

governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 2018.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.498, in the table in paragraph (a)(2):

■ i. Remove the entries “Asparagus”; “Brassica, head and stem, subgroup 5A”; and “Brassica, leafy greens, subgroup 5B”.

■ ii. Add alphabetically the entries “Brassica, leafy greens, subgroup 4–16B” and “Chia, seed”.

■ iii. Remove the entry “Nut, tree, group 14”.

■ iv. Add alphabetically the entry “Nut, tree, group 14–12”.

■ v. Remove the entry “Pistachio”.

■ vi. Add alphabetically the entries “Stalk and stem vegetable subgroup 22A”; “Teff, forage”; “Teff, grain”; “Teff, hay”; and “Teff, straw”.

■ vii. Remove the entry “Turnip, tops”.

■ viii. Add alphabetically the entry “Vegetable, *Brassica*, head and stem, group 5–16”.

The additions read as follows:

§ 180.498 Sulfentrazone; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
* * * *	*
Brassica, leafy greens, subgroup 4–16B	0.60
Chia, seed	0.15
* * * *	*
Nut, tree, group 14–12	0.15
* * * *	*
Stalk and stem vegetable subgroup 22A	0.15
* * * *	*
Teff, forage	0.50
Teff, grain	0.15
Teff, hay	0.30
Teff, straw	1.5
* * * *	*
Vegetable, <i>Brassica</i> , head and stem, group 5–16	0.20
* * * *	*

[FR Doc. 2018–07740 Filed 4–12–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58, 14–259, AU Docket No. 17–182; FCC 18–5]

Connect America Fund, ETC Annual Reports and Certifications, Rural Broadband Experiments, Connect America Fund Phase II Auction

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission considers the remaining issues raised by parties challenging the Commission’s orders implementing the Connect America Phase II (Phase II) auction (Auction 903). Specifically, the

Commission resolves petitions challenging the Commission’s decisions on the following issues: How to compare bids of different performance levels, standalone voice requirements, Phase II auction deployment and eligibility, and state-specific bidding weights, among other matters. The Commission also adopts a process by which a support recipient that sufficiently demonstrates that it cannot identify enough actual locations on the ground to meet its Phase II obligations can have its total state location obligation adjusted and its support reduced on a pro rata basis. Lastly, the Commission modifies the Commission’s letter of credit rules to provide some additional relief for Phase II auction recipients by reducing the costs of maintaining a letter of credit.

DATES: This rule is effective May 14, 2018, except for the amendment to 47 CFR 54.315(c)(1)(ii), which requires approval by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing approval of the information collection requirement and the date the amendment will become effective. For more information, see **SUPPLEMENTARY INFORMATION**.

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

SUPPLEMENTARY INFORMATION: The Commission adopted this Order on Reconsideration on January 30, 2018, and the decisions set forth therein for the Phase II auction, along with all associated requirements also set forth therein and the amendment to the heading of § 54.315 of the Commission’s rules, 47 CFR 54.315, go into effect May 14, 2018, except for the new or modified information collection requirements related to the location adjustment process contained in paragraphs 12–14 and the amendment to 47 CFR 54.315(c)(1)(ii), that require approval by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing approval of those information collection requirements and the date they will become operative.

This is a summary of the Commission’s Order on Reconsideration in WC Docket Nos. 10–90, 14–58, 14–259, AU Docket No. 17–182; FCC 18–5, adopted on January 30, 2018 and released on January 31, 2018. 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 Street SW, Washington, DC 20554, or at the

following internet address: https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0131/FCC-18-5A1.pdf

I. Order On Reconsideration

1. *Discussion.* The Commission declines to reconsider the weights it adopted for bids in the Phase II auction for the varying performance tiers and latency levels. In adopting these weights, which the Commission found to be within a reasonable range of the increments proposed in the record, the Commission appropriately recognized the value of higher-speed and lower-latency services to consumers. The Commission sought to balance its preference for higher-quality services with its objective to use the finite universal service budget effectively. Based on its predictive judgment, the Commission concluded that its approach is likely to promote competition within and across areas by giving all service providers the opportunity to place competitive bids, regardless of the technology they intend to use to meet their obligations.

2. The Commission disagrees with Hughes' contention that low-latency, high-speed bids will always necessarily win. Bids will be scored relative to the reserve price and therefore bids placed for lower speeds and high latency will have the opportunity to compete for support, but will have to be particularly cost-effective to compete with higher tier bids.

3. Hughes presents a hypothetical example that only reinforces the conclusion that adopting minimal weights would be inappropriate. Even if the Commission were to adopt Hughes' proposed weights, it is unclear from Hughes' own statements in the record whether Hughes could place winning bids. Hughes argues that the Commission failed to take into account record evidence that "the lower bound for satellite providers' bids will be above \$185 per customer per month in the 25/3 Mbps tier," and that there was no data in the record to contradict its showing. Assuming that Hughes could receive from subscribers a reasonably comparable rate of \$88 per month for offerings at 25/3 Mbps, Hughes claims that the lower bound for satellite providers' bids in this tier will be above \$185 per customer per month. In the example, Hughes compares a fiber-based provider bidding a reserve price of \$250 in the Gigabit tier to a satellite provider bidding \$187 in the Baseline tier under two scenarios. Under the hypothetical, the Gigabit bid would win using the Commission's adopted weights; using Hughes' proposed weights, the satellite provider would win. If the fiber-based

provider and the satellite provider required \$250 and \$187 in support per location, respectively, neither would win given the Commission's decision to adopt a per location funding cap of \$146.10. Notwithstanding the reserve price, the Commission is not convinced that awarding \$187 per customer for high-latency, lower-speed satellite service would be the preferred outcome, or particularly cost-effective, if it could fund a Gigabit network for only \$63 more per customer. Lowering support amounts is not the Commission's only goal. Rather, the Commission must balance—within a finite budget—its goal of lower support amounts and wider coverage with its goal of service at higher speeds and lower latency.

4. Hughes has not presented any analysis or data that persuades the Commission that it should alter the balance it sought to achieve with the adopted weights. The Commission previously concluded that adopting smaller weight differences between tiers, as Hughes advocates, would be inappropriate. The Commission was concerned that minimal weighting could deprive rural consumers of the higher-speed, lower-latency services that consumers value and that are common in urban areas. The Commission predicted that minimal weight differences would likely result in bids in lower tiers prevailing, leaving all consumers with minimum service even though some service providers might be able to offer increased speeds for marginally more support.

5. The Commission is not persuaded that it should reconsider the weights adopted by the Commission to reflect the consumer preference data cited by Hughes. In the *Phase II Auction FNPRM Order*, 82 FR 14466, March 21, 2017, the Commission concluded that "establishing weights based on specific data is likely to be a drawn out and complicated process that may further delay the Phase II auction and may not produce an improved outcome in the auction." Hughes argues that the Commission adopted weights that provide "too great of a bidding advantage to high-speed, high-capacity, low-latency services," and claims that "[s]atellite broadband customers are just as satisfied as the customers of other types of broadband providers, notwithstanding the inevitable latency resulting from the data travel time to and from a geostationary satellite." Hughes now claims that "changing the bidding weights would require simply changing numeric values in the Commission's existing auction software and result in no delay." Even if it were true that changing the auction software

would be easy, there would only be no delay if the Commission simply accepted Hughes values and ignored data cited by other parties. Nothing in Hughes' reply comments fundamentally changes the Commission's prior conclusion.

6. The Commission previously rejected arguments that it should adopt a narrower weight for latency than for speed tiers to account for claims that consumers value higher speed over latency. The Commission emphasized that "these claims do not address the concerns raised by commenters about the inherent limitations of high latency services—particularly for interactive, real-time applications and voice services given that high latency providers may be the only voice providers in the area." Hughes does not address the inherent limitations of satellite voice service, particularly in rural areas, and argues that there is no valid policy reason to provide such an advantage to low-latency bids. The Commission disagrees. In areas where winning bidders begin receiving Phase II support, the incumbent price cap carriers not receiving such support will be immediately relieved of their federal high-cost eligible telecommunications carrier (ETC) obligation to offer voice telephony in those census blocks, and the winning bidder will have the responsibility of providing the supported service: voice telephony. The potential savings to the Fund of supporting non-terrestrial broadband services must be balanced with the fact that providers of such services will have the obligation to provide the supported service—voice telephony—to rural consumers as well.

7. The Commission also is not persuaded by Hughes' argument that it should reduce the speed and latency weights to "account for satellite broadband systems' more expedited deployment capabilities." Hughes argues that satellite service is "quicker to market" because it is not affected by obstacles faced by terrestrial broadband providers such as lengthy permitting processes, construction delays, limited consumer demand, or geographical isolation. Although satellite service may theoretically be available sooner in rural areas, it is not clear that satellite providers will be meeting the needs of rural and underserved communities any sooner than other providers. The Commission granted a petition for reconsideration regarding re-auctioning areas served by high-latency service providers, filed by ViaSat and supported by Hughes, because it agreed that it may be difficult for high-latency service providers to obtain enough subscribers

to meet a 35 percent subscription threshold by the end of the third year of support. In doing so, the Commission was persuaded by comments suggesting that many of the factors related to low adoption are likely to be present in more rural high-cost areas of the country. The Commission has no reason to think these factors have changed and decline to modify the weights to account for “speed to market.”

8. For the reasons stated above, the Commission declines to reconsider the weights the Commission adopted for bids in the Phase II auction for the varying performance tiers and latency levels.

9. *Discussion.* As an initial matter, the Commission clarifies that it has not yet specified which of the methods for subjective determination of transmission quality identified in ITU-T Recommendation P.800 should be used to demonstrate compliance with the second part of the two-part standard (MOS of four or higher). Based on the sparse record before the Commission, it declines to do so at this time. ADTRAN proposes that the Commission specify use of a conversational-opinion test and argues that this is preferable to a listening-opinion test, or the ITU’s other recommended option: interview and survey tests. The Commission finds that there is insufficient information in the record to specify which of the ITU’s recommended options applicants should be prepared to use to demonstrate an MOS of four or higher. The Commission expects that the specific methodology will be adopted by the Bureaus and Office of Engineering and Technology (OET) by June 2018, consistent with the Commission’s previous direction to refine a methodology to measure the performance of ETCs’ services subject to general guidelines adopted by the Commission.

10. The Commission also clarifies that recipients of Phase II support awarded through competitive bidding should use the same testing methodologies for measuring peak period roundtrip latency adopted for price cap carriers accepting model-based Phase II support. That is, the same testing methodologies should be used by Phase II recipients whether they are demonstrating compliance with the 100 ms requirement or the 750 ms requirements. As set forth in the *Phase II Service Obligations Order*, 78 FR 70881, November 27, 2013, providers can rely on existing network management systems, ping tests, or other commonly-available measurement tools, or on the alternative Measuring Broadband America (MBA) program

results if they have deployed at least 50 white boxes in funded areas throughout the state.

11. *Discussion.* The Commission adopted the standalone voice requirement in 2011. When it adopted the separate standalone broadband reasonable comparability requirement in 2014, the Commission explained that “high-cost recipients are permitted to offer a variety of broadband service offerings as long as they offer at least one standalone voice service plan and one service plan that provides broadband that meets the Commission’s requirements.” Setting aside the untimeliness of these requests, the Commission would not reconsider the requirement that Connect America Fund recipients offer voice telephony—the supported service—at rates that are reasonably comparable to rates for voice service in urban areas. The Commission is not persuaded by arguments that, because VoIP is provided over broadband networks and over-the-top voice options are available, broadband service providers need only offer broadband as a standalone service. Phase II auction recipients may be the only ETC offering voice in some areas and not all consumers may want to subscribe to broadband service. To comply with Connect America Fund service obligations, support recipients can offer VoIP over their broadband network on a standalone basis, but they must offer the service at the reasonably comparable rate for voice services.

12. *Discussion.* The Commission clarifies that it will permit Phase II auction support recipients to bring to the Commission’s attention disparities between the number of locations estimated by the CAM and the number of locations actually on the ground in the eligible census blocks within their winning bid areas in a state. If a support recipient can sufficiently demonstrate that it is unable to identify enough actual locations on the ground across all the eligible census blocks to meet its total state requirement, its obligation will be reduced to the total number of locations it was able to identify in the state and its support will also be reduced on a pro rata basis. Specifically, within one year after release of the Phase II auction closing public notice, a recipient that cannot identify enough actual locations must submit evidence of the total number of locations in the eligible areas in the state, including geolocation data (indicating the latitude/longitude and address of each location), in a format to be specified by the Bureau, for all the actual locations it could identify. The Commission directs the Bureau to establish the

procedures and specifications for the submission of this information, such as collecting the data through the Universal Service Administrative Company’s (USAC) High Cost Universal Service Broadband (HUBB) online location reporting portal. Relevant stakeholders would have the opportunity to review and comment on the information and to identify other locations, following which the Bureau shall issue an order addressing the recipient’s showing and any such comments. The evidence submitted by a support recipient will also be subject to potential audit.

13. The Commission directs the Bureau to implement this process, consistent with the Commission’s prior direction to the Bureau concerning model location adjustments. Specifically, in cases where the Bureau has determined by a preponderance of the evidence that there are no additional locations in the relevant eligible census blocks in the state, the Commission directs the Bureau to adjust the support recipient’s required state location total and reduce its support on a pro rata basis for that state. The Commission directs the Bureau to specify the types of information that a support recipient should submit to demonstrate that it could not locate additional locations on the ground, specify the types of evidence that commenters should submit to dispute the evidence provided by the support recipients and set the parameters of this review process, set the parameters for the audits, and adopt any other necessary implementation details. The Commission directs the Bureau to issue a public notice or order (following its issuance of a notice and opportunity for comment) detailing instructions, deadlines, and requirements for filing valid geolocation data and evidence for both support recipients and commenters.

14. The Commission adopts this process because it is persuaded that potential bidders may be reluctant to bid on census block groups if the number of locations estimated by the CAM is substantially different from the number of actual locations currently on the ground, leaving those areas without an opportunity to get served through the Phase II auction. While parties claiming that there are discrepancies between the CAM and the facts on the ground have not demonstrated that the data and analyses they are relying on are necessarily more accurate than the CAM, the Commission agrees that support recipients should not be penalized if the actual facts on the ground differ from the CAM’s estimates. Accordingly, the Commission has

decided to require support recipients seeking to adjust their required locations to gather and submit geolocation data to demonstrate that they have done the necessary legwork to identify locations within their service areas. By requiring applicants to submit geolocation data and demonstrate that there are no additional locations in the relevant areas, providing an opportunity for relevant stakeholders to comment on the findings, and conducting audits, the Commission also intends to prevent any cherry picking that might occur if support recipients only identify the easiest-to-serve locations and ignore harder-to-serve locations. The Commission also emphasizes that applicants are required to conduct the necessary due diligence prior to submitting their short-form applications, including identifying locations they will serve within the eligible areas, so that they can certify that they will be able to meet the relevant public interest obligations when they submit their applications.

15. The Commission declines to permit support applicants to identify additional locations to serve above their required state total with an accompanying increase in support. The Commission has a finite Phase II budget that will be allocated through the auction. Accordingly, the Commission would be constrained from giving support recipients more support.

16. The Commission is also not convinced that it should take the further step of broadening the Commission's existing definition of locations for all Phase II auction recipients so they have more potential locations that they can serve in their winning census blocks. The focus of Phase II has been on serving housing units and businesses that receive mass market service, with areas being designated as high-cost by the CAM based on the cost to serve these types of locations. Moreover, reserve prices are being set using the CAM, and the Commission proposed awarding no more support than the CAM calculates is needed to serve housing units and businesses receiving mass market services in high-cost areas, with a cap on extremely high-cost locations. Accordingly, the Commission declines to permit *all* recipients to divert Phase II support away from housing units and businesses receiving mass market services to other types of locations because *some* recipients may find it difficult to serve the number of locations identified by the model.

17. Finally, the Commission declines to monitor a support recipient's compliance at a census-block level or to allow a support recipient to count

toward meeting its deployment obligation locations that do not exist. In comments filed on specific bidding procedures for this auction, several parties propose allowing recipients that make service available to all actual locations in a census block to receive credit for making service available to all model-indicated locations within that census block. For instance, under this proposal, if a census block had only six actual locations to be served, and the CAM indicated there were 14 locations to be served, a recipient would receive credit for serving 14 locations in that census block after serving only six. Such a system could create perverse incentives to focus deployment on the types of census blocks in the example, leading to fewer consumers receiving broadband overall. The Commission already decided it would monitor compliance at the state-level so that a support recipient would have to serve locations in other eligible census blocks in the state if it cannot locate enough actual eligible locations within a census block, and the opportunity to petition the Commission to reconsider this decision has passed. The commenters' challenge to this statewide approach is untimely. To the extent there are discrepancies between the number of actual locations on the ground and the CAM-estimated statewide location totals, a support recipient can take advantage of the process adopted above.

18. *Discussion.* The Commission denies Verizon's request. The Commission is not persuaded that it should reduce the service obligation to give recipients 90 percent flexibility. The Commission acknowledges that, because costs will be averaged at the census block level, all the locations the CAM identified in each census block in the authorized bids will count towards Phase II auction recipients' funded location total, unless adjusted using the process adopted above. While this differs from the Phase II model-based support requirements, in which some of the locations in some of the census blocks do not count toward the state-required location totals, Phase II auction bidders will have the advantage of choosing which eligible census blocks to include in their bids. Because compliance will be determined on a state-wide basis, the bidder can identify additional locations in the other eligible census blocks within the census block group or choose to bid on additional census block groups where it is able to identify more locations in eligible census blocks than the CAM had identified to meet its statewide total. As the Commission explained above, if a

support recipient sufficiently demonstrates that it is unable to identify enough locations to meet its total support obligation statewide, it can also have its location total adjusted with an accompanying reduction in support.

19. If the Commission were to permit Phase II auction recipients to use up to 90 percent flexibility in each state, the result could be as much as an additional five percent of locations potentially remaining unserved in Phase II auction-funded census blocks. Because these unserved locations would be in census blocks where Phase II auction recipients are receiving support, targeting support to these locations through another mechanism could prove difficult. Instead, the Commission concludes that 95 percent flexibility is a more reasonable balance between ensuring that as many locations as possible get served in Phase II auction-funded areas and giving recipients some flexibility in the case of unforeseeable circumstances.

20. The Commission acknowledges that some bidders may bid for more support to compensate for the risk of having to return support if they cannot meet the 100 percent service milestone. But the Commission concludes that this potential increase in costs is outweighed by the benefits of ensuring that at least 95 percent—as opposed to 90 percent—of the required number of locations in Phase II-funded areas are served, particularly given that unserved locations in Phase II-funded areas would be difficult to target with another support mechanism. Additionally, the Commission expects that the competitive pressure imposed by competing for a finite budget in the Phase II auction will help mitigate bid inflation. Finally, any support that is returned by a Phase II recipient that serves less than 100 percent of the required number of locations can be repurposed to support broadband through other universal service mechanisms.

21. For these reasons, the Commission also is not persuaded that it should permit Phase II auction recipients to take advantage of the 95 percent flexibility without returning an associated amount of support. Moreover, the Commission is not convinced by claims that it is unnecessary for such recipients to return support because bids will “already reflect the cost of building out to the minimum number of locations.” Instead, the Commission expects that all Phase II auction bidders will bid with the intention of serving 100 percent of funded locations, will factor the cost of serving 100 percent of the locations into their bids, and will take advantage of

the flexibility only if necessary. Indeed, if the Commission lowered the flexibility to 90 percent, under Verizon's logic, the Commission would be conceding that even more locations within eligible blocks could be unserved following the auction. Because Phase II auction bidders are required to conduct due diligence prior to bidding, the Commission explained that it adopted the flexibility to address "unforeseeable challenges" that Phase II auction recipients may have in meeting their deployment obligations. If a Phase II auction bidder initially plans to build to only 95 percent of the required number of locations and then later in the support term experiences unforeseeable events, it will be subject to non-compliance measures if it is unable to serve at least 95 percent of locations and is unable to obtain a waiver. The Commission expects it would be difficult for a recipient to meet its burden of demonstrating good cause to grant a waiver of the deployment obligations if it did not plan to build to 100 percent of funded locations at the outset of its support term.

22. *Discussion.* The Commission declines to reconsider the Commission's decision not to adopt an accelerated payment option for recipients of Phase II auction support. The Commission is not convinced that the benefits of an accelerated payment option would outweigh any potential additional burden on rate payers. Moreover, as the Commission explained, service providers already have the incentive to build out their networks more quickly so that they can begin earning revenues to help with their costs. They also have an incentive to meet the final service milestone as soon as possible because once it has been verified that they have met their deployment obligations, they can further reduce costs by no longer maintaining a letter of credit. While Crocker Telecommunications suggests that the requirement that Phase II auction recipients offer the required services at rates that are reasonably comparable to those offered in urban areas means that revenues may not offset the higher costs of building in rural areas, nothing precludes a recipient from securing other funding options that can help with the upfront costs of building out and maintaining its network before it receives its full ten years of support.

23. Additionally, the Commission is concerned about its ability to accurately predict the amount by which the Phase II auction budget could be exceeded and, in turn, the potential impact of an accelerated option. Crocker Telecommunications suggests that,

given the size of the Phase II auction budget relative to the entire universal service budget, and taking into consideration the additional contributions from providers that will be offering VoIP over their Phase II-funded networks, an accelerated payment option would not result in "dramatic swings in the contribution factor" if the Commission exceeds its annual Phase II auction budget. Whereas in the rural broadband experiments, the Commission had access to the entire \$100 million budget at the start of the program, and thus could make an accelerated payment option available because the Commission could cover any upfront payment requests without needing to increase the contribution factor or wait for the following year's budget, here, however, the Commission will have only the annual Phase II auction budget available each year. Too many unknowns remain about the Phase II auction—including the number of bidders that will participate, the number of bidders that would request and qualify for an accelerated support option, the size of those bidders' bids, and the timing for when the bidders would be eligible to receive accelerated support—to predict with any degree of certainty how much the Commission could potentially exceed the annual budget if it were to adopt an accelerated option.

24. Even if the Commission could determine that giving Phase II auction recipients the option of receiving accelerated support would not dramatically increase the contribution factor, the Commission is not convinced that it would serve the public interest to do so. The Phase II auction is one of many universal service programs, and the Commission is responsible for making decisions that balance the objectives of all of the programs with the burdens on the end-user rate payers that fund the programs. The Commission is not persuaded that increasing the contribution factor by even a small margin for the Phase II auction would be justified for the sole purpose of providing more support earlier in the term, given the Commission's efforts to also remain within a budget for other universal service programs.

25. *Discussion.* The Commission dismisses as untimely NRECA and UTC's petition for reconsideration of the Commission's decision to exclude from the Phase II auction RBE census blocks that are served by an unsubsidized competitor with broadband at speeds of 10/1 Mbps. The Commission decided in the *December 2014 Connect America Order*, 80 FR 4446, January 27, 2015,

that "any area" served by an unsubsidized competitor offering 10/1 would be excluded from the Phase II auction. The Commission also stated that shortly before the Phase II auction it expected to "update the list of census blocks that will be excluded from eligibility" from the Phase II auction "based on the most current data" so as to "take into account any new deployment that is completed" prior to the auction. The Commission did not indicate that there would be any exceptions to this decision. The Commission's decision not to offer support in areas served by an unsubsidized competitor is one of the fundamental principles of the Connect America Fund, so it is reasonable to expect that the Commission would make explicit any exceptions to this policy.

26. Because the Commission made the decision to exclude all census blocks served by an unsubsidized competitor from the Phase II auction in the *December 2014 Connect America Order*, NRECA and UTC should have filed a petition for reconsideration of this decision within 30 days of publication of that order in the **Federal Register**. NRECA and UTC failed to do so. Instead, NRECA and UTC filed a petition for reconsideration of this decision after the May 2016 *Phase II Auction Order*, 81 FR 44414, July 7, 2016. In that order, the Commission took steps to implement the decisions it had already made about Phase II auction eligible areas in the *December 2014 Connect America Order*, including its decision to exclude areas served by unsubsidized competitors, by deciding that it would: (1) Rely on the most recent publicly available FCC Form 477 data for identifying eligible Phase II auction census blocks, (2) conduct a limited challenge process, (3) average costs at the census block level, and (4) direct the Bureau to release a preliminary list of eligible census blocks. NRECA and UTC do not take issue with these implementation decisions. Because NRECA and UTC instead seek reconsideration of the Commission's underlying decision in the *December 2014 Connect America Order* to exclude from the Phase II auction census blocks served by unsubsidized competitors, the Commission dismisses this portion of the petition as untimely.

27. Notwithstanding the untimely nature of this portion of the petition, the Commission denies it on the merits. The Commission similarly denies the timely filed portion of the petition asking it to reconsider its decision to exclude from the auction RBE census blocks served by

price cap carriers at broadband speeds of 10/1 Mbps. In both instances, the Commission concludes that its decision to exclude these census blocks reasonably balances the Commission's objectives in furtherance of the public interest. The Commission has repeatedly emphasized that while it has a preference for higher speeds, higher data usage, and lower latency, it must balance these preferences against its objective of maximizing its finite budget to serve as many unserved consumers as possible and not overbuilding locations served by private capital. For this reason, the Commission adopted different performance tiers for the Phase II auction starting with 10/1 Mbps speeds, and for this reason the Commission decided to make ineligible census blocks already served by unsubsidized competitors and price cap carriers at broadband speeds of 10/1 Mbps. Although the decision to exclude these census blocks means that these areas may not have access to higher speeds through the Phase II auction, the Commission found that using the Phase II auction budget to address the digital divide by targeting those areas that lack a provider offering even 10/1 Mbps speeds to at least one residential location was a more effective use of the limited Phase II budget.

28. UTC and NRECA are asking the Commission to use its finite budget to fund census blocks where either an unsubsidized competitor using private capital or a price cap carrier has already deployed broadband at speeds meeting or exceeding the Commission's minimum 10/1 Mbps speeds. The Commission recognizes that all locations in these census blocks may not be served with 10/1 Mbps or higher speeds, as they would have been if the blocks were included in the Phase II auction. Nevertheless, the Commission concludes that, on balance, it better serves the public interest to focus its finite budget on areas that lack *any* broadband provider offering speeds that meet the Commission's requirements than on areas that have such a provider somewhere in the block. This approach will ensure that the Commission's budget will be used to serve consumers that completely lack access to broadband meeting its minimum speed requirements rather than diverting funds to potentially overbuild areas where consumers already have access to such service.

29. The Commission is not convinced by UTC and NRECA's arguments that the "cost efficiencies that would be gained by removing [the rural broadband experiment] census blocks are greatly outweighed by the public

interest benefits that would be lost if [the] census blocks go unfunded." Although it is possible that the current provider offering 10/1 Mbps in these areas may cease offering service at these speeds, it also is possible that the current provider could improve its offerings without Connect America support. Similarly, it is possible that some price cap carriers or unsubsidized competitors may target only one location in the RBE census blocks with 10/1 Mbps broadband service to make them ineligible for the Phase II auction. But consumers overall may benefit if such service providers take this opportunity to expand their 10/1 Mbps broadband offerings without Phase II auction support because that support then could be directed to areas that are totally unserved. There is also a possibility that service providers that were interested in bidding in RBE census blocks that are now ineligible may still win support in surrounding eligible areas. Such recipients may be able to leverage their funded networks in eligible areas so that it becomes cost-effective to deploy higher speeds in the ineligible census blocks absent support. Finally, if an area that was excluded from the Phase II auction does subsequently become unserved, either because the provider ceases offering service in that area or the provider does not upgrade its broadband service speeds to meet the Commission's current definition of "served," the Commission could make that area eligible for the Remote Areas Fund or for other future competitive bidding to the extent it remains unserved.

30. The Commission also is not persuaded by NRECA and UTC's claims that potential applicants "acted in good faith" in assuming that all RBE census blocks would be made eligible for the Phase II auction or that the Commission's decisions "penalize[]" those potential applicants for moving forward and deploying broadband prior to the Phase II auction. As the Commission explains below, all potential bidders have known since at least April 2014 that the Commission contemplated excluding certain census blocks from the Phase II auction, and it had been the Commission's longstanding policy to exclude census blocks served by unsubsidized competitors for its programs since the Connect America Fund was created. But even if the Commission were to agree that it was reasonable for applicants to assume that all RBE census blocks would be included, the Commission is not convinced that applicants that intended to bid on these blocks are

worse off than applicants that intend to bid on other census blocks. Any census block that is on the preliminary eligible census block list could subsequently become ineligible if it is reported as served in the most recent publicly available Form 477 when the final list of eligible census blocks is released. This means that any applicant could invest resources to get ready to bid for an area, only to later discover that it is no longer eligible. The Commission took measures to reduce this possibility by directing the Bureau to release the final census block list three months prior to the short-form application filing deadline so that applicants have time to plan and prepare for bidding. The Commission also concludes that the potential costs applicants incur in planning to bid on census blocks that ultimately become ineligible are outweighed by the benefits to consumers of using the Phase II auction budget efficiently.

31. Moreover, the fact that some applicants already deployed networks in the RBE blocks, even though they acknowledge they had no guarantee of winning support through the auction, provides further support for the Commission's decision not to make these census blocks eligible for the auction. The Commission did not adopt the eligibility rules or the public interest obligations for the Phase II auction until the *Phase II Auction Order* in May 2016. Thus, the entities that NRECA and UTC cite in their petition as already having deployed broadband to these areas in July 2016 did not know, when they deployed broadband to these areas, if they could meet the eligibility requirements or what public obligations would be required; whether their applications would ultimately be approved to participate in the auction; whether they would win in the Phase II auction; and, whether they would be authorized to receive support. Given these uncertainties, it seems unlikely that a broadband provider would deploy to an area if it thought it could not sustain the service without support. Because these providers could make a business case to serve these areas, even at the risk that they would not qualify to participate in the auction or win support, the Commission sees no reason why it should use its finite funds to support these areas instead of areas where no provider has been able to make a business case to serve.

32. The Commission also disagrees with NRECA and UTC's claims that its decisions favor price cap carriers. NRECA and UTC claim that price cap carriers were given the "right of first refusal to model based support without

any removal of census blocks in those areas.” However, they neglect to acknowledge that census blocks that were served by unsubsidized competitors at 4/1 Mbps and above (the Commission’s minimum speed requirement when the decision was made) were removed from the offer of model-based support, as were the RBE census blocks that are the subject of the petition. Moreover, price cap carriers and other competitive bidders are both precluded from receiving Phase II support in ineligible RBE census blocks because they were removed from the offer of model-based support and from the Phase II auction.

33. The Commission also does not find it persuasive to compare its decisions with respect to the offer of model-based support to price cap carriers with its decisions to remove certain census blocks from the Phase II auction. NRECA and UTC claim that the Commission’s decisions are “arbitrary and capricious” because they “disparately deny[] competitive providers . . . from being able to receive funding under Phase II in areas where they have deployed broadband networks.” Price cap carriers were able to receive Phase II funding in areas where they had already deployed 10/1 broadband service. But for the offer of model-based support, the Commission offered price cap carriers a state-wide commitment in high-cost areas so that if they accepted support, they would be required to offer voice and broadband at speeds of 10/1 Mbps to the required number of locations in their service area in the state where they were already an ETC, and in most cases they were already receiving universal service funding in those areas. The Commission decided that it preferred this approach as opposed to one in which the Commission would immediately adopt competitive bidding everywhere because price cap carriers were “in a unique position to deploy broadband networks rapidly and efficiently” throughout their “large service areas.” The Commission further concluded that, on balance, and in its predictive judgment, its approach “best serves consumers in these areas in the near term, many of whom are receiving voice services today supported in part by universal service funding and some of whom also receive broadband, and will speed the delivery of broadband to areas where consumers have no access today.”

34. Here, the Commission also used its predictive judgment when deciding how to allocate its finite Phase II auction budget to best serve consumers, but under different conditions. For the

Phase II auction, a service provider need not be the incumbent to compete for support; bidders can be selective about which eligible areas they include in their bids; bidders may not have received universal service support in the past to serve the areas for which they intend to bid; and, there are likely more areas eligible for support than there is support available. For the offer of model-based support, the Commission was constrained by the service area of a specific price cap carrier and reliant on only one incumbent carrier to reach its objectives of maximizing coverage. Here, the Commission is constrained by the Phase II auction budget. Therefore, it decided to take a different approach in the Phase II auction by targeting support only to those areas that are unserved by price cap carriers and unsubsidized competitors at 10/1 Mbps minimum broadband speeds. Nothing in the record persuades the Commission that it would better serve the public interest by reconsidering this approach.

35. Nor is the Commission convinced that its decision to exclude certain census blocks from the Phase II auction “frustrate[s] the fundamental purpose” of the rural broadband experiments. NRECA and UTC claim that the purpose of the experiments was to “challenge status quo broadband from the price cap carriers.” While the Commission may have indicated that it expected the rural broadband experiments to provide the Commission with information about “which and what types of parties are willing to build networks that will deliver services that exceed” the performance standards the Commission adopted for the offer of model-based support, the Commission intended to use what it learned to inform the rules it adopted for the Phase II auction. The Commission did not decide to exclude the RBE census blocks from the offer of model-based support to price cap carriers until after rural broadband experiment bidders had placed their bids, suggesting that it was not the fundamental purpose of the program to give losing rural broadband experiment bidders another opportunity to bid for support in the RBE census blocks in the Phase II auction. Instead, the rural broadband experiments served their purpose by giving the Commission valuable experience and data it could use when determining the public interest obligations and eligibility requirements for the Phase II auction. The Commission is under no obligation to ensure that all participants in the rural broadband experiments have the opportunity to bid for their desired

census blocks in the auction, particularly when it would conflict with the Commission’s overall objectives for the Phase II auction.

36. Finally, the Commission disagrees with NRECA and UTC’s claims that applicants had no notice that the Commission might exclude RBE census blocks from the Phase II auction. Consistent with the requirements of Section 553 of the Administrative Procedure Act, interested parties had an opportunity for meaningful comment on the Commission’s proposals to exclude certain census blocks from Phase II auction eligibility. The Commission noted in the *April 2014 Connect America FNPRM*, 79 FR 39196, July 9, 2014, that, if its proposal to establish 10 Mbps as the minimum broadband downstream speed was adopted, “Phase II funds would only be available in a competitive bidding process for any area lacking 10 Mbps/1 Mbps.” In the *FNPRM*, the Commission sought comment on excluding from the Phase II auction “any area” that is served by a price cap carrier that offers fixed residential voice and broadband meeting the Commission’s requirements, and on excluding from Phase II “those census blocks” that are served by a facilities-based terrestrial competitor offering voice and broadband services at 10/1 Mbps.

37. Although the Commission did not seek comment on applying these exclusions specifically to the RBE census blocks, such action is a logical outgrowth of the Commission’s proposals. Under the “logical outgrowth” standard, a notice of proposed rulemaking does not violate notice requirements under the Administrative Procedures Act if it “provide[s] the public with adequate notice of the proposed rule followed by an opportunity to comment on the rule’s content.” First, the Commission sought 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.” Given the broad nature of this question, the parties were on notice that the Commission was contemplating eliminating support for served areas in any universal service context. Second, while the *FNPRM* did not explicitly propose that the RBE census blocks would be made eligible for the Phase II auction if they were removed from the offer of model-based support, both NRECA and UTC filed comments in response to the *FNPRM* requesting that the Commission make the RBE census blocks available for competitive bidding. Because they had the opportunity to urge the Commission

to include the census blocks in the Phase II auction, they also had the opportunity to comment on how the Commission's proposals for the Phase II auction—including whether to exclude areas served by unsubsidized competitors—should or should not apply to the RBE census blocks. In fact, those comments also separately discuss the Commission's proposals to remove from eligibility the Phase II auction census blocks served by price cap carriers and raise similar arguments to those raised in the petition. In the section seeking comment on the interplay between the Phase II offer of model-based support and the rural broadband experiments, the Commission did not suggest that census blocks removed from the offer of model-based support would be exempt from its broader Phase II auction proposals if the removed blocks were considered eligible for the Phase II auction inventory.

38. *Discussion.* The Commission declines to reconsider its Phase II auction eligibility rules and automatically qualify to participate in the Phase II auction those entities that were selected as provisional winning bidders for the rural broadband experiments. The Commission is not persuaded that provisionally-selected bidders that failed to submit all of the required information during the rural broadband experiments are necessarily qualified for the Phase II auction. Because provisionally-selected bidders that were not ultimately authorized to receive support did not submit all of the required technical and financial information at the post-selection review stage, Commission staff did not fully assess their qualifications once they were named as winning bidders.

39. Furthermore, the Commission is not convinced that it should permit provisionally-selected bidders that were ultimately authorized to receive rural broadband experiment support to participate in the Phase II auction without meeting the eligibility requirements for the Phase II auction. Although the Commission acknowledges that such entities underwent more extensive vetting than defaulting provisionally-selected bidders, eligibility requirements for applicants seeking to bid in the rural broadband experiments were not as rigorous as those proposed and adopted for the Phase II auction. As the Commission previously indicated, the eligibility considerations for participation in the rural broadband experiments bidding were different than they are for the Phase II auction. The rural broadband experiments were

intended to award support to discrete experiments, and if the bidder defaulted, the area that was included in the bid would be eligible for the Phase II auction if it remained unserved. By contrast, the Commission seeks to balance maximizing coverage with its preference for supporting higher speeds, higher usage allowances, and lower latency through the Phase II auction, and if a bidder defaults, it would thwart these objectives by leaving the relevant area unserved when another qualified bidder may have been able to serve the area if it had won the support.

40. Moreover, because the obligations for the Phase II auction are not the same as those of the rural broadband experiment, the Commission concludes that it serves the public interest to independently assess the qualifications of rural broadband experiment recipients seeking to participate in the Phase II auction. The Commission has adopted different speed, capacity, and latency requirements and a different build-out timeline for the Phase II auction. When the Commission authorized provisionally-selected bidders to receive rural broadband experiment support, it was authorizing those entities based on the specific technologies and networks they intended to use to meet their rural broadband experiment obligations. For the Phase II auction, the Commission has proposed to determine an applicant's eligibility to bid for the performance tier and latency combinations it selects in part based on information regarding how it intends to meet the Phase II obligations, which may differ from how it intended to meet its rural broadband experiment obligations. Finally, the Commission began authorizing rural broadband experiment recipients in 2015, and the last rural broadband experiment recipient was authorized in 2016. Because the Phase II auction will not be held until 2018, an applicant's technical and financial qualifications may have changed since the Commission last had the opportunity to review them.

41. *Discussion.* The Commission grants Broad Valley and Crocker Telecommunications' petition for reconsideration in part by permitting Phase II auction recipients to reduce the value of their letter of credit 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 Phase II auction recipient has met the 80 percent service milestone. However, the Commission also denies Broad Valley and Crocker Telecommunications' petition for reconsideration in part by

declining to make further reductions in the value of the letter of credit.

42. The Commission is persuaded by commenters that claim that the Commission's existing letter of credit rules may impose significant costs on Phase II auction recipients, particularly on small providers. The Commission finds that it is reasonable to provide some additional relief from these costs by permitting Phase II recipients to reduce further the amount of support that a letter of credit must cover for Phase II recipients offering the required service to 80 percent of the required number of locations in a state. Because the Commission requires recipients to submit the geocoded locations that count towards their service obligations in an online portal with built-in validations, USAC will be able to quickly verify that a recipient's 80 percent service milestone has been met, thereby enabling the recipient to reduce the value of its letter of credit. As the Commission acknowledged in the *Phase II Auction Order*, the Commission expects that the risk of default will lessen as a Phase II auction recipient makes progress towards meeting its Phase II auction service milestones because, as recipients offer service to more locations, they have the opportunity to offset more of their deployment costs with revenues.

43. The letter of credit requirement applies to all winning bidders, which simplifies the administration of the letter of credit rules. However, the exact costs of obtaining and maintaining a letter of credit will affect each potential bidder in the Phase II auction differently. The letter of credit costs will likely vary based on the amount of support that a Phase II auction winning bidder is authorized to receive, and the impact of those costs is likely to vary based on the size and creditworthiness of the Phase II recipient. Therefore, the Commission cannot reasonably predict the cost of the requirement for each potential bidder relative to the benefit to the public of protecting the funds from default. However, the costs for a letter of credit in the range of several percentage points, when applied to the sizable amounts that may be awarded to bidders here, could well be considerable, particularly for smaller bidders. The Commission concludes on reconsideration that, on balance, the benefits of relieving all Phase II auction recipients of some additional costs of maintaining a letter of credit later in the term of support, after the recipient has met significant deployment milestones, outweigh the risk that the Commission will not be able to recover an additional portion of the support already disbursed

if the recipient is unable to repay the Commission in the event of a default. Moreover, as the Commission discusses below, an applicant that is affected by high letter of credit costs may choose to build out its network more quickly so that it can close out its letter of credit sooner.

44. The Commission is not persuaded by claims that it should take further steps to reduce the cost of a letter of credit for Phase II auction recipients. While Broad Valley and Crocker Telecommunications present new proposals that would further reduce costs for recipients, the Commission is not convinced that these cost reductions would outweigh the associated risks to the public's funds. Under the Commission's rules, the Commission is able to recover the full amount of support that has been disbursed in prior years and support that will be disbursed in the coming year until the fourth year service milestone has been met, with only modest adjustments to the value of the letter of credit after a recipient has met the significant deployment milestones in the fourth and fifth years. In contrast, under Broad Valley's and Crocker Telecommunications' proposals, for the first three years of support, and prior to a recipient significantly deploying its network, the letter of credit would only cover support that had been disbursed in the previous year(s). Accordingly, the Commission would not be able to recover support that is disbursed in the year that a recipient defaults. Moreover, under Broad Valley's and Crocker Telecommunications' proposals, more drastic reductions would be made in the value of the letter of credit earlier in the support term. As a result, throughout the build-out period, the Commission would not be able to recover more than two years of disbursements if a recipient defaults.

45. Under these proposed approaches, the Commission would recover far less support if the recipient stops offering service and could not repay the Commission for the support associated with the locations that remain unserved. The Commission noted that the letter of credit will be drawn only in situations where the Phase II auction recipient does not repay the Commission for the support associated with its compliance gap, and that the recipients unable to repay the support are also more likely to be at risk for going into bankruptcy and ceasing operation of their networks. Without a letter of credit, the Commission has no security to protect itself against the risks of default. Accordingly, the Commission found that it was necessary to ensure it could

recover a significant amount of support in such situations. Broad Valley and Crocker Telecommunications do not address these concerns in their petitions.

46. The Commission expects that its decision to make a further modest reduction in the required value of the letter of credit for Phase II auction recipients that have substantially met their obligations will help address some of the cost concerns of potential bidders, including small entities and new entrants. But the Commission is not persuaded that it should address these concerns by further reducing the value of the letter of credit. The Commission acknowledges that each winning bidder will have to certify in its long-form application that it will have available funds for all projects costs that exceed Phase II support. The Commission also recognizes that small entities and new entrants, which often lack the resources of larger and established companies so that letter of credit costs have more of an impact on their budgets, may have to factor more of these letter of credit costs in their bids, potentially leading to less competitive bids. However, all participants in the Phase II auction will have to factor in the various costs of meeting the Phase II auction obligations when deciding whether to participate in the auction and how much to bid to ensure they can cover all of the costs. The Commission took a number of steps at the request of small entities to help lessen these costs, including expanding the number and types of banks eligible to issue letters of credit so that small entities can obtain letters of credit from banks with which they have existing partnerships. Although some entities may still find that participating in the auction is cost-prohibitive or that they are unable to place competitive bids, the Commission is not convinced that it should put its ability to recover a significant amount of support at risk if these same entities were to participate and later discover that they are unable to meet the Phase II auction obligations and unable to repay the Commission for their compliance gap.

47. The Commission is not persuaded that making large reductions in the required value of the letter of credit when a recipient meets its service milestones would encourage recipients to build out their networks faster. Instead, the Commission expects that the letter of credit requirements it adopts today may encourage more rapid deployment. By making only modest adjustments for the fourth- and fifth-year service milestones, and requiring a recipient to maintain a letter of credit only until it has been verified that the

recipient has met the final service milestone, the Commission expects that recipients will move faster to meet the final service milestone so that they no longer have to maintain a letter of credit. Indeed, smaller bidders, which might be most affected by letter of credit costs, are also more likely to have winning bids that can be completed in less than the full six-year deployment term. Moreover, if the recipient could instead significantly reduce the value of its letter of credit when it reaches earlier milestones, it may not have as much of an incentive to meet the final service milestone as quickly.

48. *Discussion.* The Commission declines to reconsider the formula it adopted for applying the weights for performance tier and latency combinations to give bids placed in Pennsylvania, in areas where Verizon declined Phase II support, an advantage over other bids by adding an additional negative weight for such bids. The Commission also declines to waive the Phase II auction rules to add such a weight to Pennsylvania bids.

49. Based on the record before the Commission, Pennsylvania has not persuaded the Commission that its proposal would more effectively balance its Phase II objectives in furtherance of its section 254 obligations and the public interest. The Commission balanced its interest in ensuring that consumers in declined states get access to broadband services with its objective of maximizing the finite Phase II budget by deciding to award support to cost-effective and higher service quality bids through the Phase II auction and then prioritize unserved areas in declined states in the Remote Areas Fund. As part of this balancing, the Commission determined that its adopted framework may encourage bidders to bid in declined areas and incentivize states to offer complementary support, so that declined states may still have a strong possibility of being served through the Phase II auction absent a preference. Bidders might be more interested in bidding in the declined areas in the state through the Phase II auction because those areas are lower cost. While the ranking of bids on a bid-to-reserve price basis, rather than on a dollar-per-location basis, may remove a potential bidding advantage for bidders in lower cost areas because those areas tend to have more locations, bidders may nonetheless be more likely to make a business case to serve such areas because they are lower cost. Bidders might also be more attracted to declined areas, and may have a higher likelihood of winning such areas, if a state such as Pennsylvania made available support

that bidders could leverage to reduce the amount of Connect America support they were requesting, therefore making their bids more cost-effective when compared to other bidders nationwide.

50. The Commission is not convinced by Pennsylvania and the National Association of Regulatory Utility Commissioners' (NARUC) claims that Pennsylvania's proposal would "provide significant cost effectiveness and financial synergies that may not be available absent modification." In fact, the Commission finds that adopting a negative weight could actually thwart its objectives of maximizing the Phase II auction budget and incentivizing states to contribute support. First, the negative weight would effectively double count the support that Pennsylvania offers to bidders because bidders would be able to reduce their bids by the amount of Pennsylvania support in addition to a negative weight applied to their Connect America bids in proportion to the amount of Pennsylvania support they receive. This could result in bidders asking for more Connect America support than they might if they could only use Pennsylvania support to reduce their bids (*i.e.*, without the additional negative weight). With the negative weight applied to a Connect America bid that already accounts for Pennsylvania support, they could potentially win even though their bid is not as cost-effective as other bidders. Second, the negative weight could result in Pennsylvania making less support available than it would without this factor because the weight would give Pennsylvania bidders at least some advantage over other bidders, regardless of the amount of support provided by Pennsylvania.

51. The Commission also is not persuaded that the negative weight that Pennsylvania proposes would permit the Commission to effectively leverage the funds that Pennsylvania does make available to meet its Phase II auction objectives. Pennsylvania's petition does not describe with specificity the amount of funding that will be made available, and how the Commission will have assurance that the funding Pennsylvania makes available will actually be provided to the applicant. And although Pennsylvania's proposal would allocate federal support through the Phase II auction rather than establishing a separate allocation mechanism for Pennsylvania, the results of the auction may be skewed in a way that conflicts with Phase II objectives if a preference is given to bidders based on state support that is allocated in a manner that is inconsistent with decisions the Commission made for the Phase II

auction. For example, Pennsylvania does not describe what specific restrictions will be placed on its funding to ensure it is used in areas that are eligible for the Phase II auction, how Pennsylvania will ensure that its funding is made available on a technology-neutral basis, and whether Pennsylvania will be using market-based mechanisms to allocate support. Without such information and safeguards, the Commission risks giving Pennsylvania bidders an advantage in the Phase II auction to the detriment of other cost-effective bidders even though state funding may ultimately not be made available, be spent to overbuild areas that already have broadband service, or be allocated in a manner that conflicts with the Commission's Phase II objectives. Unlike New York's NY Broadband Program, where the Commission found it could align its stated Phase II objectives with New York's existing broadband-funding program by adopting specific conditions to its waiver of the Phase II auction rules, here the Commission does not have enough specific information about the various programs Pennsylvania intends to use to allocate support in order to consider any appropriate conditions that might address its concerns.

52. In addition, the Commission is not convinced by Pennsylvania's claims that the negative weight would not "detract[]" from the Commission's goals of deploying broadband nationwide and would not "negatively impact[]" support that is available to other declined states. Due to the finite Phase II auction budget, there is a potential that not all interested bidders will ultimately be awarded support. Accordingly, any mechanism that would give Pennsylvania bidders an opportunity to make less cost-effective bids than other bidders in other states, but still win, has the potential to unreasonably skew support to the state at the expense of other areas that may be served more cost-effectively. Such a mechanism also could result in fewer consumers receiving broadband. For New York, the Commission knew the *maximum* amount of support that could be allocated through New York's program and it adopted certain measures that could stretch that support beyond the census blocks in New York that were eligible for the Phase II offer of model-based support. Because Pennsylvania has not provided specific information regarding how much support it intends to make available, and the value of the negative weight is based on how much state support a

Pennsylvania bidder will receive, the Commission is unable to assess the potential impact of the negative weight on its nationwide broadband deployment objectives.

53. The Commission also disagrees with Pennsylvania's claims that such a negative weight will not add complexity to the Phase II auction. First, a process must be created to determine and verify how much support each applicant has received or will receive from Pennsylvania state programs to determine how much negative weight to apply. Second, an auction system must be designed that uses a different formula for calculating bids in only the declined Pennsylvania areas. These steps add a significant layer of complexity to the auction and could potentially lead to a delay in commencing the Phase II auction.

54. The Commission acknowledges that Pennsylvania's proposed approach could reduce the possibility that Pennsylvania will have to wait "until the finalization of the Remote Areas Fund to make progress on its "intra-county digital divides," may make it more likely that an amount equivalent to the support that Verizon declined is allocated to Pennsylvania through the Phase II auction rather than through the Remote Areas Fund, and would give Pennsylvania recognition for its past and future contributions to broadband deployment. However, the benefits of adopting the approach Pennsylvania recommends are outweighed by the drawbacks the Commission has discussed, and it is not persuaded that altering the balance already achieved by the Commission through its existing Phase II auction and Remote Areas Fund framework would serve the public interest. Pennsylvania is one of a number of states, including other states where Phase II model-based support was declined, that have supported and continue to support broadband deployment. The Commission concludes the most effective way to accomplish its Phase II objectives and leverage these state programs is to have bidders factor any state support that they have received or will receive into their bids so that they can place cost-effective bids within the existing Phase II auction and Remote Areas Fund auction framework.

55. The Commission disagrees with the assumption that states are entitled to receive the amount of support that the price cap carrier declined in the respective states. The Commission has made several decisions that contradict this assumption, including comparing all bids nationwide, making extremely high-cost census blocks nationwide

eligible for the Phase II auction, adopting a limited budget, and deciding to score bids against each other nationwide on a ratio-to-reserve price basis. Instead, the Commission has acknowledged the importance of connecting a similar number of unserved consumers in the states that would have been reached had the Phase II offer been accepted and has committed to provide sufficient support to do so through both the Phase II auction and the Remote Areas Fund, to the extent possible.

56. The Commission also finds that Pennsylvania has not demonstrated good cause for waiving the Phase II auction scoring formula. First, Pennsylvania has not established special circumstances that warrant deviation from the Phase II auction scoring formula. When the Commission waived the Phase II auction program rules for New York, the Commission found that the state was uniquely situated to quickly and efficiently further its goal of broadband deployment. The state had committed a significant portion of its own support as matching support, and demonstrated that there were unique timing considerations given that it had already implemented its own broadband program and had aggressive service deadlines. Such conditions are not present here. As explained above, the Commission already intends to address Pennsylvania's status as a declined state through the existing framework it adopted for the Phase II auction and the Remote Areas Fund, and it is able to leverage any support that Pennsylvania makes available through that same framework. And while the Commission acknowledges and appreciates Pennsylvania's past efforts to encourage broadband deployment in the state, Pennsylvania has not demonstrated why its past state contributions warrant waiver of rules for the future allocation of federal support.

57. Second, even if the Commission were to find that Pennsylvania had established special circumstances, for the reasons explained above, Pennsylvania has not demonstrated the public interest would be served by waiving the Phase II auction formula to add a negative weight for bids placed in declined areas in the state. New York was able to demonstrate that waiver of the Phase II auction program rules would serve the public interest for a number of reasons including that it would result in accelerated broadband deployment, it would enable the Commission to use Phase II support efficiently and effectively by leveraging matching New York support in Connect

America Phase II-eligible areas and avoiding overbuilding areas served by New York's program, and support would be awarded in a technology-neutral manner using a market-based mechanism consistent with Phase II auction objectives. Such conditions are not present here. For the reasons the Commission already discussed, although Pennsylvania's proposed approach could result in more declined areas in Pennsylvania being served through the Phase II auction, Pennsylvania has not demonstrated that its requested modification would necessarily further the Commission's objectives of using the finite Phase II auction budget efficiently or fully explained how its request would result in a more effective federal-state partnership. Instead, the Commission concludes that the framework it has adopted for the Phase II auction and the Remote Areas Fund will more effectively balance all of these objectives, while still leading to widespread broadband deployment across Pennsylvania's high-cost areas with complementary state support. Thus, the Commission concludes it would not serve the public interest to grant Pennsylvania a waiver.

II. Procedural Matters

A. Paperwork Reduction Act Analysis

58. This 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, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought 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

59. The Commission will send a copy of this 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).

60. 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*, 76 FR 78384, December 16, 2011, the *April 2014 Connect America FNPRM*, and the *Phase II Auction FNPRM* (collectively, *Phase II FNPRMs*). The Commission sought written public comment on the proposals in the *Phase II FNPRMs* including comments on the IRFAs. The Commission included Final Regulatory Flexibility Analyses (FRFAs) in connection with the *December 2014 Connect America Order*, *Phase II Auction Order* and the *Phase II Auction FNPRM Order* (collectively, *Phase II Orders*). This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFAs in the *Phase II Orders* to reflect the actions taken in this Order on Reconsideration and conforms to the RFA.

61. *Need for, and Objectives of, this Order on Reconsideration.* This Order on Reconsideration considers the remaining issues raised by parties challenging the Commission's orders implementing the Phase II auction, in which service providers will compete to receive support of up to \$1.98 billion to offer voice and broadband service in unserved high-cost areas. Specifically, the Commission resolves petitions challenging the Commission's decisions on the following issues: How to compare bids of different performance levels, standalone voice requirements, Phase II auction deployment and eligibility, and state-specific bidding weights, among other matters. The Commission also adopts a process by which a support recipient that sufficiently demonstrates that it cannot identify enough actual locations on the ground to meet its Phase II obligations can have its total state location obligation adjusted and its support reduced on a pro rata basis. Additionally, the Commission modifies its letter of credit rules to provide some additional relief for Phase II auction recipients by reducing the costs of maintaining a letter of credit. By resolving these issues, the Commission moves a step closer to holding the Phase II auction and, in turn, to the goal of closing the digital divide for all Americans, including those in rural areas of our country.

62. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* 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 of the Small Business Administration (SBA), and to provide a detailed statement of any change made

to the rules as a result of those comments. The Chief Counsel did not file any comments in response to the relevant IRFAs.

63. *Description and Estimate of the Number of Small Entities to which the Rules Will Apply.* 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.

64. As noted above, FRFAs were incorporated into the *Phase II Orders*. In those analyses, the Commission described in detail the small entities that might be significantly affected. In this Order on Reconsideration, the Commission hereby incorporates into this Supplemental FRFA the descriptions and estimates of the number of small entities from the previous FRFAs in the *Phase II Orders*.

65. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The data, information and document collection required by the *Phase II Orders* as described in the previous FRFAs in this proceeding are hereby incorporated into this Supplemental FRFA. In this Order on Reconsideration, the Commission also adopts a process whereby a support recipient can demonstrate there are not enough actual locations on the ground to meet its state location requirement. The Order on Reconsideration directs the Bureau to implement the specific procedures for this filing.

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

67. The analysis of the Commission’s efforts to minimize the possible significant economic impact on small entities as described in the previous *Phase II Orders* FRFAs are hereby incorporated into this Supplemental FRFA. In addition, by making a modest reduction in the required value of the letter of credit for recipients that have substantially met their service obligations, the Commission is further reducing the costs of this requirement for such entities, including small entities. Moreover, the Commission adopted a process by which a support recipient can demonstrate that there are not enough actual locations on the ground to meet its state location requirement. If the support recipient makes a sufficient demonstration, it can have its state location obligation adjusted along with a pro rata reduction in support. This will particularly benefit entities that bid to serve smaller areas, which the Commission expects will include small entities. Such entities might not have otherwise been able to locate enough locations in the areas where the CAM did not overestimate the available locations in their bids to meet their obligation and would potentially have been subject to non-compliance measures. The Commission also expects that the Bureau will factor in the unique challenges faced by small entities in implementing this process.

68. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

III. Ordering Clauses

69. Accordingly, *it is ordered*, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 254, 303(r), 403, and 405, and §§ 1.1, 1.3, 1.427, and 1.429 of the Commission’s rules, 47 CFR 1.1, 1.3, 1.427, and 1.429, that this Order on Reconsideration *is adopted*, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**.

70. *It is further ordered* that part 54 of the Commission’s rules, 47 CFR part 54, *is amended* as set forth in the following, and such rule amendment *shall be effective* thirty (30) days after publication of the rule amendment in

the **Federal Register**, except to the extent they contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act. The rules that contain new or modified information collection requirements subject to PRA review *shall become effective* after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

71. *It is further ordered* that, pursuant to § 1.429 of the Commission’s rules, 47 CFR 1.429 the Petition for Clarification or Reconsideration filed by ADTRAN, Inc. on July 5, 2016 is *denied* to the extent described herein.

72. *It is further ordered* that, pursuant to § 1.429 of the Commission’s rules, 47 CFR 1.429 the Petition for Reconsideration filed by Broad Valley Micro Fiber Networks Inc. on July 20, 2016 is *granted in part, dismissed in part, and denied in part* to the extent described herein.

73. *It is further ordered* that, pursuant to § 1.429 of the Commission’s rules, 47 CFR 1.429 the Petition for Reconsideration filed by Crocker Telecommunications, LLC on July 18, 2016 is *granted in part, dismissed in part, and denied in part* to the extent described herein.

74. *It is further ordered* that, pursuant to § 1.429 of the Commission’s rules, 47 CFR 1.429 the Petition for Reconsideration filed by Hughes Network Systems, LLC on April 20, 2017 is *denied* to the extent described herein.

75. *It is further ordered* that, pursuant to § 1.429 of the Commission’s rules, 47 CFR 1.429 the Petition for Reconsideration filed by the National Rural Electric Cooperative Association and the Utilities Technology Council on July 21, 2016 is *dismissed in part and denied in part* to the extent described herein.

76. *It is further ordered* that, pursuant to §§ 1.3 and 1.429 of the Commission’s rules, 47 CFR 1.3, 1.429 the Petition for Reconsideration, Modification, or Waiver filed by the Pennsylvania Public Utility Commission and the Pennsylvania Department of Community and Economic Development on April 19, 2017 is *denied* to the extent described herein.

77. *It is further ordered* that, pursuant to § 1.429 of the Commission’s rules, 47 CFR 1.429 the Petition for Reconsideration filed by Southern Tier Wireless, Inc. on July 20, 2016 is *granted in part, dismissed in part, and denied in part* to the extent described herein.

78. *It is further ordered* that, pursuant to § 1.429 of the Commission's rules, 47 CFR 1.429 the Petition for Reconsideration filed by Verizon on August 8, 2016 is *denied in part* to the extent described herein.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

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 § 54.315 by revising the section heading and paragraph (c)(1)(ii) to read as follows:

§ 54.315 Application process for Connect America Fund phase II support distributed through competitive bidding.

* * * * *

(c) * * *

(1) * * *

(ii) Once the recipient has met its 80 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 60 percent of the total support that has been disbursed plus the amount that will be disbursed in the coming year.

* * * * *

[FR Doc. 2018-07509 Filed 4-12-18; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202 and 239

[Docket DARS-2018-0013]

RIN 0750-AJ39

Defense Federal Acquisition Regulation Supplement: Definition of "Information Technology" (DFARS Case 2017-D033)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to relocate the definition of information technology within the DFARS.

DATES: Effective April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Johnson, telephone 571-372-6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is relocating the definition of "information technology" from DFARS 202.101 to DFARS 239.7301. This specific definition of "information technology" was established in section 806, entitled "Requirements for Information Relating to Supply Chain Risk," of the National Defense Authorization Act for Fiscal Year (FY) 2011 (Pub. L. 111-383). Section 806(b)(6) used the definition of "information technology" in 40 U.S.C. 11101(6) to define a "covered item of supply". On October 30, 2015, DoD published in the **Federal Register** (80 FR 67244) the final rule for DFARS case 2012-D050, Requirements Relating to Supply Chain Risk, incorporating this "information technology" definition into DFARS 202.101, Definitions, as opposed to DFARS 239.7301, Definitions. This rule will align this specific definition of "information technology" with DFARS 239.73, Requirements for Information Relating to Supply Chain Risk, as originally intended in Public Law 111-383.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is the Office of Federal Procurement Policy statute (codified at Title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1)

requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because the rule merely relocates existing text within the DFARS. This rule affects only the internal operating procedures of the Government.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new provisions or clauses or impact existing provisions or clauses. There are no reporting, recordkeeping, or other compliance requirements in this rule.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility