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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10-90, 14-58, 07-135; WT Docket No. 10-208; CC Docket No. 01-92; FCC 14-54]

Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers; Universal Service Reform – Mobility Fund; Developing an Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes measures to update and further implement the framework adopted by the Commission in 2011. The Commission strives to adapt its universal service reforms to ensure those living in high-cost areas have access to services that are reasonably comparable to services offered in urban areas.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by either WC Docket No. 10-90, WC Docket No. 14-58, WC Docket No. 07-135, WT Docket No. 10-208, or CC Docket No. 01-92, by any of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/. Follow the instructions for submitting comments.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, or Suzanne Yelen, Wireline Competition Bureau, (202) 418-7400 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, and CC Docket No. 01-92; FCC 14-54, adopted on April 23, 2014 and released on June 10, 2014. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th St., SW, Washington, DC 20554 or at the following Internet address: http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0610/FCC-14-54A1.pdf. The Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order and Seventh Order on Reconsideration that was adopted concurrently with the FNPRM are published elsewhere in this issue of the Federal Register.

Pursuant to §§ 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, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. 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.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

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).

I. INTRODUCTION

1. With this Further Notice of Proposed Rulemaking (FNPRM) and concurrently adopted Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, and Seventh Order on Reconsideration, the Commission takes significant steps to continue the implementation of the landmark reforms unanimously adopted by the Commission in 2011 to modernize universal service for

the 21st century. The Commission builds on the solid foundation created in 2011, taking into account what they have learned to date and new marketplace developments, to fulfill our statutory mission to ensure that all consumers "have access to . . . advanced telecommunications and information services."

2. A core component of the 2011 reforms was the creation of the Connect America Fund to preserve and advance voice and robust broadband services, both fixed and mobile, in high-cost areas of the nation that the marketplace would not otherwise serve. Today, the Commission adopts rules that build on the framework established by the Commission in the USF/ICC Transformation Order, 76 FR 73830, November 29, 2011, while proposing targeted adjustments that the Commission believes are necessary to ensure that it's best utilizing the funds that consumers and businesses pay into the universal service system. In particular, the Commission is mindful that technological innovation is occurring at a rapid pace, and the marketplace has continued to evolve in the intervening years. The Commission must ensure that the reforms it implements now are not predicated on outdated assumptions.

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

4. In the FNPRM, the Commission proposes measures to update and implement further the framework adopted by the Commission in 2011. The Commission strives to adapt our universal service reforms to ensure those living in high-cost areas have access to services that are reasonably comparable to services offered in urban areas. Consistent with that goal, in the FNPRM the Commission proposes to revise our current broadband performance obligations to require minimum speeds of 10 Mbps downstream to ensure that the services delivered using Connect America funds are reasonably comparable to the services enjoyed by consumers in urban areas of the country. The FNPRM also proposes to apply uniformly the same performance obligations to all recipients of Phase II support and to rate-of-return carriers. In addition, the Commission seeks to further develop the record on the ability of Phase II recipients to satisfy their obligations using any technology or a combination thereof – whether wireline or wireless, fixed or mobile, terrestrial or satellite – that meets the performance standards for Phase II. The FNPRM also proposes to provide financial incentives for recipients of Phase II support to accelerate their network deployment.

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

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

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

8. The FNPRM also addresses significant developments that have occurred since the adoption of the USF/ICC Transformation Order in the marketplace for mobile wireless services. Given the commercial deployment of 4G Long Term Evolution (LTE), the Commission proposes to retarget the focus of Mobility Fund Phase II. The Commission seeks comment on targeted measures that would address those areas of the country where LTE is not and, to the best of our knowledge, will not be available in the foreseeable future and would preserve existing mobile voice and broadband service where it would not otherwise exist without government support. The FNPRM also proposes to maintain existing support levels (i.e., 60 percent of baseline support) for wireless competitive ETCs for whom competitive ETC support exceeds one percent of their wireless revenues until a date certain after winning bidders are announced for the offer of Mobility Fund Phase II support, and to accelerate the

phase-down for wireless competitive ETCs for whom high-cost support is one percent or less of their wireless revenues. The FNPRM seeks comment on whether to take a different approach for wireline competitive ETCs and asks whether their phase-down in support should be determined by the timing of the Phase II competitive bidding process. The FNPRM also proposes to freeze support for carriers serving remote areas in Alaska, as of December 31, 2014, and to begin their phase-down in support on a date certain after the Mobility Fund Phase II auction or Tribal Mobility Fund Phase II auction.

9. In the FNPRM, the Commission also focuses on developing and implementing a "Connect America Fund" for rate-of-return carriers. Specifically, they Commission seeks comment on reform proposals that would address a number of the identified shortcomings in the current support mechanisms that provide support to rate-of-return carriers. As a short term measure, the Commission proposes to apply the effect of the annual rebasing of the cap on support known as high-cost loop support (HCLS) equally on all recipients of HCLS, to address the problematic incentives of the current rule. As another near term reform, the Commission also proposes to prohibit recovery of new investment occurring on or after January 1, 2015, through either HCLS or interstate common line support (ICLS) in areas that are served by a qualifying competitor that offers voice and broadband service meeting the Commission's standards. As a longer term measure, the Commission seeks comment on limiting recovery of new investment through HCLS or ICLS as of a date certain, in conjunction with implementation of a Connect America Fund for rate-of-return carriers. The Commission proposes to adopt a stand-alone broadband support mechanism that meets defined parameters and seek to develop further the record on various industry proposals. Building on a proposal recently submitted by the Independent Telephone & Telecommunications Alliance (ITTA), the Commission proposes to provide rate-of-return carriers the option of participating in a two-step transition to Phase II model-based support and seek comment on alternative rate regulation measures

and specific implementation issues. The Commission also seeks comment in the FNPRM on providing one-time funding for middle mile projects on Tribal lands in 2015. Such an approach could serve as a template for further implementation on a broader scale in subsequent years.

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

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

12. With the actions the Commission takes today and those planned for later this year, it expects to move forward to implement the offer of Phase II model-based support by the end of the year, as they noted in January. The Commission also expects to take further action to implement the rural

broadband experiments it adopted in their January Tech Transitions Order, 79 FR 11327, February 28, 2014 and 79 FR 11366, February 28, 2014. Through these coordinated actions, the Commission expects to create incentives for both existing and new providers to extend robust, scalable next-generation voice and broadband networks that provide high-quality performance, whether through fiber, wireless, or other technology, as deep into high-cost areas as is feasible given the existing Connect America budget.

II. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Public Interest Obligations

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

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

15. The Commission proposes a new downstream speed standard of 10 Mbps to further the statutory goal of ensuring that consumers in rural parts of the country have access to advanced telecommunications and information services that are reasonably comparable to those services available in urban areas. The most recent round of State Broadband Initiative (SBI) data show that nearly all persons living in urban areas have access to fixed broadband with downstream speeds of at least 10 Mbps. SBI data as of June 2013 indicate that only two percent of the population residing in urban census blocks lack access to fixed broadband with speeds of 10 Mbps downstream/768 kbps upstream. In contrast, the SBI data indicate that 33 percent of the population residing in rural census blocks lack access to fixed broadband providing 10 Mbps/768 kbps speeds.

16. SBI data also show that urban users have greater access to higher upstream speeds than rural users. Given the statutory goal of reasonable comparability, should the Commission set an upstream speed requirement for universal service purposes at a level higher than 1 Mbps, such as 2 Mbps? The Commission specifically seeks comment on whether 1 Mbps upstream will provide sufficient bandwidth for residential consumers to take advantage of applications and services that advance critical

public purposes such as education and healthcare. In the recent Rural Broadband Workshop, some parties suggested that upload speeds higher than 1 Mbps were necessary to support certain telehealth applications. To the extent commenters argue that the Commission should set a different upstream benchmark than 1 Mbps for universal service purposes, they should provide specific examples of the applications and services that require such upstream capability for residential consumers.

17. In proposing to increase the current broadband downstream speed benchmark, the Commission is primarily focusing on the minimum standard for new deployments of broadband-capable infrastructure. Our goal is to ensure that Connect America funding is used efficiently, going forward, to deploy networks that are capable of scaling to higher speeds over time, as consumer demand warrants. By proposing a new speed benchmark, the Commission does not intend to suggest that ETCs must deliver such speeds immediately upon adoption of a new rule. Rather, consistent with the approach the Commission adopted for the current speed benchmark, it is proposing a standard that ETCs, current and future, would be expected to achieve over a period of years, as they utilize high-cost support to extend and upgrade networks in high-cost areas.

18. In the USF/ICC Transformation Order, the Commission adopted a requirement that ETCs develop five-year service improvement plans and provide annual updates regarding those plans. Likewise, in the USF/ICC Transformation Order, the Commission established a five-year time frame for recipients of model-based support to meet the deployment milestones for Phase II. The Commission thus recognized that broadband-capable infrastructure would not, and realistically could not, be ubiquitously deployed overnight, but rather that it would be deployed over a period of time. As such, the Commission emphasizes that there is no immediate consequence, and in particular no loss of universal service support, to the extent an existing ETC is not currently offering speeds that meet the

current 4 Mbps /1 Mbps benchmark throughout its entire service territory, nor would an ETC be immediately non-compliant with our rules if in the future it were to revise the downstream speed standard to, for instance, 10 Mbps in response to this FNPRM. Rather, our intent in proposing to revisit this standard is to establish a new minimum standard that the Commission build toward over time, recognizing that consumers increasingly will utilize applications and services that require greater bandwidth than our current standard.

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

Commission seeks comment on this proposal. To the extent commenters believe it would take longer than five years to upgrade networks to meet the proposed new standard, they should specify what time frame they believe is realistic.

20. In addition, if commenters believe that it would make more requests for service unreasonable, therefore requiring carriers to scale back their deployment plans, the Commission seeks comment on how to ensure that consumers in those areas receive service. For example, if a request for a higher speed service would be unreasonable but a request that meets our current standard would be reasonable, the Commission seeks comment on permitting the deployment at the lower speed standard. The Commission also seeks comment on whether carriers should be allowed to self-identify territories that they would not be able to serve (either alone or through a voluntary partnership) so that the Commission could extend broadband service to those consumers through a different mechanism.

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

their comments how changing the speed standard would affect the number of consumers that could be served.

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

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

24. Usage and Latency Standards. The Commission proposes to apply the same usage allowances and latency benchmarks that the Bureau implemented for price cap carriers that will accept the offer of model-based support in the state-level commitment process to ETCs that will receive support through a competitive bidding process. Under this proposal, all Phase II recipients would be

required to offer at least one plan with an initial minimum usage allowance of 100 GB, adjusted over time to take into account trends in consumer usage, at a price that is reasonably comparable to similar fixed wireline offerings in urban areas. The Commission also proposes to require recipients of support through the competitive bidding process to provide a roundtrip provider network latency of 100 ms or less. This latency is suitable to allow for existing real time applications, such as VoIP. The Commission seeks comment on these proposals.

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

26. In the Phase II Service Obligations Order, 78 FR 70881, November 27, 2013, the Bureau stated that recipients of model-based support are permitted to offer their customers services other than those meeting the stated performance criteria. The Commission proposes a similar approach for ETCs awarded support in the competitive bidding process, so they would be free to offer an array of services,

including those not meeting the proposed performance requirements, so long as at least one offering met all the necessary metrics. The Commission seeks comment on this proposal.

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

28. Role of Alternative Technologies in Phase II. In reforming the universal service fund, the Commission established the Connect America Fund, focused on terrestrial, fixed broadband deployment, and the Mobility Fund, focused on mobile broadband deployment. Connect America Fund Phase II recipients were required to deploy networks capable of providing "broadband service that is reasonably comparable to terrestrial fixed broadband service in urban America." The Commission did not explicitly prohibit the use of mobile or satellite technology in meeting Phase II obligations, as long as it provided performance comparable to terrestrial, fixed broadband. Relatedly, in providing funding for the Connect America Fund, the Commission excluded Phase II support for areas that were served by unsubsidized competitors; it limited the definition of unsubsidized competitor to terrestrial, fixed

providers. The Commission stated that it would revisit this definition as satellite and mobile technologies developed over time.

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

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

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

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

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

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

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

36. The Commission proposes to provide financial incentives for recipients of Phase II support to accelerate their network deployment. Specifically, funds could be disbursed on an accelerated timetable if a recipient completed its deployment ahead of the required timeframe. For instance, for price cap carriers making a state-level commitment, all or some fraction of the remaining support for the five-year term that has not yet been disbursed after network completion is validated could be paid out over six months. How could a similar proposal be implemented for ETCs awarded support through a competitive bidding process? If the Commission adopts such a system, how should it

structure the accelerated payout? The Commission proposes that if it were to adopt such a system, accelerated payment would not be made until the Universal Service Administrative Company (USAC) has validated the completion of network deployment. The Commission seeks comment on this proposal.

B. Flexibility in Meeting Deployment Obligations

37. In developing the Connect America Cost Model, the Bureau concluded that census blocks shown as served on the National Broadband Map would be treated as presumptively served, and it determined that, for purposes of the Phase II challenge process, partially served census blocks would be treated as fully served. It did so primarily for administrative reasons, due to concern that conducting a challenge process at the sub-census block level would be time consuming and burdensome for all affected parties.

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

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

40. First, the Commission seeks comment on to permitting Phase II recipients (both price cap carriers accepting the state-level commitment and winners in a competitive bidding process) to

specify they are willing to deploy to less than 100 percent of locations in their funded areas, with associated support reductions to the extent they elect to deploy to less than 100 percent of funded locations. If the Commission were to adopt such a proposal, it proposes to establish a minimum percentage of locations that must be served by a Phase II recipient. Would 95 percent of funded locations be an appropriate minimum? To the extent parties argue that the required percentage should be lower than 95 percent, they should identify with specificity the particular number. Should the Commission require the Phase II recipient to specify the number of locations it intends to deploy to at the time funding is first authorized, or should it provide it with flexibility to adjust its deployment commitments for some period of time after making a state-level commitment or being authorized to receive support through a competitive bidding process?

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

42. Second, the Commission seeks comment on allowing Phase II recipients to substitute some number of unserved locations within partially served census blocks for locations within funded census blocks. Phase II funding recipients thus would have the option to deploy to some number of

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

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

44. The Commission emphasizes that it is not proposing to overturn the Bureau's decision not to entertain sub-census block challenges in the Phase II challenge process. That was a reasonable decision given the anticipated number of challenges that may be filed regarding the list of census blocks

potentially eligible for the offer of model-based support. Partially served census blocks will continue to be treated the same as fully served census blocks, and excluded from calculations of the offer of model-based support. Rather, the Commission is proposing to give funding recipients the flexibility to deploy to unserved locations that within census blocks that are deemed served, after they are awarded support either through the offer of model-based support or the competitive bidding process, subject to reasonable limitations to ensure that no overbuilding occurs.

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

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

days, the funding recipient would be permitted to deploy to the locations. The funding recipient could disregard statements received after the 90-day window. What process should occur if another provider contends that it serves the locations, but the Phase II funding recipient wants to contest such assertions?

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

C. Eligibility of Areas for Phase II Support

48. Discussion. The Commission now proposes to revisit the requirement that a competitor be "unsubsidized" to exclude a service area from receiving high-cost support, including Connect America support. The Commission asks whether it is the most efficient use of the Connect America budget to provide support in geographic areas where there is another facilities-based terrestrial provider of fixed residential voice and broadband services that meets our current requirements – whether that competitor is subsidized or not. Every dollar that is spent in such areas is a dollar not available to extend

broadband to areas that lack it. The Commission therefore proposes to exclude from the offer of model-based support any census block that is served by a facilities-based terrestrial competitor offering fixed residential voice and broadband services that meet the Commission's service requirements. If the Commission adopts our proposal to increase the downstream benchmark to 10 Mbps, it proposes to exclude from Connect America Phase II those census blocks where there is a facilities-based terrestrial competitor offering fixed residential voice and broadband services meeting that new speed standard. The Commission seeks comment on these proposals.

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

50. If the Commission were to allow Connect America support to be used to overbuild the broadband network of a provider, even one that is subsidized, it would mean those support dollars would not be available to deploy broadband-capable infrastructure in areas that truly lack broadband. On the other hand, the Commission recognizes that excluding areas that currently may have fixed

residential voice and broadband services may make it more difficult for bidders in a competitive process to develop bids for a network that is cost-effective to build; it is possible that the amount of support provided for the unserved census blocks alone may be insufficient to build out to those census blocks on a stand-alone basis. The Commission seeks comment on this analysis and how best to ensure that it extends broadband-capable infrastructure to those lacking it today.

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

52. Finally, the Commission also seeks comment on the broader question of whether universal service funds are ever efficiently used when spent to overbuild areas where another provider has already deployed service. In this section, the Commission proposes to exclude support for areas already served by an existing provider meeting the requisite voice and broadband requirements; whether a provider receives universal service support should not necessarily be the determining factor. The Commission proposes to define such a provider that meets the voice and broadband requirements as a "qualifying competitor." Second, the Commission seeks comment on whether our other rules that

reduce or eliminate support in areas with unsubsidized competitors should be reframed as reducing or eliminating support in areas with qualifying competitors, whether subsidized or not. For example, should the 100 percent overlap rule apply only where unsubsidized competitors overlap an incumbent or also where any qualifying competitor overlaps the incumbent?

D. ETC Designation

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

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

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

56. Second, the Commission proposes to adopt a rebuttable presumption that a state commission lacks jurisdiction over an ETC designation petition for purposes of Connect America Phase II competitive bidding or Remote Areas Fund if it fails to initiate a proceeding on that petition within 60 days of receiving it. The Commission seeks comment on whether it should adopt a similar rebuttable presumption if a state commission fails to decide a petition within a certain period of time, such as 90 days of initiating a proceeding on it. Under this proposal, a carrier may file for ETC designation with the Commission and point to the lack of state action within the prescribed time period as evidence that the petitioner is not subject to the jurisdiction of a state commission. In determining whether a state commission lacks jurisdiction over the applicant, Commission staff would weigh any statements that a state commission submits during the notice-and-comment period against the lack of action and the arguments of the applicants. The Commission seeks comment on this proposal.

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

58. Third, the Commission seeks comment on sunsetting ETC designations tied to participation in the Connect America Phase II competitive bidding process or the Remote Areas Fund after the funding term has expired and the entity has fulfilled its build-out and public interest obligations. As WISPA has explained, "imposing continuing obligations that extend beyond the funding term would discourage participation by qualified companies that desire to compete for funding under the subject CAF program." The Commission seeks comment on whether sunsetting those ETC designations is consistent with the Act. The Commission notes that a carrier may not discontinue voice service without receiving authorization pursuant to section 214 and that sunsetting an ETC designation

for federal purposes would not impact state obligations such as carrier of last resort obligations to the extent applicable. The Commission seeks comment on this proposal. Under such a proposal, how would the Commission ensure that rates remain affordable for low-income consumers? Should those ETCs be required to maintain their ETC designation for purposes of the Lifeline program throughout the areas for which they receive support, subject to existing procedures for relinquishment?

59. At this time, the Commission does not propose to preempt state review of ETC designation applications or to deem applications granted after 30 days because there is nothing in the record before us that would warrant such a broad change from the existing framework. Rather, the Commission believes that the proposed changes to the current ETC process would be sufficient. The Commission seeks comment on this analysis.

E. Transitions to Phase II

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

1. Frozen Support in High-Cost Areas

61. Discussion. The Commission clarifies that its decision to eliminate frozen support when there is a winner of a competitive bidding process applies only with respect to the geographic area – however defined – where another provider is awarded Phase II support. The Commission needs a

mechanism to determine the appropriate amount of frozen support to provide in those instances where a competitive ETC is awarded support to serve less than the entire area of the incumbent where the average cost exceeds the funding benchmark.

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

63. The Commission proposes a simplified methodology to calculate the amount of support to provide at least on an interim basis in high-cost and extremely high-cost areas to the extent no other ETC is designated to serve such areas. In particular, the Commission proposes to use the Connect America Cost Model to develop a ratio of the cost of serving all blocks where the average cost per location is at or above the final funding benchmark adopted by the Bureau for determining the offer of model-based support to price cap carriers to the total cost of serving for the state. That ratio would then be multiplied by the total amount of Phase I frozen support for that carrier in the relevant state. Is this a reasonable interim methodology to use to calculate support to be provided for those areas that no other party wishes to serve? Are there other potential methodologies for providing a pro-rata amount of frozen high-cost support for such areas? What would be the budgetary impact of awarding such additional frozen support to incumbent providers in certain areas if the full Phase II budget is awarded

through the combination of the offer of model-based support to price cap carriers and competitive bidding process?

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

65. Both landline and mobile voice services meet the definition of voice telephony and both have been supported through the federal high-cost and the Lifeline programs. In the Tech Transitions Order, the Commission noted that evolving technology transitions bring additional choices to consumers by supplementing the legacy copper circuit-switched voice services and consumers may choose to "cut-the-cord" by using wireless voice services. Information from the Tech Transition experiments will allow the Commission and the public to evaluate how customers are affected by the historic technology

transitions that are transforming our nation's voice communications services. The Commission notes also that the Commission will begin collecting more data regarding mobile availability on FCC Form 477, although such data collection will not begin until June 30, 2014. The Commission does know that in some areas of the country these alternatives may not be available. The Commission is committed to preserving universal service, consistent with the statute.

66. The Commission asks commenters to provide specific data relating to the extent of mobile wireless coverage in the areas identified by the forward-looking cost model as high-cost or extremely high-cost. How would the Commission determine whether areas purportedly served by mobile voice providers are in fact served? What data sources should the Commission rely upon, if it were ultimately to conclude that interim frozen support is not necessary in areas where there is a mobile voice service provider? How should the Commission take into account the fact that mobile coverage may vary within a census block, with some customers receiving adequate coverage while other customers may not? Should the Commission refocus our vision for the Remote Areas Fund to preserve voice service for residential consumers in those price cap areas that do not have adequate signal strength for mobile service to be a reliable alternative?

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

67. Discussion. The Commission seeks to further develop the record on how to apply this statutory framework to situations where an incumbent LEC ETC no longer receives high-cost universal service support for a given geographic area or where a non-incumbent carrier has been selected for support through the competitive bidding process. At the outset, the Commission notes that most incumbent LEC ETCs are receiving CAF-ICC support and will continue to do so for several years. And the

Commission also notes that the obligations of being an ETC are distinct from the more general section 214 obligation to receive Commission approval before discontinuing voice service to a community.

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

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

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

70. Discussion. The Commission proposes specific service obligations for non-contiguous carriers electing to continue to receive frozen support amounts. In the course of the model development process, the Bureau sought to develop the record on several of these issues. The Commission now invites parties to comment on specific proposals. The Commission also seeks comment on how it can monitor for compliance with these obligations.

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

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

73. In addition to speed and price obligations, the Commission proposes that non-contiguous carriers continuing to receive frozen support be subject to the same usage allowance

specified by the Bureau for price cap carriers receiving model-based support. Specifically, the Commission proposes that these non-contiguous carriers must initially offer at least one service option that provides a minimum usage allowance of 100 GB per month at a rate that either meets the reasonable comparability benchmark announced by the Bureau or at a rate that is the same or lower than rates for its fixed wireline services in urban areas. The Commission also proposes that this minimum initial usage allowance should be adjusted over time to reflect trends in consumer usage over time. The Bureau permitted price cap carriers accepting model-based support to make this determination based on the usage level of 80 percent of all of its broadband subscribers, including those subscribers that live outside of Phase II-funded areas, while concluding that 100 GB would serve as a floor, even if 80 percent of the carrier's subscribers used less than 100 GB. The Commission seeks comment on whether – in light of the potentially unique circumstances in non-contiguous areas – it would be appropriate to relax the 100 GB minimum usage allowance for non-contiguous carriers and instead allow them to meet their usage requirements based on a comparison to 80 percent of their entire subscriber base.

74. The Commission also proposes that non-contiguous carriers be required to meet a roundtrip provider network latency of 100 milliseconds or less. The Bureau noted in the Phase II Service Obligations Order that latency determinations for carriers serving non-contiguous areas could be affected by the use of undersea cable, depending upon the type and length of cable. Therefore, it allowed carriers in non-contiguous areas of the United States who receive model-based support to conduct their latency network testing from the customer location to a point at which traffic is consolidated for transport to an Internet exchange point in the continental United States. The Commission proposes allowing non-contiguous carriers that choose to continue to receive frozen support to fulfill their latency requirements using the same measurement. The Commission previously

recognized that satellite backhaul may limit the performance of broadband networks as compared to terrestrial backhaul, and it exempted fixed broadband providers that must rely on satellite backhaul facilities from the usage allowance and latency requirements as a result. The Commission proposes exempting non-contiguous carriers that choose to continue to receive frozen support from these requirements as well, provided they rely exclusively on satellite backhaul and certify annually that no terrestrial backhaul options exist.

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

76. The Commission seeks comment on the specific build out obligations that non-contiguous carriers receiving frozen support would have in those census blocks that do not currently have broadband service meeting the Commission's requirements. Specifically, should non-contiguous carriers receiving frozen support be required to deploy voice and broadband-capable networks and offer services meeting the above performance metrics to all locations in those funded areas, consistent with the state-level commitments required of carriers receiving model-based support? In the alternative, should these carriers be allowed to serve some subset of locations within their respective service areas where the average cost equals or exceeds the funding benchmark established by the Bureau? Should they also be required to extend broadband-capable networks to serve some specified number of locations in census blocks determined by the model to be above the extremely high-cost threshold?

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

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

79. Recognizing there may be differing circumstances for each of the non-contiguous carriers, the Commission asks whether it should adopt tailored service obligations for each one that chooses to elect frozen support. To the extent non-contiguous carriers contend that they could not meet one or more of the public interest service standards set forth above, they should submit specific alternatives. However, the Commission notes that, for certain non-contiguous carriers, the amount of frozen support they would receive is greater than the amount of model-based support they would receive. The Commission expects, therefore, that any alternatives proposed by these carriers would

reflect this level of support and would be consistent with the Commission's goal of ensuring universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions.

4. Other Issues Relating to the Phase II Transition

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

a. Aligning Connect America Phase II Funding and Calendar Years

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

82. At this juncture, the Commission anticipates that while the offer of support may be extended before the end of 2014, the deadline for acceptance will be in 2015, 120 days later. The

Commission proposes to disburse a lump sum amount to those carriers for whom model-based support in a given state will be greater than Connect America Phase I support, representing the additional amount of model-based support that would accrue for the beginning months of the year while the offer of support is under consideration, so that in calendar year 2015 those carriers will receive the appropriate yearly amount. Should such support be disbursed in the month after the acceptance of model-based support, or some other date? The Commission seeks comment on these proposals.

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

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

84. The Commission now proposes to eliminate the transition year and disburse the full amount of model-based support in the initial year to those carriers for whom the amount of model-based support is greater than frozen support. The Commission expects this will reduce administrative

burden on the Fund Administrator, as it will only need to program its systems once to disburse the appropriate monthly amounts over the five-year period, rather than first implementing a transition year, and then switching to the full model-determined amounts the second year. In addition, the Commission expects that this would provide greater certainty for carriers accepting a state-level commitment than deferring disbursement of part of the initial year's support until certain milestones are met, as suggested in the Additional Phase II Public Notice, 78 FR 76789, December 19, 2013. Given that in all relevant circumstances, the carriers will be receiving a support level that is higher than their prior frozen support for that state, the Commission proposes that there is no need for a transition year, and the public interest and the purposes of section 254 of the Act will be served by disbursing the new, model-based level in the first year.

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

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

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

87. The Commission proposes to clarify that for the purposes of transitioning from Connect America Phase I to Phase II, only Connect America Phase I frozen support is relevant. Specifically, the multi-year phase down in support that the Commission adopts in the concurrently adopted Report and

Order would only apply to frozen support and would not include Phase I incremental support. Incremental support was provided to carriers on a one-time basis in exchange for specific build-out commitments, in contrast to the ongoing frozen support. The Commission is unaware of any policy justification for providing any fraction of the one-time support on a recurring basis under the guise of a transition to Connect America Phase II. The Commission seeks comment on this proposed clarification.

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

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

89. The Commission seeks comment on what conditions a rural broadband experiment formal proposal would have to meet in order to remove a geographic area from a price cap carrier's state-level commitment. In particular, the Commission seeks comment on the broadband performance, amount of support requested, and other conditions a rural broadband formal proposal should meet before the area it covers would be removed from the price cap carrier's state-level commitment. For

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

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

91. If the Commission were to adopt such an approach, how would this affect the incentives of potential participants in the Phase II competitive bidding process to express their interest prior to the offer of support to price cap carriers? How would this affect the incentives of price cap carriers to accept or decline model-based support? How would it affect the timing and extent of the deployment

of broadband-capable infrastructure in high-cost areas? Given that the vast majority of the expressions of interest proposing to extend fiber-based technologies propose to deploy fiber-to-the-premise, would removing such areas from the state-level commitment result in greater deployment of broadband to high-cost areas than would be the case under the current Connect America framework?

G. Phase II Competitive Bidding Process

92. In the concurrently adopted Report and Order, the Commission sets certain parameters for the Phase II competitive bidding process. In this section, the Commission seeks to develop further the record on additional issues relating to the competitive bidding process that will occur in Phase II.

93. In the USF/ICC Transformation Order, the Commission adopted rules to apply generally for competitive bidding to award universal service support, codified in Subpart AA of Part I. In the USF/ICC Transformation FNPRM, 76 FR 78384, December 16, 2011, it proposed to use a reverse auction to distribute support to providers of voice and broadband services in price cap areas where the price cap carrier declined support. The Commission proposed to use such a mechanism to determine where services meeting the specified performance requirements can be offered "at the lowest cost per unit" with the relevant unit being the number of residential and business locations in a given census block. The Commission also sought comment on relaxing performance obligations and allowing bidders to offer to provide service with different performance characteristics, with the Commission considering these service quality attributes when it evaluates bids.

94. The Commission recognizes the importance of specifying in advance objective, well-defined, and measurable criteria for selecting among entities that seek funding in a competitive bidding process. The record received in response to the USF/ICC Transformation FNPRM is not sufficiently well developed on this issue, however, for us to make final decisions at this time. But the Commission is

nevertheless determined to finalize the details of the competitive bidding process so that it can occur shortly after the model-based elections take place. In the concurrently adopted Report and Order, the Commission adopts certain rules with respect to participation, the term of support, and the ETC designation process, and the Commission seeks further comment on other aspects of those rules elsewhere. Here, the Commission focuses on the mechanics of the competitive bidding process and seek comment on specific proposals.

95. First, the Commission proposes that it adopts reserve prices based on the Connect America Cost Model so that the reserve price for a given geographic area in the competitive bidding (i.e., census tract or census block) equals the amount of support the model would have calculated for that same geographic unit in the state-level election process. To the extent the Commission ultimately decides that census tracts will be the minimum geographic unit for competitive bidding, it proposes that the reserve price for a given census tract would be the support associated with the requisite number of locations in census blocks within that tract that are eligible for funding. That support could be used to serve locations within census blocks where the average cost per location exceeds the extremely high-cost threshold established by the model. To the extent parties argue that the model should not be used to determine reserve prices either generally or in specific areas, they should articulate what instead should be used for a reserve price.

96. Second, the Commission proposes bidders may bid for a package of geographic areas, either census blocks or census tracts. The Commission believes that such package bidding is likely necessary so that bidders may construct efficient networks and are not left to serve certain high-cost tracts without the scale to do so effectively.

97. Third, the Commission proposes 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. The Commission notes that because bidders can compete both for areas subject to the state-level election process as well as areas that are deemed extremely high-cost, there could be insufficient funds to support all bidders even if there is only one bid in each area. As such, the competitive bidding process is likely to result in both intra-area and inter-area competition for funding.

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

99. Fifth, the Commission proposes that the competitive bidding process be implemented in a way that first identifies those provisionally winning bids that propose service that substantially exceeds the Commission's service standards, for an amount per location equal to or less than the model-determined amount of support for the relevant geographic areas. To the extent funding remains available, the Commission proposes that the next round of bidding would identify those bids proposing to provide service that meets the Commission's service standards, for an amount of support per location equal to or less than the model-determined amount. To the extent funding still remains available after these two determinations, the Commission proposes that the competitive bidding process would then identify winning bidders that are willing to provide service using relaxed performance standards for an amount of support equal to, or less than, the model-determined reserve price. The Commission seeks comment on the specific characteristics of services that would be deemed to be "substantially"

exceeding the Commission's standards. In order to qualify for such a preference, must a bidder commit to offering service that substantially exceeds our standards to 100 percent of all funded locations, or some lesser percentage? In addition, the Commission seeks comment on whether it should adopt any other limits on the priorities discussed above. For instance, should the auction be designed so that the Commission select all bids that substantially exceed the Commission's standards before selecting any bids for service that meets or falls below the Commission's standards? Should the Commission allocate funding in a way that provides geographic coverage across various states? The Commission also seeks comment on how it might incorporate into our auction design consideration of the expressed preferences of the affected community for service of a particular type or quality. What would be an appropriate form for such an indication?

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

101. The Commission also seeks comments on concerns that a reverse auction will result in bidders competing to provide the minimally acceptable level of service. How can the Commission best ensure that any competitive bidding process it ultimately adopts will bring an evolving level of broadband service to consumers, businesses, and anchor institutions in rural America? The Commission now seeks to refresh the record and seek more focused comment on what objective metrics should be used when the Connect America Phase II competitive bidding process is implemented nationwide in

price cap territories to the extent the offer of model-based support is declined. Specifically, what criteria should be adopted that will determine who is awarded support?

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

H. Mobility Fund Phase II

103. Since the USF/ICC Transformation Order was adopted, there has been significant commercial deployment of mobile broadband services. According to some sources, nearly 99.5 percent of the U.S. population today (and the road miles associated with that population) is covered by some form of mobile broadband technology. Verizon asserts that its 4G LTE network currently is available to

95 percent of the U.S. population – more than 500 markets covering approximately 303 million people. Similarly, AT&T has stated that at present its LTE deployment covers all major metropolitan areas, totaling nearly 280 million people, and it expects to cover approximately 300 million people by the summer of 2014.

104. Discussion. Based on these marketplace developments, the Commission proposes to target the funds set aside to support mobile services in Mobility Fund Phase II on preserving and extending service in those areas that will not be served by the market without governmental support. The Commission emphasized in the USF/ICC Transformation Order that it did not intend to provide ongoing support for service to areas that are likely to be served absent support. Given marketplace developments over the last few years, the Commission seeks comment on how to ensure that Mobility Fund Phase II is focused on preserving service that otherwise would not exist and expanding access to 4G LTE in those areas that the market will not serve.

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

106. Given the experiences with Mobility Fund Phase I and Tribal Mobility Fund Phase I where demand for universal service support far exceeded the supply of available funding, the

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

107. Based on technological developments in the industry, our proposal would require that recipients of Mobility Fund Phase II support deploy 4G LTE. Is there another deployment standard the Commission should use? For example, in the USF/ICC Transformation Order, the Commission allowed winners of Mobility Fund Phase I support to elect to deploy 3G or 4G, with a shorter deployment deadline for those that elected 3G. The Commission originally proposed requiring 4G deployment for Mobility Fund Phase II. For those parties who argue that the Commission should employ a deployment standard other than 4G LTE, please explain how using that standard would help us address the other issues the Commission identifies in this section and help us meet our goals of preserving and extending service in those areas that will not be served by the market without governmental support. In identifying eligible areas under our proposed standard, if there are areas where a portion of a network

overlaps in part with an area that has LTE coverage provided by AT&T and/or Verizon, how should the Commission treat the eligibility of those areas so as to promote the preservation of service in the portion that does not overlap? Similar to the process used for Auctions 901 and 902, which awarded Mobility Fund Phase I support, the Commission expects that proposed eligible areas would be identified publicly prior to the commencement of bidding for Mobility Fund Phase II support and would be subjected to a challenge process to add or subtract areas from the original proposed eligible areas. What is the best way to verify in such a process that proposed ineligible areas are in fact served by LTE and that proposed eligible areas are indeed eligible because they lack LTE? In addition, the Commission asks commenters to describe whether and, if so how, it should modify other aspects of the original proposals for Mobility Fund Phase II competitive bidding to conform to this proposed new approach.

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

could target that support to those areas that will not be served with 4G LTE through commercial deployments.

109. The Commission seeks to further develop the record on how much of that $400 million in competitive ETC support provided today to smaller and regional wireless providers is covering ongoing operating expenses, and how much of it is being used to extend service to unserved areas. To the extent commenters contend that the current funding is necessary to preserve existing service, they should identify with particularity those amounts and specify the extent to which such subsidized service overlaps with the coverage areas of one of the four national providers. To what extent is existing frozen support being provided to areas that are not expected to receive 4G LTE from either Verizon or AT&T?

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

111. If the Commission adjusts downward the budget for Mobility Fund Phase II, it proposes to reallocate those funds to the Remote Areas Fund or the competitive bidding process for Connect America Phase II. The Commission seeks comment on this proposal. The Commission expects wireless providers that meet the requisite service standards will participate in both the Remote Areas Fund and

Connect America Fund. Wireless technology may well be the appropriate solution to serve many areas lacking broadband today, and the Connect America Phase II competitive bidding process and Remote Areas Fund will be implemented in a technologically neutral manner to allow the participation of as many entities as possible. Would re-allocating a portion of the Mobility Fund Phase II budget to either of these mechanisms be consistent with our overall reform objectives?

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

113. Proposed Rules. The USF/ICC Transformation FNPRM included proposed rules for Phase II of the Mobility Fund. The Commission now seeks comment on revised proposed rules for Mobility Fund Phase II in light of the above proposals and the Commission's experience with administering Phase I of the Mobility Fund. The Commission seeks comment on these proposed rules in Appendix B.

114. Timing of ETC Designation. As described in the concurrently adopted Order, the Commission adopts new rules to enable participants in the Connect America Phase II competitive bidding process to seek designation as an eligible telecommunications carrier after winning competitive bidding for Connect America Phase II support. The Commission seeks comment on whether to adopt this approach for Mobility Fund Phase II or to maintain the Commission's practice that parties must have ETC designations, subject to certain exceptions, before applying to participate in Mobility Fund competitive bidding. Participants in Mobility Fund competitive bidding have been able to obtain new

designations prior to applying to participate in competitive bidding. There may, however, be benefits to permitting parties to participate in competitive bidding for Mobility Fund Phase II prior to seeking a designation, such as increased competition in the bidding. The Commission seeks comment on whether a greater number of qualified parties would participate in Mobility Fund Phase II if it only required that they seek designation after winning competitive bidding.

I. Phase-down of Identical Support

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

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

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

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

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

120. The Commission now proposes to freeze the total amount provided to each competitive ETC serving remote areas in Alaska. This would simplify support calculations for the Administrator, while not disturbing existing support levels for existing competitive ETCs. Competitive ETCs would no longer be required to file line counts for remote areas of Alaska, thus alleviating the need for the Bureau to address on a case-by-case basis how competitive ETCs should report line counts in situations where the customer's billing address is either unavailable or does not accurately represent the location of where the service is actually provided. Under this proposal, the baseline for competitive ETC support in remote areas of Alaska would be set as of a date certain, such as December 31, 2014, or the effective date of the rule, whichever is later. The Commission seeks comment on this proposal.

121. Above, the Commission proposes to maintain existing support levels for wireless competitive ETCs until after it adopts rules for Mobility Fund Phase II. Consistent with the framework established by the Commission in 2011, the Commission proposes to maintain the baseline frozen support for each competitive ETC serving remote areas in Alaska until (1) the first month after the month in which its Mobility Fund Phase II or Tribal Mobility Fund Phase II ongoing support is authorized in the case of a winning bidder of such Mobility Fund Phase II support, or (2) the first month after the month in which a public notice announces winning bidders for ongoing support under Mobility Fund

Phase II or the Tribal Mobility Fund Phase II, whichever is later, for a competitive ETCs that is not winning bidder of such Mobility Fund Phase II or Tribal Mobility Fund Phase II support. Upon that date certain, the phase-down in support would commence under the schedule originally adopted by the Commission: 80 percent of the baseline in the first year; 60 percent of the baseline in the second year; 40 percent of the baseline in the third year; and 20 percent of the baseline in the fourth year. The Commission seeks comment on this proposal. To the extent parties argue for a different approach, they should specify when the phase-down in support in remote Alaska should begin. Should remote areas in Alaska or any other areas in the United States be subject to exceptions or other conditions with respect to the phase-down in frozen support?

J. Reforms in Rate-of-Return Study Areas

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

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

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

124. Support for rate-of-return carriers has been subject to the HCLS cap, which is rebased annually through a rural growth factor, for more than a decade. In 2001, the Commission modified the distribution of HCLS by rebasing the fund for rural telephone companies and retaining an indexed cap. Specifically, the Commission concluded that the total cap on HCLS would be adjusted annually by a rural growth factor equal to the sum of the annual percentage changes in the gross domestic product-chain priced index and the total number of working loops. Given decreases in working loops in rate-of-return study areas in recent years, resulting in reductions of the indexed cap, HCLS has been reduced substantially for many rate-of-return carriers while others incur almost no reduction. The Commission also adopted a rule that ensures that rural carriers receive the total amount of capped HCLS, regardless of the extent to which individual carriers' costs exceed the actual national average cost per-loop (NACPL) by the requisite percentages. Neither of these features of the HCLS rule was altered in the USF/ICC Transformation Order.

125. As a near term measure that can be quickly implemented to mitigate both of these deficiencies, the Commission proposes to reduce support proportionally among all HCLS recipients by no

longer adjusting the NACPL, but instead reducing the reimbursement percentages for all carriers. Under the proposed rule, reductions in support will be spread proportionally among all carriers, and carriers presently close to the NACPL will no longer run the risk of "falling off the cliff" in terms of their receipt of HCLS support. This rule could be implemented beginning January 1, 2015. The Commission seeks comment on this proposal and invite comment on other possible methods to address this issue.

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

part of the proposed rule, if there are other changes that would otherwise result in a lowering of the NACPL, carriers will receive support based on the 65 and 75 percentage reimbursements.

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

128. The Commission proposes measures to monitor and enforce compliance with such a rule. Price cap carriers today are precluded from using support in areas that are served by an unsubsidized competitor. Support may be used to serve geographic areas that are partially served by an unsubsidized competitor; however, price cap carriers must certify that, with respect to the support dollars subject to this obligation, a majority of the served locations are unserved by an unsubsidized competitor. For purposes of determining whether this requirement is met, price cap carriers must be prepared to provide asset records demonstrating the existence of facilities that serve locations in census blocks where there is no unsubsidized competitor. The Commission proposes to take a similar approach if it adopts a rule precluding recovery of new investment in areas served by competitors through our universal service support mechanisms.

129. In particular, to enforce a requirement that new investment recovered in whole or in part through HCLS or ICLS not occur in areas where there is a competing provider, the Commission proposes that rate-of-return carriers be prepared to produce, in an audit or other inquiry, asset records and associated receipts to document that new investment for which recovery is sought through the federal support mechanisms, after a date certain, occurred only in census blocks that are not served by other providers. Recognizing concerns expressed in the record regarding the coverage indicated in the

National Broadband Map, the Commission further proposes to create a safe harbor that would allow rate-of-return carriers to include new investment in cost studies used to determine HCLS or ICLS if they publicly post information on their website regarding deployment plans and wait a specified period of time, such as 90 days. If no competing provider notifies the rate-of-return carrier that it serves the areas in question, the rate-of-return carrier may presume no other provider is serving those locations, and new investment in such areas may be eligible for cost recovery, consistent with any applicable rules for existing or future support mechanisms. The Commission seeks comment on these proposals and any alternatives that would provide a mechanism to provide clarity as to which new investments would be applicable for cost recovery through universal service support mechanisms, without creating undue burden on either rate-of-return carriers or potential qualifying competitors in their service areas.

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

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

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

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

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

incentives for continued broadband deployment in rate-of-return territories, and would reduce incentives to skew customer purchasing decisions.

134. The Commission also seeks to develop further the record on other proposals. NTCA has presented its own stand-alone broadband proposal, which relies on complicated cost-calculations based on embedded costs. The proposal also does not appear to account for the fact that when a carrier's voice line is lost, the following-year both its HCLS and ICLS will likely increase on a per-line basis because fixed costs are now recovered over a smaller number of lines. Further, the proposal states that stand-alone broadband support would be developed based on annual projected costs followed by a true-up to actual costs developed using the existing HCLS rules. However, HCLS payments, under the current rules, are based on costs incurred two years previously. How would NTCA's proposal avoid recovery of costs from both HCLS and a stand-alone broadband support mechanism, given this timing difference? Also, under NTCA's proposal, there would be no definitive way to determine how HCLS is affected by voice line migration to broadband-only lines until true-ups are reconciled two years later. What impact would that have on the size of the fund, and what incentives would that create for cost reporting?

135. The Commission also seeks to understand further the rationale for the assumed broadband subscriber line charge of $26 in NTCA's proposal. For the offer of model-based support in price cap territories, the Commission directed the Wireline Competition Bureau to set the funding threshold for model-based support taking into account "where the cost of service is likely to be higher than can be supported through reasonable end-user rates alone." The Commission expects end user rates for broadband-only lines to be higher than $26. If the Commission were to provide support for stand-alone broadband offered by rate-of-return carriers, should it provide such support only for costs that exceed the $52.50 funding benchmark established for price cap territories? To the extent parties

argue that a lower figure should be used in rate-of-return areas, they should provide a detailed analysis of what figures the Commission should assume are reasonable end user rates for retail broadband internet access.

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

137. The Commission also seeks comment on how the proposal fits within the overall universal service support budget framework. Of the $4.5 billion budget for the Connect America Fund, the Commission concluded that "up to $2 billion," including intercarrier compensation recovery would be available annually in rate-of-return territories. USAC's projected demand for rate-of-return carriers was at an annualized rate of $2.014 billion in 2013, with actual disbursements of $1.958 billion. According to NTCA's own projections, its stand-alone broadband proposal would result in support in excess of $2 billion flowing to rate-of-return carriers annually in 2015-2017 under a variety of assumptions.

138. Finally, the NTCA proposal does not appear to have a mechanism to ensure that universal service is not subsidizing new investment occurring in areas served by an unsubsidized

competitor. The Commission therefore seeks further comment on this issue, and alternative proposals that would better meet our reform objectives.

139. In addition to its proposal concerning support for broadband-only lines, NTCA submitted a plan to establish an annual investment budget for individual rate-of-return carriers called the "Capital Budget Mechanism." NTCA states that this mechanism is intended to promote fiscal responsibility while also providing more predictable and transparent planning for investment in rate-of-return carrier networks. It includes a four-step framework for determining a budget for high-cost supported future investment, as follows: (1) determine current loop investment (i.e., total loop investment for each rate-of-return carrier study area), adjusted for inflation; (2) determine a "future allowable loop investment" for each rate-of-return carrier, based on the replacement of depreciated plant, precluding support to replace plant that is still used and useful; (3) use a trigger to identify alleged inefficiencies, which would enable prospective adjustment to a carrier's future allowable loop investment; and (4) establish an annual budget for each rate-of-return carrier by dividing each carrier's future allowable investment by a period of years to establish budget of supported additional investment each year. One critical shortcoming in the proposal as presented, however, is that there is no concrete plan for how the Commission would implement the trigger that "identifies alleged inefficiencies." Absent specificity on this key point, the Commission is skeptical as to how the proposal could be put in place in the near term. The Commission therefore seeks to develop the record on this proposal and invite specific, actionable proposals for defining the relevant triggers. How would it work within the context of the Commission's current rules? How does this proposal fit within the budget for rate-of-return territories?

3. Voluntary Transition of Rate-of-Return Carriers to Incentive Regulation

140. The Commission proposes to adopt rules that would allow rate-of-return ETCs to elect to participate in a voluntary, two-phase transition to model-based universal service support, including participation in the Connect America Fund Phase II. The Commission also seeks comment on whether rate-of-return carriers should be allowed to transition on a voluntary basis to an alternative rate regulation approach. As an initial matter, the Commission asks parties to address whether the voluntary path to model-based support and the alternative rate regulation approach are linked, or whether they should be considered independent of each other. The Commission proposes to adopt a transition framework for voluntary participation in Connect America Phase II for rate-of-return carriers and seek comment on alternative rate regulation approaches and specific implementation details below.

141. The Commission previously has sought comment in this docket on potential reforms that would provide support to rate-of-return carriers under mechanisms other than the current legacy mechanisms. The Bureau sought further to develop the record on facilitating voluntary participation in Phase II of the Connect America Fund in the May 2013 Public Notice, 78 FR 34016, June 6, 2013.

142. ITTA has proposed the most comprehensive plan in the record for such a transition (ITTA Plan). The ITTA Plan calls for, among other things, a voluntary, two-phase transition to a model-based support framework for rate-of-return ETCs. ITTA argues that the plan is designed to provide a viable path for rate-of-return carriers to move to model-based support. Any rate-of-return carrier would be free to participate at any time during either of the two phases of the plan. A participating carrier would also have the discretion to opt-in to model-based support for all of its study areas, or for a subset of its study areas.

143. During the first phase of the ITTA Plan, an electing carrier's ICLS and HCLS would be frozen at current levels (i.e., as of December 31 of the year prior to that carrier's election). Existing service obligations for rate-of-return carriers, such as the requirement to offer broadband service meeting the Commission's current requirements, with actual speeds of at least 4 Mbps downstream and 1 Mbps upstream "upon reasonable request" would remain in effect.

144. The second phase of the ITTA Plan for universal service support would begin after a rate-of-return carrier-specific support model is defined and established. According to ITTA, rate-of-return carriers that accept support under this model would assume the same service and public interest obligations as price cap carriers receiving Connect America Phase II model-based support. Model-based support would be made available for ten years to participating rate-of-return carriers. For those rate-of-return carriers choosing to participate in the second phase after it becomes operational, model-based support would be made available to such carriers for the remainder of the ten-year timeframe left for carriers who elected to participate at the beginning of the second phase.

145. The ITTA Plan proposes that rate-of-return carriers that decline support for certain study areas would be relieved of ETC status and obligations in those study areas where support is declined. Those study areas would then be opened up to a competitive bidding process similar to that used in areas where price cap carriers decline Connect America Phase II support. To the extent that the Phase II funding made available for a study area in the second phase is lower than frozen support, ITTA proposes that support would be transitioned down to the level determined appropriate by the rate-of-return-specific model over a five-year period.

146. The ITTA Plan proposes an alternative rate regulation approach for rate-of-return carrier intercarrier compensation (ICC), special access, and broadband internet access services. Carriers could

elect participation in the proposed alternative rate regulation plan at any time by study area. Electing carriers would continue to implement ICC rate reductions pursuant to the timeline adopted in the USF/ICC Transformation Order for rate-of-return carriers and, if eligible, would continue to charge an Access Recovery Charge and receive CAF-ICC support. Electing carriers choosing to participate in the NECA pool for special access services would move to an alternative rate regulation approach for special access cost determination employing principles taken from the average schedule process and settle with the pool based on the interstate special access revenue requirement established by the retention ratio. Electing carriers with company-specific special access tariffs would use their most recent tariff filing data to initialize their rates and be allowed to "adjust their tariffs on a going-forward basis to take into account evolving circumstances." The ITTA Plan does not describe the alternative rate regulation that would govern non-pooled special access services beyond saying that it would be a "price cap-like structure." ITTA also does not indicate how common line rates of electing carriers would be affected going forward and whether such services would be subject to rate-of-return or an alternative regulatory mechanism. Finally, electing carriers that offer the transmission component of their broadband Internet access service as a Title II of the Act regulated service would have the option to elect to have that transmission component deregulated upon electing to participate in the ITTA Plan.

147. Discussion. The Commission proposes to adopt a transition framework for a voluntary election by rate-of-return carriers to receive model-based support. The Commission tentatively concludes that such a framework could achieve important universal service benefits, creating a framework that creates incentives for deployment of voice and broadband-capable infrastructure. The Commission seeks comment on how to implement such a framework in a way that furthers these important public policy objectives, while ensuring that it also meets our statutory directives under sections 201(b) and 202. The Commission also asks commenters to address specifically how other

proposals in this FNPRM, if adopted, would affect the ITTA Plan and incentives for rate-of-return carriers to voluntarily move to model-based support.

148. Time Frame for Implementation. The ITTA Plan does not appear on its face to contemplate a specific time frame in which rate-of-return carriers would elect to participate in the voluntary plan. Should the Commission allow rate-of-return carriers to transition in any year for the remaining years of the model-based support, or should it only open a window for such transitions, i.e., allowing carriers to elect to transition in 2015 only? Under either approach, the Commission specifically proposes that an electing carrier's ICLS and HCLS would be frozen at the amount received for a given study area as of December 31 of the year prior to the election. The Commission seeks comment on this proposal.

149. Should the Commission adopt a specific deadline for rate-of-return carriers to elect this voluntary path to receive model-based support? For instance, should carriers be required to elect this path within 120 days of the Bureau adopting revisions to the Connect America Cost Model for use in determining support for rate-of-return carriers electing to receive model-based support? Put another way, should the Commission prohibit carriers from voluntarily transitioning to model-based support if they do not do so within a Commission-defined window? To the extent parties argue a longer time period to make the election is necessary, they should specify what time frame would be appropriate.

150. Impact on HCLS Cap. Consistent with the approach taken when the Commission transitioned price cap carriers and their rate-of-return affiliates to Connect America Phase I, the Commission proposse to rebase the high-cost loop cap to deduct the HCLS that electing rate-of-return carriers would have received in the year after their election, had they not made the voluntary election to transition to the Connect America Fund. Specifically the Commission proposes to direct NECA to

submit a revised 2015 HCLS cap within 30 days of any deadline for the election by a rate-of-return carrier to pursue this voluntary path to model-based support, and to make similar adjustments in subsequent years to the extent it permits carriers to make elections to pursue this voluntary path to model-based support after 2015. The Commission seeks comment on this proposal.

151. State-level Election. The ITTA Plan proposes to allow participating rate-of-return carriers to make an election on a study area-by-study area basis. The Commission proposes instead that participating carriers be required to make a state-level election to receive model-based support, comparable to what is required of price cap carriers. Such an approach would prevent rate-of-return carriers from cherry picking the most attractive areas in their study areas, potentially those areas where model-support is greater than legacy support, leaving the least desirable areas for a competitive process. The Commission seeks comment on this proposal. Would requiring a state-level commitment have a material impact on the incentives of rate-of-return carriers to participate in this voluntary plan? If the Commission were to adopt an approach, as proposed above, that would provide greater flexibility to Phase II participants regarding how they may meet their deployment obligations in funded areas, would that create a greater incentive for rate-of-return carriers to voluntarily elect to receive model-based support?

152. Transition to Model-Based Support. The ITTA Plan proposes that carriers for whom frozen support is more than model-based support would transition to the lower model-based amount over a five-year period. In the concurrently adopted Report and Order, the Commission adopted a four-year transition for price cap carriers for whom model-based support is lower in a given state. The Commission proposes a similar approach for rate-of-return carriers that voluntarily elect to receive model-based support. In particular, in the first year, the carrier would receive, in addition to its Phase II

support, 75 percent of the difference between the annualized amount of Connect America Phase II support that it accepted and the amount of its frozen high-cost support; in the second year, it would receive 50 percent of the difference; in third year, it would receive 25 percent of the difference; and then in the fourth year, it would receive model-based support. The Commission seeks comment on this proposal. Would adopting a four-year transition, rather than a five-year transition as proposed by ITTA, have a material impact on the incentives of rate-of-return carriers to participate in this voluntary plan?

153. Impact on Budget. In the USF/ICC Transformation Order, the Commission adopted a $1.8 billion budget for price cap territories, and a $2 billion budget for rate-of-return territories. How would implementation of a voluntary plan for rate-of-return carriers to elect to receive model-based support impact rate-of-return carriers that do not participate in the voluntary plan, given the overall high-cost fund budget and the budget for rate-of-return areas in particular? Specifically, to the extent there are incentives for rate-of-return carriers to opt voluntarily into this plan only if model-based support is the same or greater than their current support under legacy mechanisms, would the net effect be to squeeze the remaining budget for rate-of-return territories that are served by rate-of-return carriers that do not opt into the plan? Are there any adjustments to the ITTA Plan or the Commission's proposal that could reduce any such squeeze? How would implementation of this plan meet the overall statutory principle of providing predictable and sufficient support and other statutory criteria such as the framework of section 214(e)? How could the Commission maintain the overall budget within a voluntary framework, with no way to determine how many carriers may elect to participate? Would one option be to allocate some defined amount from the existing broadband reserve account to the extent the voluntary election of certain carriers in rate-of-return territories to receive model-based support results in the overall support level for rate-of-return territories exceeding the budgeted amount

of $2 billion? Do commenters recommend any other adjustments to the ITTA Plan to minimize concerns about the budget or how it is allocated among rate-of-return carriers?

154. Adjustments to the Model. In the concurrently adopted Declaratory Ruling, the Commission directed the Bureau to incorporate the results of the study area boundary data collection in the Connect America Cost Model and to make such other adjustments as appropriate for use of that model in rate-of-return territories. Here, the Commission asks commenters to address what specific changes should be implemented in the model before using it to calculate the offer of model-based support for rate-of-return carriers that voluntarily elect to receive model-based support.

155. The ITTA Plan also suggests that a competitive bidding process be designed for rate-of-return areas where support is declined under the second phase of the proposal. What timeframe would be realistic to assume for further model development, and how would that affect the overall timing of implementation of the ITTA proposal? What are the advantages and disadvantages of holding the competitive bidding process for areas not elected by the rate-of-return carriers at a date subsequent to the Phase II competitive bidding process that will occur after the offer of model-based support to price cap carriers?

156. Cost determination for special access services under the ITTA Plan. Rate-of-return carriers determine their interstate revenue requirement by allocating the costs assigned to the interstate jurisdiction by the separations procedures contained in Part 36 of the Commission's rules among the various access categories, one of which is special access, in accordance with the investment and expense allocation rules contained in Part 69 of the Commission's rules. As noted above, under the ITTA Plan, a rate-of-return carrier filing its own special access tariff would use the preceding year's special access data to initialize its costs and/or rates for participating in an alternative rate regulation

plan. Parties should explain the scope and nature of any adjustments that would be allowed to take into account "evolving circumstances." While a retention ratio would produce a dollar amount reflective of the year for which the calculation was made, the ITTA Plan does not explain how the retention ratio would be used going forward. Would it be a fixed percentage, or would it be adjusted each year to reflect special access growth, special access rate changes, or other factors? Parties should address how this approach could be implemented going forward, as well as identifying other approaches that could be considered in an alternative regulatory framework for rate-of-return carriers. Parties should address how the proposed ITTA Plan would produce projections of costs and/or rates that would remain reasonable over time, and propose specific measures to ensure that it meets the Commission's overall objectives.

157. The ITTA Plan allows carriers to elect participation by study area and to choose when to enter an alternative rate regulation plan. With this flexibility, the sensitivity of the retention ratio, or other costing determinant, to year-to-year differences could create the ability for carriers to time their election to maximize their retention ratio, or their cost base, to their benefit. Above the Commission proposes to require electing carriers to make a state-level election to receive model-based support. Would that lessen the incentive of participants to time strategically their elections to maximize their retention ratios or their cost base? Parties should comment on the sensitivity of any alternative costing measure and on means by which any gaming opportunities can be minimized. Parties should also address the need for any special conditions to check the ability of affiliated carriers to shift costs between study areas electing an alternative regulation plan and those that do not.

158. Pricing for special access services under the ITTA Plan. The costs determined pursuant to an alternative rate regulation plan must be translated into special access rates. A single retention

ratio produces overall special access costs, but does not address the allocation of those costs among special access services. Parties should address what rules or principles should govern the development of special access rates, whether individually or within the NECA pool, to ensure that they are just and reasonable and not unjustly discriminatory pursuant to sections 201(b) and 202 of the Act, respectively. In particular, parties should address the degree of flexibility to adjust rates carriers electing an alternative rate regulation plan should be allowed. Are there specific mechanisms that could or should be built into the cost determination process that could facilitate the development of special access rates? Parties should consider whether the proposed rules or principles would produce different incentives depending on whether the carrier participates in the NECA traffic-sensitive pool or tariffs its own special access rates.

159. NECA pooling issues. The ITTA Plan would allow electing carriers to participate in the NECA traffic-sensitive pool. In light of the questions asked concerning the costing and pricing of special access services, the Commission invites parties to address the feasibility of pooling both carriers electing an alternative regulation plan and those remaining under traditional rate-of-return regulation within a single pool. What changes, if any, would need to be made to the pooling procedures to ensure that both groups of carriers were treated equitably? Parties should address how earning variations within the pool should be handled, whether pool entry and exit rules would need to be modified, and if there would be any effect on the banding processes that NECA uses to establish special access rates. Any party proposing that a carrier electing an alternative rate regulation plan should have additional flexibility to adjust rates should explain how that would be handled in the pooling process.

160. Broadband internet access service deregulation. Rate-of-return carriers today offer the transmission component of their broadband Internet access service as a Title II regulated service. The

ITTA Plan proposes that rate-of-return carriers would have the option to elect to offer the transmission component of their broadband Internet access service on a deregulated Title I basis upon electing to participate in the ITTA Plan. What impact would this aspect of the proposal have on achievement of the Commission's goals?

161. Switched access services. The ITTA Plan proposes to continue the switched access transition and associated recovery mechanism for rate-of-return carriers unchanged. The Commission asks parties to comment on whether there are changes that should be made to the switched access transition process or recovery mechanism if changes similar to those proposed for common line or special access in the ITTA Plan were to be adopted. For example, should the five percent annual reduction in Base Period Revenue be accelerated, or should the CAF-ICC recovery of rate-of-return carriers be subjected to a phase-out at some point similar to that applicable to price cap carriers? To the extent parties disagree, they should identify the public interest rationale and specify the timing and amount of any such changes that they believe should be implemented.

162. Other ratemaking issues. The Commission requests ITTA and other parties to clarify how an alternative rate regulation plan would adjust, if at all, the rates for common line rate elements going forward. The Commission also invites parties to comment on whether, if cost savings are achieved as a result of any changes adopted, a portion of such savings should be used to reduce access rates. Parties believing that such savings should be used to reduce access rates should identify the portion of any savings that should be used to reduce rates, as well as how the savings should be allocated among the various access services. The Commission also invites parties to comment on the regulatory treatment if an electing rate-of-return carrier in the future becomes affiliated with a price cap carrier.

The Commission notes that the price cap rules require acquired entities to convert to price cap regulation within one year.

163. Finally, how would adoption of some variant of the ITTA Plan further the Commission's goals? In the USF/ICC Transformation Order the Commission adopted a framework to provide ongoing support to areas served by price cap and rate-of-return carriers in order to, among other things, "ensure universal availability of modern networks capable of providing voice and broadband service . . . [and] minimize the universal service contribution burden on consumers and businesses." How could this proposal, or one similar to it, further these and other important Commission goals?

4. Support for Middle Mile for Rate-of-Return Carriers

164. In this section, the Commission seeks comment on potential measures to provide support for middle mile for rate-of-return carriers, recognizing that the cost of backhaul is an important component of the ability of such providers to offer broadband services to their customers at rates that are reasonably comparable to similar offerings in urban areas. The Commission proposes to focus initially on supporting middle mile infrastructure on Tribal lands. The Commission also invites longer term proposals for supporting middle mile connectivity in territories served by rate-of-return carriers.

165. Discussion. The Commission proposes measures to address the challenges of extending middle mile projects on Tribal lands, including remote areas in Alaska. The Commission seeks comment on the ARC proposal and seek data on the availability of middle mile infrastructure more generally on Tribal lands, as well as the benefits and the costs of providing support for these types of infrastructure projects. The Commission encourages commenters to provide factual information to support any projections placed in the record.

166. As an initial step, the Commission proposes to award $10 million in one-time support for new middle mile construction in 2015 on Tribal lands. Depending on lessons learned, this approach then could be expanded further in subsequent years to address middle mile challenges facing rate-of-return carriers more generally.

167. The Commission proposes to award the $10 million support for middle mile projects on Tribal lands pursuant to our existing rules for competitive bidding processes codified in Subpart AA of Part 1. Under such a competitive bidding process, the Commission would solicit proposals for middle mile projects designed to expand voice and broadband coverage to the greatest number of unserved locations on Tribal lands. The Commission proposes to award funds through a single round bidding process to those applicants proposing to bring new terrestrial broadband service to the greatest number of locations for a specified amount of funding. The Commission seeks comment on this proposal and alternatives.

168. The Commission encourages multi-stakeholder partnerships in the creation of competitive proposals. The Commission is particularly interested in proposals that would encourage contributions from state and Tribal governments or entities. Should the Commission award a bidding credit to the extent there is an explicit commitment of matching funds from state or Tribal government or related entities? The Commission could, for instance, provide a 50 percent bidding credit to the extent state or Tribal entities provided matching funds dollar for dollar. Should the same bidding credit be available to applicants that can leverage other sources of funding for the project, such as funding from other federal agencies?

169. The Commission seeks comment on whether support for the expansion of current middle mile construction projects would be appropriate. The Commission proposes not to fund any

terrestrial middle mile in areas that already have terrestrial middle mile, whether fiber or microwave-based. To prevent waste, fraud, and abuse, how does the Commission ensure that the funding proposed in this FNPRM is not used to overbuild existing middle mile facilities? What lessons can be learned from the BTOP to inform our decision regarding the award of funding for middle mile infrastructure?

170. The Commission seeks comment on ARC's suggestion that the Commission should adopt some mechanism to ensure that recipients of middle mile funding should be required, as a condition of that funding, to provide access to that middle mile connectivity at a reasonable rate. For example, while allowing recipients of funding to enter into individually negotiated arrangements with other providers, should they be required to charge rates for middle mile connectivity that are no higher than rates for comparable connectivity in urban areas of the state? Should they be precluded from charging rates that are higher than the discounted rates available to recipients of funding under the E-rate or rural health care programs?

171. To avoid waste, fraud, and abuse, the Commission seeks further comment on what reporting requirements it should require to ensure that middle mile infrastructure projects are financially viable and can be timely completed. The Commission proposes that any applicant certify to its financial and technical capability to build out such infrastructure. The Commission proposes the winning bidders be subject to a default payment in an amount equal to 20 percent of the defaulted bid, pursuant to section 1.21004 of our current competitive bidding rules. The Commission also seeks comment on oversight measures that will ensure that USAC has sufficient information to oversee project deployment and completion.

K. Accountability and Oversight

172. In the USF/ICC Transformation Order, the Commission adopted several reforms to harmonize and update annual ETC requirements by establishing a "uniform national framework for accountability" that replaced the various data and certification filing deadlines that carriers were required to meet previously. The Commission concluded that such an accountability framework is "critical to ensure appropriate use of high-cost support and to allow the Commission to determine whether it is achieving its goals efficiently and effectively." Among other things, the new framework incorporates annual unified reporting and certification procedures.

173. Here, the Commission seeks comment on issues related to this framework that are applicable to all Connect America Fund recipients that are required to offer broadband service as a condition of receiving high-cost support. These recipients include price cap carriers accepting the state-level commitment in exchange for model-based support, recipients of the Phase II competitive bidding process, and rate-of-return carriers that receive high-cost loop support, interstate common line support, or CAF-ICC support. The Commission first seeks comment on codifying a broadband reasonable comparability certification requirement for all ETCs receiving Connect America support. The Commission also seeks comment on modifying the reduction in support for late-filed section 54.313 and 54.314 reports and certifications. Finally, the Commission seeks comment on the consequences it should impose if ETCs do not meet the Commission's service obligations for voice or broadband service.

1. Reasonably Comparable Rates Certification for Broadband

174. Discussion. The Commission proposes to codify a broadband reasonable comparability certification requirement that will apply generally to all ETCs that are required to offer broadband service as a condition of receiving ongoing high-cost Connect America Fund support in areas served by

price cap and rate-of-return carriers. The Commission proposes to amend section 54.313(a) to include a new section 12 requiring recipients to submit in their annual section 54.313 report (FCC Form 481):

> a letter certifying that the pricing of the company's broadband services is no more than the applicable benchmark as specified in a public notice issued by the Wireline Competition Bureau, or is no more than the non-promotional prices charged for comparable fixed wireline services in urban areas.

175. Recognizing that ETCs receiving Connect America Fund support are free to offer a variety of broadband service offerings, for purposes of this certification the Commission proposes that they would only need to certify that one plan meets the reasonable comparability benchmark specified annually by the Wireline Competition Bureau in a Public Notice in order to make the requisite certification.

176. The Commission seeks comment on when it should begin to require Connect America recipients to submit their broadband reasonable comparability certification. Carriers that accept the state-level commitment are required to certify that they are providing broadband service that meets the required public service obligations to 85 percent of their supported locations by the end of the third year of support. However, throughout the five-year term as they increasingly deploy broadband to supported locations and connect customers, the Commission expects that they will offer broadband service that at least meets the Commission's requirements. Similarly, the Commission expects that while the Commission will impose build-out requirements for Phase II competitive bidding recipients, recipients will offer broadband service that at least meets the Commission's requirements throughout their support term. Thus, the Commission proposes requiring price cap carriers that accept the state-level commitment and recipients of the Phase II competitive bidding process to submit their first

certification with the first annual report they are required to submit after accepting support, and then each year with their annual report thereafter. Under the proposed timeline for the offer of model-based support to price cap carriers, this would mean that price cap carriers accepting model-based support would be required to make their first such certification in the annual report filed on July 1, 2016. The Commission also proposes that rate-of-return carriers, which are currently required to provide broadband that meets the Commission's public service obligations upon reasonable request, should submit such a certification. Because rate-of-return carriers are already required to be providing broadband service upon reasonable request as a condition of their support, the Commission proposes that they begin to submit such a certification with the first annual report after the requirement has received Paperwork Reduction Act (PRA) approval from the Office of Management and Budget, and then each year with their annual report thereafter.

177. The Commission seeks comment on this proposal and whether any adjustments need to be made to either certification requirement to account for differences between price cap carriers and rate-of-return carriers and other potential recipients of funding awarded through the Phase II competitive bidding process.

2. Reduction in Support for Late Filing

178. Discussion. In general, deadlines set in Commission rules are strictly enforced, and the new framework adopted in the USF/ICC Transformation Order was intended to ensure that the consequences of non-compliance are appropriate rather than unduly harsh. On further consideration, however, the Commission has concerns that the rules adopted may not be appropriately calibrated to meet our objectives. The Commission continues to recognize the importance of ensuring compliance with the reporting deadlines adopted in the USF/ICC Transformation Order. USAC, which processes a

large amount of data, requires that the data be timely filed so that it can calculate support amounts. But the Commission must also balance these concerns with ensuring that the support reduction it imposes on carriers is a proportionate response to their failure to meet deadlines and not unduly punitive given the nature of the non-compliance. The Commission therefore proposes to modify the reduction in support for late-filed section 54.313 and 54.314 reports and certifications to better calibrate the reduction of support with the length in delay of the filing.

179. Under the current rules, a carrier that misses a section 54.313 and 54.314 filing deadline by only a few days loses an entire quarter of support. The Commission proposes to adopt a rule that would impose a minimum support reduction for any late filing, which would be applied even in those instances when the filing is only a few days late. In particular, the Commission proposes that deadlines for filing reports shall be strictly enforced, with a minimum reduction of support in an amount equivalent to seven days of support, and to the extent the deadline is missed by more than seven days, support would be reduced on a pro-rata daily basis equivalent to the period of non-compliance. If the Commission were to adopt these proposed rule changes, a carrier that files a report or certification within 14 days of the deadline would lose 14 days of support, a carrier that files a report or certification two months after a deadline would lose two months of support, and so on. The Commission thus proposes to modify section 54.313(j) to read as follows:

> (1) In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this section annually by July 1 of each year. Eligible telecommunications carriers that file their reports after the July 1 deadline shall receive a reduction in support pursuant to the following schedule: (a) Eligible telecommunications carriers

that file after the July 1 deadline, but by July 8, will have their support reduced in an amount equivalent to seven days in support; (b) Eligible telecommunications carriers that file on or after July 9 will have their support reduced on a pro-rata daily basis equivalent to the period of non-compliance.

180. The Commission also proposes to modify the rule regarding certifications for use of support, section 54.314 (d), to read as follows:

(1) In order for an eligible telecommunications carrier to receive federal high-cost support, the State or the eligible telecommunications carrier, if not subject to the jurisdiction of a State, must file an annual certification, as described in paragraph (c) of this section, with both the Administrator and the Commission by October 1 of each year. If states or eligible telecommunications carriers file the annual certification after the October 1 deadline, the carriers subject to the certification shall receive a reduction in support pursuant to the following schedule: (a) Eligible telecommunications carriers subject to certifications filed after the October 1 deadline, but by October 8 will have their support reduced in an amount equivalent to seven days in support; (b) Eligible telecommunications carriers subject to certifications filed on or after October 9 will have their support reduced on a pro-rata daily basis equivalent to the period of non-compliance.

181. Recognizing that some ETCs quickly rectify their failure to meet a filing deadline, thereby minimizing the negative impact on the administration of the Connect America Fund, should the Commission also provide a one-time grace period for ETCs that miss the filing deadline by only a few days? The Commission proposes that any ETC that misses the deadline but files within three days after the deadline would not receive a reduction in support. But if the ETC filed on the fourth day after the

deadline, it would be subject to the seven day minimum support reduction, and then after seven days, its support would be reduced on a pro-rata daily basis equivalent to the period of non-compliance, as described in the prior paragraph. If the Commission were to adopt this proposed one-time grace period, an ETC that files a report or certification within two days of the deadline would not lose support, an ETC that files a report or certification within five days of the deadline would lose seven days of support, and an ETC that files a report or certification within 14 days of the deadline would lose 14 days of support, and so on. The Commission proposes only providing this grace period once for a given holding company, regardless of the number of affiliated operating companies that may individually be designated as an ETC. If an ETC misses the deadline a subsequent year, the seven day minimum support reduction would apply even if it files within three days of the deadline. The Commission also proposes to apply the grace period at the holding company level, so that a grace period would not be available to another operating company of that holding company that holds the ETC designation to serve a different study area. Finally, the Commission proposes that if an ETC (or another ETC with the same holding company) misses the deadline for a second time, it will be responsible for the reduction in support that would have occurred the first year that the deadline was missed if there had been no grace period. For example, if an ETC missed the deadline by two days the first year, it would not lose support due to the grace period. But, if another ETC within the same holding company (or the same ETC) misses the deadline again a subsequent year by eight days, it would be subject to a loss of support for eight days, plus the seven day minimum reduction of support that would have applied to its affiliate ETC the prior year if there had been no grace period, for a reduction in support that totals 15 days.

182. The proposed rule would amend the rule for annual reporting by recipients of high-cost support, section 54.313(j) to add a new subsection (2):

(2) Grace period. An eligible telecommunications carrier that submits the annual reporting information required by this section after July 1 but before July 5 will not receive a reduction in support if the eligible telecommunications carrier and all other eligible telecommunications carriers owned by the same holding company as the eligible telecommunications carrier have not missed the July 1 deadline in any prior year. The next time that either the eligible telecommunications carrier that had previously benefitted from the grace period or an eligible telecommunications carrier owned by the same holding company misses the July 1 deadline, that eligible telecommunications carrier will be subject to a reduction of seven days in support in addition to the reduction of support it will receive pursuant to (j)(1) of this section.

183. The proposed rule also would amend the rule for certification regarding use of support, section 54.314(d), to add a new subsection (2):

(2) Grace period. If an eligible telecommunications carrier or state submits the annual certification required by this section after October 1 but before October 5, the eligible telecommunications carrier subject to the certification will not receive a reduction in support if the eligible telecommunications carrier and all other eligible telecommunications carriers owned by the same holding company as the subject eligible telecommunications carrier have not missed the October 1 deadline in any prior year. The next time that either the eligible telecommunications carrier that had previously benefitted from the grace period or an eligible telecommunications carrier owned by the same holding company misses the October 1 deadline, that eligible telecommunications carrier will be subject to a reduction of seven days in support in addition to the reduction of support it will receive pursuant to (d)(1) of this section.

184. The Commission also proposes to cease the practice of providing waivers to parties that commit to implement improved internal controls to ensure compliance in the future as it has done previously. As a practical matter, parties invariably seek waivers of the filing requirements when they miss the deadline and addressing such waiver requests diverts staff from other Commission priorities. While waivers may have been justified in the past when the consequence for failure to meet a deadline was the loss of entire year of support, going forward the Commission does not believe it serves the public interest to absolve an ETC of any consequence when it fails to meet a Commission-mandated requirement merely due to administrative or clerical oversight. All ETCs should have policies and procedures in place to ensure compliance with Commission reporting requirements, and promising to do better in the future should not become a routine basis for grant of a waiver of a filing deadline. The Commission thus seeks comment on whether it should revisit our prior findings that good cause for waiver is present when parties commit to implement improved internal controls to ensure compliance in the future. More generally, the Commission seeks comment on these proposals to modify our rules and practices regarding filing deadlines and alternatives identified by commenters.

185. The Commission also seeks comment on whether it should apply our proposals described above to reduce support for late-filed section 54.313 and 54.314 reports and certifications to recipients of Mobility Fund Phase II support, and if so, whether any of the specific proposals it makes today for Mobility Fund Phase II warrant a modification of our approach to reductions of support.

3. Support Reductions for Non-Compliance with Service Obligations

186. Discussion. Providers should face predictable consequences for performance noncompliance. Under existing Commission rules, eligible telecommunications carriers lose a quarter of support in the following calendar year for each quarter they are late in filing their annual reports, while

the Commission proposes above to adjust the support reduction for late filing to be proportionate to the degree a filing is late. Similarly, here the Commission proposes that recipients of high-cost support should face a proportional loss of support, depending on the degree of non-compliance with established standards.

187. One alternative would be to give providers an opportunity to improve performance prior to withholding support in certain circumstances. For example, if there were an audit finding or other determination that a provider failed to meet performance measurements for a certain number of months consecutively (such as two months) or a certain number of months during a one-year period (such as three months), the provider could be required to submit a plan to USAC describing how it will come into compliance within a certain period (such as six months). If a provider does not meet its performance standards during the requisite period, it would then lose a certain percentage of funding (such as five percent) for each month until performance improves. Monitoring would continue throughout this process until the provider had demonstrated compliance with the performance measures for four consecutive months or five months out of a six month period. If performance did not improve within one year, an additional five percent of funding would be lost for each month until the provider consistently meets performance requirements or is no longer receiving high-cost funding. The Commission seeks comment on this proposal and alternative options for the mechanics of how it could operate.

188. Another alternative would be to adopt quickly-increasing support reductions to heighten provider incentives to meet performance standards. For example, if there were an audit finding or other determination that a provider failed to meet performance measurements for a certain number of months consecutively (such as two months) or a certain number of months during a one-year

period (such as three months), the provider could lose five percent of its funding for each of the next six months. If performance levels were not being met after six months, the provider would lose 25 percent of its funding for each of the next six months.

189. The Commission also seeks to develop more fully the record on consequences for failing to meet the Commission's reasonable comparability benchmarks. Under longstanding precedent, the Commission presumes that a voice rate is within a reasonable range if it falls within two standard deviations of the national average. In the USF/ICC Transformation Order, the Commission concluded it would "consider rural rates for broadband services to be 'reasonably comparable' to urban rates under section 254(b)(3) if rural rates fall within a reasonable range of urban rates for reasonably comparable broadband service." What should be the appropriate remedy if a recipient of high-cost support is unable to certify that either its voice or broadband services meet the Commission's reasonable comparability benchmarks, or if there is an audit finding or other determination that the provider in fact failed to offer at least one plan meeting the reasonable comparability benchmark? Given that the Commission has concluded that the reasonable comparability benchmark for voice is a presumption, not an absolute mandate, what should be the process for an ETC to rebut that presumption? If the ETC is unable to rebut the presumption, should it face a reduction of support, such as five percent of monthly funding, until the situation is remedied? Should the Commission take other action if ETCs fail to offer service at reasonably comparable rates? Would other support reductions for noncompliance be more effective?

190. The Commission also seeks comment on whether it should apply any of our proposals described above for reducing support for non-compliance with service obligations to recipients of

Mobility Fund Phase II support, and whether any of the specific proposals it makes today for Mobility Fund Phase II would warrant a modification of our approach to such reductions of support.

III. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

191. The FNPRM contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. In addition, pursuant to the Small Business Paperwork Relief Act, the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Congressional Review Act

192. The Commission will send a copy of this Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

C. Initial Regulatory Flexibility Act Analysis

193. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on the first page of this document. The Commission will send a copy of the FNPRM,

including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.

1. Need for, and Objectives of, the Proposed Rules

194. In the FNPRM, the Commission proposes measures to update and implement further the framework adopted by the Commission in 2011. The Commission strives to adapt our universal service reforms to ensure those living in high-cost areas have access to services that are reasonably comparable to services offered in urban areas. Consistent with that goal, in the FNPRM the Commission proposes to revise our current broadband performance obligations to require minimum speeds of 10 Mbps downstream to ensure that the services delivered using Connect America funds are reasonably comparable to the services enjoyed by consumers in urban areas of the country and seek comment on whether to increase the upstream speed requirement to something higher than 1 Mbps. The FNPRM also proposes to apply uniformly the same performance obligations to all recipients of Phase II support and to rate-of-return carriers. In addition, the Commission seeks to further develop the record on the ability of Phase II recipients to satisfy their obligations using any technology or a combination thereof – whether wireline or wireless, fixed or mobile, terrestrial or satellite – that meets the performance standards for Phase II. The FNPRM also proposes to provide financial incentives for recipients of Phase II support to accelerate their network deployment.

195. The Commission proposes to apply the same usage allowances and latency benchmarks that the Bureau implemented for price cap carriers that will accept the offer of model-based support in the state-level commitment process to ETCs that will receive support through a competitive bidding process.

196. To target our finite universal service funds most effectively, the FNPRM proposes to exclude from eligibility for Phase II support those areas that are served by any provider that offers voice and broadband services meeting the Commission's service obligations – whether those providers are subsidized or unsubsidized.

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

198. The FNPRM seeks comment on the amount of frozen support to provide to incumbents that decline the offer of model-based support where no other provider wishes to serve, and on the obligations associated with such support. It proposes to eliminate or modify the requirement that a price cap carrier certify that all of its frozen support is used to build and operate a broadband –capable network used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor. The FNPRM also proposes to define the public interest obligations that would apply to recipients of frozen support in the non-contiguous areas of the United States. The Commission also proposes several minor changes and clarifications regarding the implementation of the transition to model-based support to ease the administration of Connect America Phase II.

199. The FNPRM seeks comment on specific proposals for the design of the Phase II competitive bidding process that will occur in areas where price cap carriers decline model-based support.

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

201. In the FNPRM, the Commission also focuses on developing and implementing a "Connect America Fund" for rate-of-return carriers. As a short term measure, the Commission proposes to apply the effect of the annual rebasing of the cap on support known as high-cost loops support (HCLS) equally on all recipients of HCLS. As another near term reform, the Commission also proposes to prohibit recovery of new investment occurring on or after January 1, 2015, through either HCLS or interstate common line support (ICLS) in areas that are served by a qualifying competitor that offers voice and broadband service meeting the Commission's standards. The Commission proposes that such

rate-of-return carriers, many of which are small entities, document their compliance with this requirement in the course of an audit or other inquiry, and to create a safe harbor that an area is presumed unserved if the rate-of-return carrier announces an intention to make new investment and no other provider notifies the rate-of-return carrier that it serves the area.

202. As a longer term measure, the Commission is seeking comment on limiting recovery of new investment through HCLS or ICLS as of a date certain, in conjunction with implementation of a Connect America Fund for rate-of-return carriers. The Commission proposes to adopt a stand-alone broadband support mechanism that meets defined parameters and seek to develop further the record on various industry proposals. Building on a proposal recently submitted by ITTA, the Commission proposes to provide rate-of-return carriers the option of participating in a two-step transition to Phase II model-based support and seek comment on alternative rate regulation measures and specific implementation issues. The Commission also seeks comment in the FNPRM on providing one-time funding for middle mile projects on Tribal lands in 2015.

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

2. Legal Basis

204. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 2, 4(i), 5, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

205. 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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. 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.

206. **Small Businesses**. Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

207. **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. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer

employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

208. **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. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the FNPRM.

209. **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. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the FNPRM.

210. The Commission has 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." 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. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

211. **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. 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. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. 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. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. 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 FNPRM.

212. **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. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, 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 interexchange service providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

213. **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. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

214. **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. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the FNPRM.

215. **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. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the FNPRM.

216. **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. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the FNPRM.

217. **800 and 800-Like Service Subscribers**. 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. 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. 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. The Commission does 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, the Commission estimates 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.

218. **Wireless Telecommunications Carriers (except Satellite)**. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. 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. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

219. **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. 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. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. 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. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. 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. 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. 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. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

220. **Advanced Wireless Services**. In 2008, the Commission conducted the auction of Advanced Wireless Services (AWS) licenses. 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. Four winning bidders that identified themselves as very small businesses won 17 licenses. 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.

221. **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. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. 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, 65 FR 35843, June 6, 2000. 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. 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. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

222. **Paging (Private and Common Carrier)**. In the Paging Third Report and Order, 64 FR 33762, June 24, 1999, the Commission 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. 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. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. 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. A fourth auction of 9,603 lower and upper band paging licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

223. **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, the Commission applies 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. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the FNPRM.

224. **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, 62 FR 15978, April 3, 1997, the Commission 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. 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. 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. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 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.

225. **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. 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. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. 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. 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 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. 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.

226. 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. 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. 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.

227. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does 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, the Commission does not know how many of these firms have 1500 or fewer employees. The Commission assumes, 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.

228. **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")). 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. 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, the Commission estimates 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. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds 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. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. 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.

229. 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. Thus, the Commission estimates that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." 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.

Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the FNPRM.

230. **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. 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. 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. 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. The SBA approved these small size standards. 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. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. 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. 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. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

231. In 2007, the Commission reexamined its rules governing the 700 MHz band in the 700 MHz Second Report and Order, 72 FR 48814, August 24, 2007. 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. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. 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.

232. **Upper 700 MHz Band Licenses.** In the 700 MHz Second Report and Order, the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. 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).

233. **700 MHz Guard Band Licensees**. In the 700 MHz Guard Band Order, 65 FR 17594, April 4, 2000, the Commission 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. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. 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. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

234. **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. Bidding credits for designated entities were not available in Auction 77. 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.

235. **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, the Commission uses 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. 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. The Commission notes 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.

236. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. The Commission notes 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.

237. **Rural Radiotelephone Service**. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). In the present context, the Commission 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. 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.

238. **Air-Ground Radiotelephone Service**. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission 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. There are approximately 100 licensees in the Air-Ground

Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the FNPRM.

239. **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. 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, the Commission estimates 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. 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. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards and may be affected by rules adopted pursuant to the FNPRM.

240. **Fixed Microwave Services**. Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. 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. 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. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

241. **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. There are 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 Cellular and Other Wireless Telecommunications services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

242. **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. 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. The SBA has approved these small business size standards. 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 FNPRM.

243. **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. 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. 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. The SBA has approved these small business size standards in the context of LMDS auctions. 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.

244. **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. In the 218-219 MHz Report and Order and Memorandum Opinion and Order, 64 FR 59656, November 3, 1999, the Commission 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. 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. These size standards will be used in future auctions of 218-219 MHz spectrum.

245. **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. The SBA has approved these definitions. 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.

246. **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.

247. **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, the Commission estimates that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

248. **24 GHz – Incumbent Licensees**. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent 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.

249. **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. "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. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

250. **Satellite Telecommunications**. Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and the Commission 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. Under the "Other Telecommunications" category, a business is considered small if it had $25 million or less in average annual receipts.

251. 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." For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the FNPRM.

252. 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." For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by our action.

253. **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." 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. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the FNPRM.

254. **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. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. 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. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the FNPRM.

255. **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." 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. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

256. **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. The OVS framework provides opportunities for the distribution of video

programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." 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. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Notice. In addition, the Commission notes that it has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. 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.

257. **Internet Service Providers**. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." 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 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. 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. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

258. **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)." The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

259. **Data Processing, Hosting, and Related Services**. Entities in this category "primarily … provid[e] infrastructure for hosting or data processing services." The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that

operated for the entire year. Of these, 7,744 had annual receipts of under $ $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

260. **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)." 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. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. 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, the Commission estimates that the majority of these firms are small entities that may be affected by our action.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

261. In this FNPRM, the Commission seeks public comment on additional steps for its comprehensive universal service reform. The transition to the reforms could affect all carriers including small entities, and may include new administrative processes. In proposing these reforms, the Commission seeks comment on various reporting and other compliance requirements that may apply to all carriers, including small entities. The Commission seeks comment on any costs and burdens on small

entities associated with the proposed rules, including data quantifying the extent of those costs or burdens.

262. For example, in the FNPRM, the Commission seeks further comment on the design of the Phase II competitive bidding process in which small entities may participate. It is likely that the rules the Commission ultimately adopts for the competitive bidding process will impose obligations on small entities deciding to participate.

263. In defining the areas eligible for Phase II support, the Commission seeks comment on excluding from eligibility areas served by any provider that offers voice and broadband meeting the Commission's requirements – regardless of whether the provider is subsidized or unsubsidized. The Commission seeks comment on requiring competitors (including small entities) that wish to contest the eligibility of an area to certify to the Commission that they are able and willing to continue providing voice and broadband service meeting the Commission's requirements for a period of time, such as five years.

264. The Commission seeks comment on methods of providing funding recipients with increased flexibility in making their deployments. First, the Commission seeks comment on permitting Phase II recipients to specify that they are willing to deploy to less than 100 percent of locations in exchange for some lesser amount of funding. In such a process, the recipients may be required to state the percent or number of locations that they are willing to serve. Second, the Commission seeks comment on requiring Connect America funding recipients to make a statement announcing their intent to deploy to unserved locations in partially served census blocks. Such recipients may potentially also be required to send a copy of that statement to any provider currently shown on the National Broadband Map as serving that census block.

265. Moreover, the Commission seeks comment on near term measures for reforms to rate-of-return carriers' support mechanism. As a part of this short-term reform, the Commission proposes adopting a rule that no new investment may be recovered through HCLS or ICLS as of a date certain when such investment occurs in areas that are already served by a competing provider of voice and broadband services meeting our requirements. In the FNPRM, the Commission proposes to require rate-of-return carriers, many of which are small entities, to be prepared to document with asset records and associated receipts that new investment for which recovery is sought through federal support mechanisms is occurring only in census blocks that are not served by other providers. It also proposes that rate-of-return carriers be required to announce an intention to make new investment and wait 90 days before such investment may properly be eligible for cost recovery through the universal service support mechanisms. The FNPRM also proposes a transition framework for rate-of-return carriers to elect to receive support based on a forward looking cost model.

266. The Commission anticipates that rate-of-return carriers are likely to be subject to other accountability measures depending on which reforms the Commission ultimately adopts. The Commission also seeks comment on setting aside $10 million of support for the construction of middle mile networks on Tribal lands. If such a program is implemented and small entities choose to participate, they would be subject to the trial's rules, including any accountability obligations the Commission chooses to adopt after considering comments submitted in response to the FNPRM.

267. The Commission also seeks comment on requiring entities participating in the Phase II competitive bidding process to submit an application to become an ETC within 30 days of notification that they are the winning bidders for those areas where they have not already been designated as ETCs. This proposal is intended to facilitate the ability of non-incumbent carriers, many of which are small

entities, to participate in the Connect America Fund and the Remote Areas Fund. The Commission also proposes to adopt a rebuttable presumption that if a state commission fails to initiate an ETC designation proceeding within 60 days, the entity may file for ETC designation with the Commission and point to the lack of state action within the prescribed time period as evidence that the petitioner is not subject to the jurisdiction of a state commission. The Commission also proposes to require winning bidders to submit proof to the Commission that they have filed the requisite ETC designation application within the required timeframe to the extent filed with a state commission.

268. The Commission also seeks comment on several proposals related to the "uniform national framework for accountability" that was established in the USF/ICC Transformation Order. The Commission proposes to codify a certification requirement for ETCs that are required to provide broadband service as a condition of receiving ongoing high-cost support in areas served by price cap and rate-of-return carriers. ETCs would be required to certify that the pricing of one of their broadband service plans is no more than the applicable benchmark specified by the Wireline Competition Bureau, or is no more than the non-promotional prices charged for comparable fixed wireline service in urban areas. The Bureau also proposes a revised framework for reductions in support that ETCs will receive for failing to file their section 54.313 and 54.314 filings on time and seeks comment on what penalties it should impose for ETCs that do not meet the Commission's public service obligations.

269. The Commission seeks comment on proposals for specific service obligations for carriers serving non-contiguous areas electing to continue to receive frozen support amounts. The Commission seeks comment on how it can monitor for compliance with these obligations.

270. The Commission also proposes rules for Mobility Fund II, in which small entities might choose to participate. The proposed rules would impose a number of obligations including the

requirement that participating entities secure a letter of credit, the requirements for the contents of the applications to participate and for winning bidders, and various certifications and reporting requirements.

5. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

271. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

272. The FNPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may affect small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the FNPRM.

273. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the FNPRM, in reaching its final conclusions and taking action in this proceeding. The reporting, recordkeeping, and other compliance requirements in the FNPRM could have an impact on both small and large entities. The Commission believes that any impact of such requirements is outweighed by the accompanying public benefits. Further, these requirements are

necessary to ensure that the statutory goals of section 254 of the Act are met without waste, fraud, or abuse.

274. The Commission has made an effort to anticipate the challenges faced by small entities in complying with its rules. For example, when proposing new speed obligations, the Commission recognizes that ETCs, including small entities, may not be able to meet revised speed standards immediately. Noting that rate-of-return carriers, which are often small entities, are required to deploy broadband upon reasonable request, the Commission emphasizes that rate-of-return carriers would only be required to meet the higher speed if the request for service is reasonable – meaning that the carrier could cost effectively extend voice and broadband-capable network to that location, given its anticipated end-user revenues and other sources of support. The Commission also seeks comment on the timeframe for rate-of-return carriers to upgrade their networks to a faster speed benchmark. Related to the other performance standards the Commission proposes to impose – particularly usage and latency standards – the Commission also requests that parties identify whether the requirements are too stringent and offer alternative proposals.

275. The Commission also seeks comment on how the obligations for carriers serving non-contiguous areas should be adjusted when determining support obligations for those that select frozen support in lieu of model-based support.

276. The Commission proposes to allow Phase II recipients to meet their deployment obligations using any technology that meets the performance requirements. If adopted, this would give participants, including small entities, additional flexibility in satisfying their obligations. The Commission also seeks comment on two potential measures that would provide all recipients of Phase II funding, both in the state-level commitment process and competitive bidding process, greater flexibility to satisfy

their deployment obligations. These include proposing to permit Phase II recipients to specify that they are willing to deploy to less than 100 percent of locations in their funded areas, with associated support reductions, and to allow Phase II recipients to substitute some number of unserved locations within partially served census blocks for locations within funded census blocks.

277. The Commission also proposes to retarget the focus of Mobility Fund Phase II to the U.S. population that will not have 4G LTE through commercial deployments and those areas where support is needed to preserve existing mobile voice and broadband service that would not otherwise exist without governmental support. The FNPRM proposes adjusting downward the budget for a retargeted Mobility Fund II. While this could affect small mobile providers, the Commission notes that if Mobility Fund Phase II is retargeted as proposed, support could be available for small entities that are the only providers serving populations in portions of the country.

278. The Commission proposes targeted measures to maintain competitive ETC funding until after the Mobility Fund Phase II auction. Thus, the Commission proposes to maintain 60 percent competitive ETC baseline support for those wireless ETCs whose competitive ETC support exceeds one percent of their wireless revenues, until a specified date after the Mobility Fund Phase II ongoing support. While the Commission proposes to eliminate competitive ETC support for wireless ETCs for whom high-cost support represents less than one percent of their wireless revenues, it notes that such carriers can take advantage of the waiver process if the elimination of support would result in consumers losing access to existing mobile voice or broadband service. The FNRPM also proposes to freeze competitive ETC support for competitive ETCs serving remote areas of Alaska, many of which are small entities, which would provide greater certainty to individual carriers regarding their support

amounts. The FNRPM also proposes a delayed time table for phasing down that frozen support compared to other competitive ETCs.

279. The FNPRM proposes to exclude from eligibility for Phase II support those areas served by a provider that offers voice and broadband services meeting the Commission's requirements regardless of whether the competitor is subsidized or unsubsidized. The Commission also seeks comment on excluding from eligibility providers that are offering qualifying service regardless of what technology is used to deliver that service. If adopted, these proposals could limit the overbuilding of areas served by other providers, some of which may be small entities.

280. For rate-of-return carriers, the Commission seeks comment on short-term and long-term reforms to ensure that funds provided to rate-of-return carriers are disbursed efficiently and in the public interest. Recognizing the need to eliminate the inefficiencies of the universal service support mechanisms for rate-of-return carriers, the FNPRM proposes to modify the current HCLS mechanism by reducing the reimbursement percentages for all carriers and to limit the ability of rate-of-return carriers to recover new investment through HCLS in areas where other providers are offering voice and broadband. The Commission also proposes a funding mechanism that would provide support for rate-of-return carriers' broadband-only lines and seeks comment on various industry proposals for longer term reforms. The Commission anticipates taking into account the unique challenges faced by rate-of-return carriers when determining which reforms to adopt.

281. In the FNPRM, the Commission seeks comment on specific proposals for the design of the Phase II competitive bidding process and the rules for a retargeted Mobility Phase II. The Commission asks a variety of questions about how these mechanisms should be designed, and proposes rules for Mobility Fund Phase II. The Commission anticipates that small entities will comment and

provide data on the challenges they face and proposals for how to design the mechanisms to accommodate small entities. The Commission anticipates taking these comments and any alternatives proposed into consideration when making final decisions on how the mechanisms will be designed and what rules it will adopt for entities receiving support from these mechanisms.

282. The Commission proposes a broadband reasonably comparable rate certification on all ETCs that receive ongoing high-cost support in areas served by price cap carriers and rate-of-return carriers, but it also seeks comment on modifying the reduction in support for late filing. Although the Commission notes that filing deadlines will be strictly enforced, it proposes to adjust the reduction of support for all ETCs, including small entities, and provide a grace period to ensure it is not unduly punitive given the nature of non-compliance. The Commission also seeks comment on support reductions it should impose for failure to meet its service obligations and considers alternatives that would give all ETCs, including small entities, an opportunity for cure before support reductions are imposed.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

283. None.

D. Ex Parte Presentations

284. Permit-But-Disclose. The proceeding this Further Notice of Proposed Rulemaking and concurrently adopted Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order and Seventh Order on Reconsideration, initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. 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.

E. Filing Requirements

285. Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 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).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.

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

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

    - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

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

286. 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).

287. Availability of Documents. Comments, reply comments, and ex parte submissions will be publically available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

288. Additional Information. For additional information on this proceeding, contact Alexander Minard of the Wireline Competition Bureau, Telecommunications Access Policy Division, Alexander.Minard@fcc.gov, (202) 418-7400, or Suzanne Yelen of the Wireline Competition Bureau, Industry Analysis and Technology Division, Suzanne.Yelen@fcc.gov, (202) 418-7400.

IV. ORDERING CLAUSES

289. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429, that this Further Notice of Proposed Rulemaking and concurrently adopted Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order and Seventh Order on Reconsideration IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register, except for (1) those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the Federal Register of OMB approval, (2) the waiver of sections 1.1105, 54.318(b), and 54.318(i) of the Commission's rules to the extent

described herein which shall become effective upon release pursuant to sections 1.4(b)(2) and 1.103 of the Commission's rules (47 CFR 1.4(b)(2), 1.103), and (3) the elimination of the benchmarking rule, which shall become effective as of the first month following publication of a summary of this order in the Federal Register. It is our intention in adopting these rules that if any of the rules that we retain, modify, or adopt herein, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

290. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 5, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and sections 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, 1.429, NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this Further Notice of Proposed Rulemaking.

291. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Further Notice of Proposed Rulemaking and concurrently adopted Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order and Seventh Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

292. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking and concurrently adopted Report and Order, Declaratory Ruling, Order, Memorandum

Opinion and Order and Seventh Order on Reconsideration, including the Initial Regulatory Flexibility Analysis and the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 as follows:

PART 54 – UNIVERSAL SERVICE

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

Authority: Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted..

2. Amend § 54.5 by removing the definition "Unsubsidized competitor" and adding the definition "Qualifying competitor" in alphabetical order to read as follows:

§ 54.5 Terms and definitions.

*****

Qualifying competitor. A "qualifying competitor" is a facilities-based provider of residential terrestrial fixed voice and broadband service. The broadband service provided must satisfy the specifications set forth in § 54.309.

* * * * *

3. Amend § 54.202 by adding paragraph (d) to read as follows:

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

*****

(d) If a state fails to initiate a proceeding on an entity's application for eligible telecommunications carrier designation within 60 calendar days from the date the application is filed, that applicant may presume the state lacks jurisdiction and may file an application for eligible telecommunications carrier designation with the Commission pursuant to section 214(a)(6).

4. Revise § 54.307 to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a) Competitive eligible telecommunications carriers will, beginning January 1, 2012, receive support as described in this paragraph.

(1) Baseline support amount. Each competitive eligible telecommunication carrier will have a "baseline support amount" equal to its total 2011 support in a given study area, or an amount equal to $3,000 times the number of reported lines for 2011, whichever is lower. Each competitive eligible telecommunications carrier will have a "monthly baseline support amount" equal to its baseline support amount divided by twelve.

(i) "Total 2011 support" is the amount of support disbursed to a competitive eligible telecommunication carrier for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by the Administrator on January 31, 2012.

(ii) For the purpose of calculating the $3,000 per line limit, the average of lines reported by a competitive eligible telecommunication carrier pursuant to line count filings required for December 31, 2010, and December 31, 2011, shall be used. The $3,000 per line limit shall be applied to support amounts determined for each incumbent study area served by the competitive eligible telecommunications carrier.

(2) Monthly support amounts. Competitive eligible telecommunications carriers shall receive the following support amounts, except as provided in paragraphs (b)(3), (c), and (d) of this section.

(i) From January 1, 2012, to June 30, 2012, each competitive eligible telecommunications carrier shall receive its monthly baseline support amount each month.

(ii) From July 1, 2012 to June 30, 2013, each competitive eligible telecommunications carrier shall receive 80 percent of its monthly baseline support amount each month.

(iii) Beginning July 1, 2013, until a date specified by public notice, each competitive eligible telecommunications carrier shall receive 60 percent of its monthly baseline support amount each month.

(iv) Each competitive eligible telecommunications carrier that is not a winning bidder for Mobility Fund Phase II support shall receive 40 percent of its monthly baseline support amount each month for twelve months, beginning the first month after the month in which a public notice announces winning bidders for Mobility Fund Phase II support, and then 20 percent of its monthly baseline support amount each month for the subsequent twelve months. Thereafter, it shall not receive universal service support pursuant to this section.

(v) If a competitive eligible telecommunications carrier becomes eligible to receive high-cost support pursuant to the Mobility Fund Phase II, it will cease to be eligible for phase-down support in the first month after the month in which its Mobility Fund Phase II support is authorized.

(b) Delayed phase down for remote areas in Alaska. Certain competitive eligible telecommunications carriers serving remote areas in Alaska shall have their support phased down on a later schedule than that described in paragraph (a)(2) of this section.

(1) Remote areas in Alaska. For the purpose of this paragraph, “remote areas in Alaska” includes all of Alaska except;

(i) The ACS-Anchorage incumbent study area;

(ii) The ACS-Juneau incumbent study area;

(iii) The Fairbankszone1 disaggregation zone in the ACS-Fairbanks incumbent study area; and

(iv) The Chugiak 1 and 2 and Eagle River 1 and 2 disaggregation zones of the Matanuska Telephone Association incumbent study area.

(2) Carriers subject to delayed phase down. A competitive eligible telecommunications carrier shall be subject to the delayed phase down to the extent that it serves remote areas in Alaska, and it certified that it served covered locations in its September 30, 2011, filing of line counts with the Administrator.

(3) Interim support for remote areas in Alaska. From January 1, 2012, until December 31, 2014, competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall continue to receive the support, as calculated by the Administrator, that each competitive telecommunications carrier would have received under the frozen per-line support amount as of December 31, 2011, capped at $3,000 per year, provided that the total amount of support for all such competitive eligible telecommunications carriers shall be capped pursuant to paragraph (b)(3)(i) of this section.

(i) Cap amount. The total amount of support available on an annual basis for competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall be equal to the sum of "total 2011 support," as defined in paragraph (a)(1)(i) of this section, received by all competitive eligible telecommunications carriers subject to the delayed phase down for serving remote areas in Alaska.

(ii) Reduction factor. To effectuate the cap, the Administrator shall apply a reduction factor as necessary to the support that would otherwise be received by all competitive eligible telecommunications carriers serving remote areas in Alaska subject to the delayed phase down. The

reduction factor will be calculated by dividing the total amount of support available amount by the total support amount calculated for those carriers in the absence of the cap.

(4) Baseline for delayed phase down. Beginning January 1, 2015, each competitive eligible telecommunications carrier subject to the delayed phase down shall receive the annualized monthly support amount it received for December 2014. Competitive eligible telecommunications carriers subject to the delayed phase down described in paragraph (b) of this section shall no longer be required to file line counts beginning January 1, 2015.

(5) Monthly support amounts for carriers subject to delayed phase down. Competitive eligible carriers subject to the delayed phase down for remote areas in Alaska shall receive the following support amounts, except as provided in paragraphs (c) and (d) of this section.

(i) Commencing in the first month after the month in which a public notice announces winning bidders for ongoing support from Mobility Fund Phase II or Tribal Mobility Fund Phase II, each competitive eligible telecommunications carrier subject to delayed phase down that is not a winning bidder in Mobility Fund Phase II or Tribal Mobility Fund Phase II shall receive 80 percent of its monthly baseline support amount each month for twelve months; 60 percent of its monthly support for the next 12 months; 40 percent of its monthly support for the next twelve months; and 20 percent of its monthly support for the next twelve months. Thereafter, it shall not receive universal service support pursuant to this section.

(ii) If a competitive eligible carrier subject to delayed phase down is a winning bidding for Mobility Fund Phase I or Tribal Mobility Fund Phase II support, it will cease to be eligible for phase-down support in the first month after the month in which its Mobility Fund Phase II or Tribal Mobility Fund Phase II support is authorized.

(c) Further reductions. If a competitive eligible telecommunications carrier ceases to provide services to high-cost areas it had previously served, the Commission may reduce its baseline support amount.

(d) Accelerated phase down. Any wireless competitive eligible telecommunications carrier shall cease receiving competitive eligible telecommunications carrier support effective January 1, 2015, to the extent its annualized support in 2014 represented 1 percent or less of its wireless revenues for 2014 as reported on FCC Form 499-A.

5. Revise § 54.309 to read as follows:

§ 54.309 Connect America Fund Phase II Public Interest Obligations.

Recipients of Connect America Phase II support (whether awarded through the offer of model-based support to price cap carriers or through a competitive bidding process) are required to offer broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonable comparable to rates for comparable offerings in urban areas. For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the benchmarks to be announced annually by public notice issued by the Wireline Competition Bureau.

6. Amend § 54.310 by revising paragraphs (c) and (e) to read as follows:

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

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(c) Deployment Obligation. Recipients of Connect America Phase II support must complete deployment to 85 percent of supported locations within three years of notification of Phase II support authorization and up to 100 percent of supported locations within five years of notification of Phase II support authorization. For purposes of meeting the obligation to deploy to the requisite number of supported locations, recipients may serve unserved locations in census blocks with costs above the extremely high-cost threshold instead of locations in eligible census blocks, provided that they meet the public interest

obligations set forth in § 54.309 for those locations and provided that the total number of locations covered is greater than or equal to the number of the eligible census blocks for which funding is authorized.

*****

(e) Provider eligibility. Any eligible telecommunications carrier is eligible to receive Connect America Phase II support in eligible areas. An entity may obtain eligible telecommunications carrier designation after public notice of winning bidders in a competitive bidding process for the offer of Phase II Connect America support. An applicant in the competitive bidding process shall certify that it is financially and technically qualified to provide the services supported by Connect America Phase II in order to receive such support. An entity that is a winning bidder must submit an application to become an eligible telecommunications carrier no later than 30 calendar days following the public announcement of the winning bidders for the offer of Phase II Connect America support. To the extent an applicant in the competitive bidding process seeks eligible telecommunications carrier designation prior to notification of winning bidders for Phase II Connect America support, its designation as an eligible telecommunications carrier may be conditional subject to the receipt of Phase II Connect America support.

7. Add § 54.311 to subpart D to read as follows:

§ 54.311 Voluntary election by rate-of-return carriers to receive model-based support.

(a) Frozen high-cost support. Rate-of-return carriers may voluntarily elect to have their support frozen as the first step to a voluntary transition to receive Phase II model-based support. Each carrier making such an election will have a “baseline support amount” equal to its support in the immediately prior year in a given study area, or an amount equal to $3,000 times the number of reported lines for the prior calendar year, whichever is lower. Each such carrier will have a “monthly baseline support amount” equal to its baseline support amount divided by twelve. Upon election to receive frozen support, on a monthly basis, eligible carriers will receive their monthly baseline support amount.

(1) The “ baseline support amount” is the amount of support disbursed to a rate-of-return carrier in the prior calendar year, without regard to prior period adjustments related to years other than that calendar year and as determined by USAC in the month following election of frozen support.

(2) For the purpose of calculating the $3,000 per line limit, the average of lines reported by the rate-of-return carrier pursuant to line count filings required for two immediately preceding years shall be used.

(3) A carrier receiving frozen high cost support under this rule shall be deemed to be receiving Interstate Common Line Support equal to the amount of support that the carrier was eligible for under that mechanism in the preceding year.

(b) Connect America Phase II support may be made available in rate-of-return territories for census blocks identified as eligible by public notice. The number of supported locations will be identified for each area eligible for support by public notice. Rate-of-return carriers that voluntarily elect to transition to Phase II model-based support shall elect to make a state-level commitment to receive such support. Such electing carriers will be subject to the public interest obligations set forth in § 54.309.

(c) Upon electing to receive model-based support, rate-of-return carriers will be subject to the transition specified in § 54.310(f) to the extent frozen support is less than Phase II model-based support for a given state.

8. Amend § 54.313 by revising paragraph (a) introductory text, adding paragraph (a)(12), and revising paragraphs (c), (f)(1) introductory text, (f)(1)(i), and (j) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

(a) Any recipient of high cost support shall provide:

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(12) A letter certifying that the pricing of the company's broadband services is no more than the applicable benchmark as specified in a public notice issued by the Wireline Competition Bureau, or is no more than the non-promotional prices charged for comparable fixed wireline services in urban areas.

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(c) In addition to the information and certification in paragraph (a) of this section, price cap carriers that receive frozen support pursuant to § 54.312(a) shall provide by July 1, 2016 and thereafter a certification that all frozen high-cost support the company received in the previous year was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by a qualifying competitor as defined in § 54.5.

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(f) * * *

(1) Beginning July 1, 2016. A progress report on its five-year service quality plan pursuant to § 54.202(a) that includes the following information:

(i) A letter certifying that it is taking reasonable steps to provide upon reasonable request broadband services at actual speeds of at least 10 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonable comparable to rates for comparable offerings in urban areas, and that requests for such service are met within a reasonable amount of time; and

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(j) Filing deadlines—(1) Annual reporting information deadline. In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this

section annually by July 1 of each year. Eligible telecommunications carriers that file their reports after the July 1 deadline shall receive a reduction in support pursuant to the following schedule:

(i) Eligible telecommunications carriers that file after the July 1 deadline, but by July 8, will have their support reduced in an amount equivalent to seven days in support;

(ii) Eligible telecommunications carriers that file on or after July 9 will have their support reduced on a pro-rata daily basis equivalent to the period of non-compliance.

(2) Grace period. An eligible telecommunications carrier that submits the annual reporting information required by this section after July 1 but before July 5 will not receive a reduction in support if the eligible telecommunications carrier and all other eligible telecommunications carriers owned by the same holding company as the eligible telecommunications carrier have not missed the July 1 deadline in any prior year. The next time that either the eligible telecommunications carrier that had previously benefitted from the grace period or an eligible telecommunications carrier owned by the same holding company misses the July 1 deadline, that eligible telecommunications carrier will be subject to a reduction of seven days in support in addition to the reduction of support it will receive pursuant to (j)(1) of this section.

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9. Amend § 54.314 by revising paragraph (d) to read as follows:

§ 54.314 Certification of support for eligible telecommunications carriers.

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(d) Filing deadlines—(1) Certification of support deadline. In order for an eligible telecommunications carrier to receive federal high-cost support, the state or the eligible telecommunications carrier, if not subject to the jurisdiction of a state, must file an annual certification, as described in paragraph (c) of this section, with both the Administrator and the Commission by October 1 of each year. If states or eligible

telecommunications carriers file the annual certification after the October 1 deadline, the carriers subject to the certification shall receive a reduction in support pursuant to the following schedule:

(i) Eligible telecommunications carriers subject to certifications filed after the October 1 deadline, but by October 8, will have their support reduced in an amount equivalent to seven days in support;

(ii) Eligible telecommunications carriers subject to certifications filed on or after October 9 will have their support reduced on a pro-rata daily basis equivalent to the period of non-compliance.

(2) Grace period. If an eligible telecommunications carrier or state submits the annual certification required by this section after October 1 but before October 5, the eligible telecommunications carrier subject to the certification will not receive a reduction in support if the eligible telecommunications carrier and all other eligible telecommunications carriers owned by the same holding company as the subject eligible telecommunications carrier have not missed the October 1 deadline in any prior year. The next time that either the eligible telecommunications carrier that had previously benefitted from the grace period or an eligible telecommunications carrier owned by the same holding company misses the October 1 deadline, that eligible telecommunications carrier will be subject to a reduction of seven days in support in addition to the reduction of support it will receive pursuant to paragraph (d)(1) of this section.

(3) Newly designated eligible telecommunications carriers. Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6) of the Act, provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by

paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d) of this section.

10. Add § 54.319 to read as follows:

§ 54.319 Elimination of High-Cost Support in Areas with 100 Percent Coverage by a Qualifying Competitor.

(a) Universal service support shall be eliminated in an incumbent local exchange carrier study area where a qualifying competitor, or combination of qualifying competitors, as defined in § 54.5, offers to 100 percent of residential and business locations in the study area voice and broadband service at speeds of at least 10 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas.

(b) After a determination there is a 100 percent overlap, the incumbent local exchange carrier shall receive the following amount of high-cost support:

(1) In the first year, two-thirds of the lesser of the incumbent's total high-cost support in the immediately preceding calendar year or $3,000 times the number of reported lines as of year-end for the immediately preceding calendar year;

(2) In the second year, one-third of the lesser of the incumbent's total high-cost support in the immediately preceding calendar year or $3,000 times the number of reported lines as of year-end for the immediately preceding calendar year;

(3) In the third year and thereafter, no support shall be paid.

(c) The Wireline Competition Bureau shall update its analysis of where there is a 100 percent overlap on a biennial basis.

11. Add § 54.905 to subpart K to read as follows:

§ 54.905 Prohibition on recovery of new investment through interstate common line support in areas served by a qualifying competitor.

(a) Effective January 1, 2015, no new investment shall be recovered through interstate common line support in areas served by a qualifying competitor as defined in § 54.5.

(b) An incumbent local exchange carrier may presume that an area is unserved by a qualifying competitor after publicly posting, for 90 days, information on its website regarding its intent to make new investment in the area in question, if it does not receive notification from a qualifying provider that it serves locations within the area where new investment is proposed.

12. Add §§ 54.1011, 54.1012, 54.1013, 54.1014, 54.1015, 54.1016, 54.1017, 54.1018, 54.1019, and 54.1020 to subpart L to read as follows:

Subpart L—Mobility Fund

Sec.

* * * * *

54.1011 Mobility Fund – Phase II.

54.1012 Geographic areas eligible for support.

54.1013 Provider eligibility.

54.1014 Service to Tribal lands.

54.1015 Application process.

54.1016 Public interest obligations.

54.1017 Letter of credit.

54.1018 Mobility Fund Phase II disbursements.

54.1019 Annual reports.

54.1020 Record retention for Mobility Fund Phase II.

§ 54.1011 Mobility Fund – Phase II.

The Commission will use competitive bidding, as provided in part 1, subpart AA of this chapter, to determine the recipients of support available through Phase II of the Mobility Fund and the amount(s) of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

§ 54.1012 Geographic areas eligible for support.

(a) Mobility Fund Phase II support may be made available for census blocks or other areas identified as eligible by public notice.

(b) Coverage units for purposes of conducting competitive bidding and disbursing support based on designated population will be identified by public notice for each area eligible for support.

§ 54.1013 Provider eligibility.

(a) Except as provided in § 54.1014, an applicant shall be an Eligible Telecommunications Carrier in an area in order to receive Mobility Fund Phase II support for that area. The applicant's designation as an Eligible Telecommunications Carrier may be conditional subject to the receipt of Mobility Fund support.

(b) An applicant shall have access to spectrum in an area that enables it to satisfy the applicable performance requirements in order to receive Mobility Fund Phase II support for that area. The applicant shall certify, in a form acceptable to the Commission, that it has such access at the time it applies to participate in competitive bidding and at the time that it applies for support and that it will retain such access for ten (10) years after the date on which it is authorized to receive support.

(c) An applicant shall certify that it is financially and technically qualified to provide the services supported by Mobility Fund Phase II in order to receive such support.

§ 54.1014 Service to Tribal lands.

(a) A Tribally-owned or –controlled entity that has pending an application to be designated an Eligible Telecommunications Carrier may participate in an auction by bidding for support in areas located within

the boundaries of the Tribal lands associated with the Tribe that owns or controls the entity. To bid on this basis, an entity shall certify that it is a Tribally-owned or –controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. A Tribally-owned or -controlled entity shall receive any Mobility Fund Phase II support only after it has become an Eligible Telecommunications Carrier.

(b) Tribally-owned or –controlled entities may receive a bidding credit with respect to bids for support within the boundaries of associated Tribal lands. To qualify for a bidding credit, an applicant shall certify that it is a Tribally-owned or –controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. An applicant that qualifies shall have its bid(s) for support in areas within the boundaries of Tribal land associated with the Tribe that owns or controls the applicant reduced by 25 percent or purposes of determining winning bidders without any reduction in the amount of support available.

(c) A winning bidder for support in Tribal lands shall notify and engage the Tribal governments responsible for the areas supported.

(1) A winning bidder's engagement with the applicable Tribal government shall consist, at a minimum, of a discussion regarding:

(i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;

(ii) Feasibility and sustainability planning;

(iii) Marketing services in a culturally sensitive manner;

(iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and

(v) Compliance with Tribal business and licensing requirements.

(2) A winning bidder shall notify the appropriate Tribal government of its winning bid no later than five business days after being identified by public notice as a winning bidder.

(3) A winning bidder shall certify in its application for support that it has substantively engaged appropriate Tribal officials regarding the issues specified in paragraph(d)(1) of this section, at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

(4) A winning bidder for support in Tribal lands shall certify in its annual report, pursuant to § 54.1019(a)(5), and prior to disbursement of support, pursuant to § 54.1018, that it has substantively engaged appropriate Tribal officials regarding the issues specified in paragraph(d)(1) of this section, at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

§ 54.1015 Application process.

(a) Application to participate in competitive bidding for Mobility Fund Phase II Support. In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for Mobility Fund Phase II support shall:

(1) Provide ownership information as set forth in § 1.2112(a) of this chapter;

(2) Certify that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1016 in each area for which it seeks support;

(3) Disclose its status as an Eligible Telecommunications Carrier in any area for which it will seek support or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any such area, and certify that the disclosure is accurate;

(4) Describe the spectrum access that the applicant plans to use to meet obligations in areas for which it will bid for support, including whether the applicant currently holds a license for or leases the spectrum, and certify that the description is accurate and that the applicant will retain such access for at least 10 years after the date on which it is authorized to receive support;

(5) Make any applicable certifications required in § 54.1014.

(b) Application by winning bidders for Mobility Fund Phase II Support—(1) Deadline. Unless otherwise provided by public notice, winning bidders for Mobility Fund Phase II support shall file an application for Mobility Fund Phase II support no later than 10 business days after the public notice identifying them as winning bidders.

(2) Application contents. An application for Mobility Fund Phase II support must contain:

(i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter;

(ii) Certification that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1016 in the geographic areas for which it seeks support;

(iii) Proof of the applicant's status as an Eligible Telecommunications or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any area for which it seeks support and certification that the proof is accurate;

(iv) A description of the spectrum access that the applicant plans to use to meet obligations in areas for which it is winning bidder for support, including whether the applicant currently holds a license for or leases the spectrum, and certification that the description is accurate and that the applicant will retain such access for at least 10 years after the date on which it is authorized to receive support;

(v) A detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the budget and describes each specific phase of the project, e.g., network design, construction, deployment and maintenance;

(vi) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from Mobility Fund Phase II and that the applicant will comply with all program requirements;

(vii) Any guarantee of performance that the Commission may require by public notice or other proceedings, including but not limited to the letters of credit required in §54.1017, or a written commitment from an acceptable bank, as defined in §54.1017(a)(1), to issue such a letter of credit;

(viii) Certification that the applicant will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas for a period during the term of the support the applicant seeks;

(ix) Any applicable certifications and showings required in §54.1014; and

(x) Certification that the party submitting the application is authorized to do so on behalf of the applicant.

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

(3) Application processing. (i) No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(ii) Any application that, as of the submission deadline, either does not identify the applicant seeking support as specified in the public notice announcing application procedures or does not include required certifications shall be denied.

(iii) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the Administrator, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(iv) Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive Mobility Fund Phase II support, after the winning bidder submits a Letter of Credit and an accompanying opinion letter as required by § 54.1016, in a form acceptable to the Commission, and any final designation as an Eligible Telecommunications Carrier that any Tribally-owned or –controlled applicant may still require. Each such winning bidder shall submit a Letter of Credit and an accompanying opinion letter as required by § 54.1016, in a form acceptable to the Commission, and any required final designation as an Eligible Telecommunications Carrier no later than 10 business days following the release of the public notice.

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

§ 54.1016 Public interest obligations.

(a) Deadline for construction. A winning bidder authorized to receive Mobility Fund Phase II support shall, no later than three years after the date on which it was authorized to receive support, submit data covering the area for which support was received demonstrating mobile transmissions supporting voice and data to and from the network covering 75 percent of the designated population in the area deemed uncovered, or an applicable higher percentage established by public notice prior to the competitive bidding, and meeting or exceeding the following:

(1) Outdoor minimum data transmission rates of 800 kbps uplink and 2000 kbps downlink;

(2) Transmission latency low enough to enable the use of real time applications, such as VoIP.

(b) Coverage test data. Coverage data submitted in compliance with a recipient's public interest obligations shall demonstrate coverage of the population designated in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's support. Any drive tests or scattered site tests submitted in compliance with a recipient's public interest obligations shall be in compliance with standards set forth in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's authorized support. Any drive tests shall demonstrate required transmission rates at vehicle speeds appropriate for the roads covered by the tests.

(c) Collocation obligations. During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase II on newly constructed towers that the recipient owns or manages in the area for which it receives support. In addition, during this period, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the facilities.

(d) Voice and data roaming obligations. During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall comply with the Commission's voice and data roaming requirements that were in effect as of October 27, 2011, on networks that are built through Mobility Fund Phase II support.

(e) Liability for failing to satisfy public interest obligations. A winning bidder authorized to receive Mobility Fund Phase II support that fails to comply with the public interest obligations in this paragraph or any other terms and conditions of the Mobility Fund Phase II support will be subject to repayment of the support disbursed together with an additional performance default payment. Such a winning bidder may be disqualified from receiving any further Mobility Fund Phase II support or other USF support. The additional performance default amount will be a percentage of the Mobility Fund Phase II support that the applicant has been and is eligible to request be disbursed to it pursuant to § 54.1018. The percentage will be determined as specified in the public notice detailing competitive bidding procedures prior to the commencement of competitive bidding. The percentage will not exceed twenty percent.

§ 54.1017 Letter of credit.

(a) Before being authorized to receive Mobility Fund Phase II support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission. Each winning bidder authorized to receive Mobility Fund Phase II support shall maintain the standby letter of credit or multiple standby letters of credit in an amount equal to the amount of Mobility Fund Phase II support that the winning bidder has been and is eligible to request be disbursed to it pursuant to § 54.1018 plus the additional performance default amount described in § 54.1016(e), until at least 120 days after the winning bidder receives its final distribution of support pursuant to this section.

(1) The bank issuing the letter of credit shall be acceptable to the Commission. A bank that is acceptable to the Commission is:

(i) Any United States Bank;

(A) That is among the 50 largest United States banks, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit,

(B) Whose deposits are insured by the Federal Deposit Insurance Corporation, and

(C) That has a long-term unsecured credit rating issued by Standard & Poor's of A- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(ii) An agricultural credit bank in the United States that serves rural utilities and is a member of the United States Farm Credit System;

(A) That has total assets equal to or exceeding the total assets of any of the 50 largest United States banks, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit,

(B) Whose deposits are insured by the Farm Credit System Insurance Corporation, and

(C) That has a long-term unsecured credit rating issued by Standard & Poor's of A- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iii) Any non-U.S. bank that;

(A) Is among the 50 largest non-U.S. banks in the world, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit (determined on a U.S. dollar equivalent basis as of such date),

(B) Has a branch office in the District of Columbia or such other branch office agreed to by the Commission,

(C) Has a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to an A- or better rating by Standard & Poor's, and

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

(2) [Reserved]

(b) A winning bidder for Mobility Fund Phase II support shall provide with its Letter of Credit an opinion letter from its legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 et seq. (the "Bankruptcy Code"), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate under section 541 of the Bankruptcy Code.

(c) Authorization to receive Mobility Fund Phase II support is conditioned upon full and timely performance of all of the requirements set forth in § 54.1016, and any additional terms and conditions upon which the support was granted.

(1) Failure by a winning bidder authorized to receive Mobility Fund Phase II support to comply with any of the requirements set forth in § 54.1015 or any other term or conditions upon which support was granted, or its loss of eligibility for any reason for Mobility Fund Phase II support will be deemed an automatic performance default, will entitle the Commission to draw the entire amount of the letter of credit, and may disqualify the winning bidder from the receipt of Mobility Fund Phase II support or additional USF support.

(2) A performance default will be evidenced by a letter issued by the Chief of either the Wireless Bureau or Wireline Bureau or their respective designees, which letter, attached to a standby letter of credit

draw certificate, and shall be sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

§ 54.1018 Mobility Fund Phase II disbursements.

(a) A winning bidder for Mobility Fund Phase II support will be advised by public notice whether it has been authorized to receive support. The public notice will detail how disbursement will be made available.

(b) Mobility Fund Phase II support will be available for disbursement to a winning bidder authorized to receive support for 10 years following the date on which it is authorized.

(c) Prior to each disbursement request, a winning bidder for support in a Tribal land will be required to certify that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1014(d)(1), at a minimum, as well as any other issues specified by the Commission and to provide a summary of the results of such engagement.

(d) Prior to each disbursement request, a winning bidder will be required to certify that it is in compliance with all requirements for receipt of Mobility Fund Phase II support at the time that it requests the disbursement.

§ 54.1019 Annual reports.

(a) A winning bidder authorized to receive Mobility Fund Phase II support shall submit an annual report no later than July 1 in each year for the ten years after it was so authorized. In addition to the information required by § 54.313, each annual report shall include the following, or reference the inclusion of the following in other reports filed with the Commission for the applicable year:

(1) Electronic shapefiles of the outdoor minimum data transmission rates requirement coverage polygons illustrating the area newly reached by mobile services at a minimum resolution of 100 meters;

(2) A list of relevant census blocks previously deemed unserved, with total resident population and resident population residing in areas newly reached by mobile services (based on Census Bureau data and estimates);

(3) If any such testing has been conducted, data received or used from drive tests, or scattered site testing, analyzing network coverage for mobile services in the area for which support was received;

(4) Certification that the winning bidder offers service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas;

(5) Any applicable certifications and showings required in § 54.1014; and

(6) Updates to the information provided in § 54.1015(b)(2)(v).

(b) The party submitting the annual report must certify that they have been authorized to do so by the winning bidder.

(c) Each annual report shall be submitted to the Office of the Secretary of the Commission, clearly referencing WT Docket No. 10-208; the Administrator; and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate

§ 54.1020 Record retention for Mobility Fund Phase II.

A winning bidder authorized to receive Mobility Fund Phase II support and its agents are required to retain any documentation prepared for, or in connection with, the award of Mobility Fund Phase II support for a period of not less than 10 years after the date on which the winning bidder receives its final disbursement of Mobility Fund Phase II support.

13. Amend § 54.1309, as added elsewhere in this issue of the Federal Register, effective [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER], by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 54.1309 National and study area average unseparated loop costs.

(a) Until December 31, 2014, the national average unseparated loop cost per working loop, except as provided in paragraph (c) of this section, is equal to the sum of the Loop Costs for each study area in the country as calculated pursuant to §54.1308(a) divided by the sum of the working loops reported in §54.1305(h) for each study area in the country. The national average unseparated loop cost per working loop shall be calculated by the National Exchange Carrier Association.

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(d) Effective January 1, 2015, the national average unseparated loop cost per working loop shall be frozen at the amount in effect as of December 31, 2014, or lowered to the extent the expense adjustment (additional interstate expense allocation) calculated by the sum of paragraphs (d)(1) and (2) of this section does not exceed the maximum allowable support calculated pursuant to section 54.1302(a) of this subpart.

(1) Sixty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to §54.1309(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost pursuant to §54.1309(d) multiplied by the number of working loops reported in §54.1305(h) for all study areas with less than 200,000 working loops.; and

(2) Seventy-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to §54.1309(b) in excess of 150 percent of the national average for this cost pursuant to §54.1309(d) multiplied by the number of working loops reported in §54.1305(h) for all study areas with less than 200,000 working loops.

14. Revise § 54.1310, as added elsewhere in this issue of the Federal Register, effective [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER], to read as follows:

§ 54.1310 Calculation of Expense Adjustment – Additional Interstate Expense Allocation.

(a) Beginning January 1, 2015, for study areas reporting 200,000 or fewer working loops pursuant to §54.1305(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (b)(1) and (2) of this section multiplied by the ratio of the maximum allowable support calculated pursuant to section 54.1302(a) to the aggregate sum of paragraphs (b)(1) and (2) of this section for all study areas reporting 200,000 or fewer working loops pursuant to § 54.1305(h).

(b) Until December 31, 2014, for study areas reporting 200,000 or fewer working loops pursuant to §54.1305(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (b)(1) through (2) of this section.

(1) Sixty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to §54.1309(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost as calculated pursuant to §54.1309 multiplied by the number of working loops reported in §54.1305(h) for the study area; and

(2) Seventy-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to §54.1309(b) in excess of 150 percent of the national average for this cost as calculated pursuant to §54.1309) multiplied by the number of working loops reported in §54.1305(h) for the study area.

(c) Beginning January 1, 2015, the expense adjustment shall be adjusted each year to reflect changes in the amount of high-cost loop support resulting from adjustments calculated pursuant to §54.1306(a) made during the previous year. If the resulting amount exceeds the previous year's fund size, the difference will be added to the amount calculated pursuant to §54.1310(a). If the adjustments made during the previous year result in a decrease in the size of the funding requirement, the difference will be subtracted from the amount calculated pursuant to §54.1310 (a) for the following year.

15. Add § 54.1311 to Subpart M, as added elsewhere in this issue of the Federal Register, effective [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER], to read as follows:

§ 54.1311 Prohibition on recovery of new investment through high-cost loop support in areas served by a qualifying competitor.

(a) Effective January 1, 2015, no new investment shall be recovered through high-cost loop support in areas served by a qualifying competitor as defined in section 54.5.

(b) An incumbent local exchange carrier may presume that an area is unserved by a qualifying competitor after publicly posting, for 90 days, information on its website regarding its intent to make new investment in the area in question, if it does not receive notification from a qualifying provider that it serves locations within the area where new investment is proposed.

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