FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 64

[WC Docket Nos. 10–90, 14–58, 07–135, CC Docket No. 01–92; FCC 18–29]

Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing a Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes the next step in closing the digital divide through actions and proposals designed to stimulate broadband deployment in rural areas. To reach the Commission's objective, it must continue to reform its existing high-cost universal support programs. Building on earlier efforts to modernize high-cost universal support, it seeks to offer greater certainty and predictability to rate-of-return carriers and create incentives to bring broadband to the areas that need it the most.

DATES: Effective May 31, 2018, except for §§ 54.313(f)(4) and 54.1305(j) which contains information collection requirements that have not been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date of those rules awaiting OMB approval.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and Third Order on Reconsideration in WC Docket Nos. 10–90, 14–58, 07–135, CC Docket No. 01–92; FCC 18–29, adopted on March 14, 2018 and released on March 23, 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/db0323/FCC-18-29A1.pdf.* The Notice of Proposed Rulemaking (NPRM) that was adopted concurrently with the Report and Order and Third Order on Reconsideration was published in the **Federal Register** on April 25, 2018.

I. Introduction

1. Universal service can—and must—play a critical role in helping to bridge the digital divide to ensure that rural America is not left behind as broadband services are deployed. The directive articulated by the Commission in 2011 remains as true today as it did then: ''The universal service challenge of our time is to ensure that all Americans are served by networks that support high-speed internet access.'' Though the Commission has made progress for rural Americans living in areas served by our nation's largest telecommunications companies, the rules governing smaller, community-based providers—rate-of-return carriers—appear to make it more difficult for these providers to serve rural America. As a result, approximately 11 percent of the housing units in areas served by rate-of-return carriers lack access to 10 Mbps downstream/1 Mbps upstream (10/1 Mbps) terrestrial fixed broadband service while 34 percent lack access to 25 Mbps downstream/3 Mbps upstream (25/3 Mbps). It is time to close this gap and ensure that all of those living in rural America have the high-speed broadband they need to participate fully in the digital economy.

2. By improving access to modern communications services, the Commission can help provide individuals living in rural America with the same opportunities that those in urban areas enjoy. Broadband access fosters employment and educational opportunities, stimulates innovations in health care and telemedicine and promotes connectivity among family and communities. And as important as these benefits are in America's cities, they can be even more important in America's more remote small towns, rural, and insular areas. Rural Americans deserve to reap the benefits of the internet and participate in the 21st century society—not run the risk of falling yet further behind.

3. In the Report and Order and Third Order on Reconsideration, the Commission takes the next step in closing the digital divide through actions designed to stimulate broadband deployment in rural areas. To reach its objective, the Commission must continue to reform its existing high-cost universal support programs. Building on earlier efforts to modernize high-cost universal service support, the Commission seeks to offer greater certainty and predictability to rate-of-return carriers and create incentives to bring broadband to the areas that need it most.

4. Specifically, in this Report and Order the Commission takes several steps to increase broadband deployment in rural areas. First, to maximize available funding for broadband networks, the Commission codifies existing rules that protect the high-cost universal service support program from waste, fraud, and abuse by explicitly prohibiting the use of federal high-cost support for expenses that are not used for the provision, maintenance, and upgrading of facilities and services for which the high-cost support is intended. The Commission also adopts additional compliance obligations that will assist us in determining whether high-cost recipients comply with the requirement to spend high-cost funds only on eligible expenses. Additionally, for rate-of-return carriers, the Commission adopts a presumption against recovery through interstate rates for specific types of expenses not used and useful in the ordinary course and identify other expenses that the Commission presumes are not used and useful unless customary for similarly situated companies. Second, in exchange for increased broadband deployment obligations, the Commission offers additional high-cost support to those rate-of-return carriers that previously accepted model-based support. Next, to ensure stability in the contribution factor pending ongoing implementation of various high-cost reforms, the Commission directs the Universal Service Administrative Company (USAC) to continue forecasting a uniform quarterly amount of high-cost demand pending further Commission action.

5. In the Third Order on Reconsideration, the Commission resolves or clarifies a number of issues raised in several petitions for reconsideration of the Commission's 2016 *Rate-of-Return Reform Order,* 81 FR 24282, April 25, 2016. Taken together, the Commission expects that these actions will provide greater stability and certainty in the high-cost program and therefore spur additional broadband deployment to the areas that need it most.

II. Report and Order

6. In this Report and Order, the Commission adopts reforms to ensure that high-cost universal service support provided to eligible telecommunications carriers (ETCs) is used only for the provision, maintenance, and upgrading of facilities and services for which the high-cost support is intended pursuant to section 254(e) of the Act. The Commission also adopts reforms to ensure that the investments and

expenses that rate-of-return carriers recover through interstate rates are reasonable pursuant to section 201(b) of the Act. The Commission's findings here do not prevent rate-of-return carriers from incurring any particular investment or expense, but simply clarify the extent to which investments and expenses may be recovered through federal high-cost support and interstate rates. The rules the Commission adopts are prospective but the underlying obligations are preexisting and many of the rules the Commission adopts codify existing precedent. The Commission's rules and the used and useful standard have long governed ETCs and rate-of-return carriers' behavior. Nothing the Commission does in this Report and Order is intended to undermine its precedent.

7. *Discussion.*—Recent events by carriers involving large-scale abuses in the recovery of expenses that are unrelated to the provision of a universal service supported services give us cause to provide more specific rules for compliance with section 254(e). The Commission has a duty to the public to protect against waste, fraud, and abuse and ensure ETCs utilize finite universal service funds most effectively for their intended purpose. Unrelated expenses detract from universal service goals. The Commission finds that section 254(e) provides that carriers can recover those expenses from high-cost support to the extent those expenses are used only for, directly related to, and incurred for the sole purpose of, the provision, maintenance, and upgrading of facilities and services for which the support is intended, *i.e.,* supported voice and broadband. The use by Congress of the word ''only'' to modify the description of the uses of universal service support indicates that such support must be used exclusively for providing, maintaining and upgrading of facilities and services, so that support is not used for purposes other than those ''for which the support is intended.'' To the extent an expense is incurred in part for a recoverable business use and in part for a non-recoverable use, carriers may only recover from high-cost support that portion of expenses incurred for the provision, maintenance, and upgrading of facilities for which support is intended.

8. Because the Commission establishes the contours of universal service programs under section 254, the statute vests it with the authority to determine the scope of expenditures ''for which support is intended.'' Having reviewed the record, the Commission now codifies a simple, clear, and carefully defined, non-exclusive, list of expense categories that are precluded from recovery via the high-cost programs of the Fund because the Commission finds it is not used ''for the provision, maintenance and upgrading of facilities and services for which the support is intended.'' In codifying a list of ineligible expenses, the Commission incorporates, with some modifications, expense categories the Commission previously identified as ineligible for high-cost support in the *High-Cost Oct. 19, 2015 Public Notice* and in the *Rate-of-Return Reform Further Notice of Proposed Rulemaking (FNPRM),* 81 FR 21511, April 12, 2016, and the Commission provides guidance going forward on the eligibility of expenses on which the Commission sought comment in the *Rate-of-Return Reform FNPRM.* The Commission recognizes that its approach differs from that proposed by the rural associations; however, the Commission finds that its approach is more consistent with the statutory requirements that high-cost support be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. To the extent the Commission adopts new prohibitions on expenses that may be recovered from high-cost support, the Commission's rules apply on a prospective basis.

9. The Commission organizes the types of goods and services as ineligible for support into three broad expense categories—personal expenses, expenses unrelated to operations, and corporate luxury goods—and within each broad category specify certain types of goods and services not eligible for support. The Commission cautions that this list is based on the record before us. As specified in the Commission's revised rules, this list is not a comprehensive list of expenses ineligible for high-cost support. This list provides a codified bright-line prohibition on seeking high-cost support for some types of expenses. However, the Commission reminds carriers that it is also prohibited from seeking support for *any* expenses that are not used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The Commission intends to remain vigilant in protecting the Fund from waste, fraud, and abuse.

10. *Personal Expenses.*—Initially, the Commission codifies the existing prohibition on recovery from the high-cost program for personal expenses of employees, board members, family members of employees and board members, contractors, or any other individuals affiliated with the ETC, including but not limited to personal expenses for personal travel, personal vehicles, housing, such as rent, mortgages, or housing allowances, childcare, employee gifts, and entertainment-related expenses including food and beverage, regardless of whether such expenses are paid directly by the individual or indirectly by the carrier in the form of allowances or gifts. Personal expenses are clearly not used for the provision of supported services and thus may not be recovered through high-cost support. Furthermore, the Commission cautions recipients of high-cost support that recovering these types of expenses from high-cost support may constitute outright fraud, waste, and abuse on the Fund, subjecting employees, executives, and board members to personal civil and criminal liability.

11. The Commission already explicitly excludes personal travel expenses from high-cost support recovery. Personal travel expenses include airfare, car rentals, gas, lodging, and meals for personal use. Commenters overwhelmingly agree that personal travel is unrelated to the provision of a supported service and may not be recovered through high-cost support. In response to concerns raised by commenters, the Commission finds that, in contrast to personal travel expenses, reasonable work-related travel expenses are recoverable to the extent they are used for the provision, maintenance, and upgrading of facilities and services for which high-cost support is intended. For example, if an ETC's technician travels to repair a supported facility and such travel requires overnight accommodation, the ETC may recover that employee's reasonable hotel costs.

12. The Commission already explicitly excludes expenses for personal vehicles and housing for personal use from high-cost support recovery. Commenters supported the continued exclusion. For example, an ETC is prohibited from recovering from high-cost support the purchase of a vehicle and home for personal use. To the extent a vehicle is used for both legitimate business purposes and non-business purposes, an ETC may only recover from high-cost support that portion of expenses incurred in connection with the provision, maintenance, and upgrading of supported services and facilities for which high-cost support is intended.

13. Subject to the very narrow exception the Commission describes below, the prohibition concerning housing for personal use precludes ETCs from using high-cost support to provide housing allowances for employees. Some commenters claim that housing allowances are necessary to

attract qualified employees and may be essential if affordable housing is not available in rural areas. Another commenter asserts that housing allowances are not a common operating expenditure. Regardless of whether such allowances are beneficial or commonly provided, they are not generally used for the provision, maintenance, and upgrading of facilities and services. Expenses for employee housing allowances are no different than other personal expenses for housing, which are disallowed, and the Commission codifies this prohibition.

14. However, the Commission recognizes that it may be appropriate to seek high-cost support to recover the cost of providing temporary or seasonal lodging for employees providing service in remote areas with rugged terrain and extreme weather conditions where no other lodging is available. The Commission views this situation as analogous to *per diem* travel expenses for lodging, which can be a recoverable operating expense when such travel meets the statutory test for recoverable expenses. Reasonable temporary or seasonal lodging may only be recovered if used for the provision, maintenance, and upgrading of services and facilities for which high-cost support is intended. Housing allowances outside of this very narrow exception are prohibited and are excluded from high-cost support.

15. Childcare expenses are not recoverable from high-cost support. Commenters argue that childcare is important to ''attract and retain qualified employees.'' Another commenter asserts that the ''vast majority'' of rural incumbent LECs are ''too small to afford childcare'' which they do not provide. Although the provision of childcare may be desirable and beneficial, such expenses are not used only for the provision, maintenance, and upgrading of supported facilities and services. Accordingly, such expenses are excluded from high-cost support.

16. It is undisputed that gifts to employees may not be recovered through high-cost support. Gifts to employees are unrelated to the provision, maintenance, and upgrading of facilities and services for which high-cost support is intended, and therefore are excluded from high-cost support.

17. Entertainment and food and beverage expenses, including but not limited to expenses incurred for meals to celebrate personal events, such as weddings, births, or retirements, are explicitly not recoverable through high-cost support. Some commenters agree that entertainment expenses in particular have not been recoverable in the past. Other commenters disagree, claiming that recovering entertainment expenses incurred for ''client or vendor meetings, or attendance at board meetings'' is a ''common and accepted practice.'' Some commenters maintain that they should be able to include food and beverage and entertainment expenses related to annual meetings, employee recognition, parties or picnics because such events build morale and improve service quality. The question is whether these expenses are used only for the provision, maintenance, and upgrading of facilities and services for which high-cost support is intended—not whether they are beneficial, desirable or common practice. Because these expenses do not meet the Commission's interpretation of what the statutory standard requires, the Commission excludes them from high-cost support. As noted above, the Commission acknowledges that meals provided during business-related travel may qualify as a reasonable *per diem* travel expense recoverable from high-cost support consistent with the Commission's interpretation of section 254(e).

18. Finally, some commenters misread § 32.6720(j) of the Commission's rules as permitting universal service recovery for '''food services (*e.g.,* cafeterias, lunch rooms and vending facilities).''' While cafeterias and dining facilities should be recorded in corporate operations accounts (Account 6720), it does not follow that these expenses can be recovered from high-cost support. Commenters argue that such costs are ''insignificant and immaterial'' and ''offset by increased efficiencies.'' At the same time, some commenters acknowledge that the vast majority of rate-of-return carriers do not provide cafeterias and dining facilities. Most rate-of-return carriers are able to serve their customers without having cafeterias and dining facilities for their employees precisely because these expenses are not solely related to the provision, maintenance, and upgrading of facilities and services for which the support is intended. Thus, consistent with the Commission's interpretation of section 254(e), ETCs may not recover from high-cost support expenses for food services and dining facilities, including cafeterias, lunch rooms, and vending facilities.

19. *Expenses Unrelated To Operations.*—The Commission next codifies the existing prohibitions on recovering support for expenses unrelated to operations—including political contributions, charitable donations, scholarships, membership fees and dues in clubs and organizations, sponsorships of conferences or community events, and penalties or fines for statutory or regulatory violations, penalties or fees for late payments on debt, loans, or other payments—from high-cost support. ETCs calculate high-cost universal support, including high cost loop support (HCLS) and Connect America Fund Broadband Loop Support (CAF BLS) (formerly interstate common line support (ICLS)), based on their eligible capital investment and operating expenses pursuant to § 54.303. Expenses unrelated to operations, however, are not currently included in these high-cost support calculations. Instead, under the Commission's current rules, ''nonoperating expenses''—including political contributions, contributions for charitable, social, or community welfare purposes, membership fees and dues in social, service and recreational or athletic clubs and organizations, and penalties and fines on account of violations of statutes—are recorded in Account 7300, presumed excluded from the costs of service in setting rates, and not included in high-cost support calculations. Expenses unrelated to operations have historically not been recoverable from high-cost support because by definition these expenses are not operational in nature and are ancillary to core business objectives. Expenses must fall within the scope of the statutory requirement that support be used ''only for the provision, maintenance, and upgrading of facilities and services for which support is intended.'' Below the Commission finds that various expenses unrelated to operations, including various Account 7300 nonoperating expenses, do not satisfy this standard and, thus, may not be recovered from high-cost support.

20. Political contributions are expenses unrelated to operations that may not be recovered from high-cost support. The record supports the continued exclusion of political contributions from recovery through high-cost support. No commenter opposed this. Political contributions are not used only for the provision, maintenance, and upgrading of facilities and services for which support is intended. ETCs are still, of course, free to make political contributions to the extent permitted by other laws, but they cannot recover those expenses from high-cost support.

21. In a related vein, the National Exchange Carrier Association (NECA) sought clarification on the extent to which the costs of '''[m]aintaining relations with government, regulators,

other companies and the general public' such as 'performing public relations and non-product-related corporate image advertising activities''' (Account 6720) should be included in universal service data submissions. At the outset, no commenter has provided any persuasive basis for determining how non-product-related corporate image advertising expenses are used for the provision, maintenance, and upgrading of supported services and facilities. Accordingly, corporate image advertising expenses may not be recovered from high-cost support. By contrast, expenses incurred to meet state, local, or federal regulatory requirements or obligations to provide supported services including preparing tariff and service cost filings and obtaining plant construction permits are allowable under section 254(e) to the extent that they are a precondition to providing supported services. Additionally, contracting expenses (excluding sales contracts) such as negotiating pole attachment rights-of-way and interconnection agreements that are a precondition to providing supported service are recoverable from the high-cost program consistent with the Act.

22. Charitable donations and scholarships are expenses unrelated to operations that may not be recovered from high-cost support. The Commission recognizes the benefits charitable donations provide to the community, as raised by multiple commenters. However, charitable donations are unrelated to the provision, maintenance, and upgrading of facilities and services for which the high-cost support is intended.

23. Membership fees and dues in clubs and organizations, including social, service, and recreational or athletic clubs and organizations, as well as trade associations and organizations that provide professional or trade certifications such as state bar associations, are expenses unrelated to operations excluded from high-cost support. Commenters agree that these expenses related to social and recreational clubs and organizations are already excluded from high-cost support recovery. But those same and other commenters also argue that membership fees and dues in trade associations, chambers of commerce, state bar associations and professional certifications for specialized employees should be recoverable. The Commission recognizes the educational and training benefits that trade associations provide and that membership in chambers of commerce may help stimulate business. However, as other commenters acknowledge, a function of many of these organizations is advocacy on behalf of their members for the purpose of influencing public policy which is not used for the provision, maintenance, and upgrading of facilities and services for which support is intended. Just as ETCs may not recover lobbying expenses under the Commission's rules, similarly, they may not recover membership fees in organizations that engage in lobbying. Further, professional affiliations or certifications such as state bar associations, accounting associations, or other professional groups may facilitate general corporate functions but are not used only for the provision of supported facilities and services.

24. No commenter opposed the prohibition on using high-cost support to sponsor conferences or community events. As the Commission has explained, sponsorships may be related to community interests but are not used for the provision, maintenance, and upgrading of facilities and services for which support is intended. The Commission continues to recognize that sponsorships of conferences or community events may benefit the community and the ETC, but such expenses do not satisfy the statutory standard for recovery.

25. Costs incurred as penalties or fines on account of violations of statutes, including judgments and payments in settlement of civil and criminal suits alleging antitrust violations, are excluded from high-cost support. Such expenses are not used for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Commenters did not take issue with this exclusion.

26. Similar to penalties or fines for statutory or regulatory violations, costs incurred as penalties or fees for any late payments on debts, loans, or other payments are not used for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Indeed, commenters recognize that such expenses ''have typically not been recoverable in the past.'' Penalties or fees for late payments on debt, loans, or other payments arguably are costs of doing business and mistakes will happen, but the costs of these mistakes and inefficiencies should not be borne by universal service contributors.

27. *Corporate Luxury Goods.*—The Commission next codifies the prohibition on recovery from the high-cost program of expenses for corporate luxury goods, including artwork and other objects which possess aesthetic value, and corporate aircraft, watercraft, and other vehicles, with limited exception discussed below and codify the existing prohibitions on using high-cost support for tangible luxury goods, including consumer electronics for personal use, and tangible property used for entertainment purposes. None of these goods is used only for the provision, maintenance, and upgrading of facilities and services for which high-cost support is intended. Likewise, kitchen appliances are unrecoverable with a limited exception noted below.

28. No commenter argues that artwork is used only for the provision, maintenance, or upgrading of facilities; instead commenters claim that artwork creates a pleasant work environment. While this may be the case, it is irrelevant to the question of whether such expenses meet the statutory standard. Because artwork is not used for the provision, maintenance, and upgrading of supported facilities and services, expenses for artwork must be excluded from high-cost support.

29. Corporate aircraft, boats, and other off-road vehicles to the extent used by executives or board members are more akin to luxuries for personal benefit and not used for provision, maintenance, and upgrading of supported facilities and services. The Commission's proposed rule in the *Rate-of-Return Reform FNPRM* did make allowances ''insofar as necessary to access inhabited portions of the study area not reachable by motor vehicles traveling on roads.'' Commenters supported this exception and opposed a blanket exclusion of aircraft, watercraft, and the like as contrary to the Commission's objective of reducing waste and promoting efficiency. The Commission is persuaded that the use of aircraft and off-road vehicles often can be the ''fastest, safest, most reliable and most efficient and least expensive way for technicians to reach remote areas to install, inspect or repair facilities.'' The Commission encourages such efficiencies because they reduce burdens on the Fund and thus reduce universal service fees for subscribers. The Commission cautions ETCs that they may only recover from high-cost support that portion of aircraft, watercraft, and other vehicle expenses used for the provision, maintenance, and upgrading of supported services and facilities, not expenses used for the benefit of corporate executives and board members. Thus, the Commission will closely scrutinize these expenses, and ETCs seeking to recover these costs from high-cost support must retain records of their use in sufficient detail to justify recovery.

30. Consumer electronics for personal use may not be recovered from high-cost support. Consumer electronics such as video games, televisions, and radios designed, marketed, and sold for everyday personal use by consumers, not business use, are analogous to a personal expense or an entertainment expense, both of which are not recoverable from high-cost support. The Commission acknowledges that consumer electronic devices such as laptops, monitors, smart phones, or other hand-held devices may serve valid business purposes. Accordingly, ETCs may only seek high-cost support for that portion of the expense associated with work use, consistent with the Commission's narrow interpretation of section 254(e). The Commission emphasizes that consumer electronics for *personal use* are never used for the provision, maintenance, and upgrading of facilities and services for which high-cost support is intended.

31. Tangible property used for entertainment purposes (*e.g.,* pool tables) may not be recovered from high-cost support. Commenters argue that property used for entertainment purposes builds morale and improves overall service quality. But, these expenses have no direct nexus to the provision, maintenance, or upgrading of facilities or supported services.

32. Except in narrow circumstances referenced above, kitchen appliances may not be recovered from high-cost support except to the extent provided as part of temporary or seasonal lodging for employees providing supported service in rugged, remote areas as explained above. Commenters argued that kitchen appliances are useful for employees in ''fulfillment of their company obligations in rural areas'' and ''relatively inexpensive and last for years.'' The Commission recognizes that kitchen appliances may be a good investment for rural providers, but ultimately the standard is whether the item is used only for the ''provision, maintenance, and upgrading of facilities and services for which the support is intended,'' and kitchen appliances do not meet this standard, except in the very narrow circumstance described above.

33. *Compliance.*—Based on the record received in response to the *Rate-of-Return Reform FNPRM,* the Commission adopts measures to ensure carrier compliance with the permitted expense rules adopted above for universal service support. Specifically, the Commission requires rate-of-return ETCs to identify on their annual FCC Form 481 (Carrier Annual Reporting Data Collection Form) their cost consultants and cost consulting firm, or other third party, if any, used to prepare cost studies, or other calculations used to calculate high-cost support for their submission. Disclosure of an ETC's cost consultants is a low-burden measure that will help the Commission identify waste, fraud, and abuse during audits. As at least one commenter explained, it is common business practice for rate-of-return carriers to hire cost consultants to prepare their financial and operations data disclosures used to justify high-cost support. The Commission agrees with commenters that discrepancies in permitted expenses disclosed on Form 481 prepared by a cost consultant may flow through to other carriers' represented by the same cost consultant. Identifying a carrier's cost consultants and cost consulting firms will help NECA, the Commission, and USAC identify and rectify patterns of noncompliance, and potentially fraud, during audits. This disclosure will ultimately help preserve the integrity of the Fund by ensuring that carriers only recover permitted expenses.

34. The Commission declines at this time, however, to adopt a number of other compliance measures proposed in the *Rate-of-Return Reform FNPRM.* Specifically, the Commission declines to require a new certification from carriers attesting that they have not included any prohibited expenses in their cost submissions used to calculate high-cost support. Carriers' corporate officers are already required to certify that they are compliant with the Commission's rules. Carriers are also required to certify to the accuracy of their cost studies used to calculate HCLS pursuant to § 69.601(c) and CAF BLS pursuant to § 54.903(a)(3) and (4). The Commission further requires similar certifications for filings with NECA, Tariff Review Plans (TRPs), tariff filings for carriers that elect to receive CAF support, cost studies used to calculate high-cost support submitted to NECA and USAC and high-cost support. For example, willful false statements in data submissions to NECA or USAC are punishable by fine or imprisonment pursuant to U.S. Code, Title 18, Section 1001. Requiring carriers to submit an additional certification would not further encourage compliance but would be needlessly duplicative and burdensome. To the extent a carrier's corporate officer certifies compliance with the Commission's rules, such certification would cover compliance with the eligible expense rules, as amended.

35. The Commission also does not believe it is necessary to alter NECA's role to enforce the rules adopted herein. NECA is an association of LECs established in 1984, at the direction of the Commission, to administer interstate access tariffs for LECs that do not file separate tariffs and to collect and distribute access charge revenues for those companies. NECA administers the process by which average schedule companies submit sampled data and cost companies submit cost studies that are ultimately used to calculate revenue requirements, rate base, and universal service disbursements. Carriers are required to submit certain cost data necessary to calculate high-cost support payments to NECA, certifying that they are accurate to the best of their knowledge, and NECA in turn analyzes that cost data, performs certain calculations and submits that information to USAC for use in determining support payments for eligible carriers. NECA has a responsibility to take reasonable precautions to ensure that the data it uses in preparing interstate access tariff filings and distributing interstate revenue comply with the Commission's rules. The Commission believes that NECA has sufficient authority and operational capability to provide oversight of its members with respect to high-cost support. Rather than expel carriers from the NECA pools as some commenters propose, the Commission encourages NECA to continue its oversight role, which it must do in compliance with the Commission's rules, and subject to Commission review. The Commission directs NECA to work with its members to develop processes to ensure compliance with the eligible expenses rules adopted herein to ensure that universal service support is being used only for its intended purposes. The Commission reminds NECA members that it is their responsibility to ensure that the expenses submitted to and used by NECA to calculate high-cost support are accurate and consistent with the Commission's rules. The Commission has authority to revoke section 214 authorizations based on misconduct, a finding that disqualifies that carrier from participation in the NECA pools.

36. Finally, the Commission declines to adopt a ''safe harbor'' standard proposed by commenters that would insulate carriers from audit and enforcement liability if a carrier includes prohibited expenses but the ''overall impact'' is ''immaterial.'' The only way to determine if excluded expense are immaterial would be to conduct an audit. Moreover, the Commission believes that such an approach would not be in the public

interest because it would not encourage strict compliance with the existing and revised permitted expense rules.

37. The Commission reminds carriers that failure to keep Commission-prescribed accounts, records, and memoranda on the books is a violation of section 220(d) of the Act and may subject carriers to forfeiture liability in the amount of $6,000 for each day of the continuance of each such offense. Carriers' employees, executives, and board members may also be subject to personal liability for violations. Carriers' employees, executives, and board members that willfully make any false entry in Commission-prescribed accounts may be subject them to monetary penalties for violations of section 220(e) of the Act will be deemed guilty of a misdemeanor, and shall be subject, upon conviction, to a fine of not less than $1,000 nor more than $5,000 or imprisonment for a term of not less than one year nor more than three years, or both such fine and imprisonment. Furthermore, persons making willful false statements in data submissions to NECA, USAC, or the Commission can be punished by fine or imprisonment under the provisions Title 18, Section 1001, of the U.S. Code.

38. Section 201(b) of the Communications Act requires that only reasonable investments and expenses be recovered through regulated interstate rates—a requirement the Commission has historically enforced through the ''used and useful'' standard. The Commission amends its rules to provide guidance to legacy rate-of-return LECs regarding investments and expenses that are presumed not used and useful (and thus unreasonable under section 201) and thus, as a general matter, may not be recovered through interstate rates. The Commission divides such investments and expenses into two broad categories: Those that the Commission does not expect would be used and useful in the ordinary course and those the Commission would not expect to be used and useful unless customary for similarly situated companies. The Commission notes that the second category is intended to capture types of expenses that may be customary among small companies (and based on their widespread usage the Commission may consider more likely to be used and useful) but are subject to abuse. For example, a small company may reasonably host a company picnic (to boost the morale of employees operating the interstate telecommunications network), which would be customary for small companies, but might not reasonably host an expensive banquet for employees at an out-of-state venue.

39. The Commission makes clear that its actions are not intended to alter the scope of the used and useful standard—instead only to provide prospective guidance and a default presumption in certain cases. Legacy rate-of-return LECs are free to attempt to rebut the presumption by showing particular factual circumstances justifying recovery of these investments and expenses through interstate rates but cannot recover for such costs absent a particularized showing. To the extent that these investments and expenses are recovered through interstate rates, in the event of an audit or other investigation, the carrier bears the burden of demonstrating that such investments and expenses are used and useful despite the presumption that they are not.

40. *Discussion.*—Commenters agree that several of the expenses and investments discussed in the *Rate-of-Return Reform FNPRM* are already excluded from ratemaking, while others argue they should be excluded prospectively. Based on the record, below the Commission discusses the specific categories of investments and expenses that it presumes are not used and useful in the ordinary course and those not used and useful unless customary for similarly situated companies.

41. *Personal Expenses.*—Personal expenses including vehicles for personal use, and personal travel (such as transportation, lodging and meals) are presumed excluded from recovery through interstate rates. There is broad consensus in the record that personal expenses are not used and useful for the provision of interstate telecommunications services and therefore cannot, and should not, be recovered through interstate rates. Personal expenses are for the benefit of an individual affiliated with the rate-of-return LEC without an articulable business-related purpose and are not necessary or incurred to provide regulated service. Personal expenses are presumed not used and useful in the ordinary course.

42. To the extent a rate-of-return LEC provides its employees, executives or board members, or any other individuals affiliated with the LEC with additional benefits, such as gifts, housing allowances, and childcare that are not part of taxable compensation, the Commission finds that these expenses are presumed not used and useful unless customary for similarly situated companies. As noted by commenters, cash or in-kind bonuses, housing allowances, or childcare may qualify as part of a taxable compensation package—and are subject to a presumption-free review under the used and useful standard. The Commission agrees with commenters that temporary housing offered as part of businesses-related travel lodging or a temporary work assignment may qualify as legitimate business expenses, not a personal expense, and do not warrant the presumption.

43. Personal food and beverage expenses are presumed not used and useful whereas food and beverage expenses for work and work-related travel as well as costs of operating cafeterias and dining facilities are presumed not used and useful unless customary for similarly situated companies. The Commission clarifies that food and beverages purchased during business-related travel are not personal expenses. As noted by commenters, reasonable *per diem* travel expenses, including food and beverages, are commonly-accepted business expenses. Similarly, food and beverage expenses incurred as part of work-related entertainment such as company parties or picnics are likewise presumed not used and useful unless customary. The Commission's existing rules allow rate-of-return LECs to include expenses incurred operating cafeterias and dining facilities in general and administrative accounts used to calculate interstate rates. At the same time, ratepayers should not be forced to pay for excessive or imprudent expenses unrelated to business purposes or unnecessary to the provision of regulated services.

44. Although commenters disagree on whether entertainment expenses should be recoverable, the Commission finds that entertainment expenses are presumed not used and useful unless customary for similarly situated companies. Entertainment expenses, such as musical entertainment or food and beverage expenses incurred at company parties or picnics, are a common business practice to improve employee morale but are subject to potential abuse.

45. *Expenses Unrelated to Operations.*—The Commission clarifies that certain expenses unrelated to operations—including political contributions, membership fees and dues in social, service and recreational or athletic clubs and organizations, penalties or fines for statutory or regulatory violations, and penalties or fees for late payments on debt, loans, or other payments—are presumed not used and useful. As several commenters note, most of these nonoperating expenses are

currently presumed to be excluded from the cost of service in setting rates. The record supports the continued presumption that these expenses are excluded from recovery through interstate rates.

46. Although penalties or fees for late payments on debt, loans, or other payments have typically not been recovered through ratemaking, as noted by commenters, the Commission's rules do not contain an explicit prohibition. The Commission fails to see how these expenses can be distinguished from penalties or fines for statutory or regulatory violations which are currently presumed excluded from ratemaking. All of these expenses are imprudent—incurred when a carrier fails to adequately manage its business and operations. Ratepayers should not pay for expenses incurred due to irresponsible business practices. Accordingly, the Commission finds that penalties or fees for any late payments on debt, loans, or other payments are presumed not used and useful (and thus unreasonable).

47. Under the Commission's current rules, membership fees and dues in social, service and recreational, or athletic clubs and organizations are presumed not used and useful and must be excluded from recovery via interstate rates. The Commission declines at this time to expand the scope of excluded fees and dues to cover additional types of fees, such as memberships in professional organizations and associations. As some commenters have argued, there is utility to customary memberships in professional organizations such as trade associations, chambers of commerce, and bar associations. As a result, membership fees and dues associated with professional organizations, unless customary for similarly situated companies, are presumed not used and useful.

48. The Commission clarifies that other expenses unrelated to operations—including charitable donations, scholarships, sponsorships of conferences or community events—raise the potential for abuse and thus are presumed not used and useful unless customary for similarly situated companies. As commenters note, there appears to be a conflict in the Commission's rules regarding the treatment of charitable donations for ratemaking purposes. The Commission clarifies here, consistent with the justification provided in the *1987 Rate Base Order,* 53 FR 1027, January 15, 1988, that the Commission's rules allow recovery of reasonable charitable donations through the interstate revenue requirement. The Commission agrees with commenters that reasonable charitable donations may to be appropriate to support the community in which it operates as a cost of doing business and part of "good corporate citizenship." For similar reasons as charitable donations, the Commission finds that scholarships and sponsorships of conferences or community events likewise serve an important role in the community.

49. *Corporate Luxury Goods.*—Although some corporate luxury goods are in fact customary, as a category it is subject to potential abuse. As such, expenses associated with corporate luxury goods—specifically corporate aircraft, watercraft, and other off-road vehicles used for work and work-related purposes, as well as artwork and other objects which possess aesthetic value that are displayed in the workplace—are presumed not used and useful (and thus unreasonable) unless customary for similarly situated companies. In the *Rate-of-Return Reform FNPRM,* the Commission proposed to allow recovery for corporate aircraft, watercraft, and other vehicles "insofar as necessary to access inhabited portions of the study area not reachable by motor vehicles traveling on roads." Commenters support this proposal, asserting that a blanket ban is contrary to the Commission's objective of reducing waste and promoting efficiency. The Commission agrees that the use of aircraft and off-road vehicles can be the "fastest, safest, most reliable and most efficient and least expensive way for technicians to reach remote areas to install, inspect or repair facilities." However, to avoid the risk of abuse, the Commission presumes that even vehicles used for work and work-related purposes are not used and useful unless customary for similarly situated companies. Based on the record, the Commission fully expects that carriers using such vehicles to access areas not seasonably reachable by road travel will be able to overcome the presumption, so long as they limit the use of aircraft, watercraft and off-road vehicles to work and work-related purposes. The Commission acknowledges that office artwork is a common business expense and should not place excessive burdens on ratepayers. Accordingly, expenses associated with artwork and other objects which possess aesthetic value that are displayed in the workplace are presumed not used and useful unless customary for similarly situated companies.

50. The *Rate-of-Return Reform FNPRM* also proposed to prohibit recovery from interstate support "expenses for tangible property not logically related or necessary to offering voice or broadband service." Such expenses include, for example, recreational equipment and consumer electronics not used for work purposes. These expenses are not used in the ordinary course for providing interstate telecommunications services, and so the Commission will presume them not used and useful (and thus unreasonable). Further, the Commission's rules provide that rate-of-return LECs may not recover investments and expenses unless "recognized by the Commission as necessary to the provision" of interstate telecommunications services. The Commission notes that, by definition, tangible property not logically related or necessary to offering voice or broadband service is not necessary or incurred to provide regulated interstate telecommunications service.

51. Also in the *Report and Order,* the Commission directs the Bureau to offer additional Alternative Connect America Cost Model (A–CAM) support up to $146.10 per-location to all carriers that accepted the revised offers of model-based support. Under the revised offer, all locations with costs above $52.50 per location will be funded up to a per-location funding cap of $146.10, and the Bureau should adjust deployment obligations accordingly. If all eligible carriers accept this offer, the Commission anticipates that it would result in approximately $36.5 million more support per year for the 10-year A–CAM term. Increasing support immediately will result in additional broadband deployment, while balancing budgetary constraints pending the outcome of this proceeding. This increase in support does not impact legacy support.

52. There is ample support in the record from carriers and state government officials, as well as from members of Congress, for increasing the budget for A–CAM. With additional funding, these parties have made clear the economic, educational, and healthcare benefits that will directly follow. The Commission's action today addresses these requests by extending a revised offer at $146.10, the same maximum per-location support amount as the Commission offered to price cap carriers for the Phase II offer of model-based support and as the Commission has proposed for the maximum reserve price in the Phase II auction. By raising the per-location cap to a uniform $146.10 for all current A–CAM recipients, the Commission could increase by more than 17,700 the number of locations that will receive 25/

3 Mbps over the course of the support term, with another 14,000 locations receiving 10/1 Mbps. Although the Commission declines to extend the per-location funding cap to $200 at this time, the Commission seeks comment on doing so in the concurrently adopted NPRM, along with potential increases to the overall budget.

53. The Commission directs the Bureau to release a public notice announcing the revised model-based support amounts and corresponding deployment obligations, and providing carriers with 45 days to confirm that they are will accept the revised offer. Any such election shall be irrevocable. In order to true up support that would have been disbursed in 2017 at the $146.10 per-location cap support amounts, the Commission directs USAC to make a one-time lump sum payment from excess cash in its high-cost account. USAC shall disburse that support the month following a Bureau public notice authorizing those carriers that accept this revised offer. The Commission further directs USAC to collect additional funds going forward to cover the increase in A–CAM support for the remainder of the support term.

54. Finally, in the *Report and Order,* pursuant to § 54.709(a)(3) of the Commission's rules, the Commission directs USAC to continue forecasting a quarterly amount of high-cost demand at no less than one quarter of $4.5 billion until further Commission action, such as addressing the issues raised in the concurrently adopted NPRM. The concerns raised by the Commission in 2011 regarding support fluctuations resulting from implementation of the CAF remain true today. The Commission expects that there will continue to be shifts in support levels as the Commission transitions to paying winners of both upcoming universal service auctions (CAF Phase II and Mobility Fund II) while phasing down payments to current ETCs receiving frozen support amounts. At this time, the Commission cannot predict how those transitions will impact the overall CAF budget but will have a better sense of the impacts after the outcome of the auctions. It is in the public interest to collect a uniform amount to minimize unpredictable fluctuations in consumers' bills by allowing USAC to build up some excess cash to cover transitions without causing a dramatic shift in the quarterly contribution factor. Moreover, the Commission seeks comment in the concurrently adopted NPRM on whether to make certain adjustments to the rate-of-return support mechanisms, and building up excess cash leading up to an order on those decisions could lessen later increases to the contribution factor.

55. USAC forecasted contributions based on an estimated demand of $1.06 billion for the first quarter of 2018, given that USAC's directive to collect $1.125 billion ended in 2017. To collect at least $4.5 billion for 2018, the Commission directs USAC to project for each of the final quarters of 2018 a total high-cost demand of at least $1.125 billion plus the difference between what it has already projected in 2018 based only on demand and the amount it would have collected had the Commission's prior direction continued into 2018, equally spread out over the final quarters. USAC shall place those excess funds in its high-cost account, pending further Commission decisions. USAC shall not take those excess funds into account when forecasting demand for 2018. If high-cost quarterly demand actually exceeds $1.125 billion plus the additional amount, no additional funds will accumulate in the high-cost cash account for that quarter and excess cash will be used to constrain the high-cost demand in the contribution factor. In other words, by the end of 2018, absent further direction by the Commission, USAC will have collected at least $4.5 billion for the deployment of broadband networks in high-cost areas. The Commission anticipates that it will take action on the concurrently adopted NPRM prior to the end of 2018 and will issue additional guidance to USAC at that time.

III. Third Order on Reconsideration

56. On May 25, 2016, five petitions were filed requesting that the Commission reconsider or clarify various aspects of the *Rate-of-Return Reform Order.* In April 2017, the Commission adopted an Order on Reconsideration, 82 FR 22901, May 19, 2017, in which it amended the capital investment allowance (CIA) rule limiting support for new construction projects with high average capital expenses. In a Second Order on Reconsideration and Clarification, 83 FR 14185, April 3, 2018, the Commission addressed the surrogate method for estimating consumer broadband-only loops (CBOLs) and the Access Recovery Charge imputation rule. In this Third Order on Reconsideration, the Commission addresses certain additional issues petitioners raised, including the mitigation of the budget control mechanism from July 2017 to June 2018; the addition of an inflation factor to calculate the operating expenses limitation; inclusion of broadband-only loops in calculating each carrier's corporate operations expense limitation; treatment of transferred exchanges; streamlined waivers; and the effect of the first A–CAM election on current budget for legacy rate-of-return carriers.

57. *Discussion.*—To address the concerns raised by NTCA–The Rural Broadband Association (NTCA), the Commission grants its petition in part and eliminate the effect of the budget control mechanism for the period current budget year (from July 2017 to June 2018).

58. During this budget year, the support claims of legacy rate-of-return carriers have been reduced by approximately $180 million due to application of the budget control mechanism—a 13 percent reduction in support. Moreover, the reductions in support are not evenly distributed among states or carriers. For example, carriers in Virginia are subject to an average 17 percent reduction in support while carriers in New Mexico have their support reduced overall by only 9 percent. Similarly, carriers within each state may be subject to drastically different reductions. In Iowa, one carrier has its support reduced by 17 percent while another carrier's support is only reduced by 8 percent. In Texas, carrier reductions range from 8 percent to 16 percent.

59. NTCA claims these legacy support reductions, which are even greater than it predicted, endanger legacy carriers' ability to offer service at reasonably comparable rates, and could result in rural consumers paying ''tens of dollars (or even hundreds of dollars) more per month than urban consumers for standalone broadband.'' That claim has been borne out in fact: Based on FCC Form 481 data, 27 eligible telecommunications carriers could not certify to meeting the broadband reasonable comparability benchmark.

60. Several parties support NTCA's assertions regarding the insufficient budget for legacy carriers as enforced through the budget control mechanism. GVNW states that the Commission should revisit the budget ''to ensure sufficient support so that rural consumers may pay affordable rates.'' The National Tribal Telecommunications Association also argues that ''inadequate funding is leading to unreasonably comparable rates between rural Tribal areas and the urban areas of the United States,'' and that the Commission ''must act soon to provide the support necessary to ensure broadband capable facilities are deployed in these areas that allow for services being provided at affordable rates.'' ITTA ''shares the concerns expressed by NTCA . . . regarding the

insufficiency'' of the budget. The WTA–Advocates for Rural Broadband (WTA) Petition for Reconsideration of the *Rate-of-Return Reform Order* similarly asserts that the budget control mechanism is contributing to rates that are not reasonably comparable to urban areas.

61. The Commission agrees with these concerns and find here that it is in the public interest to grant in part NTCA's petition for reconsideration. Specifically, the Commission reconsiders implementation of the budget control mechanism affecting claims from July 2017 to June 2018 by fully funding carrier claims during that period—such large and variable reductions in support have made support not sufficiently ''predictable'' for affected rate-of-return carriers to engage in the long-term planning for the high-speed broadband deployment needed in rural America. The Commission directs USAC, working with the Bureau, to determine an efficient methodology to calculate the amounts withheld as a result of the budget control mechanism and make payments to fully fund support claims to the affected carriers in a lump sum payment in the second full quarter after the effective date of this Third Order on Reconsideration, drawing first upon funds available in USAC's reserve account.

62. Nonetheless, the Commission disagrees with NTCA's suggestion that it should go farther immediately and instead initiate a budget review to determine whether the current level of support is sufficient and predictable enough for carriers serving rural areas to provide service at rates comparable to those in urban areas. The Commission also seeks comment on how it can encourage more efficient use of carrier support and modify the budget control mechanism to provide more predictable support.

63. *Discussion.*—The Commission grants NTCA's request regarding the opex limitation. The Commission recognizes that the opex limitation, which does not account for inflation, may constrain support for rising costs, potentially diminishing carriers' ability to maintain and support their networks, thereby potentially reducing service quality, and in turn harming consumers. The Commission therefore reconsiders how the opex limitation is calculated to include the inflationary adjustment factor GDP–CPI. The GDP–CPI is the same adjustment factor proposed by industry and that the Commission uses for the Rural Growth Factor (RGF). Using this adjustment factor will alleviate any harm caused by inflation in application of the opex limitation. Moreover, using the same series for both the opex adjustment and the RGF will reduce confusion and facilitate administrative efficiency. This inflation adjustment will be applicable for five years. Thereafter, the Commission anticipates that it may revisit the inflation adjustment to assess whether it accurately reflects carriers' experienced changes in costs and if it remains necessary to protect carriers from inflation-driven cost increases.

64. The Commission directs NECA to calculate each carrier's opex limitation for the following calendar year by multiplying the inflation adjustment factor used in the RGF, as described in its annual September 30 filing, by the carrier's opex limitation for the current year. For example, if the inflation adjustment in NECA's September 30, 2018 annual filing is 2 percent, then each carrier's opex limit for 2019 will be calculated by multiplying its 2018 opex limit by 1.02. Adjusting the opex limitation on this schedule will provide sufficient notice for carriers in preparing their budgets for the upcoming calendar year.

65. The inflation adjustments will be implemented beginning with expenses incurred in 2017. It would be administratively burdensome to apply the inflation adjustment to 2016 expenses because NECA has already made its annual filing setting 2018 HCLS amounts based on 2016 expenses. Therefore, the Commission will include in the 2017 opex limitation a compounded inflation adjustment so as to account for the effects of inflation for 2016 expenses. Specifically, the inflation adjustment will be implemented as follows.

Expense incurred in	Inflation adjustment (multiplied by prior year opex limitation)	Expenses reported in
2017	1.0273	NECA October 1, 2018 annual filing (HCLS), December 31, 2018 Form 509 (CAF BLS).
2018	1.0128	NECA October 1, 2019 annual filing (HCLS), December 31, 2019 Form 509 (CAF BLS).
2019	As published in NECA's Oct. 1, 2018 annual filing.	NECA October 1, 2020 annual filing (HCLS), December 31, 2020 Form 509 (CAF BLS).
Subsequent years.	As published in the prior year's NECA annual filing.	NECA annual filing and Form 509 filed in the following year.

66. On reconsideration, as requested by NTCA, the Commission amends § 54.1308(a)(4) of the Commission's rules to include CBOLs in the calculation of each carrier's corporate operations expense limitation. The rule operates by creating a limit on total corporate operations expenses based on the number of lines, and then apportioning those costs among common line and other cost categories. The Commission did not amend this rule in the *Rate-of-Return Reform Order,* and the rule currently includes only common line (voice and voice-broadband) loops in the calculation. As a result, NTCA argues that the rule now sets an inappropriately low limit on the corporate operations expenses for carriers with broadband-only lines. In an extreme case, a carrier with customers that exclusively have chosen to subscribe through broadband-only lines would not be eligible to recover any of its corporate operations expenses. The Commission concurs and amends the rule accordingly to allow broadband-only loops, as well as voice and voice-broadband loops, in the corporate operations expense limitation calculations. The Commission expects that this action will provide parity for carriers with broadband-only lines and create incentives for broadband deployment.

67. At the request of WTA, the Commission clarifies the treatment of transferred exchanges under the rules adopted in the *Rate-of-Return Reform Order.*

68. Specifically, the Commission first clarifies that when any entity that is not a rate-of-return carrier (including a price cap carrier, competitive local exchange carrier, interexchange carrier, or non-carrier entity) acquires exchanges from a rate-of-return carrier, § 54.902(c) applies. This means that, ''absent further action by the Commission, the carrier will receive model-based

support.'' The Commission notes that the language about which WTA raises its specific question—''entity other than a rate-of-return carrier''—is retained from the prior ICLS rule. Given that CAF BLS is predicated on rate-of-return regulation, there does not appear to be any basis for automatically providing CAF BLS to an entity that is not a rate-of-return carrier. The rule expressly contemplates that the Commission may consider alternatives on a case-by-case basis, but provides a default mechanism whereby the acquiring entity becomes subject to the Connect America Model support and obligations. WTA suggests that this result does not appear to be the intent of the *Rate-of-Return Reform Order* but provides no support for this assertion.

69. Second, the Commission clarifies, as requested by WTA, that the term ''exchanges'' in § 54.902 does not apply to entire study areas, but instead to areas smaller than a complete study area. This approach is consistent with how the Commission has previously treated transfers of control, as well as § 54.305 (the ''parent trap rule'') and study area waivers. The Commission notes that the sale of a complete study area does not necessarily present the same potential for manipulating universal service support as the sale of exchanges because support is calculated on a study area basis. The transfer of exchanges or other parts of a study area, on the other hand, likely would affect the amount of universal service support for which a study area would qualify under its rules. The Commission is concerned that transfers of exchanges could be structured in order to maximize and increase high-cost support and could put additional pressure on scarce high-cost resources.

70. Next, the Commission declines to eliminate § 54.305 as proposed by Madison Telephone Company (Madison Telephone). Madison Telephone argues that the parent trap rule is no longer necessary because § 54.902 is sufficient to address the consequences to high-cost universal service support resulting from transfers of exchanges. The Commission disagrees. Section 54.902, entitled ''Calculation of CAF BLS Support for transferred exchanges,'' does not apply to HCLS. Without § 54.305, therefore, there is no constraint on increases to HCLS resulting from the strategic transfer of portions of study areas. Further, the Commission is not persuaded by Madison Telephone's arguments that the parent trap rule should be eliminated because only a relatively small number of carriers are currently subject to the rule. Currently, 28 carriers are subject to the parent trap rule. Madison Telephone's argument fails to address the fact that the absolute number of carriers subject to the rule is not an adequate measure of the potential financial effects to universal service posed by the elimination of the parent trap rule. Madison Telephone does not, for example, estimate the amount of additional support that affected carriers would receive if the parent trap rule were eliminated. The Commission further notes that the Commission relied on the applicability of § 54.305 as a constraint on universal service support in granting study area waivers to many of the carriers currently subject to the parent trap rule. Eliminating the parent trap rule without further analysis of the consequences would undermine the rationale for granting those waivers.

71. The Commission is also not persuaded by Madison Telephone's argument that the build-out requirements of the *Rate-of-Return Reform Order* necessitate the provision of additional support to carriers currently subject to the parent trap rule. Each carrier's build-out obligations have been determined based on the amount of support a carrier was forecasted to receive, which takes into account the effect of the parent trap rule. Therefore, the Commission expects that eliminating the parent trap rule would increase the build-out obligations for those carriers, rather than provide additional support to achieve the same obligations. Finally, the Commission rejects Madison Telephone's argument that the complications of the parent trap rule perpetuate a disincentive to further consolidation among rate-of-return carriers. Although the Commission agrees that rate-of-return carriers should have appropriate incentives for further consolidation, the Commission must have adequate safeguards to protect the Fund from transfers of exchanges that result in excessive increases in high-cost support. As described above, the Commission disagrees that there would be adequate safeguards if the Commission eliminates the parent trap rule and find that it continues to serve an important purpose.

72. In general, the rules governing the transfer of exchanges are intended to prevent an increase in high-cost universal service, driven by a change in the area over which costs are averaged, without a Commission finding that such an increase would be in the public interest. Although budget constraints now prevent the Fund's total size from increasing as the result of transactions, increases in universal service awarded to one carrier result in decreases in support to other carriers. Therefore, the Commission must carefully review new or additional demands on resources to ensure that the overall effect is in the public interest. Although the Commission may consider a systematic review of the rules governing transfers of exchanges in light of the recent reforms, it does not believe that the current petitions are the appropriate means by which to do so.

73. The Commission also addresses two requests, one from NTCA and the other from WTA, related to streamlining waivers. NTCA's petition for reconsideration, in part, asks the Commission to clarify (or to the extent necessary, reconsider) the circumstances in which a ''streamlined waiver'' process may be used, whereby an ''engineer-certified estimate of construction costs could be substituted for the CIA-estimated investment allowance. Specifically, NTCA argues that a streamlined process should be permitted for circumstances beyond the narrow instance of compliance with defined buildout obligations.'' For example, NTCA states that, ''a RLEC may be unable to obtain financing to perform any buildout—whether tied to a specific obligation or otherwise intended to advance broadband—unless it can obtain such a waiver.'' NTCA also notes that ''timing considerations with respect to buildout and hiring of contractors, especially in certain locales where build seasons are shorter, may drive the need for a waiver.''

74. First, the Commission clarifies that it did not adopt a ''streamlined waiver'' process in the *Rate-of-Return Reform Order.* Although the Commission noted that several commenters argued a streamlined waiver process was needed ''to ensure that carriers can seek a waiver if it needs to make investments greater than those allowed by the capital budget limitation to provide broadband to the carrier's customers,'' the Commission determined that any carrier could file a waiver under the Commission's existing rules. The Commission then explained what would enable ''expeditious'' treatment of a waiver and further stated that ''carriers who cannot meet their deployment obligation even by expending the full amount of their TALPI [Total Allowed Loop Plant Investment] allowance should submit information regarding the costs expected to be incurred to meet the deployment obligation certified by an engineer licensed in the state(s) in which the construction will take place.'' The Commission noted that this information would assist the Commission in reviewing a waiver request expeditiously.

75. Second, the Commission clarifies that in assessing whether ''good cause'' exists to grant a request for waiver of the CIA, the Commission is likely to view as highly relevant cost estimate information certified by an engineer licensed in the state where the construction will take place. The Commission anticipates that certification will help ensure that any cost estimates are reasonably accurate and objective. The Commission further clarifies that it will review any waiver petitions of the CIA on a case-by-case basis, and carriers should submit all relevant information, certified appropriately, to justify the relief requested to help expedite the review process.

76. WTA asks the Commission to address the ''extremely likely'' situation of material/labor shortages and corresponding price increases by adopting a rule that allows rate-of-return carriers receiving CAF BLS to ''request and obtain via a streamlined process a reduction of their applicable build-out requirements if they can show that their cost per location has increased by thirty percent (30.0%) or more above the cost per location used to compute their initial buildout requirement.'' WTA further requests a streamlined waiver process for all CAF BLS and A–CAM carriers to ''extend their deadlines for meeting interim and/or ultimate build-out requirements if they can show that they had made *bona fide* attempts to obtain the requisite pre-construction approvals, fiber optic cable and/or contractor arrangements, and had been unsuccessful in doing so for reasons significantly outside their control.''

77. The Commission denies WTA's request. The Commission finds that the situations for which WTA requests streamlined waivers must each be considered individually and that there is an existing process by which to seek relief. As stated above and in the *Rate-of-Return Reform Order,* any carrier may file a waiver under existing rules to address the specific hardships that it faces. Carriers should submit all relevant information, certified appropriately, to justify the relief requested to help expedite the review process, and the Commission will evaluate the circumstances on a case-by-case basis. The Commission further notes that WTA does not provide a concrete proposal for how a streamlined waiver process would work. For instance, it is not clear whether after a specific period of time the waiver would be deemed granted; or whether a request to reduce the number of locations by a third or extend a deadline by two years would qualify for streamlined treatment. Given the availability of an existing mechanism to address WTA's concerns, and its lack of a specific proposal, the Commission concludes that WTA's request lacks merit and is thereby denied. The Commission reminds carriers that detailed petitions for waiver, substantiated by data (and certified appropriately) will help to facilitate expeditious review.

78. The Commission dismisses as moot NTCA's request regarding the budgetary impact in cases where a carrier that initially elected to receive model support in 2016 subsequently declined the revised offer. In the *Rate-of-Return Reform Order,* the Commission decided how the budget for the first offer of A–CAM support would be determined if carriers that initially elected to receive model support subsequently declined to accept a revised second offer. Specifically, the *Rate-of-Return Reform Order* provided that ''[i]f the carrier received more support from the legacy mechanisms in 2015 than it was offered by the final model run, the overall budget for all carriers that receive support though the rate-of-return mechanisms (HCLS and reformed ICLS) will be reduced by the difference between the carrier's 2015 legacy support amount and the final amount of model support offered to that carrier.''

79. NTCA seeks clarification of whether this statement means that the difference reduces that carrier's own support, or whether it reduces the overall budget for carriers remaining on legacy support. To the extent the Commission intended to reduce the overall budget, NTCA seeks reconsideration of this decision. NTCA is concerned that such an approach could dramatically reduce the budget for carriers remaining on legacy support and undermine their ability to offer voice and broadband service at reasonably comparable rates. Similarly, Custer Telephone Cooperative et al. seeks clarification, or reconsideration, regarding the reduction of support available to carriers remaining on legacy support mechanisms.

80. In the *A–CAM Revised Offer Order,* 82 FR 4275, January 13, 2017, the Commission concluded that its approach to revising the first A–CAM offers largely addressed the concerns raised by NTCA because the Commission did not change the support amounts for those carriers for which the offer of model-based support was less than the legacy support. The 35 such carriers that accepted the initial offer contributed to the overall A–CAM budget and were authorized by the Bureau to receive support because their support was unchanged and their initial elections were irrevocable. When the Bureau extended revised offers to the remaining carriers that accepted the initial offer, it resulted in only 18 instances in which the carrier was offered a revised amount that was less than the legacy support received in 2015. Because the net decrease in legacy support for this group of carriers was only approximately $4.2 million, the Commission determined that the difference was only a *de minimis* amount in the context of the overall rate-of-return budget. Therefore, the potential harm identified by the parties in their petitions for clarifications or reconsideration of this issue—''to ensure that non-model carriers and their consumers will not be harmed by the decisions of RLECs that choose to 'jump in and out' of the model election process''—did not come to pass. Accordingly, the Commission dismisses as moot those portions of these requests.

IV. Procedural Matters

A. Paperwork Reduction Act

81. The Report and Order adopted herein 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), it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this present document, the Commission has assessed the effects of the new and modified rules that might impose information collection burdens on small business concerns, and find that they either will not have a significant economic impact on a substantial number of small entities or will have a minimal economic impact on a substantial number of small entities.

B. Congressional Review Act

82. The Commission will send a copy of the Report and Order, Third Order on Reconsideration and Notice of Proposed Rulemaking to Congress and the Government Accountability Office

pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

83. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, Initial Regulatory Flexibility Analyses (IRFAs) were incorporated in the Report and Order, Order, and Order on Reconsideration, and Further Notice of Proposed Rulemaking (*Rate-of-Return Reform Order and Further NPRM*). The Commission sought written public comment on the proposals in the *Rate-of-Return Reform Order and Further NPRM,* including comment on the IRFA. The Commission did not receive comments on the *Rate-of-Return Reform Order and FNPRM* IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

84. In the Report and Order, the Commission adopts reforms to ensure that high-cost universal service support provided to eligible telecommunications carriers (ETCs) is used only for the provision, maintenance, and upgrading of facilities and services for which the high-cost support is intended. Specifically, this Report and Order addresses whether specific expenses are eligible for recovery from federal high-cost support pursuant to section 254(e) of the Act.

85. The Commission also adopts measures to ensure carrier compliance with the permitted expense rules adopted above for high-cost support. The Commission requires rate-of-return ETCs to identify on their annual FCC Form 481 (Carrier Annual Reporting Data Collection Form) their cost consultants and cost consulting firm, or other third party, if any, used to prepare cost studies, or other calculations used to calculate high-cost support for their submission. Disclosure of such parties is a low-burden measure that will help the Commission identify waste, fraud, and abuse during audits. Identifying such parties will help the Commission and USAC identify and rectify patterns of noncompliance, and potentially fraud, during audits. This will ultimately help preserve the integrity of the Universal Service Fund by ensuring that carriers use high-cost support only for the provision, maintenance, and upgrading of facilities and services for which the high-cost support is intended.

86. In the Report and Order, the Commission further amends the rules to provide guidance to legacy rate-of-return LECs regarding investments and expenses that are presumed not used and useful (and thus unreasonable under section 201 of the Communications Act) and thus, as a general matter, may not be recovered through interstate rates. The Commission divides such investments and expenses into two broad categories: Those that it does not expect would be used and useful in the ordinary course and those it would not expect to be used and useful unless customary for similarly situated companies.

87. The Report and Order also addresses two matters for which Final Regulatory Flexibility Analysis is unnecessary.

88. First, the Report and Order provides additional support to fund model-based deployment. In the *April 2014 Connect America FNPRM,* 79 FR 39196, July 9, 2014, the Commission proposed a framework for a voluntary election by rate-of-return carriers to receive model-based support and tentatively concluded that such a framework could achieve important universal service benefits by creating incentives for deployment of voice and broadband-capable infrastructure. The Commission sought written comment on the proposal, including comment on the Initial Regulatory Flexibility Analysis (IRFA). The Commission did not receive any comments on the *April 2014 Connect America FNPRM* IRFA. In the *Rate-of-Return Reform Order,* the Commission adopted a voluntary path under which rate-of-return carriers may elect to receive model-based support for a term of 10 years in exchange for meeting defined build-out obligations. The Commission issued a Final Regulatory Flexibility Analysis (FRFA) that conforms to the Regulatory Flexibility Act of 1980 (RFA), as amended. This present Report and Order further implements the framework previously adopted by the Commission. Therefore, the Commission certifies that it will not have a significant economic impact on a substantial number of small entities.

89. Second, the Report and Order directs USAC to continue the practice of uniform quarterly collections. The Commission's directive to USAC to continue uniform quarterly collection is not a rule subject to notice-and-comment rulemaking and therefore no Regulatory Flexibility Analysis is required. Further, the Commission notes that is only applicable to USAC and will not have a significant economic impact on a substantial number of small entities.

90. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

91. The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

92. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of Aug. 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

93. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

94. In the Report and Order, the Commission codifies a list of ineligible expenses and expense categories the

Commission previously identified as ineligible for high-cost support, and it provides guidance going-forward on the eligibility of expenses on which the Commission sought comment in the *Rate-of-Return Reform Order and FNPRM.* The revised rules adopted herein provide more specificity and certainty to ETCs and do not impose any additional recordkeeping requirements. Additionally, the Commission requires all rate-of-return ETCs to identify on their annual FCC Form 481 (Carrier Annual Reporting Data Collection Form) their cost consultants and cost consulting firm, or other third party, if any, used to prepare cost studies, or other calculations used to calculate high-cost support for their submission. The Commission expects this reporting obligation to have a minimal impact.

95. The Report and Order amends the rules to provide guidance to legacy rate-of-return LECs regarding investments and expenses that are presumed not used and useful and thus, as a general matter, may not be recovered through interstate rates. Such investments and expenses are divided into two broad categories: Those that the Commission does not expect would be used and useful in the ordinary course and those it would not expect to be used and useful unless customary for similarly situated companies. These changes do not impact reporting obligations, and are necessary to ensure that recovery of these investments and expenses via interstate rates is consistent with section 201(b) of the Act.

96. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Commission has considered all of these factors subsequent to receiving substantive comments from the public and potentially affected entities. The Commission has considered the economic impact on small entities, as identified in comments filed in response to *Rate-of-Return Reform Order and FNRPM* and IRFA, in reaching its final conclusions and taking action in this proceeding.

97. The rules that the Commission adopts in the Report and Order provide greater certainty to rate-of-return carriers, many of which are small entities. The Commission codifies a simple, clear, and carefully defined list of categories of expenses that are precluded from recovery via the universal service fund. The Commission incorporates expenses categories previously identified as ineligible for high-cost support, *High-Cost Oct. 19, 2015 Public Notice* and in the *Rate-of-Return Reform FNPRM* and the Commission provides guidance going-forward on the eligibility of expenses on which the Commission sought comment in the *Rate-of-Return Reform FNPRM.* Providing a clear list of expenses that are not reimbursable will ensure that more resources are available in the universal service fund. Although the Commission provides guidance going-forward on the eligibility of expenses on which the Commission sought comment, such guidance should have only a minimal impact on small entities.

98. Similarly, the Commission provides greater certainty to legacy rate-of-return carriers by codifying a list of investments and expenses that are presumed not used and useful and thus, as a general matter, may not be recovered through interstate rates. This guidance provides more certainty and predictability, while also providing carriers the opportunity to recover these costs via regulated interstate rates if the presumption can be overcome.

99. The Commission also acts to modify its existing reporting requirements. The Commission requires carriers to identify on their annual FCC Form 481 their cost consultants and cost consulting firm, or other third party, used to prepare cost studies or other calculations used to calculate high-cost support for their submission will have a minimal economic impact because small entities already prepare this filing. The Commission revises ETCs' annual reporting requirements to align better those requirements with the Commission's statutory and regulatory objectives. This addition will allow the Commission to identify themes and trends among both rate-of-return carriers and third-party cost consultants and to eliminate waste, fraud, and abuse.

100. The Third Order on Reconsideration above amends rules adopted in the *Rate-of-Return Reform Order* by (1) implementing, for a five-year period, an inflation adjustment for the operating expense limitation, (2) incorporating broadband-only loops into the corporate operations expense limitation, and (3) reconsiders the application of the budget control mechanism for July 2017 to June 2018. These revisions do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to the *Rate-of-Return Reform Order.* Therefore, the Commission certifies that the rule revisions adopted in this Third Order on Reconsideration and Clarification will not have a significant economic impact on a substantial number of small entities.

V. Ordering Clauses

101. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1–4, 5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151–155, 201–206, 214, 218–220, 251, 256, 254, 256, 303(r), 403 and 405, this Report and Order, Third Order on Reconsideration *is adopted*, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval. It is the Commission's intention in adopting these rules that if any of the rules that the Commission retains, modifies, or adopts herein, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

102. *It is further ordered* that part 54 and 64 of the Commission's rules, 47 CFR part 54 and 64, are amended as set forth in the following, and such rule amendments *shall be effective* May 31, 2018, except that those rules and requirements which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act *will become effective* after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date.

103. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and §§ 0.331 and 1.429 of the Commission's rules, 47 CFR 0.331 and 47 CFR 1.429, the Petition for Reconsideration filed by NTCA on May 25, 2016 *is granted in part* and *dismissed as moot in part* to the extent described herein.

104. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and §§ 0.331 and 1.429 of the Commission's rules, 47 CFR 0.331 and 47 CFR 1.429, the Petition for Reconsideration filed by CUSTER TELEPHONE COOPERATIVE, ET AL., on May 25, 2016 *is dismissed as moot in part* to the extent described herein.

105. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and §§ 0.331 and 1.429 of the Commission's rules, 47 CFR 0.331 and 47 CFR 1.429, the Petition for Reconsideration filed by WTA on May 25, 2016 *is granted in part* and *denied in part* to the extent described herein.

106. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and §§ 0.331 and 1.429 of the Commission's rules, 47 CFR 0.331 and 47 CFR 1.429, the Petition for Reconsideration filed by MADISON TELEPHONE COMPANY on May 25, 2016 *is denied*.

List of Subjects

47 CFR Part 54

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

47 CFR Part 64

Claims, Communications Common carriers, Computer technology, Credit, Foreign relations, Individuals with disabilities, Political candidates, Radio, Reporting and recordkeeping requirements, Telecommunications, Telegraph, Telephone.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 54 and 64 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 § 54.7 by adding paragraph (c) to read as follows:

§ 54.7 Intended use of federal universal service support.

* * * * *

(c) For those eligible telecommunications carriers as defined in § 54.5 receiving universal service support pursuant to subparts K and M of this part, ineligible expenses include but are not limited to the following:

(1) Personal expenses of employees, executives, board members, and contractors, and family members thereof, or any other individuals affiliated with the eligible telecommunications carrier, including but not limited to personal expenses for housing, such as rent or mortgages, vehicles for personal use and personal travel, including transportation, lodging and meals;

(2) Gifts to employees; childcare; housing allowances or other forms of mortgage or rent assistance for employees except that a reasonable amount of assistance shall be allowed for work-related temporary or seasonal lodging; cafeterias and dining facilities; food and beverage except that a reasonable amount shall be allowed for work-related travel; entertainment;

(3) Expenses associated with: Tangible property not logically related or necessary to the offering of voice or broadband services; corporate aircraft, watercraft, and other motor vehicles designed for off-road use except insofar as necessary or reasonable to access portions of the study area not readily accessible by motor vehicles travelling on roads; tangible property used for entertainment purposes; consumer electronics used for personal use; kitchen appliances except as part of work-related temporary or seasonal lodging assistance; artwork and other objects which possess aesthetic value;

(4) Political contributions; charitable donations; scholarships; membership fees and dues in clubs and organizations; sponsorships of conferences or community events; nonproduct-related corporate image advertising; and

(5) Penalties or fines for statutory or regulatory violations; penalties or fees for any late payments on debt, loans, or other payments.

■ 3. Amend § 54.303 by adding paragraph (a)(6) to read as follows:

§ 54.303 Eligible Capital Investment and Operating Expenses.

(a) * * *

(6) For a period of five years following the implementation of paragraph (a) of this section, the total eligible annual operating expenses per location in paragraph (a) shall be adjusted annually to account for changes to the Department of Commerce's Gross Domestic Product Chain-type Price Index (GDP–CPI).

* * * * *

■ 4. Amend § 54.313 by adding paragraph (f)(4) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(f) * * *

(4) If applicable, the name of any cost consultant and cost consulting firm, or other third-party, retained to prepare financial and operations data disclosures submitted to the National Exchange Carrier Association (NECA), the Administrator or the Commission pursuant to subpart D, K, or M of this part.

* * * * *

■ 5. Amend § 54.901 by revising paragraph (b) and adding paragraph (f)(4) to read as follows:

§ 54.901 Calculation of Connect America Fund Broadband Loop Support.

* * * * *

(b) For the purpose of calculating support pursuant to paragraph (a) of this section, the Interstate Common Line Revenue Requirement and Consumer Broadband-only Revenue Requirement shall be subject to the limitations set forth in § 54.303.

* * * * *

(f) * * *

(4) This paragraph (f) shall not apply to support provided from July 1, 2017 to June 30, 2018.

* * * * *

■ 6. Amend § 54.1305 by adding paragraph (j) to read as follows:

§ 54.1305 Submission of information to the National Exchange Carrier Administration (NECA)

* * * * *

(j) The number of consumer broadband-only loops for each study area, as defined in § 54.901(g), calculated as of December 31st of the calendar year preceding each July 31st filing.

■ 7. Amend § 54.1308 by revising paragraphs (a)(4)(ii) introductory text and (a)(4)(ii)(A) through (C) to read as follows:

§ 54.1308 Study Area Total Unseparated Loop Cost.

(a) * * *

(4) * * *

(ii) A monthly per-loop amount computed according to paragraphs (a)(4)(ii)(A) through (D) of this section. To the extent that some carriers' corporate operations expenses are disallowed pursuant to these limitations, the national average unseparated cost per loop shall be adjusted accordingly. For the purposes of this paragraph (a)(4)(ii), ''total eligible lines'' refers to working loops as defined by this subpart and consumer broadband-only loops, as defined in § 54.901(g).

(A) For study areas with 6,000 or fewer total eligible lines, the monthly per-loop amount shall be $\$42.337 - (.00328 \times$ the number of total eligible lines), or, $63,000/the number of total eligible lines, whichever is greater;

(B) For study areas with more than 6,000 but fewer than 17,887 total eligible lines, the monthly per-loop amount shall be $3.007 + (117,990/the number of total eligible lines); and

(C) For study areas with 17,887 or more total eligible lines, the monthly per-loop amount shall be $9.562.

* * * * *

■ 8. Amend § 54.1310 by adding paragraph (d)(3) as follows:

§ 54.1310 Expense adjustment.

* * * * *

(d) * * *

(3) This paragraph (d) shall not apply to support provided from July 1, 2017 to June 30, 2018.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 9. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 202, 225, 251(e), 254(k), 403(b)(2)(B), (c), 616, 620, Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 202, 218, 222, 225, 226, 227, 228, 251(e), 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

1. Add subpart J, consisting of §§ 64.1000 through 64.1002, to read as follows:

Subpart J—Recovery of Investments and Expenses in Regulated Interstate Rates

Subpart J—Recovery of Investments and Expenses in Regulated Interstate Rates

§ 64.1000 Scope.

This subpart is applicable only to rate-of-return carriers as defined in § 54.5 of this chapter receiving Connect America Fund Broadband Loop Support as described in § 54.901 of this chapter.

§ 64.1001 Purpose.

This subpart is intended to ensure that only used and useful investments and expenses are recovered through regulated interstate rates pursuant to section 201(b) of the Communications Act as amended (the Act), 47 U.S.C. 201(b).

§ 64.1002 Investments and expenses.

(a) *Investment and expenses not used and useful in the ordinary course.* The following investments and expenses are presumed not used and useful (and thus unreasonable):

(1) Personal expenses, including but not limited to personal expenses for food and beverages, housing, such as rent or mortgages, vehicles for personal use, and personal travel;

(2) Tangible property not logically related or necessary to offering voice or broadband services;

(3) Political contributions;

(4) Membership fees and dues in social, service and recreational, or athletic clubs or organizations;

(5) Penalties or fines for statutory or regulatory violations; and

(6) Penalties or fees for late payments on debt, loans, or other payments.

(b) *Non-customary investments and expenses.* Unless customary for similarly situated companies, the following investments and expenses are presumed not used and useful (and thus unreasonable):

(1) Personal benefits, such as gifts, housing allowances, and childcare, that are not part of taxable compensation;

(2) Artwork and other objects that possess aesthetic value that are displayed in the workplace;

(3) Aircraft, watercraft, and off-road vehicles used for work and work-related purposes;

(4) Cafeterias and dining facilities;

(5) Charitable donations;

(6) Entertainment;

(7) Food and beverage expenses for work and work-related travel;

(8) Membership fees and dues associated with professional organizations;

(9) Scholarships; and

(10) Sponsorships of conferences or community events.

[FR Doc. 2018–08025 Filed 4–30–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180123065–8378–02]

RIN 0648–XF989

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2018 Allocation of Northeast Multispecies Annual Catch Entitlements and Approval of a Regulatory Exemption for Sectors

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This rule provides allocations to 17 of 19 groundfish sectors for the 2018 fishing year and also approves a new regulatory exemption for sector vessels. The action is necessary because sectors must receive allocations in order to operate in the 2018 fishing year. This action is intended to maximize fishing opportunities, ensure sector allocations are based on the best scientific information available, and help achieve optimum yield for the fishery.

DATES: Effective May 1, 2018, through April 30, 2019.

ADDRESSES: Copies of each sector's operations plan and contract, as well as the programmatic environmental assessment for sectors operations in fishing years 2015 to 2020, are available from the NMFS Greater Atlantic Regional Fisheries Office (GARFO): Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the GARFO website: *https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies/.*

FOR FURTHER INFORMATION CONTACT: Kyle Molton, Fishery Management Specialist, (978) 281–9236.

SUPPLEMENTARY INFORMATION:

Background

The Northeast multispecies (groundfish) sector management system allows us to allocate a portion of available groundfish catch by stock to each sector. Each sector's annual allocations are known as annual catch entitlements (ACE) and are based on the collective fishing history of a sector's members. The ACEs are a portion of a stock's annual catch limit (ACL)