

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[WC Docket Nos. 10–90, 14–58, 14–259; FCC 16–64]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules to implement a competitive bidding process for Phase II of the Connect America Fund that will harness market forces to expand broadband in targeted rural areas. The Commission also adopts rules to establish the framework for the Remote Areas Fund auction to address those areas that receive no winning bids in the Phase II auction.

DATES: Effective August 8, 2016, except for the amendments to §§ 1.21001(b)(6), 54.313(e)(2), 54.315, 54.316(a)(4), (b)(4) and (5), and (c)(2), 54.804 (b) through (d), and 54.806, which contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418–0428 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket Nos. 10–90, 14–58, 14–259; FCC 16–64, adopted on May 25, 2016 and released on May 26, 2016. 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://apps.fcc.gov/edocs_public/attachmatch/FCC-16-64A1.pdf.

The Further Notice of Proposed Rulemaking (FNPRM) that was adopted concurrently with the Report and Order is published elsewhere in this issue of the **Federal Register**.

I. Introduction

1. Over the last several years, the Commission has engaged in a modernization of its universal service regime to support networks capable of

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

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

- Adopt public interest obligations for recipients of support awarded through the Phase II competitive bidding process, that will be known in advance of the auction and that will continue for the duration of the term of support, recognizing that competitive bidding is likely to be more efficient if potential bidders know what their performance standards will be before bids are made. In particular, the Commission establishes four technology-neutral tiers of bids available for bidding with varying speed and usage allowances, all at reasonably comparable rates, and for each tier will differentiate between bids that would commit to either lower or higher latency.

- The Commission's minimum performance tier requires that bidders commit to provide broadband speeds of at least 10 Mbps downstream and 1 Mbps upstream (10/1 Mbps) and offer at least 150 gigabytes (GB) of monthly usage.

- The Commission's baseline performance tier requires that bidders commit to provide at least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps) and offer a minimum usage allowance of 150 GB per month, or that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher.

- The Commission's above-baseline performance tier requires that bidders commit to provide at least 100 Mbps downstream and 20 Mbps upstream (100/20 Mbps) and offer an unlimited monthly usage allowance.

- The Commission's Gigabit performance tier requires that bidders commit to provide at least 1 Gigabit per second (Gbps) downstream and 500 Mbps upstream and offer an unlimited monthly usage allowance.

- For each of the four tiers, bidders will designate one of two latency performance levels: (1) Low latency

bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 100 milliseconds (ms), or (2) High latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 750 ms and, with respect to voice performance, demonstrate a score of four or higher using the Mean Opinion Score (MOS).

- Adopt the same interim service milestones for winning bidders in the Phase II auction as for price cap carriers that accepted Phase II model-based support.

- Finalize the Commission's decisions regarding areas eligible for the Phase II competitive bidding process.

- Establish a budget for the Phase II competitive bidding process of \$215 million in annual support.

- Provide general guidance on auction design, with the specific details to be determined by the Commission at a future date in the *Auction Procedures Public Notice*, after further opportunity for comment. The Commission will use weights to account for the different characteristics of service offerings that bidders propose to offer when ranking bids. The Commission expresses its preference for a multi-round auction format and for setting the minimum biddable unit as a census block group containing any eligible census blocks. The Commission concludes that reserve prices will not exceed support amounts determined by the Connect America Cost Model (CAM).

- Adopt a two-step application process, similar to Commission spectrum auctions and the Mobility Fund Phase I and Tribal Mobility Fund Phase I auctions. In the pre-auction short-form application, a potential bidder will need to establish its baseline financial and technical capabilities in order to be eligible to bid. In the long-form review process, winning bidders will be required to provide additional information regarding their qualifications. They will be required to obtain an acceptable letter of credit and designation as an eligible telecommunications carrier (ETC) before funding is authorized.

- Establish a baseline forfeiture for bidders that default before funding authorization.

- Establish a 180-day post-auction deadline for winning bidders to submit proof of their ETC designation during long-form review and forbear from the section 214(e)(5) service area conformance requirements.

- Adopt reporting requirements that will enable the Commission to monitor

recipients' progress in meeting their interim deployment obligations, and a process by which the Wireline Competition Bureau (Bureau) or the Wireless Telecommunications Bureau will authorize the Universal Service Administrative Company (USAC) to draw on a letter of credit in the event of performance default.

- Adopt rules to establish the framework for the Remote Areas Fund, which will award support through a competitive bidding process to occur expeditiously after conclusion of the Phase II auction.

II. Public Interest Obligations

A. Performance Requirements

3. *Discussion.* Consistent with the Commission's previous decisions on performance requirements and the record in this proceeding, the Commission now establishes technology-neutral standards for the Phase II auction as described below. The Commission will accept bids for four service tiers with varying speed and usage allowances, and for each tier will differentiate between bids that would offer either lower or higher latency. The Commission has already decided that 10/1 Mbps should not be the

Commission's end goal for support recipients over a 10-year term, and that is why it adopts a variety of service tiers for bids in the Phase II auction. The Commission is guided by the statutory goal in section 254 of ensuring that consumers in rural and high-cost areas of the country have access to advanced telecommunications and information services that are reasonably comparable to those services in urban areas, at reasonably comparable rates. The Commission expects and encourages participants to innovate and provide better service over the 10-year term.

4. The following charts summarize the Commission's approach:

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

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

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

6. As discussed further below, all bids will be considered simultaneously, so that bidders that propose to meet one set of performance standards will be directly competing against bidders that

propose to meet other performance standards. The Commission believes that this approach strikes a balance by providing sufficient granularity with respect to the performance characteristics of broadband offerings, while maintaining an auction design that will encourage a broad range of providers to participate in the auction. The Commission discusses its approach to ranking these service tiers below and seeks comment in the concurrently adopted Further Notice on auction procedures to assign weights to each tier and latency combination.

7. The Commission recognizes that some commenters have expressed concerns that it is difficult to plan a network deployment not knowing the performance obligations that may exist at the end of the 10-year term. Competitive bidding is likely to be more efficient if potential bidders know what their performance standards will be before bids are made. The Commission finds that establishing the service requirements now is preferable to doing so after support has been awarded, as it will provide more certainty for potential bidders. Winning bidders that comply with the performance requirements the Commission establishes today for each tier of service for the duration of the 10-year term will be deemed in compliance even if the Commission subsequently establishes different standards in a later proceeding (e.g., the standards that will apply when it awards support through a Phase III auction after the six-year term of support for price cap carriers accepting the offer of model-based support).

8. *Minimum Performance Tier.* As a minimum, the Commission will

consider bids that will meet standards for speed consistent with those applicable to the price cap carriers that accepted the offer of model-based support. Specifically, in the Phase II auction, the Commission will allow for bids that offer at least 10/1 Mbps speeds and offer at least 150 GB of monthly usage.

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

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

11. The Commission recognizes that wireless and satellite providers have argued that a minimum usage allowance of even 100 GB is unrealistic for spectrum-based networks that have capacity limitations, and that the standards should be set at levels that do not exclude spectrum-based services.

The Commission notes, however, that winning bidders will be free to offer an array of service plans, not all of which would provide the minimum 150 GB usage allowance. The 150 GB plan could thus be one of several offerings. The Commission merely require that bidders must offer at least one service offering at a reasonably comparable rate that meets the minimum usage allowance.

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

13. *Baseline Performance Tier.* The Commission now concludes that the baseline tier for the Phase II auction will be speeds of 25 Mbps downstream and 3 Mbps upstream. The Commission's decision to establish this baseline performance standard for Phase II based on the highest speed adopted by a majority of fixed broadband subscribers builds on the approach it adopted in December 2014.

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

15. *Above-Baseline Performance Tier.* The Commission also recognizes that in some areas of the country, there may be bidders willing to deploy networks that will deliver performance that exceeds

its baseline requirements for the Phase II auction. For a bid to qualify in this tier, the bidder must commit to deploying a network that is fully capable of offering speeds and usage allowances that exceed the baseline standards that the Commission establishes today for the Phase II auction to all locations. Consistent with proposals in the record, the Commission will accept bids from entities that propose to offer 100 Mbps downstream and 20 Mbps upstream throughout the 10-year term and require these bidders to offer an unlimited monthly usage allowance.

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

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

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

19. However, the Commission recognizes that some bidders may not be able to meet that latency standard. For example high-earth orbit satellite providers cannot meet the latency requirement, but may be willing to offer higher speeds. After full consideration of the record, the Commission now concludes that bidders designating high latency performance will be required to meet a two-part standard for the latency of both their voice and broadband service: (1) Requirement that 95 percent or more of all peak period measurements of network round trip latency are at or below 750 milliseconds, and (2) with respect to

voice performance, the Commission requires high latency bidders to demonstrate a score of four or higher using the Mean Opinion Score (MOS), similar to the standard that the Commission adopted for one category of rural broadband experiments.

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

21. The Commission rejects arguments that a 100 ms latency designation should apply only to "latency-sensitive traffic." Low latency, that is, shorter delays, is essential for most network-based applications and critical for others, such as VoIP and other interactive and highly interactive applications. Thus, requiring objectively measured latency performance standards is in line with network-based applications requirements and consumer-based perceptions of acceptable performance, particularly for voice services.

22. At the same time, the Commission is willing to entertain bids from entities that can only provide high latency, in the interest of making this auction as competitive as possible. For those providers offering high latency services, the Commission emphasizes the importance of providing quality voice services. The Commission particularly welcomes solutions such as the terrestrial voice service suggested by ViaSat. While the Commission does not adopt the MOS scoring metric as a *substitute* for the milliseconds of latency requirement, it believes it can be used to help ensure quality voice service performance for bids designated high latency. Thus, as noted above, in addition to the metrics set forth above, the Commission requires that bidders that exhibit high latency must be prepared to demonstrate a MOS of four or higher throughout the term of support. The Commission recognizes

that the MOS metric is a measure of perceived quality, and requires entities taking advantage of this standard to be prepared to submit testing results that are specific to their CAF-funded areas. Recipients must provide this level of voice quality to all consumers in CAF-funded areas, not just to a subset of locations.

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

24. The Commission concludes that applicants seeking to deploy spectrum-based technologies that can meet the performance requirements will be eligible to bid in any tier. To ensure that these bidders have the capabilities to meet all standards, however, the Commission will require bidders proposing to use spectrum-based technologies to demonstrate that they have the proper authorizations or licenses, if applicable, and access to spectrum, to reach the fixed locations within the areas for which they seek support.

25. The Commission does not agree with commenters who argue that setting performance standards that could potentially exclude certain technologies disserves the public interest because it conflicts with the principle of competitive neutrality. The principle of competitive neutrality does not preclude the Commission from meeting

other reasonable regulatory objectives, including as discussed above, the statutory requirement to ensure reasonably comparable service. The adoption of these technology-neutral tiers of performance standards, which are designed to meet reasonable regulatory objectives, is not objectionable simply because some service providers cannot meet the standards for a particular tier.

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

B. Interim Deployment Obligations

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

SERVICE MILESTONES FOR PHASE II SUPPORT RECIPIENTS AWARDED THROUGH COMPETITIVE BIDDING

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

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

C. Flexibility in Meeting Deployment Obligations

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

30. The Commission finds that requiring deployment to at least 95 percent of eligible locations is equally appropriate for recipients of Phase II support awarded through competitive

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

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

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

33. Finally, the Commission remains open to the possibility of allowing Phase

II recipients to substitute some number of unserved locations within partially served census blocks for locations within funded census blocks. In the *December 2014 Connect America Order*, 80 FR 4446, January 27, 2015, the Commission noted that all parties potentially interested in receiving Phase II support have an interest in building economically efficient networks, and those networks do not neatly align with census blocks. The Commission will continue to explore this issue, and encourage all stakeholders interested in receiving Phase II support to work together to propose for future Commission consideration an administratively feasible method for ensuring that unserved consumers in partially served census blocks are not left behind.

D. Accelerated Payment for Early Deployment

34. *Discussion.* After further considering the issue, the Commission declines to adopt an accelerated payment option for recipients of Phase II support awarded through the competitive bidding process. While a few commenters supported providing an option for accelerated payment, and the Commission agrees with the goal of encouraging faster deployment, it is not persuaded that it could implement this proposal within the annual available budget. The Commission is not convinced by ADTRAN’s claim that the universal service fund should be no worse off, because the outlays will not increase, and could decrease slightly to the extent the Commission discounts the accelerated future payments to reflect the time value of money. Even if annual support amounts were discounted, ADTRAN fails to recognize the impact on the fund if a significant number of support recipients took advantage of an accelerated payment option in the same year. Although overall outlays over the 10-year term would not increase, if the Commission disburses an amount of Connect America funding that significantly exceeds its annual budget, it likely would have to increase the contribution factor and the burden on all ratepayers. In adopting the high-cost budget in the *USF/ICC Transformation Order*, 76 FR 73830, November 29, 2011, the Commission explicitly sought to avoid “dramatic swings in the contribution factor.” The Commission finds that the potential risk of considerably exceeding its budget in a single year outweighs the benefits of encouraging early deployment with an accelerated payment option. Moreover, continuing monthly payments over the full 10-year

term provides the Commission with a means of addressing non-compliance by withholding payments until non-compliance is cured, as discussed below. The Commission notes that recipients will have other incentives to complete their deployment as quickly as possible, both to begin earning revenues from the new service offerings and to be in a position where they are no longer required to maintain a letter of credit, as discussed more fully below.

III. Eligible Areas

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

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

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

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

challenge process that the Bureau conducted for the offer of model-based support.

38. The Commission concludes that it will conduct a limited challenge process to ensure that support is not provided to overbuild areas where another provider already is providing voice and broadband service meeting the Commission's requirements. The Commission directs the Bureau to release a preliminary list of eligible census blocks based on June 2015 Form 477 data and to invite parties to comment within 21 days of publication if those areas have become served subsequent to the June 2015 Form 477 data collection with 10/1 Mbps or greater service, with a minimum usage allowance of 150 GBs at a rate meeting the Commission's reasonable comparability benchmark, with latency not exceeding 100 ms.

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

40. The Commission has taken several steps that make the deployment data it collects through Form 477 data more reliable than the June 2013 SBI data that was utilized in version 4.3 of the CAM for purposes of the offer of Phase II support to price cap carriers. Unlike SBI data, the submission of Form 477 data is mandatory for filers, and filers must certify that the data are accurate, thereby promoting the submission of complete and accurate data. Thus, entities should be making timely, accurate, and complete Form 477 filings as required by the Commission's rules; to the extent providers fail to indicate they serve a particular census block in FCC Form 477, there is no basis for protest if the Commission then determines such an area is unserved for purposes of the Phase II auction. Moreover, whereas SBI data were collected using varied methodologies by the states, Form 477 data are collected

through a single, uniform process, which reduces the potential for inconsistent data from one state to the next. And while the SBI data were collected in pre-defined speed tiers, Form 477 filers offering fixed broadband service are required to report their advertised maximum speed for each technology they offer in each census block and distinguish between residential and nonresidential broadband, thereby allowing the Commission to more precisely determine which speeds are available in each census block. Finally, the use of Form 477 data ensures consistency in the data used to determine the existence of voice and broadband in a given census block.

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

42. While the Commission concludes that eligibility of areas for support in the Phase II competitive bidding process will be determined at the census block level, this does not mean that the census block will be the minimum geographic unit for purposes of bidding in the Phase II auction. As discussed below in its discussion of auction design, the Commission expects the minimum biddable unit to be a census block group containing one or more eligible census blocks.

B. Averaging Costs at the Census Block Level

43. *Discussion.* The Commission now concludes that the CAM should no longer calculate costs at the sub-block level, except in very limited circumstances. This will simplify the administration and oversight of compliance with Phase II obligations for parties awarded support through the competitive process. The Commission therefore directs the Bureau to average costs at the census block level when generating the list of census blocks eligible for the Phase II competitive

bidding process, except in the circumstance it describes below.

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

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

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

47. As discussed above, the Commission has encouraged stakeholders to propose an administratively feasible method for ensuring that unserved consumers in partially served census blocks are not left behind. The Commission is open to addressing these relatively few cases after it determines which areas remain unserved after the Phase II auction, and who the neighboring providers are.

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

48. *Discussion.* The Commission excludes census blocks that a price cap carrier already serves with speeds of at least 10/1 Mbps from the Phase II competitive bidding process. Given the Commission's finite budget and its objective of targeting support to areas that are unserved, the Commission finds that it furthers the public interest to exclude census blocks that are already served by price cap carriers at speeds that meet the Commission's current requirements. The Commission acknowledges that permitting competitive bidders to include such census blocks in their bids could encourage more providers to participate in the Phase II auction. But the Commission concludes on balance that to allow such entities to overbuild census blocks already served with broadband speeds of 10/1 Mbps would be an inefficient use of its finite budget. While the Commission recognizes that all locations in a census block may not be served by the price cap carrier with broadband at speeds of 10/1 Mbps, it prefers at this time to focus its finite budget on areas that lack any broadband provider that offers broadband at speeds that meet the Commission's requirements.

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

D. Finalizing the List of Eligible Census Blocks

50. Consistent with the foregoing decisions, and prior Commission decisions, the Commission directs the Bureau to take all necessary steps to determine the census blocks that will be eligible for the Phase II auction. In particular, the Bureau shall determine which census blocks are served by unsubsidized competitors according to certified Form 477 data and thus ineligible for the Phase II competitive bidding process. The Bureau also shall add to the list any census blocks to which price cap carriers accepting model-based support indicated by December 31, 2015 that they do not intend to deploy, and the census blocks included in non-winning rural broadband experiment bids submitted in category one by entities that met the Commission's financial and technical documentation submission requirements, to the extent FCC Form 477 data indicate that such blocks are unserved with 10/1 Mbps broadband. To ensure that potential bidders are aware of the potential areas in the auction, the Commission directs the Bureau to publish expeditiously a preliminary list of eligible census blocks using the June 2015 Form 477 data. The Commission invites parties to notify the Bureau within 21 days of publication of this preliminary list if any of the census blocks on the preliminary list became served after June 30, 2015. The Commission delegates to the Bureau the task of conducting this streamlined challenge process.

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

IV. Budget

52. *Discussion.* Now that the price cap carriers have responded to the offer of support, the Commission can establish the budget for the Phase II auction. Nearly \$175 million in support was declined. To that figure, the Commission will add the nearly \$35 million in support that was removed from the offer as described above. The Commission also adds the nearly \$3

million associated with the served Missouri census blocks that was subtracted from the Phase II model-based support amount that CenturyLink accepted in Missouri. For simplicity, the Commission therefore now sets the Phase II auction budget at \$215 million in annual support (rounding up the sum of nearly \$175 million, nearly \$35 million, and nearly \$3 million).

V. Phase II Auction

A. Basic Guidance on Auction Process

53. *Discussion.* Here the Commission provides some basic guidance on choosing an auction design that will further its objectives for Connect America Phase II competitive bidding.

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

55. *Ranking bids.* The Commission now adopts an auction design in which bidders committing to different performance levels will compete head to head in the auction, with weights to take into account its preference for higher speeds over lower speeds, higher usage over lower usage allowances, and low latency over high latency. A number of commenters support a framework that provides an absolute preference to bidders deploying future proof networks, while other commenters disagree. After consideration of the record, the Commission is not persuaded that one type of bid should be processed separately from another type, or that one type of bid should

automatically be selected over another, regardless of the bid amount. Rather, all bids will be considered simultaneously, so that bidders that propose to meet one set of performance standards will be directly competing against bidders that propose to meet other performance standards. The Commission concludes that the bids for entities committing to meet significantly higher speeds and/or usage than the baseline should be adjusted because it sees the value to consumers in rural markets of having access to service during the 10-year term of support that significantly exceeds the Commission's baseline requirements. Likewise, the Commission sees value to rural consumers of having access to speeds and usage that meet its baseline requirements, rather than the minimum. The Commission would prefer, to the extent possible, to ensure that consumers living in high-cost areas receive the level of universal service that it establishes as its baseline expectation. The Commission also would prefer consumers having access to low latency services over high latency services. The Commission also notes that when structuring the Phase II auction, it will keep in mind the Commission's objective of bringing service to as many consumers lacking 4/1 Mbps Internet access service as possible through the implementation of Phase II. The Commission seeks comment on the assignment and specific level of the weights in the concurrently adopted Further Notice.

56. Bids will be scored relative to the reserve price for the areas subject to the bid with lower bids selected first, taking into accounts the weights, on which the Commission seeks comment in the concurrently adopted Further Notice. The Commission concludes that this approach is more likely to ensure winning bidders across a wide range of states than selecting bids based on the dollar per location, which could result in support disproportionately flowing to those states where the cost to serve per location is, relatively speaking, lower than other states. The Commission declines to adopt an approach that would select bids on a dollar per location basis.

57. *Appropriate Phase II Funding Across States.* The Commission recognizes the concerns that have been raised by states about the need for an efficient and equitable allocation of Phase II funds, particularly for those states in which a substantial amount of the offer of Phase II support was declined. That an incumbent carriers declined the offer of support does not diminish its universal service obligation to connect consumers in areas that

would have been reached had the offer been accepted and to provide sufficient universal service funds to do so. Accordingly, one of the Commission's objectives is to address these concerns. The Commission seeks comment on how best to design the Phase II auction in the concurrently adopted Further Notice. In addition, the Commission recognizes and applauds state-based initiatives to advance broadband deployment. In the concurrently adopted Further Notice, the Commission also seeks comment on how best to coordinate with such initiatives to achieve its universal service goals.

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

59. *Auction format for collecting bids.* The record is mixed on whether to conduct a single or multi-round bid auction. USTelecom, WISPA, and UTC propose a multiple-round format, while ACA urges a single-round sealed bid auction. The Commission prefers a multi-round auction format for the Phase II auction, but it has not settled on the specific details of such an auction format. The Commission notes that when adopting the rules for the Mobility Fund Phase I and Tribal Mobility Fund Phase I auctions in the *USF/ICC Transformation Order*, the Commission observed that the question of whether to conduct multiple rounds of bidding is typically resolved in the auction procedures process. Similarly, here, the specific auction design details will be adopted in a future *Auction Procedures Public Notice*, after the opportunity for further comment. Based on the information currently available to

the Commission, the Commission expects that a multiple-round bid auction would enable bidders, better than a single-round bid auction, to make adjustments in their bidding strategies to facilitate a viable aggregation of geographic areas in which to construct networks and enable competition to drive down support amounts.

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

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

amount. As with the auction design, the specific reserve prices will be adopted in a future *Auction Procedures Public Notice*, after the opportunity for further comment.

B. Application Process

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

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

64. Below, the Commission discusses the requirements it adopts for the short-form and the long-form applications for the Phase II competitive bidding process. Consistent with the approach the Commission took for the rural broadband experiments last year, it directs the Wireline Competition Bureau and the Wireless Telecommunications Bureau (Bureaus) to adopt the format and deadlines for the submission of documentation for the short-form and long-form applications, that are consistent with the Commission's universal service competitive bidding

rules and Part 54 of the Commission's rules.

1. Short-Form Application Process

65. *Discussion.* The Commission requires all applicants for the Phase II competitive bidding process to provide basic information in their short-form applications that will enable the Commission to review each application to assess before an entity commits time and resources to participating in the auction whether the applicant is eligible to participate in the auction. In addition to making the financial and technical certification adopted in the *April 2014 Connect America Order*, 79 FR 39164, July 9, 2014, the Commission's universal service competitive bidding rules will apply so that applicants will be required to provide information that will establish their identity, including disclosing parties with ownership interests and any agreements the applicant may have relating to the support to be sought through the Phase II competitive bidding process.

66. The Commission will also require all applicants to indicate the type of bids that they plan to make and describe the technology or technologies that will be used to provide service for each bid. Applicants will also be required to submit with their short-form applications any information or documentation required to establish their eligibility for any bidding weights or preferences that the Commission ultimately adopts. To the extent that an applicant plans to use spectrum to offer its voice and broadband services, it must disclose whether it currently holds licenses for or leases spectrum. The applicant must demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and meet the minimum performance requirements to serve all of the fixed locations in eligible areas. Moreover, all applicants will be required to certify that they will retain their access to the spectrum for at least 10 years from the date of the funding authorization.

67. The Commission does not expect that these requirements will impose an unreasonable burden on potential bidders. The Commission had similar requirements for bidders in the rural broadband experiments, and it is not aware of any applicants having difficulty providing such baseline information. The Commission anticipates that as they prepare to participate in the auction, applicants will already have firm plans for where they will bid and the technologies they

will use to provide service to the areas for which they will bid. Unlike the applicants participating in the Mobility Fund auctions, participants will likely be proposing to use a wide variety of technologies to provide service meeting the Commission's requirements. Because not all participants will have ETC designations to provide service in their relevant service areas, it will be useful for the Commission to have some insight into the types of technologies that bidders intend to use to meet their obligations prior to the auction. The project descriptions are intended to provide the Commission with some assurance that the applicant has thought through how it intends to provision service if awarded support.

68. To provide additional assurance to the Commission that the entities that intend to bid in the auction have some experience operating networks or are otherwise financially qualified, it adopts several alternative prequalification requirements. First, the Commission adopts a requirement that applicants certify in their short-form application that they have provided voice, broadband, and/or electric distribution or transmission services for at least two years and specify the number of years they have been operating, or they are the wholly-owned subsidiary of an entity that meets these requirements.

Applicants that have provided voice or broadband services must also certify that they have filed FCC Form 477s as required during that time period. Recognizing the electric utilities also have significant experience building and operating networks, the Commission also will accept certifications from entities that have provided electric distribution or transmission services for at least two years (or their wholly-owned subsidiaries). Applicants that have operated only an electric distribution or transmission network must submit qualified operating or financial reports for the relevant time period that they have filed with the relevant financial institution along with a certification that the submission is a true and accurate copy of the forms that were submitted to the relevant financial institution. The Commission will accept the Rural Utilities Service (RUS) Form 7, Financial and Operating Report Electric Distribution; the RUS Form 12, Financial and Operating Report Electric Power Supply; the National Rural Utilities Cooperative Finance Corporation (CFC) Form 7, Financial and Statistical Report; the CFC Form 12, Operating Report; or the CoBank Form 7; or the functional replacement of one

of these reports. The Commission concludes that if an entity can certify that it has provided voice, broadband, and/or electric distribution or transmission services for at least two years or that it is a wholly-owned subsidiary of such an entity, that will provide the Commission with sufficient assurance before the auction that an entity has at a minimum level demonstrated that it has the ability to build and maintain a network.

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

70. However, the Commission concludes that to the extent an entity that otherwise meets these eligibility requirements does not already obtain an audit of its financial statements in the ordinary course of business, the Commission will permit that entity to wait until after it is announced as a winning bidder to submit audited financial statements. The Commission will require such entities that do not already have audited financial statements to certify that they will submit the prior fiscal year's audited

financial statements by the deadline during the long-form application process. The Commission acknowledges that some potential bidders, particularly small entities, may be reluctant to bid in the Phase II auction because they do not want to pay the upfront costs of obtaining audited financial statements prior to finding out if they are winning bidders. Because such entities will be required to demonstrate that they have provided a voice, broadband, or electric distribution or transmission service for two years, the Commission concludes that this will give it reasonable assurance of an entity's financial health for permitting that entity to participate in the auction. The Commission concludes that on balance, its interest in maximizing participation in the Phase II auction outweighs the potential risk of qualifying an experienced entity to participate in the Phase II auction without reviewing that bidder's audited financial statements, particularly given that it will have the opportunity to scrutinize the bidder's audited financial statements at the long-form application stage before authorizing that entity to begin receiving support.

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

72. The Commission concludes that it is appropriate to adopt a base forfeiture of \$50,000 for any entity that certifies in its short-form application that it will submit audited financials in its long-form application, but then ultimately

defaults by failing to submit audited financial statements as required. Such forfeiture would also be subject to adjustment upward or downward as appropriate based on the criteria set forth in the Commission's forfeiture guidelines. The Commission finds that imposing such a forfeiture will create an incentive for bidders to certify truthfully in their short-form applications that they will obtain audited financial statements if announced as a winning bidder and will also create an incentive for winning bidders to actually go out and obtain those audited financial statements rather than default.

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

74. Recognizing that the foregoing requirements would preclude from participating in the Phase II auction

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

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

76. The Commission also expects that a letter of interest from the bank will provide the Commission with an independent basis for some additional assurance regarding the financial status of the entity. The Commission does not anticipate that this requirement will be onerous. The Commission expects that interested bidders will already be considering which banks they will use to meet the letter of credit requirement described below, and that they will have to find a bank that will be willing to issue them a letter of credit in order to ultimately be authorized to begin receiving support. But the Commission cautions potential bidders that it will carefully scrutinize such letters and reserve the right not to allow such applicants to bid if the letter of interest is too vague to assess the likelihood of a future bank commitment.

77. The Commission recognizes that by adopting these requirements, it is potentially precluding interested bidders that have not been in operation long enough to meet these requirements or that are unable to meet these requirements for other reasons. By adopting alternative types of prequalification requirements, the Commission will implement a more

narrowly tailored approach that balances maximizing participation in the auction with furthering the statutory principles of providing access to advanced services to all regions in the county and ensuring that those living in rural, insular and high-cost areas have access to reasonably comparable services. As stewards of the public's funding, it is the Commission's responsibility to implement safeguards to ensure that these funds are being used efficiently and effectively, and to protect consumers in rural and high-cost areas against being stranded without a service provider in the event a winning bidder defaults when another qualified competing bidder could have won the support instead.

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

2. Post-Auction Long-Form Application Process

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

a. Financial and Technical Requirements

80. Like the Mobility Fund Phase I and Tribal Mobility Fund Phase I auctions, the Commission will require that winning bidders submit a self-certification regarding their financial and technical qualifications with their long-form applications. They must also submit a certification that specifies that they will be able to meet all of the applicable public interest obligations for the relevant tiers, including the requirement that they offer service at rates that are equal or lower to the Commission's reasonable comparability benchmarks for fixed wireline services offered in urban areas. Due to the varying types of technologies that entities may use to fulfill their Phase II competitive bidding process obligations,

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

81. The Commission notes that it required provisionally selected bidders in the rural broadband experiments to submit similar technical documentation, and the vast majority of provisionally selected bidders in the rural broadband experiments were able to meet these requirements. Similarly, the Commission is aware that RUS requires loan applicants to submit detailed network information as part of its application process. The Commission expects that potential bidders for the Phase II competitive bidding process will need to have already developed a network plan when making a decision about whether to participate in the auction. Accordingly, on balance the Commission concludes that its interest in assessing, before an entity is authorized to receive support, whether that entity is likely able to fulfill Phase II obligations outweighs any potential burdens this requirement may impose on bidders.

82. Similar to the requirements for Mobility Fund Phase I and Tribal Mobility Fund Phase I, the Commission will require that winning bidders certify that they have available funds for all project costs that will exceed the amount of support that will be received from the Phase II auction authorization for the first two years of their support

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

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

b. Letters of Credit

84. *Discussion.* The Commission adopts a letter of credit requirement for all winning bidders. In the long-form application filing, it will require each winning bidder to submit a letter from a bank as described below committing to issue a letter of credit. The winning bidder will be required to have its letter of credit in place before it is authorized to receive support. The Commission's decision to require recipients to obtain

a letter of credit is consistent with the requirements the Commission has adopted for other competitive bidding processes it has conducted to distribute Connect America funds, where both existing providers and new entrants were required to obtain letters of credit. In response to what the Commission learned in the rural broadband experiments, however, it makes some adjustments to these requirements in an effort to reduce some of the cost associated with obtaining a letter of credit.

85. In the *USF/ICC Transformation Order* and in the *Rural Broadband Experiments Order*, 79 FR 45705, August 6, 2014, the Commission explained why letters of credit are an effective means for accomplishing its role as stewards of the public's funds by securing the Commission's financial commitment to provide Connect America support in the auction context. The Commission also explained why it did not adopt other approaches suggested in the record, such as relying on its existing accountability measures or adopting alternative methods of securing Connect America funds, for example performance or construction bonds, field inspections, or denials of certification. The Commission concludes that the same rationale applies here. Letters of credit permit the Commission to immediately reclaim support that has been provided in the event the recipient is not furthering the objectives of universal service by complying with the Commission's rules or requirements. They also have the added advantage of minimizing the possibility that the support becomes property of a recipient's bankruptcy estate for an extended period of time, thereby preventing the funds from being used promptly to accomplish the Commission's goals. The Commission finds that commenters that have renewed requests for alternatives based on their experience with the rural broadband experiments, such as requiring a performance bond, placing money in escrow, or submitting financial statements in lieu of a letter of credit or considering an entity's history of receiving high-cost support or performance, have not demonstrated that their suggested alternatives offer the same level of protection of ratepayers' contributions to the universal service fund.

86. Additionally, the Commission reminds bidders to become familiar with the letter of credit requirements it adopts below and consider potential issuing banks in a timely fashion. To the extent that a bidder is the recipient of a loan or grant from RUS, it should

consult with RUS regarding the need to obtain a letter of credit if it is authorized to receive support *before* it submits a short-form application. The Commission notes that RUS' regulations generally require that recipients of RUS support obtain a first lien on the assets that are secured by certain broadband and telecommunications loan programs. If a bank determines that it will need a first lien on an entity's assets as collateral for issuing a letter of credit, RUS and that bank will need to negotiate acceptable arrangements, such as an intercreditor agreement with that bank to share RUS' first lien status. RUS has set forth a number of standards that an intercreditor agreement will have to meet including having the bank impose specific obligations on the Phase II auction recipient, in order for RUS to sign on to an intercreditor agreement. To the extent required, it is in the best interest of entities to contact RUS and become familiar with those standards as soon as possible. In the event that the bidder's chosen issuing bank requires a first lien to issue a letter of credit, the bidder should ensure that it can comply with the additional obligations and that the issuing bank will be able to agree to those terms by the time the bidder will be required to submit a letter of credit commitment letter as described below.

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

88. In response to concerns raised about the cost of maintaining a letter of credit for the entire support period, the Commission will require that the letter of credit only remain open until the recipient has certified that it has deployed broadband and voice service meeting the Commission's requirements to 100 percent of the required number of locations, and USAC has validated

that the entity has fully deployed its network. The Commission concludes that such an approach will help alleviate the costs of obtaining a letter of credit, particularly for entities that are able to build out their networks faster than the six year build-out period, while still protecting the Commission's ability to recover the funds in the event that the entity is not building out its network as required. This approach is consistent with the approach used for Mobility Fund Phase I and Tribal Mobility Fund Phase I, where an entity is required to maintain a letter of credit valued at the support that had been disbursed until the Commission verifies that the build-out has been completed.

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

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

letter of credit under section 541 of the Bankruptcy Code.

91. *Issuing Bank Eligibility.* The letters of credit for winning bidders must be obtained from a domestic or foreign bank meeting the requirements adopted herein. The record suggests that entities, especially small entities, lack established relationships with banks that met the requirements the Commission adopted for the rural broadband experiments, which can make it costly for such entities to obtain a letter of credit. Moreover, some entities may intend to bid on smaller projects, and larger banks that met the Commission's requirements for the rural broadband experiments may be unwilling to issue letters of credit below a certain threshold. Because these obstacles are also faced by rural broadband experiment participants and could potentially constrain participation in the Remote Areas Fund, the Commission concludes that it serves the public interest to expand the pool of banks that are eligible to issue letters of credit for all recipients of support authorized through competitive bidding to serve fixed locations, while maintaining objective criteria that will provide sufficient assurance that letters of credit issued by such banks will be honored.

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

and protecting the public funds. The Commission expands the eligibility of banks to lower barriers to participation in the auction for entities that may not otherwise be able to obtain a letter of credit from a smaller pool of banks, while also ensuring that it puts in place adequate controls to protect the Fund by adopting alternative eligibility criteria that give the Commission independent assurance of the safety and the soundness of the bank issuing a letter of credit.

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

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

95. CFC's assets also make it comparable to commercial depository banks that are in the top 100 based on total assets and it has a credit rating from Standard & Poor's of A. But because CFC is not a depository institution and it is not part of the Farm Credit System, it is not FDIC or FCSIC-insured. Nevertheless, the Commission concludes that CFC is uniquely situated and should be made eligible to the extent it retains its standing with assets equivalent to a top 100 U.S. bank and a qualified credit rating. CFC is "owned by, and exclusively serves" rural utility providers, and CFC manages and funds

its affiliate, the Rural Telephone Finance Cooperative (RTFC), which lends primarily to telecommunications providers and affiliates across the nation. As the largest non-governmental lender for rural utilities, CFC has specialized institutional knowledge regarding the types of entities that the Commission expects will participate in universal service competitive bidding to serve fixed locations and has demonstrated that it has significant and long-term experience in financing the deployment of rural networks. A number of entities that participated in the rural broadband experiments and entities that have expressed interest in participating future competitive bidding have indicated that they have an established relationship with CFC. This unique and longstanding role in rural network deployment coupled with CFC's significant participation in other rural federal government programs, its substantial assets, and its sustained credit rating, provides the Commission with sufficient assurance that CFC has the qualifications to assess the financial health of potential bidders and honor the letters of credit that it issues at the request of these bidders, without the need for the independent oversight of CFC's safety and soundness that would be offered by FDIC or FCSIC insurance or a Weiss safety rating. The Commission concludes that based on the totality of these circumstances, CFC is eligible to issue letters of credit despite the fact that it does not meet the FDIC and Weiss rating requirements. The Commission notes that it is not adopting alternative eligibility requirements that would permit banks that are not FDIC or FCSIC-insured or that do not have a Weiss bank safety rating to issue letters of credit. Instead the Commission is concluding that, for purposes of providing security for winning bidders, a letter of credit from CFC provides assurances that are equivalent to those provided by banks meeting the Commission's general criteria, due to CFC's uniquely extensive experience in financing rural networks, its significant participation in other federal government programs, and its long-standing relationship with a class of potential auction bidders.

96. For non-U.S. banks, the Commission retains the same eligibility requirements that it adopted for the rural broadband experiments. Accordingly, for non-U.S. banks, the Commission requires that the bank be among the 100 largest non-U.S. banks in the world (determined on the basis of total assets as of the end of the calendar year immediately preceding the

issuance of the letter of credit, determined on a U.S. dollar equivalent basis as of such date). The bank must also have a branch in the District of Columbia or other agreed-upon location in the United States, have a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's, and must issue the letter of credit payable in United States dollars.

97. The Commission is not persuaded that it should further expand the bank eligibility requirements to include all banks that are federally-insured. If the Commission were to permit entities to use any bank that is federally-insured, it would need to conduct a comprehensive review of every bank to determine whether it has adequate safety and soundness. Because the Commission lacks the expertise to conduct such a review and it would delay the authorization of winning bidders, it concludes that expanding the number of eligible U.S. banks to banks that are FDIC-insured and have a Weiss bank safety rating of B- or higher addresses the concerns of small entities while also using an objective and administratively feasible method to judge the financial security of a bank. The Commission also finds that relying on an independent evaluation of the safety and soundness of a bank that uses a rating based on a number of financial indices provides a more comprehensive view of a bank's financial viability than other proposals submitted in the record that would rely solely on the size of the bank or its capitalization.

98. The Commission notes that winning bidders have flexibility in how they structure their letter of credit arrangements with issuing banks and may choose to obtain multiple letters of credit over the build-out period. Entities may negotiate all the terms of their letter of credit with the issuing bank, including the length of the letter of credit, so long as the letter of credit is available to USAC for the entire duration of the build-out period and it is at a minimum an annual letter of credit that follows the terms and conditions of the Commission's model letter of credit. If a recipient has been issued a letter of credit from a bank that expires during the build-out period, that recipient must notify USAC immediately and an approved replacement letter of credit must be put in place before the letter of credit expires. If a bank fails so that it is no longer able to honor a letter of credit or if the bank no longer meets the eligibility requirements the Commission adopts herein, the recipient must notify

USAC and will have 30 days to secure a letter of credit from another issuing bank that meets the Commission's eligibility requirements. The Commission also reserves the right to temporarily cease disbursements of monthly support until a recipient submits to the Commission a new letter of credit that meets its requirements and note that winning bidders will be subject to non-compliance measures if they fail to obtain a new and acceptable letter of credit.

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

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

101. Recognizing that the risk of a default will lessen as a recipient makes progress towards building its network, the Commission finds that it is appropriate to modestly reduce the value of the letter of credit in an effort to reduce the cost of maintaining a letter of credit as the recipient meets certain service milestones. Specifically, once an entity meets the 60 percent service milestone that entity may obtain a new letter of credit so that it is valued at 90 percent of the total support amount already disbursed plus the amount that will be disbursed the next year. Once the entity meets the 80 percent service milestone that entity may obtain a new letter of credit valued at 80 percent of the total support amount already

disbursed plus the amount that will be disbursed the next year. The Commission concludes that the benefit to recipients of potentially decreasing the cost of the letter of credit as it becomes less likely that a recipient will default outweighs the potential risk that if a recipient does default and is unable to cure, the Commission will be unable to recover a modest amount of support.

102. The Commission is not persuaded, however, that it should further reduce the value of the letter of credit so that it only covers 50 percent of the total of support disbursed throughout the build-out period. The Commission concludes that the approach it adopts is better calibrated to the potential risk of default because it takes into account the substantial performance of the recipient. While the Commission acknowledges that reducing the value of the letter of credit to 50 percent of the amount of support disbursed would further reduce the costs for some recipients, it finds that on balance accomplishing the Commission's duty as stewards of the public's funds by ensuring that it can recover a substantial percentage of the support the Commission disburses in the event that an entity is not using the support for its intended use outweighs the potential costs for participants.

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

104. *Costs of Letters of Credit.* The Commission continues to believe that the advantages of letters of credit in ensuring that Connect America support can be quickly reclaimed to protect ratepayers' contribution to the universal service fund, and that the support is protected from being included in a bankruptcy estate, outweigh the potential costs of obtaining letter of credit. While the Commission

understands that the requirement will impose costs on participants, it expects that all entities will factor the cost of letters of credit into their bids. Moreover, the Commission anticipates that its decision to tailor the requirement so that the letter of credit will remain open for only the build-out period and modestly reduce the value of the letter of credit as the recipient meets certain service milestones will lessen the cost of maintaining a letter of credit. The Commission also expects that by expanding the pool of eligible issuing U.S. banks to approximately 3,600 and also permitting entities to obtain a letter of credit from CFC, a bank that has an established relationship with a number of small entities, will potentially further reduce the costs of obtaining a letter of credit.

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

c. ETC Designation Documentation

106. Consistent with the Commission's decision to require winning bidders to obtain ETC designation from the relevant states or the Commission as applicable, as discussed more fully below the Commission will also require entities to submit appropriate documentation in their long-form application of their ETC designation in all areas for which they will receive support within 180 days of being announced as a winning bidder. In addition to submitting the relevant

state or Commission orders, each winning bidder should provide documentation showing that the designated areas (e.g., census blocks, wire centers, etc.) cover its winning bid areas so that it is clear that the applicant has ETC status in each winning bid area. For example, the obligation may be satisfied by providing maps of the recipient's ETC designation area, map overlays of the winning bid areas, or charts listing designated areas. Additionally, the Commission will require winning bidders to submit a letter with their documentation from an officer of the company certifying that their ETC designation for each state covers the relevant areas where the winning bidders will receive support. These requirements will help the Commission verify that each winning selected bidder is authorized to operate in the areas where it will be receiving support. The Commission does not anticipate that this requirement will impose an unreasonable burden on winning bidders given that it expects they will conduct their own due diligence review to ensure that their existing or new ETC designations cover their awarded areas.

3. Forfeiture

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

108. An entity will be considered in default and will be subject to forfeiture if it fails to timely file a long-form

application or meet the document submission deadlines outlined above or is found ineligible or unqualified to receive Phase II support by the Bureaus on delegated authority, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of support. The Commission notes that a winning bidder will be subject to the base forfeiture for each separate violation of the Commission's rules. For purposes of the Phase II competitive bidding process, the Commission defines a violation as any form of default with respect to the minimum geographic unit eligible for bidding. In other words, there shall be separate violations for each geographic unit subject to a bid. That will ensure that each violation has a relationship to the number of consumers affected by the default, but is not unduly punitive. Such an approach will also ensure that the total forfeiture for a default is generally proportionate to the overall scope of the winning bidder's bid. To ensure that the amount of the base forfeiture is not disproportionate to the amount of an entity's bid, the Commission also limits the total base forfeiture to five percent of the bidder's total bid amount for the support term. For the Mobility Fund and Tribal Mobility Fund, the Bureaus found that five percent of the total bid amount provided sufficient incentive for auction participants to fully inform themselves of the obligations associated with participation in the auctions without being unduly punitive.

109. The Commission finds that by adopting such a forfeiture, it will impress upon recipients the importance of being prepared to meet all of the Commission's requirements for the post-selection review process and emphasize the requirement that they conduct a due diligence review to ensure that they are qualified to participate in the Phase II competitive bidding process and meet its terms and conditions.

VI. ETC Designation

110. In this section, the Commission adopts more specific details related to the implementation of the ETC designation requirement for the Phase II competitive bidding process. First, the Commission requires winning bidders in the Phase II competitive bidding process to submit proof of their ETC designation within 180 days of the public notice announcing them as winning bidders. Second, the Commission concludes that forbearance from the section 214(e)(5) service area conformance requirement for recipients of the Phase II competitive bidding

process is appropriate and in the public interest.

A. ETC Designation Timing

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

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

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

114. In the event the bidder is unable to obtain the necessary ETC designations within 180 days, the Commission finds that it would be appropriate to waive the 180-day

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

115. The Commission declines to adopt a hard rule requiring a winning bidder to file an ETC application within a specified amount of time to be considered acting in good faith, because, as it found in the rural broadband experiments, there were various circumstances impacting the ability of individual bidders to file their ETC applications. The Commission expects that winning bidders will have an incentive to file their ETC applications expeditiously so that they can meet the requirements to begin receiving support as soon as possible. Instead, based on what the Commission observed in the rural broadband experiments, when considering waivers of the 180-day timeframe for obtaining ETC designation, the Commission will presume that an entity will have acted in good faith if the entity files its ETC application within 30 days of the release of the public notice announcing that it is a winning bidder.

116. The Commission is not persuaded that it needs to take the further step of adopting a rebuttable presumption that a state lacks jurisdiction in the event that the ETC does not act on a petition within a certain amount of time or does not make a final decision on a petition within a certain amount of time. A number of state commenters explained that they need varying amounts of time to handle ETC petitions based on their available resources, the complexity of the application, and whether it is contested. The Commission has found through its experience with the rural broadband experiments that while some states may need more time to initiate action and make a decision on applications, they are committed to acting diligently within the framework of their existing state processes to act on ETC requests to expand voice and broadband-capable networks to their residents. The Commission saw no situations in the rural broadband experiments where a state refused to initiate action on a petition, took an unreasonable amount of time to declare that it did not have jurisdiction over a particular carrier, or

delayed making a decision on an application for no legitimate reason. And the Commission notes that any circumstances where a state will need more time due to procedural requirements or resource issues can be dealt with through the waiver process outlined above. Accordingly, to preserve the primary role that Congress gave the states in designating ETCs, the Commission reaffirms that it will act on an ETC designation petition pursuant to section 214(e)(6) “only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.”

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

118. The Commission also declines to automatically grant petitions after they have been pending with the states for a certain amount of time. Determining whether an entity is qualified to become an ETC is a fact-intensive inquiry, and

the more complex and contested petitions are likely to take more time. It would be adverse to the public interest to forgo this inquiry into an entity’s qualifications simply because an application is taking more time to review.

B. Forbearance From Service Area Redefinition Process

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

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

121. The Commission concludes that forbearance is warranted in these limited circumstances. As the Commission noted above, its objective is to distribute support to winning bidders as soon as possible so that they can begin the process of deploying new

broadband to consumers in those areas. Case-by-case forbearance would likely delay its post-selection review of entities once they are announced as winning bidders. The Act requires the Commission to forbear from applying any requirement of the Act or its regulations to a telecommunications carrier if the Commission determines that: (1) Enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest. The Commission concludes each of these statutory criteria is met for winning bidders of the Phase II competitive bidding process.

122. *Just and Reasonable.* The Commission concludes that compliance with the service area conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission’s rules is not necessary to ensure that the charges, practices, and classifications of carriers designated as ETCs in areas for which support is authorized through the Phase II competitive bidding process are just and reasonable and not unjustly or unreasonably discriminatory. As discussed below, the Commission finds that the three factors traditionally taken into account by the Commission and the states when reviewing a potential redefinition of a rural service area pursuant to section 214(e)(5) of the Act no longer apply in the context of designating ETCs in areas for which support is authorized through a Phase II competitive bidding process. Moreover, all ETCs—whether rural ETCs or other entities designated as ETCs in areas eligible for Phase II competitive bidding support in order to receive such support—will continue to be subject to the requirements of the Act and of the Commission’s rules that consumers have access to reasonably comparable services at reasonably comparable rates. In fact, as the Commission discusses below, the expansion of voice and broadband-capable networks into these unserved Phase II areas may expand the choice of telecommunications services for consumers living in areas located near the Phase II funded areas. The resulting competition is likely to help ensure just, reasonable, and nondiscriminatory offerings of services.

For these reasons, the Commission finds that the first prong of section 10(a) is met.

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

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

process recipient should be designated as an ETC.

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

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

limited circumstances does not impose any additional administrative requirements on rural telephone companies.

127. The Commission also notes that requiring each Phase II recipient to conform its service areas to those of the rural telephone companies in the states they seek to serve could result in lengthy redefinition proceedings, which may delay the Commission's post-selection review of winning bidders and consequently delay its distribution of support and the deployment of advanced voice and broadband-capable networks. Some rural broadband experiment provisionally selected bidders found that it was time-consuming to obtain ETC designations in circumstances where the incumbent rural telephone company challenged their ETC petitions. The Commission expects that the forbearance it provides here will help accelerate the ETC designation process when applications are challenged because the state commission will not need to seek the Commission's agreement through a service redefinition process or wait 90 days for the service redefinition to be automatically granted if the Commission is unable to act within 90 days.

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

VII. Accountability and Oversight

129. In this section the Commission adopts measures for ensuring that recipients of Connect America support to serve fixed locations awarded through a competitive bidding process use their support for its intended purposes. First, the Commission adopts reporting requirements that will enable the Commission to monitor recipients' progress in meeting their deployment obligations. Second, the Commission explains how the letter of credit requirement it adopts above will work with the existing support reduction framework it adopted in the *December 2014 Connect America Order* to

calibrate support reductions to the extent of a recipient's non-compliance with its build-out obligations. Finally, the Commission clarifies that for the section 54.314 certification, the relevant states or ETCs may certify that support was used for its intended purpose for a given year if it is set aside in an account dedicated specifically for upgrades necessary to meet the relevant requirements.

A. Monitoring Progress in Meeting Deployment Obligations

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

131. The first location list will be due by the last business day of the second calendar month following the one-year anniversary of support authorization and must reflect the number and list of geocoded locations (if any) where the recipient already was offering service meeting the Commission's requirements and all new locations (if any) where the recipient was offering service meeting the requisite requirements by the end of the first year. Phase II auction recipients will then be required to submit a list of locations where they are newly offering service by the last business day of the second calendar month following each subsequent support year until they have met the final service milestone. Phase II auction recipients will be free—and indeed, encouraged—to submit information on a rolling basis throughout the year to the online portal, as soon as service is offered, so as to avoid filing all of their locations at the deadline. A best practice would be to

submit the information no later than 30 days after service is initially offered to locations in satisfaction of deployment obligations, to avoid any potential issues with submitting large amounts of information at year end.

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

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

134. The Commission will also require these auction support recipients to certify each year after they have met their final service milestone that the network they operated in the prior year meets the Commission's performance requirements. Phase II auction recipients will continue to receive support after they have met their service

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

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

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

customers at this time, they will be able to indicate this in the report.

137. Finally, the Commission will require that in each section 54.313 annual report that is filed by Phase II recipients during their support term, they will be required to certify that they have available funds for all project costs that will exceed the amount of support

that will be received from the authorization stemming from the Phase II auction for the next calendar year. This will give the Commission assurance that Phase II recipients have obtained enough funding to meet their Phase II obligations and also underscore Phase II recipients' obligation to conduct a due diligence review of their

finances to ensure that they can meet their obligations.

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

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

139. The Commission directs USAC to review, for these entities that are authorized to receive support after the Phase II competitive bidding process, compliance with deployment obligations and the Commission's public interest obligations at the state level—that is, whether the carrier is meeting interim and final service obligations for the total number of locations required for each state. As the Commission concluded in the *December 2014 Connect America Order*, conducting compliance reviews at the state level would be less administratively burdensome for the Commission, USAC, and recipients of Phase II support than at the census block level.

140. Finally, the Commission clarifies that price cap carriers that choose to use Phase II model-based support to deploy to locations in extremely high-cost census blocks may not use Phase II model-based support to serve extremely high-cost census blocks that an authorized Phase II auction recipient will be required to serve. In the *USF/ICC Transformation Order*, the Commission gave price cap carriers the flexibility to

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

141. The Commission directs USAC to review the geocoded locations lists that are submitted by the price cap carriers regarding deployment to verify that no extremely high-cost locations are

located in census blocks where a Phase II auction recipient has been authorized to begin receiving support. In other words, as of the date of authorization for another entity to serve a census block, that census block is no longer eligible for substitution of locations. If USAC determines that a price cap carrier has included such locations in its list to count towards its build-out obligation, that price cap carrier will be deemed to have not met the relevant Phase II model-based support build-out obligation and will be subject to the applicable non-compliance measures.

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

B. Section 54.314 Certifications

143. *Discussion.* The Commission clarifies that for the section 54.314 certification, using high-cost support (*i.e.* Connect America Fund support) for

the intended purpose in a given calendar year may include setting aside the high-cost support received but not spent in that calendar year in an account dedicated specifically for upgrades necessary to meet the relevant high-cost requirements. All high-cost recipients should be prepared to demonstrate to a state making such a certification on their behalf, or to the Commission or USAC upon request, that any unspent high-cost support was kept in such an account until it was spent.

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

C. Measures for Non-Compliance

145. *Discussion.* The Commission adopts the process by which the Wireline Competition Bureau or the Wireless Telecommunications Bureau will authorize USAC to draw on the letter of credit to recover all of the support that has been disbursed in the event that the Phase II competitive bidding process recipient does not meet the relevant service milestones. In the *December 2014 Connect America Order*, the Commission determined that USAC would recover support from ETCs associated with their compliance gap in three separate circumstances. If after six months, the ETC fails to repay in full, either the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter authorizing USAC to draw on the letter of credit to

recover 100 percent of the support that has been disbursed to the ETC.

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

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

draw on the letter of credit to recover all of the support that has been disbursed to the ETC.

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

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

150. Finally, the Commission notes that Phase II auction recipients may also be subject to other sanctions for non-compliance with the terms and conditions of high-cost funding, including, but not limited to potential revocation of ETC designation and

suspension or debarment. Phase II auction recipients will also be subject to any non-compliance measures that are adopted in conjunction with a methodology for high-cost recipients to measure and report speed and latency performance to fixed locations.

VIII. Remote Areas Fund

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

152. The Commission concludes that it will award support for the Remote Areas Fund through a competitive bidding process, with providers receiving support to serve defined areas that remain unserved with broadband service meeting the Commission’s public interest obligations, determined based on the most recent publicly available FCC Form 477 data available prior to the opening of the filing window for short-form applications. For several reasons, the Commission concludes that it will be most efficient to award support from the Remote Areas Fund to serve a designated area through a competitive bidding process, rather than as a portable consumer subsidy. The Commission expects that the competitive process will drive down the amount of support awarded to serve these remote locations, enabling the Commission to utilize its Remote Areas funding most effectively. The Commission also believes this approach will best provide incentives for providers to deploy broadband-capable infrastructure in these remote areas. The Commission recognizes the need for service providers to have some assurance that there will be sufficient

demand in these remote areas to warrant making the necessary investments to extend service, and by awarding support to serve a given area, bidders will be able to aggregate demand sufficiently to warrant the investments necessary to serve such areas. The Commission notes that a number of bidders in the rural broadband experiments were ultimately authorized to begin receiving support in category 3 which was limited to bids for only extremely high-cost census blocks, suggesting that these bidders were able to put together bids that enabled them to make a business case to serve the highest cost areas. Lastly, by moving swiftly to auction support from the Remote Areas Fund utilizing many of the same processes and procedures established for the Phase II auction, the Commission will bring service to consumers more quickly than would likely be the case if it were to adopt an approach that has never been implemented to date in the high-cost program. The Commission does not rule out the possibility of implementing some form of a portable consumer subsidy at a future date, however, should there remain areas after the Remote Areas Fund auction that remain unserved.

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

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

155. The Commission intends that the Remote Areas Fund auction will occur as soon as feasible after the Phase II auction, providing for a limited period of time in between so that applicants that may wish to participate in both auctions may plan and prepare for the Remote Areas auction taking into account winning bids in the Phase II

auction. Bidders qualified to bid in the Phase II auction will be able automatically to participate in this subsequent auction without having to file another short-form application, so long as there is no material change in any information filed in their Phase II short-form application.

156. Consistent with the rules established for the Phase II competitive bidding process, the Commission will not require bidders to be ETCs in order to bid in the Remote Areas Fund auction. Rather, they may obtain ETC designation after being selected as a winning bidder. The Commission finds this will serve the public interest for the same reasons previously stated when it adopted these measures for Phase II. Similarly, the Commission adopts the same timelines for submitting proof of ETC designation for Remote Areas Fund winning bidders for the same reasons stated above for the Phase II auction.

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

158. As a general matter, support from the Remote Areas Fund will be awarded on similar terms and subject to the same rules as Phase II support awarded through the Phase II auction. The Commission expects that recipients will be subject to the same interim and final service milestones as Phase II auction winners, although it reserves the right to make adjustments if necessary to encourage auction participation. Recipients will be subject to the same reporting obligations as Phase II recipients and subject to the same measures for non-compliance. The Commission expects, however, that it may be necessary to relax performance

standards for the Remote Areas Fund. The Commission may make further adjustments as needed, based on what it learns from the Phase II auction.

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

IX. Procedural Matters

A. Paperwork Reduction Act Analysis

160. This document contains new information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, 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. The Commission describes impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) in Appendix C, *infra*.

B. Congressional Review Act

161. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

162. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* adopted in November 2011 (*USF/ICC Transformation FNPRM*) and the *Further Notice of Proposed Rulemaking* adopted in April 2014 (*April 2014 Connect America FNPRM*). The Commission sought written public comment on the proposals in the *USF/ICC Transformation FNPRM*, 76 FR 78384, December 16, 2011 and *April*

2014 Connect America FNPRM, 79 FR 39196, July 9, 2014, including comment on the IRFAs. The Commission did not receive any relevant comments in response to these IRFAs. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

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

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

- Adopt public interest obligations for recipients of support awarded through the Phase II competitive bidding process, that will be known in advance of the auction and that will continue for the duration of the term of support, recognizing that competitive bidding is likely to be more efficient if potential bidders know what their performance standards will be before bids are made. In particular, the Commission establishes four technology-neutral tiers of bids available for bidding with varying speed and usage allowances, all at reasonably comparable rates, and for each tier will differentiate between bids that would commit to either lower or higher latency.

- The Commission's minimum performance tier requires that bidders commit to provide broadband speeds of at least 10 Mbps downstream and 1 Mbps upstream (10/1 Mbps) and offer at least 150 gigabytes (GB) of monthly usage.

- The Commission's baseline performance tier requires that bidders commit to provide at least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps) and offer a minimum usage allowance of 150 GB per month, or that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher.

- The Commission's above-baseline performance tier requires that bidders commit to provide at least 100 Mbps downstream and 20 Mbps upstream (100/20 Mbps) and offer an unlimited monthly usage allowance.

- The Commission's Gigabit performance tier requires that bidders commit to provide at least 1 Gigabit per second (Gbps) downstream and 500 Mbps upstream and offer an unlimited monthly usage allowance.

- For each of the four tiers, bidders will designate one of two latency performance levels: (1) Low latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 100 milliseconds (ms), or (2) High latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 750 ms and, with respect to voice performance, demonstrate a score of four or higher using the Mean Opinion Score (MOS).

- Adopt the same interim service milestones for winning bidders in the Phase II auction as for price cap carriers that accepted Phase II model-based support.

- Finalize the Commission's decisions regarding areas eligible for the Phase II competitive bidding process.

- Establish a budget for the Phase II competitive bidding process of \$215 million in annual support.

- Provide general guidance on auction design, with the specific details to be determined by the Commission at a future date in the *Auction Procedures Public Notice*, after further opportunity for comment. The Commission will use weights to account for the different characteristics of service offerings that bidders propose to offer when ranking bids. The Commission expresses its preference for a multi-round auction format and for setting the minimum biddable unit as a census block group containing any eligible census blocks. The Commission concludes that reserve prices will not exceed support amounts determined by the Connect America Cost Model (CAM).

- Adopt a two-step application process, similar to Commission spectrum auctions and the Mobility Fund Phase I and Tribal Mobility Fund Phase I auctions. In the pre-auction short-form application, a potential bidder will need to establish its baseline financial and technical capabilities in order to be eligible to bid. In the long-form review process, winning bidders will be required to provide additional information regarding their qualifications. They will be required to

obtain an acceptable letter of credit and designation as an eligible telecommunications carrier (ETC) before funding is authorized.

- Establish a baseline forfeiture for bidders that default before funding authorization.
- Establish a 180-day post-auction deadline for winning bidders to submit proof of their ETC designation during long-form review and forbear from the section 214(e)(5) service area conformance requirements.

- Adopt reporting requirements that will enable the Commission to monitor recipients' progress in meeting their interim deployment obligations, and a process by which the Wireline Competition Bureau (Bureau) or the Wireless Telecommunications Bureau will authorize the Universal Service Administrative Company (USAC) to draw on a letter of credit in the event of performance default.

- Adopt rules to establish the framework for the Remote Areas Fund, which will award support through a competitive bidding process to occur expeditiously after conclusion of the Phase II auction.

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

165. There were no relevant comments filed that specifically addressed the rules and policies proposed in the *USF/ICC Transformation FNPRM* IRFA and the *April 2014 Connect America FNPRM*, IRFA.

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

166. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

167. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

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

168. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small

organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A "small-business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

169. *Small Businesses.* Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA.

170. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

171. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies in the Order.

172. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of

incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Order.

173. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA, contexts.

174. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Order.

175. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such

a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Order.

176. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, the Commission estimates that all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Order.

177. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Order.

178. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Order.

179. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the Order.

180. 800 and 800-Like Service Subscribers. Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to the Commission's data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

181. Wireless Telecommunications Carriers (Except Satellite). Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such

firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

182. Broadband Personal Communications Service. The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events,

concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

183. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (“AWS”) licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (AWS–1). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years (“small business”) received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (“very small business”) received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

184. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the

Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*, 65 FR 35843, June 6, 2000. A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

185. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order*, 64 FR 33762, June 24, 1999, the Commission developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by the Commission’s action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming

small or very small business status won 2,093 licenses. A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

186. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard that may be affected by rules adopted pursuant to the Order.

187. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, 62 FR 15978, April 3, 1997, the Commission adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225

licenses: 216 EA Licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

188. *Specialized Mobile Radio*. The Commission awards small business bidding credits in auctions for Specialized Mobile Radio ("SMR") geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

189. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

190. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has

over \$15 million in revenues. In addition, the Commission does not know how many of these firms have 1,500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

191. *Broadband Radio Service and Educational Broadband Service*. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") (previously referred to as the Instructional Television Fixed Service ("ITFS")). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder

with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with 10 bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

192. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

193. *Lower 700 MHz Band Licenses*. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three

years. A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses, identified as “entrepreneur” and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

194. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*, 72 FR 48814, August 24, 2007. The 700 MHz Second Report and Order revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years). Thirty-three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not

exceed \$15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

195. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years).

196. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, 65 FR 17594, April 4, 2000, the Commission adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

197. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with

one provisionally winning bid for the unserved area totaling \$25,002.

198. *Private Land Mobile Radio (“PLMR”).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee’s primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission uses the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission notes that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

199. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. The Commission notes that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

200. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). In the present context, the Commission will use the SBA’s small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies issued herein.

201. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground

Radiotelephone Service. The Commission will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the Order.

202. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of the Commission's evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small”

businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Order.

203. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

204. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

205. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for “very small business” is: An entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Order.

206. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional small business size standard for “very small business” was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

207. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, 64 FR 59656, November 3, 1999, the Commission established a small business size standard for a “small

business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

208. 2.3 GHz Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

209. 1670–1675 MHz Band. An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a “small business” as an entity with attributable average annual gross revenues of not more than \$40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a “very small business” as an entity with attributable average annual gross revenues of not more than \$15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

210. 3650–3700 MHz band. In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small

entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, the Commission estimates that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

211. 24 GHz—Incumbent Licensees. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category “Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census’ use of the classifications “firms” does not track the number of “licenses”. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission’s understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

212. 24 GHz—Future Licensees. With respect to new applicants in the 24 GHz band, the size standard for “small business” is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million. “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

213. Satellite Telecommunications. Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$15 million. The most current Census Bureau data are from the economic census of 2007, and the Commission will use those figures to

gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under the “Satellite Telecommunications” category, a business is considered small if it had \$15 million or less in average annual receipts. Under the “Other Telecommunications” category, a business is considered small if it had \$25 million or less in average annual receipts.

214. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Order.

215. The second category of Other Telecommunications “primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.” For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under \$25 million. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by its action.

216. Cable and Other Program Distribution. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that

category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

217. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order.

218. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but 10 are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross

annual revenues exceed \$250 million, and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

219. *Open Video Services.* The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.” The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1,000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order. In addition, the Commission notes that it has certified some OVS operators, with some now providing service. Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

220. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had

employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1,000 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

221. *Internet Publishing and Broadcasting and Web Search Portals.* The Commission’s actions may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that “primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).” The SBA has developed a small business size standard for this category, which is: All such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

222. *Data Processing, Hosting, and Related Services.* Entities in this category “primarily . . . provid[e] infrastructure for hosting or data processing services.” The SBA has developed a small business size standard for this category; that size standard is \$25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under \$24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may

be affected by rules adopted pursuant to the Order.

223. *All Other Information Services.* The Census Bureau defines this industry as including “establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).” The Commission’s actions pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under \$5.0 million, and an additional 11 firms had receipts of between \$5 million and \$9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

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

224. In the Order the Commission adopts today, it establishes four technology-neutral tiers of bids available for bidding with varying speed and usage allowances, and for each tier will differentiate between bids that would offer either lower or higher latency. All bidders must offer a service at rates that are within a reasonable range of rates for comparable fixed wireline services offered in urban areas

225. Once a winning bidder is authorized to begin receiving Phase II auction support, it will have six years to deploy a voice and broadband-capable network meeting the relevant public interest obligations to the required number of locations included in its bid. Phase II auction recipients will also be required to meet interim service milestones. They will have to complete construction to 40 percent of the requisite number of locations in a state by the end of the third year of funding authorization, an additional 20 percent in subsequent years, with 100 percent by the end of the sixth year. Phase II recipients that at the end of their support term have deployed to at least 95 percent, but less than 100 percent of the number of funded locations will be required to refund support based on the number of funded locations left unserved in the state. The amount refunded will be based on one-half the

average support for the top five percent of the highest cost funded locations nationwide.

226. Entities that are interested in participating in the Phase II auction will be required to file a short-form application in order to establish their eligibility to participate. In their short-form applications, they will be required to submit any information or documentation required to establish their eligibility for any bidding credits the Commission adopts. If applicants are already ETCs they will need to identify themselves as such and all applicants will be required to submit a certification acknowledging that they must be designated as an ETC for the area in which they will receive support prior to being authorized to begin receiving support. Applicants will be required to submit a certification of their financial and technical capabilities to provide the required service in the required timeframe and information that establishes their identity, including disclosing parties with ownership interests and any agreements the applicants may have relating to the support to be sought through the Phase II auction. Applicants will also be required to indicate the type of bid they intend to place and describe the technology or technologies that will be used to provide service for each category of bid. If an applicant plans to use spectrum, it must also provide additional details about its spectrum access, including demonstrating that it has the proper authorizations, if applicable, and access and that the spectrum resources will be sufficient to cover peak network usage and deliver the minimum performance requirements.

227. Applicants will also be required to certify in their short-form application that they have provided voice, broadband, and/or electric transmission or distribution services for at least two years or they are the wholly-owned subsidiary of such an entity, and specify the number of years they have been operating. Applicants that have provided voice or broadband services must also certify that they have filed FCC Form 477s as required during that time period. Applicants that have operated only an electric distribution or transmission network must submit qualified operating or financial reports for the relevant time period that they have filed with the relevant financial institution along with a certification stating that those submissions are the true and accurate copies of the submissions made to the relevant financial institution. Applicants that are able to demonstrate that they have

operated such a network for at least two years will also be required to submit the prior fiscal year’s audited financial statements. Applicants that meet these requirements but that do not audit their financial statements in the ordinary course of business can instead certify that they will submit their audited financial statements for the prior fiscal year during the long-form application review process if they are selected as a winning bidder. A winning bidder that fails to submit its audited financial statements during the long-form application stage will be subject to a forfeiture. If applicants cannot meet these requirements, in the alternative, applicants may instead submit audited financial statements from the three most recent consecutive fiscal years and a letter of interest from a qualified bank that the bank would provide a letter of credit to the bidder if the bidder were selected for bids of a certain dollar magnitude. The short-form application may also include additional certifications or requirements that are adopted in an auction procedures public notice.

228. Within a specified number of days of the release of a public notice announcing an entity as a winning bidder, that winning bidder will be required to file a long-form application. In this long-form application, winning bidders will be required to submit a self-certification regarding their financial and technical qualifications and a self-certification that specifies that they will be able to meet all of the applicable public interest obligations for the relevant categories, including the requirement that they offer service at rates that are equal or lower to the Commission’s reasonable comparability benchmarks for fixed wireline services offered in urban areas. Winning bidders will also be required to submit a description of the technology and system design they intend to use to deliver voice and broadband service, including a network diagram which must be certified by a professional engineer. The professional engineer must certify that the network is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements. Winning bidders proposing to use wireless technologies must also provide certain information related to their spectrum access and licenses if applicable.

229. Winning bidders will also have to certify in their long-form applications that they have available funds for all project costs that will exceed the amount of support that will be received

from the Phase II auction for the first two years of their support term and that they will comply with program requirements, including service milestones. They will also have to describe how the required construction will be funded and include financial projections that demonstrate that they can cover the necessary debt service payments over the life of the loan. The long-form application may also include additional certifications or requirements that are adopted in an auction procedures public notice.

230. Within the number of days specified by public notice, the winning bidder will be required to submit a letter of credit commitment letter from a qualified bank as part of the long-form application process. Within 180 days of being announced as a winning bidder, winning bidders that demonstrated in their short-form application that they had provided a voice, broadband and/or electric distribution or transmission service for at least two years and did not submit their audited financials during the short-form application process, must submit their audited financial statements for the prior year. Within 180 days of an entity being announced as a winning bidder, the winning bidder will be required to submit appropriate documentation in its long-form application of its ETC designation in all areas for which it will receive support, documentation showing that the designated areas cover the bid areas, and a letter from an officer of the company certifying that the ETC designation covers the relevant areas where the winning bidder will receive support.

231. After the Commission has reviewed the winning bidder's long-form application and has determined that it is qualified to be authorized to begin receiving Phase II support, a public notice will be released stating that the winning bidder is ready to be authorized. At that point, the winning bidder will have the number of days specified by public notice to submit an irrevocable standby letter of credit from a bank that meets the Commission's requirements and an opinion letter from legal counsel. After the letter of credit and opinion letter are approved a public notice will be released authorizing the winning bidder to begin receiving Phase II auction support. Phase II recipients will be required to maintain an open and renewed letter of credit until USAC has verified that their build-outs are complete.

232. If an entity that files a short-form application defaults, it will be subject to a forfeiture. An entity will be considered in default if it fails to timely

file a long-form application or meet document submission deadlines, is found ineligible or unqualified to receive Phase II support by the Bureau on delegated authority, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of the support.

233. Once a Phase II recipient has been authorized to begin receiving support, it will be required to report certain information to the Commission so that the Commission can track the progress of Phase II recipients and monitor their use of the public's funds before and after they meet service milestones. Specifically, each year Phase II auction recipients will be required to submit by the last business day of the second calendar month following each support year a list of the geocoded locations and the total number of locations to which they have newly offered service meeting the requisite requirements with Connect America support in the prior year. The first list they submit, will also include a list of all of the locations where the recipient already offers service meeting the Commission's requirements before receiving support. Carrier are encouraged to submit their locations on a rolling basis to an online portal that will be developed by the Bureau and USAC, 30 days from the date of deployment. By the last business day of the second calendar month following the end of certain support years, recipients will also be required to submit certifications that they have met the relevant interim service milestones.

234. Like all recipients of Connect America support, all Phase II recipients are also required to file section 54.313 annual reports and section 54.314 certifications. In addition to other information required to be submitted in the section 54.313 annual reports, Phase II recipients will be required to identify the total amount of Connect America Phase II support they used for capital expenditures in the previous year and certify that they have available funds for all project costs that will exceed the amount of support that will be received from the Phase II auction for the next calendar year. After they have met the final service milestone, recipients will also be required to certify in their section 54.313 annual reports that the network they operated in the prior year met the Commission's performance requirements.

235. Analogous application and reporting requirements also are adopted for recipients of support awarded through the Remote Areas Fund auction.

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

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

237. The Commission has taken a number of steps to ensure that small entities have the opportunity to participate in the Phase II auction. For example, the Commission adopts different performance standards for bidders to maximize the types of entities that can participate in the Phase II auction. Recognizing that not all entities, including some small entities, will be able to meet the baseline performance standards the Commission adopts, it permits entities to choose to meet minimum performance requirements. Although the Commission will rank bids using weights and minimum performance bidders are not guaranteed a 10-year support term under certain circumstances, it does not restrict the geographic area where entities placing bids for relaxed standards can bid.

238. Because the Phase II challenge process was a resource-intensive process for all entities involved, the Commission has also decided to rely on Form 477 data and conduct a more streamlined challenge process to determine areas that are eligible for the Phase II auction. This means that competitors, who can be small entities, that qualify as an unsubsidized competitor will only have to file a Form 477 as they are already required to do to ensure that the areas they serve are not overbuilt and may submit comments within 30 days of the publication of the preliminary eligible census block list if they have built out since they have submitted June 2015 Form 477 data.

239. The Commission expects that the minimum geographic area for bidding will be a census block group containing one or more eligible census blocks. The Commission found adopting a larger minimum geographic unit would preclude entities from participating in the Phase II auction, including small

entities that intend to construct a smaller network or edge out their networks. The Commission expects that the auction design adopted by the Commission in the *Auction Procedures Public Notice* will similarly account for the needs of small entities.

240. Based on lessons learned from the rural broadband experiments and in response to comments submitted by participating entities, including small entities, the Commission also adopts requirements for the short-form and long-form applications that will maximize the number and types of entities that can participate. For example, in the rural broadband experiments, the Commission required that provisionally selected bidders submit three years of audited financials. A number of entities, including small entities, could not meet this requirement because they had not been in business for three years or they claimed audited financials were prohibitively expensive. For the Phase II auction and the Remote Areas Fund, the Commission will require that applicants certify in their short-form application that they have provided voice, broadband, and/or electric distribution or transmission services for at least two years or that they are the wholly-owned subsidiary of such an entity. Applicants that have provided voice or broadband services must also certify that they have filed FCC Form 477s as required during that time period and submit their audited financial statements from the prior fiscal year. Applicants that have operated only an electric distribution or transmission network must submit qualified operating or financial reports. As an alternative, the Commission also permits applicants that have demonstrated that they have operated a network for two years but do not audit their financial statements in the ordinary course of business, many of which may be small companies, to wait to submit audited financial statements until the long-form application review process. This will allow such applicants to avoid the cost of obtaining an audit if they are not ultimately announced as winning bidders. Also, by requiring only one year of audited financials, the Commission reduces the cost of this requirement for entities that have already demonstrated that they are able to maintain a voice, broadband, and/or electric distribution or transmission network for two years.

241. Recognizing that these requirements may preclude entities, including small entities, that have not operated a voice, broadband, and/or electric distribution or transmission network for two years, the Commission

also provides the alternative of letting applicants instead submit three year of audited financials and a letter of interest from a qualified bank that the bank would provide a letter of credit to the bidder if the bidder were selected for bids of a certain dollar magnitude. The Commission concluded that its interest in having some level of insight into the financial health over a significant period of time of applicants that lack an operating history outweigh the costs of obtaining three years of financial statements for this subset of entities.

242. Additionally, the Commission has taken steps to reduce the costs of the letter of credit requirement for the recipients of support awarded through a competitive bidding process to serve fixed locations in response to claims from entities, particularly small entities, that the letter of credit requirement for the rural broadband experiments was prohibitively expensive. First, the Commission only requires that recipients maintain an open irrevocable standby letter of credit until it has been verified that they have met the final service milestone; in the rural broadband experiments the letter of credit originally had to be open and renewed for the entire support term. Second, recipients can modestly reduce the value of their letters of credit as they have made substantial progress in building out their networks by meeting certain service milestones. Third, the Commission has modified its issuing bank eligibility requirements for all recipients of support authorized through competitive bidding to serve fixed locations. The Commission has expanded the pool of eligible U.S. banks and made the National Rural Utilities Cooperative Finance Corporation (CFC) an eligible issuing bank. This will potentially reduce the costs and other challenges of obtaining a letter of credit for entities that lack established business relationships with larger banks.

243. The Commission notes that the reporting requirements it adopts are tailored to ensuring that support is used for its intended purpose and so that the Commission can monitor the progress of recipients in meeting their service milestones. The Commission finds that the importance of monitoring the use of the public's funds outweighs the burden of filing the required information on all entities, including small entities, particularly because much of the information that it requires they report is information it expects they will already be collecting to ensure they comply with the terms and conditions of support and they will be able to submit their location data on a rolling

basis to help minimize the burden of uploading a large number of locations at once.

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

X. Ordering Clauses

245. Accordingly, *it is ordered*, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 503, 1302, and sections 1.1, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.427, and 1.429, that this Report and Order and concurrently adopted Further Notice of Proposed Rulemaking *is adopted*, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval. It is 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.

246. *It is further ordered* that, pursuant to section 1.3 of the Commission's rules, 47 CFR 1.3, the Petition for Waiver filed by NTCA—The Rural Broadband Association on Feb. 3, 2015 is *dismissed as moot in part* and *denied in part* to the extent described herein.

247. *It is further ordered* that, pursuant to section 1.3 of the Commission's rules, 47 CFR 1.3, the Petition for Waiver filed by The National Rural Utilities Cooperative Finance Corporation and the Rural Telephone Finance Cooperative on Jan. 21, 2015 is *dismissed as moot*.

248. *It is further ordered* that, pursuant to section 1.3 of the Commission's rules, 47 CFR 1.3, the Petition for Waiver filed by Allamakee-

Clayton Electric Cooperative, Inc. on Jan. 30, 2015 is *dismissed as moot*.

249. *It is further ordered* that, pursuant to section 1.3 of the Commission's rules, 47 CFR 1.3, the Petition for Waiver filed by Midwest Energy Cooperative, Inc. on March 20, 2015 is *dismissed as moot*.

250. *It is further ordered* that Part 54 of the Commission's rules, 47 CFR part 54, is *amended* as set forth in Appendix A, and such rule amendments shall be effective thirty (30) days after publication of the rules amendments in the **Federal Register**, except to the extent they contain information collections subject to PRA review. The rules that contain information collections subject to PRA review *shall become effective* immediately upon announcement in the **Federal Register** of OMB approval and an effective date.

251. *It is further ordered* that the Commission *shall send* a copy of this Report and Order and concurrently adopted Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

252. *It is further ordered*, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order and concurrently adopted Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Civil rights, Claims, Communications common carriers, Cuba, Drug abuse, Environmental impact statements, Equal access to justice, Equal employment opportunity, Federal buildings and facilities, Government employees, Income taxes, Indemnity payments, Individuals with disabilities, Investigations, Lawyers, Metric system, Penalties, Radio, Reporting and recordkeeping requirements, Telecommunications, Television, Wages.

47 CFR Part 54

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

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 54 as follows:

PART 1—PRACTICE AND PROCEDURE

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

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

- 2. Section 1.21001 is amended by revising paragraph (b)(6) to read as follows:

§ 1.21001 Participation in competitive bidding for support.

* * * * *

(b) * * *

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

* * * * *

PART 54—UNIVERSAL SERVICE

- 3. 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.

- 4. Section 54.309 is amended by revising paragraph (a) to read as follows:

§ 54.309 Connect America Fund Phase II Public Interest Obligations.

(a) Recipients of Connect America Phase II support are required to offer broadband service with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas. For purposes of determining reasonable comparable usage capacity, recipients are presumed to meet this requirement if they meet or exceed the usage level announced by public notice issued by the Wireline Competition Bureau. For purposes of determining reasonable comparability of

rates, recipients are presumed to meet this requirement if they offer rates at or below the applicable benchmark to be announced annually by public notice issued by the Wireline Competition Bureau, or no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in the state or U.S. Territory where the eligible telecommunications carrier receives support.

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

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

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

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

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

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

(v) For each of the tiers in paragraphs (a)(2)(i) through (iv) of this section, bidders are required to meet one of two latency performance levels:

(A) Low latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 100 milliseconds; and

(B) High latency bidders will be required to meet 95 percent or more of all peak period measurements of

network round trip latency at or below 750 ms and, with respect to voice performance, demonstrate a score of four or higher using the Mean Opinion Score (MOS).

* * * * *

■ 5. Section 54.310 is amended by revising paragraph (c) to read as follows:

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

* * * * *

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

(1) For purposes of meeting the obligation to deploy to the requisite number of supported locations in a state, recipients of Connect America Phase II model-based support may serve unserved locations in census blocks with costs above the extremely high-cost threshold instead of locations in eligible census blocks, provided that they meet the public interest obligations set forth in § 54.309(a) introductory text and (a)(1) for those locations and provided that the total number of locations covered is greater than or equal to the number of supported locations in the state.

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

* * * * *

■ 6. Section 54.313 is amended by revising paragraph (e) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(e) In addition to the information and certifications in paragraph (a) of this section, the following requirements

apply to Phase II and Remote Areas Fund recipients:

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

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

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

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

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

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

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

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

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

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

(C) A certification that it bid on category one telecommunications and Internet access services in response to all FCC Form 470 postings seeking broadband service that meets the connectivity targets for the schools and libraries universal service support program for eligible schools and libraries (as described in § 54.501) located within any area in a census block where the carrier is receiving

support awarded through auction, and that such bids were at rates reasonably comparable to rates charged to eligible schools and libraries in urban areas for comparable offerings.

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

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

* * * * *

■ 7. Section 54.315 is added to read as follows:

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

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

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

(2) Certify that the applicant is financially and technically qualified to meet the public interest obligations of § 54.309 for each relevant tier and in each area for which it seeks support;

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

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

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

(6) To the extent that an applicant plans to use spectrum to offer its voice

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

(7) Submit specified operational and financial information.

(i) Submit a certification that the applicant has provided a voice, broadband, and/or electric transmission or distribution service for at least two years or that it is a wholly-owned subsidiary of such an entity, and specifying the number of years the applicant or its parent company has been operating, and submit the financial statements from the prior fiscal year that are audited by a certified public accountant. If the applicant is not audited in the ordinary course of business, in lieu of submitting audited financial statements it must certify that it will provide financial statements from the prior fiscal year that are audited by a certified independent public accountant by a specified deadline during the long-form application review process.

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

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

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

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

the public notice identifying them as winning bidders.

(2) *Application contents*. An application for Phase II auction support must contain:

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

(ii) Certification that the applicant is financially and technically qualified to meet the public interest obligations of § 54.309 for each tier in which it is a winning bidder and in each area for which it seeks support;

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive Phase II auction support after the winning bidder submits a letter of credit and an accompanying opinion letter as described in paragraph (c) of this section, in a form acceptable to the Commission. Each such winning bidder shall submit a letter of credit and accompanying opinion letter as required by paragraph (c) of this section, in a form acceptable to the Commission no

later than the number of business days provided by public notice.

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

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

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

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

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

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

(i) Any United States bank

(A) That is insured by the Federal Deposit Insurance Corporation, and

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

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

(iii) The National Rural Utilities Cooperative Finance Corporation, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term

unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iv) Any non-United States bank

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

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

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

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

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

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

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

(ii) The default will be evidenced by a letter issued by the Chief of the Wireline Competition Bureau or the Wireless Telecommunications Bureau, or their respective designees, which letter, attached to a standby letter of credit draw certificate, shall be

sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

■ 8. Section 54.316 is amended by revising paragraph (a) introductory text, paragraph (a)(4), and paragraph (b) introductory text, adding paragraphs (b)(4) and (5), and revising paragraph (c) to read as follows:

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

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

* * * * *

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

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

* * * * *

(4) Recipients of Connect America Phase II auction support shall provide: By the last business day of the second calendar month following each service milestone in § 54.310(c), a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations specific in § 54.309 to the required percentage of its supported locations in each state as set forth in § 54.310(c).

(5) Recipients of Remote Areas Fund support shall provide: By the last business day of the second calendar month following each service milestone specified by the Commission, a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations to the required percentage of its supported locations in each state.

(c) *Filing deadlines.* In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designations, it must submit the annual reporting information as set forth below.

(1) Price cap carriers that accepted Phase II model-based support and rate-of-return carriers must submit the annual reporting information required by March 1 as described in paragraphs (a) and (b) of this section. Eligible telecommunications carriers that file their reports after the March 1 deadline shall receive a reduction in support pursuant to the following schedule:

(i) An eligible telecommunications carrier that files after the March 1 deadline, but by March 9, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier that files on or after March 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction;

(iii) *Grace period.* An eligible telecommunications carrier that submits the annual reporting information required by this section after March 1 but before March 5 will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to § 54.313(a)(8) in their report due July 1 of the prior year have not missed the March 1 deadline in any prior year.

(2) Recipients of support to serve fixed locations awarded through a competitive bidding process must submit the annual reporting information required by the last business day of the second calendar month following the relevant support years as described in paragraphs (a) and (b) of this section. Eligible telecommunications carriers that file their reports after the deadline shall receive a reduction in support pursuant to the following schedule:

(i) An eligible telecommunications carrier that files after the deadline, but within seven days of the deadline, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier that filed on or after the eighth day following the deadline will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction;

(iii) *Grace period.* An eligible telecommunications carrier that submits the annual reporting information required by this section within three days of the deadline will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to § 54.313(a)(8) in their report due July 1 of the prior year have not missed the deadline in any prior year.

■ 9. Subpart J, consisting of §§ 54.801 through 54.806, is added to read as follows:

Subpart J—Remote Areas Fund

Sec.

54.801 Use of competitive bidding for Remote Areas Fund.

54.802 Geographic areas eligible for Remote Areas Fund support.

54.803 Provider eligibility.

54.804 Application process.

54.805 [Reserved]

54.806 Remote Areas Fund reporting obligations.

Subpart J—Remote Areas Fund

§ 54.801 Use of competitive bidding for Remote Areas Fund.

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

§ 54.802 Geographic areas eligible for Remote Areas Fund support.

Remote Areas Fund support may be made available for census blocks identified as eligible by public notice.

§ 54.803 Provider eligibility.

(a) Any eligible telecommunications carrier is eligible to receive Remote Areas Fund support in eligible areas.

(b) An entity may obtain eligible telecommunications carrier designation after public notice of winning bidders in the Remote Areas Fund auction.

(c) To the extent any entity seeks eligible telecommunications carrier designation prior to public notice of winning bidders for Remote Areas Fund support, its designation as an eligible telecommunications carrier may be conditional subject to the receipt of Remote Areas Fund support.

§ 54.804 Application process.

(a) Any entity qualified to bid in the Phase II auction pursuant to § 54.315(a) shall be pre-qualified to bid in the Remote Areas Fund auction, subject to the requirement that there be no material change in any information previously submitted in the application to bid for Phase II support.

(b) In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, any applicant to participate in competitive bidding for Remote Areas Fund support shall:

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

(2) Certify that the applicant is financially and technically qualified to

meet the public interest obligations established for Remote Areas Fund support;

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

(4) Describe the technology or technologies that will be used to provide service for each bid;

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

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

(7) Submit specified operational and financial information.

(i) Submit a certification that the applicant has provided a voice, broadband, and/or electric transmission or distribution service for at least two years or that it is a wholly-owned subsidiary of such an entity, and specifying the number of years the applicant or its parent company has been operating, and submit the financial statements from the prior fiscal year that are audited by a certified public accountant. If the applicant is not audited in the ordinary course of business, in lieu of submitting audited financial statements it must certify that it will provide financial statements from the prior fiscal year that are audited by a certified independent public accountant by a specified deadline during the long-form application review process.

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

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

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

(c) *Application by winning bidders for Remote Areas Fund support*—(1)

Deadline. As provided by public notice, winning bidders for Remote Areas Fund support shall file an application for Remote Areas Fund support no later than the number of business days specified after the public notice identifying them as winning bidders.

(2) *Application contents.* An application for Remote Areas Fund support must contain:

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

(ii) Certification that the applicant is financially and technically qualified to meet the public interest obligations for Remote Areas Fund support in each area for which it seeks support;

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the

applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive Remote Areas Fund support after the winning bidder submits a letter of credit and an accompanying opinion letter as described in paragraph (d) of this section, in a form acceptable to the Commission. Each such winning bidder shall submit a letter of credit and accompanying opinion letter as required by paragraph (d) of this section, in a form acceptable to the Commission no later than the number of business days provided by public notice.

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

(d) *Letter of credit.* Before being authorized to receive Remote Areas Fund support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission.

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

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

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

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

(i) Any United States bank

(A) That is insured by the Federal Deposit Insurance Corporation, and

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

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

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

(iv) Any non-United States bank:

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

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

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

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

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

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

(i) Failure by a Remote Areas Fund support recipient to meet its service milestones as required by § 54.310 will trigger reporting obligations and the withholding of support as described in § 54.320(c). Failure to come into full compliance within 12 months will

trigger a recovery action by the Universal Service Administrative Company. If the Remote Areas Fund recipient does not repay the requisite amount of support within six months, the Universal Service Administrative Company will be entitled to draw the entire amount of the letter of credit and may disqualify the Remote Areas Fund support recipient from the receipt of Remote Areas Fund support or additional universal service support.

(ii) The default will be evidenced by a letter issued by the Chief of the Wireline Competition Bureau or the Wireless Telecommunications Bureau, or their respective designees, which letter, attached to a standby letter of credit draw certificate, shall be sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

§ 54.805 [Reserved]

§ 54.806 Remote Areas Fund reporting obligations.

Recipients of Remote Areas Fund support shall be subject to the reporting obligations set forth in § 54.313.

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