



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10-90, WT Docket No. 10-208; FCC 18-19]

Connect America Fund; Universal Service Reform – Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Federal Communications Commission (Commission) resolves the remaining petitions for reconsideration regarding the requirements for Mobility Fund Phase II (MF-II). The Commission revises the language of its rule for collocation, and reduces the value of the letter of credit that a Mobility Fund Phase II support recipient is required to hold after the Universal Service Administration Company (USAC), together with the Commission, has verified that the MF-II support recipient has achieved significant progress toward completing their buildout and service provision requirements. The Commission affirms its Mobility Fund Phase II rules in all other respects.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for the amendment to § 54.1016 (a)(1)(ii), which contains information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auction and Spectrum Access Division, Audra Hale-Maddox, at (202) 418-0660. For further information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at (202) 418-2918 or via the Internet at PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration ([MF-II Second Order on Reconsideration](#)), WC Docket No. 10-90, WT Docket No. 10-208; FCC 18-19, adopted on February 22, 2018 and released on February 27, 2018. The complete text of this document is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time

(ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street S.W., Room CY-A257, Washington, DC 20554. The complete text is also available on the Commission's website at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0804/FCC-17-102A1.pdf. Alternative formats are available to persons with disabilities by sending an email to FCC504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules adopted in this document. The Supplemental FRFA is set forth in an appendix to the MF-II Second Order on Reconsideration, and is summarized below. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this MF-II Second Order on Reconsideration, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Paperwork Reduction Act

The MF-II Second Order on Reconsideration contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new and modified information collection requirements contained in this proceeding.

Congressional Review Act

The Commission will send a copy of this MF-II Second Order on Reconsideration in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), see 5 U.S.C. 801(a)(1)(A).

I. INTRODUCTION

1. In the MF-II Second Order on Reconsideration, the Commission addresses the remaining

issues raised in petitions for reconsideration filed in response to the MF-II Report & Order, 82 FR 15422, March 28, 2017. Resolving these petitions is a significant step toward holding an auction in which service providers will compete for Mobility Fund Phase II (MF-II) support to offer 4G Long Term Evolution (LTE) service in primarily rural areas that lack qualified unsubsidized 4G LTE service.

II. BACKGROUND

2. In February 2017, the Commission adopted rules to move forward expeditiously to an MF-II auction. The Commission established a budget of \$4.53 billion to be disbursed monthly over a term of ten years to provide ongoing support for the provision of service in areas that lack adequate mobile voice and broadband coverage absent subsidies. The Commission further decided that geographic areas lacking unsubsidized, qualified 4G LTE service would be deemed “eligible areas” for MF-II support, and that it would use a competitive bidding process (specifically, a reverse auction) to distribute funding to providers to serve those areas. The Commission also decided that, prior to an MF-II auction, it would compile a list of areas that were presumptively eligible for MF-II support and it would provide a limited timeframe for challenges to areas that were found to be ineligible for support during the pre-auction process.

3. Seven petitions were filed seeking reconsideration of the MF-II Report & Order, and petitions for reconsideration of issues related to the MF-II challenge process were addressed in the MF-II Challenge Process Order on Reconsideration and Second Report and Order (MF-II Challenge Process Order or MF-II Order on Reconsideration), adopted on August 3, 2017, released on August 4, 2017, 82 FR 42473, September 8, 2017. The Commission deferred addressing the petitions, or portions thereof, requesting reconsideration of aspects of the MF-II Report & Order outside of the challenge process.

III. SECOND ORDER ON RECONSIDERATION

4. We now resolve the remaining issues raised by petitioners. We grant the requests of petitioners, insofar as we amend the rules to apply the collocation requirement for MF-II recipients to “all newly constructed” towers. We affirm our decision to require that MF-II recipients obtain a letter of credit (LOC), but grant the petitions insofar as we modify the LOC requirements to align our MF-II rules

with recent changes made in the Connect America Fund Phase II (CAF-II) proceeding. These modifications should provide MF-II support recipients with some additional relief from the costs of maintaining an LOC and alleviate some of the concerns raised by petitioners and commenters. Additionally, for the reasons explained below, we deny the petitions seeking reconsideration of the Commission's decisions to: (i) establish an MF-II budget of \$4.53 billion over a term of ten years; (ii) disburse annual support on a monthly basis; (iii) adopt performance metrics for supported networks requiring a median data speed of 10/1 megabits per second (Mbps) and data latency of 100 milliseconds (ms) round trip; (iv) not adopt bidding credits for the auction; and (v) not prevent MF-II support recipients from entering into equipment exclusivity arrangements. We also decline to clarify or limit the role of the Universal Service Administrative Company (USAC) in testing winning bidders' compliance with MF-II performance metrics, public interest obligations, or other program requirements.

A. Tower Collocation

5. First, we clarify that the MF-II collocation rule, 47 CFR 54.1015(f), should require a recipient of MF-II funds to allow for reasonable collocation by other providers of services that meet the technological requirements of MF-II on all towers that the MF-II recipient owns or manages that it “newly constructed” to satisfy MF-II performance obligations in the areas for which it receives support. The Commission stated its intent to adopt the same collocation and voice and data roaming obligations for MF-II winning bidders as it had adopted for MF-I. However, the rule in MF-I required reasonable collocation by other providers of services that met the technological requirements of MF-I on “all newly constructed towers that the recipient owns or manages in the area for which it receives support,” while the language of the rule adopted in the MF-II Report & Order applies to “all towers.” We make this clarification in order to promote our goal of ensuring that publicly funded investments can be leveraged by other service providers. Accordingly, we amend the language of section 54.1015(f) to provide that the MF-II collocation requirement applies to “all newly constructed” towers that the MF-II recipient owns or manages in the areas for which it receives support.

B. Letters of Credit

6. We affirm the Commission's decision to require an MF-II recipient to obtain an LOC before it begins receiving support disbursements, but we modify the Commission's rules to provide some additional relief from the burden associated with maintaining an LOC. Specifically, we will permit an MF-II recipient to reduce the value of an LOC to 60 percent of the total support already disbursed plus the amount of support that will be disbursed in the coming year once it has been verified that the MF-II recipient has met the 80 percent service milestone for the area(s) covered by the LOC. This modification should alleviate some of the concerns raised by petitioners and commenters and aligns our MF-II requirements with recent changes made to the CAF-II requirements. We also clarify, consistent with the Commission's stated intent in the MF-II Report & Order, that an MF-II recipient may further reduce its costs by canceling the LOC as soon as USAC, in coordination with the Commission, verifies that the recipient has met the final performance milestone (i.e., we do not require that the LOC be maintained after its purpose is no longer served). We deny the petitions for reconsideration to the extent they seek other changes to our LOC requirements.

7. In the MF-II Report & Order, the Commission adopted an LOC requirement for all winning bidders. Specifically, before a winning bidder can be authorized to receive MF-II support, it must obtain an irrevocable stand-by LOC(s) from an eligible bank that covers the first year of support for all of the winning bids in the state. Before a recipient can receive its MF-II support for the coming year, the recipient must modify, renew, or obtain a new LOC to ensure that it is valued at a minimum at the total amount of support that has already been disbursed plus the amount of support that is going to be provided in the next year. Once the MF-II recipient has met its 60 percent service milestone, its LOC may be valued at 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year. Once the MF-II recipient has met its 80 percent service milestone, it may reduce the value of the LOC to 80 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year. The LOC must remain open until USAC, in coordination with the Commission, has verified that the MF-II recipient has met its final benchmark: deployment to a minimum of 85 percent of the required coverage area by state and at least 75 percent by each census

block group or census tract in a state. If an MF-II recipient fails to meet a required service milestone after it begins receiving support, then fails to cure within the requisite time period, and is unable to repay the support that USAC seeks to recover, either the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter evidencing the failure and declaring a default. USAC will then draw on the LOC(s) to recover 100% of the support that has been disbursed to the ETC for that state. The MF-II Report & Order provides that if service ceases after the final deployment milestone has been reached and the LOC has been terminated, the Commission will cease payment of ongoing support until service resumes. At the time these MF-II rules were adopted, they were consistent with the requirements for CAF-II recipients.

8. We are convinced by claims of petitioners and commenters that the Commission's existing MF-II LOC requirements may warrant additional relief on reconsideration. We continue to conclude that MF-II bidders will take into account the costs associated with program requirements, including an LOC, as they formulate their bids, and that many bidders can do so without the consequences alleged by some petitioners and commenters. We nonetheless recognize that the costs associated with maintaining an LOC may pose a greater financial burden on those bidders that lack the resources of larger, more established companies. Such bidders may have to factor relatively higher LOC-related costs into their bids. One purpose of using competitive bidding to select support recipients is that it promotes providing support to those parties that can accomplish the MF-II program goals in the most cost-effective manner. However, we recognize that the exact cost of any requirement, including obtaining and maintaining an LOC, will affect each prospective bidder in the MF-II auction differently. A bidder's LOC-related costs will likely vary based on the amount of support that it is authorized to receive, and the impact of those costs on the bidder will also vary based on its size and creditworthiness. Thus, we cannot reasonably predict the costs of our LOC requirements for each potential winning bidder and weigh them relative to the benefit to the public of protecting the funds from default. The fees associated with maintaining an LOC can range by several percentage points and, when applied to the sizable amounts of support that may be awarded to bidders here, the costs may become substantial over time, particularly for

winning bidders that are small businesses and new entrants.

9. Accordingly, consistent with the rule modifications we recently adopted in the Connect America Fund Phase II Auction Order on Reconsideration, WC Docket No. 10-90 *et al.*, FCC 18-5, we modify our LOC requirements to permit an MF-II recipient to reduce the value of an LOC to 60 percent of the total support already disbursed plus the amount of support that will be disbursed in the coming year once it has been verified that the MF-II recipient has met the 80 percent service milestone for the area(s) covered by the LOC. In the MF-II Report & Order, the Commission indicated that it would require MF-II recipients to demonstrate compliance with our coverage requirements by submitting data consistent with the evidence we determined to be necessary in the MF-II challenge process. Once USAC is able to verify that a recipient's 80 percent service milestone has been met, the recipient will be able to reduce the value of its LOC.

10. By increasing the amount by which an LOC may be reduced after verification that an MF-II recipient has met a significant portion of its performance obligations, we can provide MF-II recipients with a measure of relief from the costs of maintaining an LOC without posing undue risks to the Universal Service Fund. As the Commission stated in the MF-II Report & Order, we expect that the risk of default will decrease as an MF-II recipient meets its deployment milestones. We therefore conclude that the benefits of providing additional relief from some of the costs associated with maintaining an LOC outweigh the risk that we will not be able to recover an additional portion of the support if the recipient is unable to repay the Commission in the event of a default. Moreover, as we discuss below, an MF-II recipient that is affected by high LOC-related costs may also choose to build out its network more quickly so that its LOC can be terminated sooner. We therefore find it reasonable to grant the petitions for reconsideration, in part, to reduce the burden associated with maintaining an LOC until the final performance benchmark has been met and verified by USAC.

11. We are not, however, persuaded by arguments that we should eliminate the requirement for an MF-II recipient to obtain an LOC because they are unnecessary to protect the public interest. Our obligation to safeguard the disbursement of universal service support justifies requiring an LOC and

outweighs the limited burden incurred by winning bidders. For this same reason, we are not convinced by the contentions that an MF-II LOC requirement is unnecessary for rural telephone companies based on their history of providing service and using universal service support without default. Our responsibility to protect universal service funds does not diminish based on a support recipient's past performance, the nature of its business, or its size. We are equally unpersuaded by a petitioner's suggestion that because the Commission has not yet had to draw on any LOC in MF-I, it is unnecessary for us to require one for MF-II. To the contrary, we find that premise supports our conclusion that an LOC requirement deters defaults and fulfills its intended purpose of protecting the public funds.

12. Similarly, we disagree with the assertion that the Commission should eliminate the LOC requirement and instead ensure the security of program funds by imposing a monetary forfeiture on the defaulting MF-II recipient or using the threat of revocation or non-renewal of its licenses as leverage to demand repayment of the funds. The exercise of our forfeiture, revocation, and licensing authority requires additional procedures and standards that are not well suited to the prompt action required in enforcing our milestones because, among other reasons, such authority does not effectively address the regulatory purpose behind our adoption of the LOC—making the Universal Service Fund whole if a support recipient failed to fulfill its MF-II performance requirements. Without an LOC, the Commission has no security to protect itself against the risks of default. Accordingly, we affirm the Commission's prior conclusion that the LOC requirement is necessary to ensure the recovery of a significant amount of MF-II support should such a need arise, and we find that, on balance, our commitment to fiscal responsibility supports the limited burden faced by support recipients.

13. We also decline to grant requests in the petitions for reconsideration to take further steps to modify our LOC requirements. In the MF-II Report & Order, the Commission already took a number of steps to help lessen LOC costs, including expanding the number and types of banks eligible to issue LOCs so that winning bidders can obtain LOCs from banks with which they have existing relationships. Although some entities may still find that participating in the MF-II auction is cost-prohibitive or that they are less likely to place winning bids, we are not convinced that we should jeopardize our ability to

recover a significant amount of support if such entities were to participate and later become unable to meet the MF-II performance milestone obligations and to repay the Commission for their compliance gap. While we have not implemented any of the specific proposals of these petitioners, we conclude that, on balance, the relief provided above should adequately address the nature of the concerns they raise. The approaches suggested by petitioners would add greater complexity and testing expenses for support recipients and would impose increased verification burdens on USAC without the corresponding benefit of significantly speeding the completion of MF-II performance requirements. Finally, we decline to adopt the request by a mobile provider to accelerate the service milestones, eliminate the LOC requirement, and pay a recipient only after compliance with a milestone has been verified. Such an approach, like the other suggestions we reject above, would require us to disburse universal service funds without being able to recoup support from a recipient if the recipient subsequently defaulted on its remaining performance requirements.

14. In reviewing arguments regarding the costs of maintaining an LOC, we also emphasize that the Commission's LOC requirements already include an incentive for a recipient to meet its final performance milestone as soon as possible, because once it has been verified that a support recipient has met its final performance milestone, the recipient can further reduce costs by no longer maintaining that LOC. In this regard, we note that the Commission provided in the MF-II Report & Order that the LOC must remain in place until it has been verified that an MF-II participant has met its minimum coverage and service requirements at the end of the six-year milestone. We interpret this language to allow the MF-II recipient to further reduce its costs by no longer maintaining the LOC as soon as USAC, in coordination with the Commission, verifies that the recipient has met the final performance milestone (i.e., we do not require that the LOC be maintained after its purpose is no longer served). We anticipate that this clarification, together with the rule modification we adopt above, should provide MF-II recipients with additional relief from the burden of maintaining an LOC.

C. Mobility Fund Phase II Budget

15. We affirm the MF-II total budget amount of \$4.53 billion that the Commission adopted in the MF-II Report & Order, and we deny the petition seeking to increase it. Petitioners addressing the

budget contend that this amount is insufficient to achieve ubiquitous availability of mobile services and reasonable comparability of service between urban and rural areas. They also argue that the budget was not supported by actual carrier cost data related to coverage needs. The Commission established the amount of the MF-II budget by starting with the \$483 million of current annual legacy high-cost support received by wireless providers, excluding Alaska. It multiplied that amount over the ten-year term of MF-II and then subtracted \$300 million, representing the estimated amount needed for the phase-down of competitive eligible telecommunications carrier (CETC) support in areas already fully covered with unsubsidized 4G LTE, for a total budget of \$4.53 billion over ten years. The Commission reasoned that basing its budget upon this amount best balanced its goal of preserving and advancing mobile broadband service with its obligation to be fiscally responsible with limited universal service funds.

16. We are not persuaded that we should reconsider that decision and base the MF-II budget on carriers' projected costs for deployment as some parties advocate. Phase II of the Mobility Fund is a considerable departure from the prior method of distributing CETC funding, and we anticipate that a \$4.53 billion budget, distributed in a more efficient and targeted manner, will lead to significant expansion and improvement in the provision of mobile voice and broadband services to areas that would otherwise be underserved or unserved without support. After the Commission has the opportunity to evaluate the impact of the MF-II auction, it can determine whether additional funding (and if so, how much) is needed. Furthermore, while we believe that the total budget of \$4.53 billion will be sufficient to address a more targeted set of eligible areas, we reiterate that MF-II is only one component of our broader universal service reform efforts, and we need not wait until the end of the MF-II support term to determine if additional funding is necessary.

17. Moreover, the proposal to base the MF-II budget on carriers' projected costs for providing service to all census blocks throughout the U.S. unserved by 4G LTE fails to address the Commission's long-standing commitment to fiscal responsibility and would be inconsistent with extensive 4G LTE deployment through private investment in recent years. As a responsible steward of the Universal Service Fund, the Commission adopted a budget that reflected its priorities in allocating

finite funds to areas of greatest need to maintain and expand critical mobile voice and broadband services. To increase the size of the MF-II budget significantly above the amount of legacy support currently provided to mobile CETCs would improperly ignore the burden on those paying for the fund, thereby abandoning one of the main concerns the Commission sought to address through universal service reform. Indeed, if the Commission were to adopt this proposal, consumers and businesses would shoulder the burden of potentially increasing the MF-II budget by tens of billions of dollars. This increase would not be consistent with the Commission's stated intention to limit universal service expenditures in light of extensive 4G LTE deployment in recent years.

18. Recognizing that the Universal Service Fund is limited, the Commission has consistently determined the amount of the MF-II budget by starting with the amount of existing CETC support, subtracting the support going to areas where support is not needed, and redirecting that amount to the areas in need. By weighing the need to distribute support to areas that would otherwise be unserved against the burden that consumers and businesses must bear by contributing to the Universal Service Fund, the Commission has demonstrated a commitment to fiscal responsibility while acknowledging that its efforts are needed to supplement private investment. Taking this type of balanced approach has been previously upheld by the Tenth Circuit Court of Appeals, which noted that, in challenging the sufficiency of the MF-II budget, the petitioners in *In re FCC 11-161*, 753 F.3d 1015, 1098-100 (10th Cir. 2014), had failed to discredit (i) the Commission's reliance on its finding that then-current CETC funding was being misallocated or (ii) the Commission's predictive judgment that redirecting those funds would be sufficient to sustain and expand mobile broadband service. In the MF-II Report & Order, the Commission similarly relied on staff analysis of data that continued to reveal that current mobile CETC funds remain misallocated, and it again exercised its predictive judgment in determining that an MF-II budget of \$4.53 billion, when distributed cost effectively, should make meaningful progress in eliminating lingering coverage gaps. The petitioners have failed to convince us that this decision to apply a balanced approach in setting the MF-II budget is in error. We continue to maintain that using the current level of mobile CETC support, minus the phase-down amount needed for areas where support is not needed, and

redirecting funding to areas unserved by qualified 4G LTE will provide a significant improvement in mobile coverage while not increasing the burden on those contributing to universal service funding.

19. For similar reasons, we further conclude that the claim that the amount of the MF-II budget is not supported by data related to coverage needs is equally flawed. While it is true that, for the reasons explained above, the Commission did not base the amount of its MF-II budget upon carrier cost deployment data, it did use data regarding the provision of service to eligible areas when establishing the budget. Specifically, the Commission relied on a 2016 analysis by the Wireless Telecommunications Bureau (Wireless Bureau) of mobile broadband providers, which revealed that, conservatively, three quarters of support currently distributed to mobile providers is being directed to areas where it is not needed. Moreover, the Wireless Bureau's analysis showed that, as of 2016, 1.4 million people in the U.S. have no LTE coverage and another 1.7 million live in areas where LTE coverage is provided only on a subsidized basis, so that 3.1 million people (or approximately 1 percent of the U.S. population) live in areas with no LTE or only subsidized LTE. Thus, staff analysis of data regarding the provision of service revealed that, despite extensive private investment spurring 4G LTE deployment generally, certain areas remain unserved without government subsidies, which the Commission took into consideration when it chose to reallocate current CETC support and derive greater coverage from the limited amount of funding.

20. In addition, to ensure that the MF-II support is directed specifically to areas that lack unsubsidized qualifying 4G LTE coverage, we have adopted a challenge process that is administratively efficient and fiscally responsible, and will enable us to resolve eligible area disputes quickly and expeditiously, so that limited funds are focused on the areas that need it the most. As part of the challenge process, we have also undertaken a new, one-time collection of standardized, up-to-date 4G LTE coverage data from mobile wireless providers. These actions, taken together with the use of competitive bidding to distribute support, will focus MF-II funds on areas that lack unsubsidized qualified 4G LTE service, thereby providing additional funds for those targeted areas that warrant such funding. These actions also will ensure the budget is used to minimize service disparities between rural and urban

areas, while continuing our obligation to be a fiscally responsible steward of universal service funding. Therefore, we decline to revise the MF-II budget at this time.

D. Monthly Disbursement Schedule

21. We decline to alter the Commission's monthly disbursement schedule for MF-II. The Commission, in deciding to provide support in monthly disbursements as it had adopted for the CAF program, including CAF-II, reasoned that such an approach would provide MF-II recipients with reliable and predictable support payments that conform to a variety of business cycles. We are not persuaded that, instead of monthly disbursements of MF-II support to winning bidders, the program should provide larger installment payments early in the construction process that are more closely matched to some providers' expected outlays. Although the Commission recognized that some MF-II support recipients might incur higher up-front project costs, it also observed that the timing of project expenses varies. Thus, it is administratively burdensome, if not impossible, for the Commission, USAC, and the winning bidders to try to match payments to expenses in a manner that would synchronize precisely with the budgetary needs of all bidders. Further, the Commission observed that, in Mobility Fund Phase I (MF-I), even with support payments based on deployment milestones, disbursements were not tied to the timing of expenditures, as petitioners request. A shift to a front-loaded disbursement mechanism or a cost reimbursement process, as requested by petitioners, would place undue strains on the universal service budget, and would thereby undermine the ability of the Commission to ensure continued program compliance over the entire 10-year term. We note that the Commission also purposefully aligned its disbursement schedule with the schedule adopted for CAF-II, which established regular and predictable monthly payments that would not exceed the budget in any one year of the term. We believe that this approach best balances the burdens on the Commission and USAC with the budgetary needs of recipients.

E. Minimum Baseline Performance Requirements for Data Speeds and Latency

22. We also decline to reconsider the minimum baseline performance requirements for recipients of MF-II funding. In the MF-II Report & Order, the Commission decided that a recipient of MF-II support must provide a minimum level of service with a median data speed of 10 Mbps download speed or greater and 1 Mbps upload speed or greater, with at least 90 percent of the required download

speed measurements being not less than a certain threshold speed to be specified as part of the pre-auction process. In addition, an MF-II support recipient must provide reports of speed and latency demonstrating that at least 90 percent of the required measurements have a data latency of 100 milliseconds (ms) or less round trip. The Commission determined that recipients of MF-II support must provide service that meets the minimum baseline performance requirements of 4G LTE or better, and concluded that these requirements will ensure that finite universal service funds are used efficiently to provide rural consumers access to robust mobile broadband service at speeds reasonably comparable to the 4G LTE service being offered in urban areas.

23. We are not persuaded that the minimum baseline performance requirement for median data speeds should be reduced to 5/1 Mbps, as one provider urges. The Commission seeks to ensure that the performance of broadband service in rural and high-cost areas is reasonably comparable to that in urban areas, and the Commission's own analysis at the time the MF-II Report & Order was adopted indicated that customers of nationwide carriers were receiving data at median speeds of around 10/1 Mbps or faster. Furthermore, in our more recent MF-II Order on Reconsideration, we explained that, in contrast to the 5 Mbps eligibility benchmark in the challenge process, which serves to target support where it is currently needed most, the 10 Mbps minimum baseline performance requirement makes sure that service in eligible areas is reasonably comparable to future urban offerings.” This forward-looking approach is consistent with past Commission decisions in the universal service context and recognizes that consumer demand for faster mobile wireless services is growing. Moreover, MF-II funding provides on-going, long-term support over a 10-year period, and reducing the performance requirement to a 5 Mbps download speed increases the risk of directing funds to areas that are already receiving download speeds just below the 5 Mbps eligibility threshold because such areas could require very little investment to meet the lowered performance requirement and would, accordingly, be more competitive at auction. Awarding funds to such areas increases the risk of only marginally benefiting consumers in those areas by not significantly improving the status quo download speeds for a decade. Further, a lowered performance requirement would reduce the final performance milestone for median data speeds in all areas, thereby

increasing the likelihood that those areas will not receive service that is reasonably comparable to urban areas by the end of the support term, despite the distribution of potentially significant MF-II support. We therefore conclude that reducing the performance benchmark to a median data speed of only 5/1 Mbps would risk relegating rural areas with the greatest need to a lower standard of service that is not comparable to urban 4G LTE service.

24. Similarly, with respect to latency, the Commission has noted that latency is important for a variety of real-time, interactive applications, including Voice over Internet Protocol (VoIP), video calling, and distance learning, which “may be effectively unusable over high latency connections, regardless of the download/upload speeds being offered.” Contrary to petitioner’s assertion that the Commission failed to account for the inherent differences between wireless and wireline technologies in adopting the 100 ms latency standard, the Commission established the performance metrics, including latency, to ensure reasonably comparable service. According to petitioner’s own data analysis, the majority (approximately 75 percent) of existing networks already meet the 100 ms standard with 90 percent probability in Metropolitan Statistical Areas (MSAs). Further, technological improvements, including newly available 600 MHz spectrum, will likely enable more carriers to exceed this performance requirement in the near future. Thus, reducing the performance benchmark for data latency to 220 ms would risk relegating rural areas to a lower standard of service that is not comparable to urban 4G LTE service, which includes support for advanced mobile applications. Accordingly, in light of the statutory mandate with respect to reasonably comparable service, we affirm that the minimum baseline performance requirement for data latency is that at least 90 percent of all required measurements must be at or below 100 ms round trip.

F. Bidding Credits

25. We decline to reconsider the Commission’s decision not to adopt bidding preferences for the MF-II auction. In the MF-II Report & Order, the Commission rejected the notion that small and rural carriers needed targeted assistance to secure MF-II support based, in part, on its observation that numerous smaller carriers had placed winning bids in the Mobility Fund Phase I (MF-I) auction without

the aid of bidding credits. Contrary to petitioners' assertions, the Commission specifically noted that commenters had advocated for bidding preferences for other entities, including rural carriers, for the MF-II auction. The Commission also reasoned that small business bidding credits would potentially decrease the reach of MF-II funding, and thereby decrease additional coverage expansion or preservation. This rationale is equally applicable to any type of bidding preference, including those for rural service providers.

26. We reject petitioners' claims that the Commission has a statutory obligation under section 309(j) of the Act to promote small business and rural carrier participation in the universal service context. The Commission's authority to award universal service support through competitive bidding is not derived from section 309(j), which authorizes the use of competitive bidding for granting spectrum licenses or construction permits, not for reverse auctions to award universal service funding. Moreover, even in spectrum auctions, where section 309(j) does apply, the Commission does not always provide bidding credits, and courts have held that the statutorily prescribed objectives in section 309(j)(3) are not mandatory. Additionally, the Commission's primary goal in using competitive bidding in MF-II is to maximize the impact of the funding to increase and preserve mobile coverage. Since bidding preferences for any entities (be they small businesses or rural service providers) would hamper that goal by effectively decreasing the number of eligible areas covered by the finite level of funding, the Commission chose not to award bidding preferences in lieu of greater coverage. Accordingly, we are not persuaded that section 309(j) obligates us to overlook this concern and adopt bidding preferences for the MF-II auction.

27. Likewise, we reject petitioner's assertion that the Commission should not have factored into its decision for MF-II the fact that numerous small and rural carriers participated successfully in the MF-I auction without bidding credits. We find it reasonable, and certainly useful, to consider past auction participation in formulating our policy concerning bidding preferences in future auctions. Moreover, even if we were to accept petitioner's claim that MF-II is fundamentally different from MF-I because it involves ongoing support provided for more significant projects, the petitioner has failed to demonstrate that small and rural carriers would be less inclined, or able, to compete effectively in the auction absent

bidding preferences. In the absence of such a demonstration, and in light of our concerns about the most efficient use of limited universal service funds, we affirm the decision in the MF-II Report & Order not to provide bidding credits in the MF-II auction.

G. Equipment Exclusivity Arrangements

28. We dismiss a provider's request to impose a new certification requirement on all MF-II support recipients that they do not and will not participate in equipment exclusivity arrangements. The petition relies on comments that the provider filed in this proceeding in 2014; however, those 2014 comments make no reference to exclusivity arrangements. Thus, to the extent that the provider raises this argument for the first time in its Petition, we dismiss it as untimely. Further, in its 2012 Fourth Order on Reconsideration in the MF-I proceeding, adopted and released July 18, 2012, 77 FR 48453, August 14, 2012, the Commission previously considered and rejected this provider's request for adoption of a bar on equipment exclusivity arrangements. In the MF-II Report & Order, the Commission again rejected proposals to restrict participation in an MF-II auction through additional eligibility requirements and confirmed its intention to encourage participation by the widest range of applicants. Petitioner has identified no substantive basis upon which to reconsider the Commission's prior decisions not to restrict participation in the Mobility Fund by adopting additional requirements, including a bar on equipment exclusivity arrangements.

H. USAC's Role in Testing Winning Bidder Buildout Performance

29. We decline to limit USAC's role in testing winning bidders' compliance with MF-II performance metrics, public interest obligations, or other program requirements as requested by a provider. We find no merit in contentions that we should limit USAC's responsibility for conducting compliance reviews in order to ensure a cost-efficient process.

30. In the MF-II Report & Order, the Commission determined that it would require MF-II support recipients to submit data sufficient to demonstrate compliance with the MF-II coverage requirements. Specifically, section 54.1015 of our rules requires an MF-II support recipient to provide the data necessary to support its certifications, and that the submitted data must be in compliance with the

standards set forth in the applicable public notice. In our role as a responsible steward of public funds, we are obligated to ensure that the funds disbursed through universal service programs are used for the purposes for which they were intended and that the recipients of support have met the terms and conditions under which the funds were awarded. Accordingly, in the USF/ICC Transformation Order or FNPRM, adopted October 27, 2011, released November 18, 2011, 76 FR 78384, December 16, 2011, the Commission directed USAC to test the accuracy of certifications made pursuant to the new reporting requirements, noting that any oversight program to assess compliance should be designed to ensure that support recipients are reporting accurately to the Commission. The Commission specifically stated that such oversight should be designed to test some of the underlying data that form the basis for a recipient's certification of compliance with various requirements.

31. In the case of MF-I, USAC's compliance reviews did not entail duplication of a recipient's drive tests as the petitioner contends, but rather verification of data transmission rates and transmission latency for a statistically valid random sample of a small portion of the total road miles for which a recipient claimed it was entitled to a support payment. Although the petitioner argues that USAC's role was redundant because USAC's drive tests ultimately validated the data the provider had already submitted for MF-I, we are not persuaded by the petitioner's claim that the benefits of USAC compliance review testing in the context of MF-I were outweighed by the time and expense spent conducting such testing. We decline to draw a conclusion about the overall value of USAC's compliance testing based only on the experience of one MF-I participant. Further, we find it lacking in logic to argue that it serves no purpose to attempt to verify, even by sampling, recipients' compliance with program requirements, merely because some recipients have been found, through such testing, to be in compliance. Compliance reviews, like audits, are an essential tool for the Commission and USAC to ensure program integrity and to detect and deter waste, fraud, and abuse. Therefore, we will not limit USAC's role in verifying the data that recipients submit to demonstrate compliance with our MF-II coverage requirements.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

32. This Second Order on Reconsideration contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

33. In this present document, we have assessed the effects of the modifications that the Commission is making to the letter of credit rule and the collocation rule adopted by the Commission in the MF-II Report & Order regarding the information collection burdens on small business concerns. The Commission describes impacts that might affect small businesses, which include most businesses with fewer than 25 employees, in the Supplemental Final Regulatory Flexibility Analysis (FRFA) in Appendix B of the Second Order on Reconsideration.

B. Congressional Review Act

34. The Commission will send a copy of the Second Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

C. Supplemental Final Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the USF/ ICC Transformation FNPRM, the CAF Further Notice, adopted April 23, 2014, released June 10, 2014, 79 FR 39195, July 9, 2014, and the MF-II FNPRM (collectively, MF-II FNPRMs). The Commission sought written public comment on the proposals in the MF-II FNPRMs including comments on the IRFAs and Supplemental IRFA. The Commission included Final Regulatory Flexibility Analyses (FRFAs) in connection with the CAF Report & Order, adopted April 23, 2014, released June 10, 2014, 79 FR 39163,

July 9, 2014, the MF-II Report & Order, and the MF-II Challenge Process Order (collectively, the MF-II Orders). This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFAs in the MF-II Orders to reflect the actions taken in the Second Order on Reconsideration and conforms to the RFA.

1. Need for, and Objectives of, the Second Order on Reconsideration

36. The Second Order on Reconsideration addresses the remaining issues raised by parties in petitions for reconsideration of the Commission's MF-II Report & Order that adopted the framework for the Mobility Fund Phase II (MF-II) and the Tribal Mobility Fund Phase II. These universal service funding mechanisms will provide on-going high-cost support to extend mobile voice and broadband coverage to unserved and underserved areas. In the Second Order on Reconsideration, the Commission amends the collocation rules adopted in the MF-II Report & Order to apply the collocation requirement for MF-II recipients to "all newly constructed" towers and modifies the letter of credit (LOC) requirements to align our MF-II rules with recent changes made in the CAF-II Order on Reconsideration. These LOC modifications should provide MF-II support recipients with some additional relief from the costs of maintaining an LOC. Moreover, by resolving these petitions, the Commission takes another significant step toward holding an MF-II auction in which service providers will compete for support to offer service meeting the minimum baseline performance requirements of 4G LTE or better in primarily rural areas of the country that lack qualified unsubsidized 4G LTE service.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFAs

37. There were no comments filed that specifically addressed the IRFAs that are relevant to the issues discussed here.

3. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

38. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the

Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

39. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

4. Description and Estimate of the Number of Small Entities to which the Procedures Will Apply

40. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. 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.

41. As noted above, FRFAs were incorporated into the MF-II Orders. In those analyses, we described in detail the small entities that might be significantly affected. Accordingly, in this Supplemental FRFA we hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous FRFAs in the MF-II Orders.

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

42. We expect the amended rules in the Second Order on Reconsideration will not impose any new or additional reporting or recordkeeping or other compliance obligations on small entities and, as described below, will reduce their costs.

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

43. The RFA requires an agency to describe any significant 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 or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.”

44. The Commission has taken steps which will minimize the economic impact on small entity MF-II recipients because we recognize that the costs associated with maintaining an LOC may pose a greater financial burden on those bidders that lack the resources of larger, more established companies. Such bidders may have to factor relatively higher LOC-related costs into their bids. One purpose of using competitive bidding to select support recipients however is that it promotes providing support to those parties that can accomplish the MF-II program goals in the most cost-effective manner. Therefore, in the Second Order on Reconsideration we have made a modest reduction in the required value of the letter of credit for MF-II recipients that have met the 80 percent service milestone for the area(s) covered by the LOC. Moreover, we clarify that small entity and other MF-II recipients may further reduce their costs by no longer maintaining the LOC as soon as USAC, in coordination with the Commission, verifies that the recipient has met the final performance milestone (i.e., we do not require that the LOC be maintained after its purpose is no longer served). These steps should alleviate some of the economic impact for small entity MF-II recipients and aligns our MF-II requirements with recent changes made to the CAF-II requirements.

7. Report to Congress

45. The Commission will send a copy of the Second Order on Reconsideration, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the

Commission will send a copy of the Second Order on Reconsideration, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA.

VI. ORDERING CLAUSES

46. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 503, 1302, and §§ 1.1, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.427, and 1.429, that the Second Order on Reconsideration IS ADOPTED.

- The parameters set forth in the Second Order on Reconsideration, along with all associated requirements also set forth therein, go into effect **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for the new or modified information collection requirements that require approval by the Office of Management and Budget (OMB). The Commission will publish a document in the Federal Register announcing the approval of those information collection requirements and the date they will become operative.
- The Petition for Reconsideration and/or Clarification filed by Rural Wireless Association, Inc. on April 12, 2017, is granted in part and denied in part to the extent described herein.
- The Petition for Reconsideration filed by Blooston Rural Carriers on April 27, 2017, is granted in part and denied in part to the extent described herein.
- The Petition for Reconsideration filed by Rural Wireless Carriers on April 27, 2017, is granted in part and denied in part to the extent described herein.
- The Petition for Reconsideration filed by T-Mobile USA, Inc. on April 27, 2017, is denied to the extent described herein.
- the Petition for Reconsideration filed by Buffalo-Lake Erie Wireless Systems L.L.C. dba

Blue Wireless on April 27, 2017, is granted in part and denied in part to the extent described herein.

- The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the Second Order on Reconsideration, including the Supplemental 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, Internet, Reporting and recordkeeping requirements, Telecommunications.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,
Secretary.

Final Rules

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

PART 54- UNIVERSAL SERVICE

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

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

2. Amend § 54.1015 by revising paragraph (f) to read as follows:

§ 54.1015 Public interest obligations.

* * * * *

(f) 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 all newly constructed towers it 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.

* * * * *

3. Amend § 54.1016 by revising paragraph (a)(1)(ii) to read as follows:

§ 54.1016 Letter of credit.

(a) * * *

(1) * * *

(ii) Once the recipient has met its 80 percent service milestone as described in § 54.1015(c) of this chapter, it may, subject to the consent of the Universal Service Administrative Company, obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 60 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.

* * * * *

