participate in the competitive auction, by, for example, making it easier for smaller banks, including community banks, to provide letters of credit; enabling certain parties to provide audited financial statements after being selected as a winning bidder in the auction; and creating a flexible process to enable entities to use a range of technological solutions to provide service in unserved areas.

We were able to reach consensus on technology neutral speed, capacity and latency tiers for the auction, and those tiers are structured in a way to encourage all providers – fixed or mobile, using licensed or unlicensed spectrum, terrestrial or satellite – to participate. I would have preferred that we also adopt the weights for these tiers now because the weighting will be crucial to ensure that rural areas have access to services reasonably comparable to urban areas, as directed by the statute. Even so, I understand the importance of getting the weights for each tier right, and I appreciate the Chairman seeking comment on the issue now rather than waiting several months to ask these questions in the Auction Comment Public Notice.

I also appreciate that the Order recognizes the need to spur deployment on Tribal lands. For far too long, the FCC has recognized the stark disparities on Tribal lands but has not taken enough action to close these divides. Indeed, the FCC's 2016 Broadband Progress Report found, that more than 68 percent of Americans living on Tribal lands in rural areas lack access to fixed broadband of speeds of 25 Mbps/3 Mbps. I strongly encourage parties to weigh in on the Further Notice, which seeks comment on ways to adopt a credit or weight in the auction to encourage bidding on Tribal lands.

While I am pleased that the action we take today holds the promise to make inroads to connect rural, unserved areas, we need to come to terms with the fact that many challenges remain even in our urban areas. If we as a nation are true to our commitment to universal service, we have a duty to take a long, hard look at what is happening or, really, what is not happening, in some of our more densely populated areas.

We need to ask and answer the question why certain pockets of our communities in major metropolitan areas still lack access. As regulators and as public servants, I do not believe that we should turn a blind eye to these communities where families can literally see from their windows and stoops the power of connectivity, but remain foreclosed, sometimes by less than 2000 yards, from economic opportunities. This is a conversation that I seldom hear in these halls but I believe that needs to change today.

To the dedicated public servants in the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and the Office of Strategic Planning & Policy Analysis, I thank you for your unwavering commitment to universal service and for focusing on how to ensure that all Americans have access to the promise that broadband brings.

STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL

Re: *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Rural Broadband Experiments*, WC Docket No. 14-259.

In case you haven't noticed, over the last few years the Commission's universal service policies have been the subject of a few changes. In fact, they've undergone an overhaul. Our programs have been more than just re-touched, they've been re-engineered and re-built, because we are no longer just taking a spin on the information superhighway. Today, high-speed communications services are indispensable infrastructure for civic and commercial life.

For our high-cost universal service program, this has meant a new name—the Connect America Fund—and a new focus on bringing broadband to rural communities.

Today, we advance this cause by putting in place a structure for the upcoming Connect America Fund Phase II auction. Between the Order and Rulemaking there are a lot of details here, so let me focus on what I think are the most important elements of the auction framework we put in place today.

First, our framework ensures that the auction will be open. We need broad participation because there is no one-size-fits-all solution when it comes to getting service in rural communities. So we are open to any provider and technology that meets essential broadband performance and financial criteria.

Second, our framework recognizes that the auction must be fair. It will reward those whose proposals are economically efficient and also advance the statutory goals of universal service, including comparable services at comparable rates.

Third, our framework delivers on the need for accountability. The Order puts in place oversight mechanisms to make sure that the broadband improvements that result from this auction are both real and measurable.

From here, of course, we still have work to do. In particular, we cannot lose sight of our duty to preserve and advance universal service, especially in those states that are the centerpiece of the auction—the states where the price cap carrier turned down its initial offer of support. It would be unacceptable for the residents in these states to lose out again if this auction does not deliver the broadband and funding that they expect and deserve.

Finally, as today's Order recognizes, once this auction is in the books, we will need to move quickly to establish the Remote Areas Fund and continue our work to make sure our universal service polices do not leave rural America behind.

Thank you to the Wireline Competition Bureau for your efforts.

STATEMENT OF
COMMISSIONER AJIT PAI
APPROVING IN PART AND CONCURRING IN PART

Re: *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Rural Broadband Experiments*, WC Docket No. 14-259.

Five years ago, the Commission made a bipartisan promise to the American people to launch the Connect America Fund. We did so to support the deployment of high-speed broadband throughout rural America.[1] Today, we adopt a bipartisan compromise that advances the Fund's competitive bidding process.

Several aspects of this *Order* bode well for the auction. *First*, we adopt rules designed to induce new entrants like wireless Internet service providers, small-town cable operators, and electric utilities to participate. We let financially secure community banks, as well as traditional rural lenders like CoBank and the National Rural Utilities Cooperative Finance Corporation, underwrite bidders because small businesses don't have access to the same capital markets as large companies.[2] We postpone certain filing deadlines until after the auction so that expensive accounting doesn't bar participation and competition.[3] And we treat small carriers using unlicensed spectrum on par with larger licensees. These were significant changes from the approach originally contemplated, and so I appreciate the support of Commissioners Clyburn and Rosenworcel for the goal of maximizing participation in this auction.

Second, we abandon the "multi-step approach" to competitive bidding that was proposed in the *Seventh Recon Order*.[4] At the time, I worried that such an approach "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 . . . 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)."[5] Instead, we aim here to maximize the broadband bang we get for our universal service buck by establishing a flexible weighting system that should incentivize carriers to deploy faster service to rural America at the lowest possible price to the taxpayer.[6]

Third, we adopt rules that otherwise track the structure of the competitive bidding process that I asked my colleagues to support in the *Seventh Recon Order*. We proposed "reserve prices based on the Connect America Cost Model,"[7] and that's what we're doing.[8] We proposed "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,"[9] and that's what we're doing.[10] We proposed "a multi-round auction so that

[1] *Connect America Fund et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 0951, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*Universal Service Transformation Order*).

[2] *Order* at paras. 127–28.

[3] *Order* at paras. 102–03 (postponing the requirement to submit audited financial statements until the long-form stage).

[4] *Connect America Fund et al*., WC Docket No. 10-90, 14-58, 07-135, WT Docket No. 10-208, 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, 29 FCC Rcd 7051, 7125, para. 231 (2014).

[5] *Id.* at 7252, n.6 (Statement of Commissioner Ajit Pai, Approving in Part and Dissenting in Part).

[6] *Order* at paras. 14–37.

[7] *Id.* at 7124, para. 227.

[8] *Order* at para. 90 ("We will use the CAM to set reserve prices for the Phase II auction.").

[9] *Seventh Recon Order* at 7125, para. 229.

competitive bidders have the opportunity to reevaluate their bids in light of the actions of others,"[11] and that's what we're doing.[12] And though we do not yet adopt package bidding for the auction,[13] the consensus is certainly heading in that direction.

There's more to like. But cataloging every change since circulation would be painstaking work. Instead, allow me to thank Commissioner O'Rielly for speaking out about his principles for the auction last December.[14] His framework in fact became the starting point for many of the Commission's deliberations. Additionally, he pushed early and persuaded the floor after circulation of this *Order* for appropriate changes that were ultimately adopted. I do not think we could have gotten to a bipartisan compromise without his tireless advocacy within the building and without.

To be sure, I don't agree with every aspect of this *Order*. For example, I had hoped to follow through much more quickly on our five-year-old promise to adopt these competitive bidding rules. And I would have preferred to give bidders even more flexibility and incentive to offer the very best service possible to rural America. But that is the nature of compromise, and I will accordingly vote to approve in part and concur in part.

(Continued from previous page)
[10] *Order* at para. 79.

[11] *Seventh Recon Order* at 7125, para. 230.

[12] *Order* para. 88. Notably, the *Order* reserves the question of whether a simultaneous multiple-round auction (like most spectrum auctions) or a clock auction (like the broadcast incentive auction) will better enable bidders to adjust "their bidding strategies to facilitate a viable aggregation of geographic areas in which to construct networks and enable competition to drive down support amounts." *Id.*

[13] *Seventh Recon Order* at 7125, para. 228.

[14] Commissioner Michael O'Rielly, FCC, *A Starting Point for CAF Post-ROFR Auction*, https://www.fcc.gov/news-events/blog/2015/12/10/starting-point-caf-post-rofr-auction (Dec. 10, 2015).

STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART AND DISSENTING IN PART

Re: *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Rural Broadband Experiments*, WC Docket No. 14-259.

It has been a long road to get to this Order and Further Notice on the Connect America Fund (CAF) Phase II reverse auction and Remote Areas Fund (RAF). The item originally circulated in September would have put a thumb on the scale to fund a handful of fiber projects in lower-cost areas, a result that would have run counter to the goal of universal service. I was deeply troubled by this and outlined sound principles and proposals for the item. They are pretty simple: maximize coverage; eliminate artificial categories; be open to all technologies; use a multi-round auction; and prohibit overbuilding. I also continued my push for action on the RAF. Fortunately, as a result of further discussions with staff, my colleagues, and outside parties, the item has been revised in a positive direction. We are still a long way from home, but at least we are back on course for now. As a result, I am able to approve in part, while dissenting on certain problematic parts of the Further Notice that could derail this progress.

The revised version takes a number of steps to accommodate concerns raised by numerous parties. The minimum standards are now set to enable a wide range of providers to participate in the auction. In addition, the rigid categories have been replaced with more flexible tiers that accommodate a variety of technologies and offerings. For instance, there is now a tier that aligns with the performance requirements that price cap carriers that accepted model-based support must satisfy, which could be met using a mix of fiber, advanced DSL, and wireless technologies. Moreover, instead of a special fiber only round or a waterfall approach, all participants will now bid at the same time, ensuring the maximum possible competition in each round of the multi-round auction. In addition, the order now excludes areas that already have at least 10/1 service, targeting funds to areas that need it most, rather than wasting dollars overbuilding existing providers. All of these changes will have the effect of stretching USF dollars to cover more consumers.

That's not to say that I agree with every aspect of the tiers. I would not have included a Gigabit tier. Reasonable comparability is about ensuring that rural consumers receive service that does not lag too far behind what a substantial majority of consumers are subscribing to in urban areas. Adding a tier that is significantly above market reality provides a nice soundbite, but it is a distraction from the effort to connect the maximum number of people with the limited dollars available under our budget. And as I have said before, we should buy fewer Lamborghinis and more Chevys.

Setting the weights to preserve the balance between performance and cost-effectiveness will be critical. The Further Notice has the right objective. It aims to set the weights "to achieve our overarching goal of providing households in the relevant high-cost areas with access to high quality broadband services, while making the most efficient use of finite universal service funds."

I worry, however, that the Commission may ultimately adopt weights that disproportionately favor certain technologies and place too high a reward on premium offerings. There has been a lot discussion about how to name the tiers, but the delta between them is far more important than what gets labeled the "baseline" as opposed to the "minimum". At the end of the day, if the weighting skews the results such that a few communities receive Gigabit service, but many more have no access at all, then the auction will have failed to deliver on the promise of universal service. I hope that we will receive a robust record on weighting to ensure good outcomes both for consumers who will receive service, as well as ratepayers who contribute fees each month to support the program.

I am also troubled that certain proposals in the Further Notice would be incompatible with an auction and could further undercut its effectiveness. I recognize the goal of ensuring that consumers in all states and Tribal lands are connected. However, the idea that the Commission would install the use of

quotas or set asides to favor certain consumers in certain areas is appalling. Such an approach is not consistent with the Commission's approach to the entirety of universal service.

To be clear, the Commission never provided any expectation that particular states would be guaranteed a certain amount of funding in this auction. Universal service is not an entitlement program for specific consumers or states. Instead, the Commission is supposed to design the program in an efficient manner that ensures that dollars flow to areas where they are most needed, consistent with the statute. As federal regulators, we have to take a broad view and focus on consumers nationwide. What matters is that we have a plan to serve as many Americans as possible, wherever they are located. States are then free to supplement the federal funding with state programs.

Moreover, the idea that certain states were somehow guaranteed the specific funding turned down by price cap carriers 1) is not accurate and 2) misses the point of holding a *reverse* auction. In fact, the amount of funding that was turned down represents the reserve price—the maximum amount we are willing to pay. We hope to pay far less in as many places as possible. Indeed, the purpose of a reverse auction is to use competition to incent providers to bid down the reserve so that we could free up dollars to connect additional consumers elsewhere. If the Commission ultimately adopts quotas or set asides, against my wishes, it will have the effect of bypassing lower bids in some states in order to fund costlier bids in other states. A nutty outcome indeed.

Instead, if there are parts of states or Tribal lands that are not claimed in this auction, it is because they are more likely than not RAF-appropriate places. They may be rural, difficult to access, far from existing providers, or otherwise extremely costly to serve. There may be permitting or other local barriers to investment and deployment. In fact, I have heard this concern raised when I have met with carriers trying to serve certain states, localities, or Tribal lands. These places should be included in the Remote Areas Fund rather than receiving special treatment now, which could skew the current auction in inefficient ways.

Importantly, the Commission is finally adopting a framework for the Remote Areas Fund, which should give all stakeholders some comfort that "winding up in the RAF" is not a dead end. For over two years, I have pressed the Commission to adopt rules to ensure that consumers in these areas will not be left behind, so I appreciate the steps taken in this order to solidify the structure of the RAF. I would have preferred to do even more, but I acknowledge staff's view that we may need to retain some flexibility to adjust the parameters to account for lessons learned in the current auction. Moreover, I appreciate staff's commitment to me to continue to work on the RAF in parallel with implementing the current auction, so that we will be in a position to commence the RAF auction within a year of the close of the current auction.

I would like to thank my colleagues and staff for working with me on this item. While the process leading up to today was far from ideal, I appreciate the collaborative effort to improve the item, which actually centered on the Eighth Floor pushing and pulling the item to get the best outcome for unserved consumers.