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47 CFR Parts 36, 54 and 69

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

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 54 and 69

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

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

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes significant steps to continue the implementation of the 2011 universal service reforms. This document takes into account lessons learned and new marketplace developments to further the Commission's statutory mission of ensuring that all consumers have access to advanced telecommunications and information services.

DATES: Effective August 8, 2014, except for § 54.310(e)(1) which contains 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 that paragraph.

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

I. Introduction

1. With the Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and concurrently adopted Further Notice of Proposed Rulemaking (FNPRM), the Commission takes significant steps to continue the implementation of the landmark reforms unanimously adopted by the Commission in 2011 to modernize universal service for the 21st century. The Commission builds on the solid foundation created in 2011, taking into account what they have learned to date and new marketplace developments, to fulfill our statutory mission to ensure that all consumers ''have access to . . . advanced telecommunications and information services.''

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

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

4. The Report and Order adopts several rules to establish the foundation for the award of support in price cap areas where the price cap carrier declines the offer of model-based support. Specifically, the Commission concludes that all areas where the average cost per location equals or exceeds a specified cost benchmark are eligible for Phase II support in the competitive bidding process. The Commission sets a support term of 10 years for support awarded through the competitive bidding process. The Commission permits price cap carriers that decline model-based support to participate in the competitive bidding process that it expects to be prepared to conduct by the end of 2015.

5. The Commission also addresses more generally provider eligibility for support through the competitive bidding process and the Remote Areas Fund. The Commission permits entities to seek designation as eligible telecommunications carriers (ETCs) after notification they are winning bidders for the offer of Phase II Connect America funding. The Commission concludes that recipients of support through the competitive bidding process or the Remote Areas Fund must certify as to their financial and technical capabilities to provide the required services within the specified timeframe in the geographic area for which they seek support.

6. The Commission issues a declaratory ruling to provide rate-of-return carriers greater clarity regarding their obligations to extend broadband service upon reasonable request.

7. In the Order, the Commission phases in support reductions associated with the 2014 rate floor of $20.46 over a multi-year period to provide time for incumbent carriers and state commissions to make any adjustments they deem necessary. In particular, the Commission defers any support reductions for lines that have rates of $14 or greater until January 2, 2015. Between January 2, 2015, and June 30, 2016, the Commission implements support reductions only to the extent rates are below $16; between July 1, 2016 and June 30, 2017, the Commission implements support reductions only for lines with rates under $18 or the rate floor established by the 2016 rate survey, whichever is lower; and between July 1, 2017 and June 30, 2018, the Commission implements support reductions only for lines with rates under $20 or the 2017 rate floor, whichever is lower. Thus, the

impact of this rule is phased in over a four-year period.

8. The Commission also reconsiders certain aspects of the *USF/ICC Transformation Order* in response to petitions from a variety of stakeholders. These modifications reflect our continuing commitment in the universal service reforms to efficiency and creating the appropriate incentives to invest and operate modern voice and broadband-capable networks. First, to provide a more measured transition for rate-of-return carriers that would have qualified under the prior rules for certain support known as Safety Net Additive (SNA) based on their significant network investment, the Commission permits such carriers to receive SNA for such investments made in 2010 and 2011. Second, the Commission eliminates the high-cost loop support (HCLS) benchmarking rule so that rate-of-return carriers' support will no longer be limited by benchmarks calculated using quantile regression analysis (QRA).

9. In addition, the Commission waives certain application fees that deter companies from rationalizing their service territory boundaries, deny a petition for reconsideration of the Commission's decision to impose broadband public interest obligations on recipients of high-cost support, while affirming that these conditions do not constitute common carrier regulation, and dismiss or deny two applications for review of the Wireline Competition Bureau's (Bureau) *Phase II Service Obligations Order,* 78 FR 70881, November 27, 2013.

II. Report and Order

A. Connect America Phase II Competitive Bidding Process

10. In the *USF/ICC Transformation Order,* the Commission decided that, in areas where the price cap ETC refuses model-based support, support will be provided through a competitive bidding process. It adopted general rules to govern competitive bidding processes to award universal service support, codified in Subpart AA of Part 1 of the Commission's rules. The Commission sought comment in the *USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011, on a number of issues related to the design of the competitive bidding process, including which areas should be eligible, the term of support, and whether price cap carriers that decline model-based support should be permitted to participate in the competitive bidding process.

1. Eligible Areas

11. *Discussion.* After reviewing the record before the Commission, and based on what it has learned over the last two years, it now concludes that it should provide more flexibility to parties in Phase II to design effective bids for areas where the average cost is equal to or above the Connect America Phase II funding benchmark. The work on the Connect America Cost Model has shown us that extremely high-cost areas are actually interspersed among high-cost areas. Indeed, many of the census tracts containing census blocks potentially eligible for the offer of model-based support (i.e., those census blocks where the average cost per location is equal to or exceeds the funding benchmark but is lower than the extremely high-cost threshold) also contain one or more census blocks where the average cost per location, as determined by the model, exceeds the extremely high-cost threshold. The Commission concludes that including both high-cost and extremely high-cost areas in the competitive bidding process will enable parties to build integrated networks that span both types of areas in adjacent census blocks as appropriate. In other words, this approach allows potential providers to decide how best to upgrade or extend networks to serve these areas rather than having the Commission artificially pre-determining which areas should be served through one mechanism and which should be served through a separate mechanism.

12. Moreover, the Commission recognizes that the actual cost for a provider to serve census blocks that are above the extremely high-cost threshold may, in fact, be less than is predicted by the cost model. Potential service providers that have done the appropriate due diligence are in a better position to know local conditions on the ground and thus determine whether the support potentially available will enable them to meet the associated obligations. The Commission believes it would be the most efficient use of Phase II funding to provide support to areas above the specified funding threshold and then target the discrete budget for the Remote Areas Fund to those areas that remain unserved after the competitive bidding process.

13. A price cap carrier that elects to make the state-level commitment is already free to deploy to locations that would be above the extremely high-cost threshold to satisfy a portion of its build out obligation. By making extremely high-cost areas eligible for support in the competitive bidding process, the Commission effectively provides participants in the competitive bidding process the same choice: They may elect or not elect to serve those areas that the model has determined to be extremely high-cost.

14. The Commission does not decide at this time whether to use census blocks, or aggregations of census blocks such as census tracts, as the minimum size geographic unit eligible in the Phase II competitive bidding process. The Commission concluded we would entertain proposals in the rural broadband experiments in price cap territories at the census tract level, and the Commission currently is reviewing the expressions of interest received to date. The lessons learned from our review of the expressions of interest in the rural broadband experiments will give us better data and allow us to make a more informed decision on this issue later this year.

2. Term of Support

15. *Discussion.* The Commission concludes that Connect America Phase II support awarded through the competitive bidding process should be available for ten years, subject to existing requirements and the availability of funds. In the recent *Tech Transitions Order,* 79 FR 11327, February 28, 2014 and 79 FR 11366, February 28, 2014, the Commission adopted a framework for rural broadband experiments and concluded that it would provide support for any approved experiments for periods of up to ten years. While acknowledging the marketplace may change over time, the Commission recognized that ''some entities may be unwilling to make the necessary long-term investments to build robust future-proof networks in areas that are uneconomic to serve absent continued support beyond a five-year term.'' The Commission similarly found that, for the competitive bidding process for Connect America Phase II, providing support for a period of ten years may stimulate greater interest in the competitive bidding process, especially given the increased investment participants may need to bring to the table to meet the higher speed benchmark we propose below. Increased participation in the competitive bidding process will help ensure that funding is targeted efficiently to expand broadband-capable infrastructure throughout the country.

16. The Commission does not find any compelling reason to limit the term of support awarded through a competitive bidding process to five years, as initially suggested by some commenters. Specifically, the

Commission is not persuaded by the American Cable Association's (ACA) arguments that the flexibility to re-evaluate the need for support after five years outweighs the benefits of a longer term that the Commission relies on above. While the Commission acknowledges that marketplace forces may bring new competitors to high-cost areas where Phase II support is provided, it makes the predictive judgment that such an outcome is unlikely to occur due to the high-cost nature of these areas; if those areas could be cost-effectively served without government support, it believes competitors would already be serving them. Nor is the Commission persuaded that the term of support should be the same for providers accepting Connect America Phase II support pursuant to the state-level commitment as for those subject to competitive bidding. As the Commission concluded in the *Tech Transitions Order,* there is no inherent reason why the terms associated with a competitive offer must be identical to the terms associated with the offer of model-based support. One reason why the Commission established a five-year term of support for areas subject to model-based support was to move to competitive bidding processes in a timely manner in those areas where support initially would be awarded through the acceptance of state-level commitments. As noted by Windstream, this reason for limiting the duration of the support term is inapplicable when support is awarded in the first instance through a competitive bidding process.

3. Eligibility of Price Cap Carriers To Participate in Phase II Competitive Bidding

17. The Commission concludes that a price cap carrier's decision not to accept model-based support should not preclude it from participating in the competitive bidding process. The Commission finds that maximizing the number of qualified eligible participants is likely to improve the quality of the competitive bids and the results of the process. Moreover, the Commission does not find persuasive the arguments made by several commenters that permitting price cap carriers to participate in the competitive bidding process would give them the ability to ''cherry pick'' the most desirable service areas. The Commission expects that a price cap carrier will determine whether to accept the offer of model-based support primarily based on its own analysis of whether the support offered for the state justifies undertaking the associated obligations. It is not unreasonable that a carrier might conclude that the total amount of state-level support would not meet the obligations in the carrier's specific circumstances, while also concluding that many or even all parts of the state are worth serving at some other support level. In addition, though a carrier could strategically decline the model-based support in the hope of favorably selecting only the most desirable service areas, that strategy would have risks. Indeed, the very desirability of certain service areas creates the possibility that the carrier might not be awarded those areas through the competitive bidding process or that the support amount for those areas will be bid down to a level that is less than what the model would have provided. In our predictive judgment, the costs of excluding price cap carriers that decline model-based support exceed the possible benefits. The Commission therefore declines to exclude price cap carriers from the competitive bidding process.

B. Provider Eligibility Requirements

18. In response to the proposals in the *USF/ICC Transformation FNRPM,* a number of parties raised concerns that requiring ETC designation before participating in the Phase II competitive bidding process was a barrier to participating in the auction, urging the Commission to allow providers to obtain ETC designation later in the process. Similarly, a number of parties urged the Commission to remove barriers to participation in the Remote Areas Fund.

19. *Discussion.* Under the statute, only ETCs designated pursuant to section 214(e) of the Communications Act of 1934, as amended (Act) ''shall be eligible to receive specific Federal universal service support.'' Section 214(e)(2) gives states the primary responsibility for ETC designation. However, section 214(e)(6) provides that this Commission is responsible for processing requests for ETC designation when the service provider is not subject to the jurisdiction of the state public utility commission. Support is disbursed only after the provider receives an ETC designation.

20. The Commission seeks to encourage as many different types of providers as possible to participate in the competitive bidding process that will award support to serve high-cost and extremely high-cost areas. Likewise, the Commission seeks to encourage participation in the Remote Areas Fund. Recognizing that there may be areas of the country that the incumbent price cap carriers do not wish to serve, it is time to take steps to establish a framework that will enable other providers to become ETCs.

21. The Commission reaffirms that entities selected to receive support from Connect America Phase II or the Remote Areas Fund must obtain ETC designation from either a state public utility commission pursuant to section 214(e)(2), or the Commission pursuant to section 214(e)(6), of the Act. The Commission declines at this time to adopt the suggestion of certain parties that it either forbear from ETC designation requirements, or that it preempt states from issuing ETC designations. Rather, to address concerns in the record and to encourage participation in the competitive process as well as the Remote Areas Fund, the Commission adopts a more liberal process for the timing of ETC designation.

22. After consideration of the record, the Commission concludes that potential applicants in the Phase II competitive bidding process need not be ETCs at the time they initially apply for funding at the Commission. Rather, the Commission is persuaded that it should permit entities to obtain ETC designation after the announcement of winning bidders for the offer of Phase II Connect America funding, which it believes will encourage greater participation in the competitive process by a wider range of entities. ETC status must be confirmed before funding awarded through the competitive process is disbursed. The Commission finds that maximizing the number of qualified participants in the competitive bidding process is likely to improve the overall quality of the process. Some qualified potential bidders may be hesitant to invest resources to apply for an ETC designation absent any sense of whether they are likely to be awarded Phase II support. Other potential bidders may have concerns about triggering obligations as an ETC pending the result of the competitive bidding process or for areas for which they are not ultimately awarded support. Moreover, unlike entities that are already ETCs, entities that do not yet have ETC designation would risk making public their bidding strategy if required to seek ETC designation in the states where they intend to bid. On balance, the Commission concludes that the benefits of encouraging greater participation in the Phase II competitive bidding process outweigh any potential risk that winning bidders do not meet the necessary requirements to be designated an ETC.

23. The Commission acknowledges that it declined to take that approach for the Mobility Fund Phase I and Tribal

Mobility Fund Phase I. There, the Commission adopted the general requirement for those auctions that parties obtain ETC designation prior to filing the short-form application in part to ensure that applicants filing to participate in the auction were serious bidders. Based on our experience with the Mobility Fund Phase I and our review of the record, however, the Commission now concludes that a different approach is warranted for the Connect America Phase II competitive bidding process. The Commission is not persuaded by arguments that the ETC designation must be received prior to the competitive bidding process in order to ensure that only financially and technically qualified providers participate in the competitive bidding process. While the Commission acknowledges the possibility that in some cases a winning bidder may not meet the requirements for designation as an ETC, it presumes that prospective bidders will have the appropriate incentives to undertake the necessary due diligence in advance of the competitive bidding process to understand the requirements for ETC designation from the relevant state, or this Commission, should the state lack jurisdiction. The Commission notes that if a winning bidder fails to receive an ETC designation, it will be ineligible to receive any payments of support and will be considered in default of its obligations, with the penalties that entails. This risk should be an adequate deterrent for prospective bidders to ensure, in advance of bidding, that they meet the necessary requirements and have sufficient resources to meet their obligations. Moreover, nothing the Commission decides today precludes any prospective bidder from filing an ETC application in advance of the competitive bidding process, should it choose to do so.

24. In the Mobility Fund Phase I, the Commission expressly permitted potential bidders to obtain conditional ETC designation prior to filing the short-form application. Given our decision to permit entities to seek ETC designation after public notice of the winning bidders for the offer of Phase II support, the Commission does not anticipate many parties would seek conditional ETC designation prior to applying for funding. To the extent a party chooses to do so, however, and a state or this Commission issues a conditional ETC designation prior to the auction, the Commission expects that the ETC designation in such situations will be finalized quickly as a pro forma matter after announcement of the winning bidders for Phase II support.

25. The Commission seeks comment in the concurrently adopted FNPRM on implementation issues relating to ETC designation, including the timeframe in which a winning bidder must seek ETC designation before being deemed in default.

26. *Financial and Technical Qualifications.* The Commission adopts the concurrently adopted FNPRM proposal that recipients of support through the Phase II competitive bidding process and the Remote Areas Fund certify as to their financial and technical capabilities to provide the required services within the specified timeframe in the geographic area for which they seek support. The Commission implemented such a requirement for Mobility Fund Phase I and Tribal Mobility Fund Phase I, and it concludes it is equally appropriate for recipients of support through the Phase II competitive bidding process and the Remote Areas Fund. It would not be administratively efficient to conduct a competitive bidding process with participation from entities that are not prepared to make such commitments. Likewise, while the Commission does not determine the details of the Remote Areas Fund at this time, it concludes that entities receiving support through that mechanism should similarly be financially and technically qualified to provide the required services.

C. Transition Into Phase II

27. In this section, the Commission addresses issues relating to the transition from existing support to Connect America Phase II.

1. Transition Where Model-Based Support Is Less Than Connect America Phase I Support

28. *Discussion.* The Commission concludes that, where a carrier chooses to accept model-based support that is less than its Connect America Phase I frozen support, the transition shall occur over a three-year period of time. Any carrier exercising its right to make a state-level commitment will effectively be making a decision that the model-based support is sufficient to meet its obligations in the areas for which it is making a commitment. However, the Commission generally prefers to avoid flash cuts in support that would dramatically affect consumers. According to our estimates, some carriers in some states will receive significantly less support than they receive today under Connect America Phase I. It appears that seven carriers would face reductions in their current support in 30 states if they accept the offer of model-based support. Because some states have more than one carrier with a reduction, there could be 52 discrete situations in which a carrier's frozen support in a particular state would be less than its Phase I frozen support if all price cap carriers accepted model-based support. Of these 52 situations, there are 12 situations where there would be reductions greater than $5 million per year. While the specific figures for individual carriers may change after completion of the Phase II challenge process, the Commission is persuaded of the need for an appropriate transition to lower support levels.

29. The Commission's desire to avoid flash cuts has led it to adopt transitions of varying lengths for various reforms adopted in the *USF/ICC Transformation Order,* including a four-year period for the phase-down of identical support for competitive ETCs and a three-year phase-down of support in rate-of-return areas where there is a 100 percent overlap with an unsubsidized competitor. Given that carriers accepting model-based support have made a business decision that such support is adequate to meet their obligations, the Commission does not agree that a transition comparable to the phase-down in support for competitive ETCs is required. To take that approach would effectively mean the price cap carrier would not be receiving model-based support until the last year of the five-year term. Rather, the Commission is persuaded that a transition occurring over three years for carriers accepting state-level Connect America Phase II support that is less than the frozen high-cost support is sufficient.

30. Accordingly, the Commission adopts the following transition: In all years, a carrier accepting state-level support pursuant to Connect America Phase II that is less than the Connect America Phase I frozen high-cost support will receive the full amount of Connect America Phase II support. Assuming the Commission adopts the proposal in the concurrently adopted FNPRM to make the funding term for Connect America Phase II coincide with calendar years, in 2015 the carrier would receive, in addition to its Phase II support, 75 percent of the difference between the annualized amount of Connect America Phase II support that it accepted and the amount of Connect America Phase I frozen high-cost support that it received in 2014. In 2016, it would receive 50 percent of the difference; in 2017, it would receive 25 percent of the difference; in 2018 and in 2019, it would receive only Connect

America Phase II state-level support. For administrative convenience, this phase-down will apply to all carriers accepting a lower amount of state-level support, even if the absolute or relative size of the reduction is small.

2. Transition Where Competitive Eligible Telecommunications Carrier Receives Support Based on Competitive Bidding Process

31. The Commission concludes that competitive ETCs awarded Connect America Phase II support through the competitive bidding process will cease to receive legacy phase-down support for those specific areas upon commencement of Connect America Phase II support. The Commission previously concluded that, with respect to any price cap carrier that declines the offer of model-based support, the carrier's Phase I support will terminate when support is provided to another provider for that area through the competitive bidding process. Similarly, the Commission also determined that a competitive ETC's legacy phase-down support would be terminated in any area for which it is awarded Mobility Fund Phase II support upon commencement of support. For similar reasons, the Commission finds that any competitive ETC that is authorized to receive Phase II support through a competitive bidding process will no longer receive frozen legacy support for the area in question. Given the carrier's explicit endorsement of the support amount in its bid, the Commission sees no need for additional support to ease the transition to Connect America Phase II.

D. Elimination of Support in Areas With 100 Percent Overlap

32. In the *USF/ICC Transformation Order,* the Commission adopted a rule to eliminate support in incumbent local exchange carrier (LEC) study areas where an unsubsidized competitor or combination of unsubsidized competitors offers voice and broadband that meet our service obligations throughout the service area. The Commission hereby codifies that rule and the three-year phase-down of support adopted therein.

33. The Commission sought comment on the methodology used for determining whether an incumbent LEC is 100 percent overlapped by an unsubsidized competitor, and it directed the Bureau ''to publish a finalized methodology for determining areas of overlap and a list of companies for which there is a 100 percent overlap.'' Now that the study area boundary data collection has been completed, the Commission expects the Bureau will implement that directive in the months ahead.

34. The Commission proposes in the concurrently adopted FNPRM that the Bureau should review the study area boundary data in conjunction with data collected on the FCC Form 477 and the National Broadband Map every other year to determine whether and where 100 percent overlaps exist. The Commission also proposes to adjust the baseline for support reductions to be the amount of support received in the year immediately preceding the determination of 100 percent overlap, rather than 2010 support amounts.

E. Rule Amendments

35. Sections 54.313 and 54.314 of the Commission's rules require that all reports and certifications filed pursuant to these sections be filed with the Commission's Office of the Secretary in WC Docket No. 10–90. The Commission takes this opportunity to amend the Code of Federal Regulations to direct all section 54.313 and 54.314 filers to file their reports and certifications with the Office of the Secretary in the newly-opened WC Docket No. 14–58.

36. The Commission also takes this opportunity to make several rule amendments. First, the Commission moves the rules regarding HCLS and safety net additive, which currently are located in subpart F of Part 36, into a new subpart M in Part 54 in order to consolidate all high-cost rules in Part 54, and make conforming changes throughout Part 54. In the course of moving those rules, the Commission also deletes those portions that are no longer applicable due to the passage of time and other changes previously implemented in the *USF/ICC Transformation Order.* The Commission notes that section 1.1105 of the Commission's rules requires a filing fee in connection with petitions for waiver of rules contained in Part 36. While consolidation of the high-cost rules into one part may constitute a substantive rule change requiring notice and comment because of the required filing fee, the Commission utilizes the good cause exemption for when notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' Previously, the Commission issued a blanket waiver of the filing fee for carriers seeking a waiver of the HCLS benchmark rule contained in Part 36, but did not do so for the remainder of the universal service rules in Part 36 because that issue was not before it. However, the Commission finds that parties seeking waiver of any of the universal service rules included in subpart F of Part 36 similarly should not be subject to a filing fee, because parties seeking a waiver of other high-cost universal service rules in Part 54 are not subject to any filing fee. In moving subpart F of Part 36 to Part 54, the Commission notes that parties seeking waiver of the moved rules will no longer be subject to a filing fee. The Commission finds that it is in the public interest to consolidate all high-cost universal service rules into one part and to maintain consistency regarding filing fees throughout all of Part 54 of the Commission's rules and, therefore, that it is unnecessary, under the circumstances, to seek comment on otherwise non-substantive change to the Commission's rules. Second, the Commission deletes other codified universal service rules that no longer are applicable because they govern time periods or support mechanisms that no longer are in existence.

III. Declaratory Ruling

37. In contrast, in the areas served by price cap carriers the Commission concluded it would target support to high-cost areas, and support would be disbursed through a combination of a forward-looking model and a competitive bidding mechanism. Price cap carriers accepting model-based support must deploy voice and broadband-capable networks to all supported locations that are deemed ''high-cost'' and not served by an unsubsidized competitor, but they are not required to extend broadband in extremely high-cost areas as determined by the forward-looking cost model.

38. The Commission expressly recognized that there are some areas of the country where it is cost prohibitive to extend broadband using terrestrial wireline technology and, that in some areas, satellite or fixed wireless technologies may be more cost-effective options to extend service. It established a Remote Areas Fund with a budget of at least $100 million annually to address those areas that are not served. It envisioned that this dedicated funding would not be available in those remote areas in rural America that already have broadband meeting the Commission's performance requirements that it sought comment on in the *USF/ICC Transformation FNPRM.* The Commission stated in the *USF/ICC Transformation FNRPM* that it intended ''to use a forward-looking cost model—once finalized—to identify a small number of extremely high-cost areas in both rate-of-return and price cap areas that should receive support from the Remote Areas Fund.'' It sought comment in the *USF/ICC*

Transformation FNPRM on various issues relating to the Remote Areas Fund, including performance requirements, eligibility standards, which areas would be eligible for support, and measures to combat waste and improve accountability. It noted that ''pending development of the record and resolution of these issues, rate-of-return carriers are simply required to extend broadband upon reasonable request.''

39. Since the issuance of the *USF/ICC Transformation Order,* a number of rate-of-return carriers have informally sought guidance from Commission staff as to what they are required to do under the ''reasonable request'' standard and what should be addressed in their five-year service improvement plans. Commenters recognize that it is not reasonable to extend service in extremely high-cost areas, but the question remains how that standard might be applied in particular situations. Some carriers have informally expressed concern that state commissions might conclude that high-cost support is not being used for its intended purpose, as required by section 54.7 of the Commission's rules, if a carrier fails to extend broadband service upon request in particular situations or fails to meet deployment targets contained in their five-year service improvement plans. Concerns also have been expressed that support could be withheld, or recovery of support previously disbursed could be sought, for failure to meet this standard. Moreover, certain state commissions have informally indicated to Commission staff that they feel they do not have jurisdiction over broadband services and thus cannot determine where or whether it is appropriate for a carrier to extend broadband service upon reasonable request.

40. *Discussion.* The Commission now concludes it would be appropriate to issue a declaratory ruling regarding which requests should be deemed unreasonable under our current rules and policies to provide greater clarity to all affected stakeholders.

41. The Commission acknowledges there is some ambiguity in the *USF/ICC Transformation Order* on this topic. The Commission suggested that to the extent states retain jurisdiction over voice service, they would have jurisdiction to monitor the responsiveness of rate-of-return carriers to requests for service over a broadband-capable voice network. The Commission did not address, however, what standards might apply in those states where the public service commission lacks jurisdiction to address such matters, nor did it provide any guidance as a matter of federal policy as to what factors might be relevant to the extent a state does have jurisdiction. Moreover, when the Commission stated its expectation that rate-of-return carriers would ''follow pre-existing state requirements, if any, regarding service line extensions in their highest-cost areas,'' it did not distinguish the situation in which a carrier is extending new facilities to serve a location in the first instance (such as extending a line to a newly built home in a high-cost area) from the situation in which the carrier has existing facilities in place to provide voice service (i.e., a copper line) to a particular location and the customer is requesting that line be upgraded to provide broadband service as well as voice service. The Commission therefore concludes that it would be beneficial to enunciate more clearly our requirements for the extension of broadband services where the rate-of-return carrier already has a facility in place to provide voice service.

42. Rate-of-return carriers evaluating a request to extend broadband service should consider whether it would be reasonable to make the necessary upgrades in light of anticipated end-user revenues from the retail provision of broadband service and other sources of revenues, including but not limited to federal or state universal service funding projected to be available under current rules. In considering end-user revenues, carriers should take into account the reasonable comparability benchmark for broadband services. If the incremental cost of undertaking the necessary upgrades to a particular location exceed the revenues that could be expected from that upgraded line, a request would not be reasonable.

43. A request to upgrade an existing voice line to provide broadband service would not be reasonable if it would require new investments that would cause total high-cost support, excluding CAF–ICC, to exceed $250 per line per month in a given study area. The Commission determined in the *USF/ICC Transformation Order* that ''support drawn from limited public funds in excess of $250 per-line monthly (not including any new CAF support resulting from ICC reform) should not be provided without further justification.'' The Commission subsequently determined in the *Third Order on Reconsideration,* 77 FR 30904, May 24, 2012, that ETCs may take into account backhaul costs or other unique circumstances that may make it cost-prohibitive to extend service to particular customers. Finally, in the *Fifth Order on Reconsideration,* 78 FR 3837, January 17, 2013, the Commission clarified that when reviewing petitions for waiver of the $250 per month cap, it would ''consider the impact of reforms not only on voice service alone, but also on continued operation of a broadband-capable network and the effect on consumer rates.'' In particular, the Commission stated that it envisioned ''granting relief to incumbent telephone companies only in those circumstances in which the petitioner can demonstrate that consumers served by such carriers face a significant risk of losing access to a broadband-capable network that provides both voice as well as broadband today, at reasonably comparable rates, in areas where there are no alternative providers of voice or broadband. To the extent carriers have already made the investment in such broadband-capable networks, reductions in support that would threaten their ability to continue to maintain and operate those existing networks offering service at reasonably comparable rates in areas where consumers have no alternatives would be a public policy concern.''

44. Thus, under these prior determinations, the Commission declares that a request is not reasonable if it would require a carrier to undertake new network upgrades to install new backhaul facilities or to replace existing copper lines to the home with fiber merely for the purpose of newly providing broadband service in study areas where total support already is subject to the $250 per line monthly cap. Moreover, the Commission declares that a request is not reasonable if it would require a carrier to undertake new network upgrades to newly provide broadband service to requesting customers if that would cause total monthly support that presently is under the $250 cap to exceed the cap, under our existing rules.

45. The Commission also declares that a rate-of-return carrier has no obligation to extend broadband-capable infrastructure in any census block that is served by an unsubsidized competitor that meets the Commission's current performance standards. Indeed, to do so would be inconsistent with the Commission's general policy—which is not limited to price cap territories—that ''all broadband build out obligations for fixed broadband are conditioned on not spending the funds to serve customers in areas already served by an 'unsubsidized competitor.' '' The Commission cannot and will not condone new investment subsidized by universal service funds to occur in areas that are already served by marketplace

forces, and thus interpret our broadband public interest obligation consistent with that policy.

46. For purposes of determining whether a census block is served by an unsubsidized competitor, the Commission provides flexibility to rate-of-return carriers to make that determination in one of several ways. They are free to, but not required to, rely upon the treatment of a particular census block in the forward-looking cost model recently adopted by the Wireline Competition Bureau for the offer of support to price cap carriers. They are free to, but not required to, rely upon published coverage maps or online tools provided by competitors to enable prospective customers to determine whether service is available at particular addresses. There may be other ways a rate-of-return carrier may determine whether a particular location already is served by another provider; the Commission does not intend to suggest these are the only means of making such a determination. The Commission proposes in the concurrently adopted FNPRM to preclude rate-of-return carriers going forward, as of a date certain, from including in cost studies used for the determination of HCLS and interstate common line support (ICLS) the costs associated with new investment in areas that are already served by a qualifying provider that provides voice and broadband meeting the Commission's Phase II performance requirements. The Commission seeks comment in the concurrently adopted FNPRM on a rule to preclude new investment from being recovered through HCLS and ICLS as of a date certain and instead to develop a new Connect America Fund that will support voice and broadband-capable networks in rural America within the existing Connect America Fund budget.

47. While the Commission does not decide now as a general matter whether and if so how a forward-looking cost model could be used to identify areas that would be eligible for funding from the Remote Areas Fund, it believes the Connect America Cost Model developed by the Bureau potentially could be a useful tool for rate-of-return carriers to consider where it might be reasonable to extend broadband-capable infrastructure and for other purposes. The Commission recognizes that some parties have suggested that further work would be required before the Connect America Cost Model could be used for any purpose in rate-of-return territories. At a minimum, the Commission concludes it should be updated to incorporate the new study area boundaries data that the Bureau recently collected before it can be used for regulatory purposes in rate-of-return territories. The Commission therefore directs the Bureau to undertake further work to update the Connect America Cost Model to incorporate study boundary data, and such other adjustments as may be appropriate.

48. In this regard, the Commission recognizes that a larger percentage of locations in rate-of-return areas lie above the likely extremely high-cost threshold identified by the Bureau in its recent order adopting inputs for the forward-looking cost model for the offer of support to price cap carriers. Commenters expressing concern about the use of the model for determining rate-of-return areas that would be served by the Remote Areas Fund appear to assume that such extremely high-cost areas would only be served by the Remote Areas Fund, and that existing support for those areas would be eliminated. The Commission emphasizes that it has made no decisions regarding how the Remote Areas Fund might be implemented in those areas of the country where the incumbent provider is a rate-of-return carrier. Classification of a rate-of-return area as extremely high-cost under the forward-looking model does not mean that support would only be available from the Remote Areas Fund.

49. Finally, the Commission notes that our decision today does not change support under the existing support mechanisms for rate-of-return carriers, nor does it impact existing broadband service in extremely high-cost areas. Rather, the Commission issues this declaratory ruling so that carriers can make efficient and prudent investments going forward in the near term, while the Commission considers the issues raised in the FNPRM. As parties have recognized, rate-of-return carriers are free today to deploy alternative technologies, or resell satellite service, in areas determined to be beyond a reasonable request for the extension of fiber, in order to meet customer demand.

IV. Order

A. Delayed Implementation of Section 54.318(b)

50. On March 20, 2014, the Bureau announced that the average local end-user rate plus state regulated fees of the surveyed incumbent LECs in urban areas is $20.46. In addition, the Bureau requested comment on a petition filed by the Eastern Rural Telecom Association (ERTA), Independent Telephone & Telecommunications Alliance (ITTA), NTCA, the National Exchange Carrier Association (NECA), the United States Telecom Association (USTelecom), and WTA—Advocates for Rural Broadband requesting that the deadline for compliance with the 2014 local service rate floor be extended from July 1, 2014 to January 2, 2015, and that subsequent adjustments to the rate floor should then be made annually on January 2.

51. Under section 54.313(h), the $20.46 rate floor goes into effect on July 1, 2014, and all incumbent ETCs are required to report their rates to the Universal Service Administrative Company (USAC) for the number of lines for which ''the sum of those rates and fees are below the rate floor.'' Pursuant to section 54.318(b), any incumbent ETC whose rate for local service plus state regulated fees is below the rate floor shall have its ''high-cost support reduced by an amount equal to the extent to which its rates for residential local service plus state regulated fees are below the local urban rate floor, multiplied by the number of lines for which it is receiving support.''

52. No parties opposed the Associations' Petition. On reply, commenters overwhelmingly supported an extension of the deadline to comply with the 2014 local service rate floor. In support of the extension, commenters note that there would be roughly sixty days for incumbent LECs currently at the $14 benchmark to take steps to adjust rates to be consistent with the 2014 local service rate floor, which may require a full local rate proceeding before state regulators. Commenters also suggest that carriers will need sufficient time to minimize the impact of the rate increase on consumers and complete other necessary modifications. In addition to overwhelmingly supporting a delay in the implementation of the rule, commenters suggest that a phase-in of the 2014 local service rate floor is appropriate and necessary to mitigate the risk of rate shock for consumers. While comments vary on the appropriate phase-in, two associations argued that an annual increase capped at roughly $2.00 would be acceptable. In addition, several commenters ask the Commission to re-evaluate the local service rate floor as a general matter, suggesting that capping the annual increase in the local rate service floor would not impact the high-cost budget adopted in the *USF/ICC Transformation Order* or affect the universal service fund contribution factor. The National Association of Regulatory Utility Commissioners (NARUC) filed a petition asking the Commission to (1) maintain the current benchmark ($14) pending release of information

regarding the data and methodology that produced the $20.46 rate, and (2) to seek comment on how to calculate the benchmark. Finally, the Maine Office of Public Advocate argues that ''a carrier should receive full universal service high cost support for each Lifeline customer served even if that customer's monthly rate is a rate that is below the Rate Floor.''

53. *Discussion.* Initially, the Commission notes that support under the federal high-cost program historically has been provided to high-cost areas to ensure reasonable comparability of rates between urban and rural areas without consideration of the relative income levels in such areas; the program has not been designed to provide differing amounts of high-cost support for areas with lower incomes. Rather, other Commission mechanisms—specifically, the Lifeline program—are the primary means by which the Commission seeks to ensure that rates are affordable for low-income households. The underlying purpose of the rate floor is one of fairness: ''The Commission does not believe it is equitable for consumers across the country to subsidize the cost of service for some consumers that pay local service rates that are significantly lower than the national urban average.'' As the Commission explained in adopting the rate floor in 2011, ''[i]t is inappropriate to provide federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability. Doing so places an undue burden on the Fund and consumers that pay into it.'' The results of the urban rate survey show there is significant variation among the states in the local rates charged to residential consumers; nonetheless, in many states, residential consumers are paying $25 or more per month for local service. To the extent that individual states wish to maintain intrastate rates significantly lower than the national urban average, they are free to do so. This rule merely prevents them from doing so in a manner that would burden ratepayers nationwide.

54. In the *USF/ICC Transformation Order,* the Commission ''anticipate[d] that the rate floor for the third year will be set at a figure close to the sum of $15.62 plus state regulated fees.'' To mitigate the impact of the implementation of the rate floor and provide time to implement a new rate survey, the Commission concluded that the rate floor should be phased in over several years: $10 beginning July 1, 2012, $14 beginning July 1, 2013, and then the average urban rate, as determined from data in the Urban Rates Survey, beginning July 1, 2014. Its goal in adopting a multi-year transition was ''to avoid a flash cut that would dramatically affect either carriers or the consumers they serve.''

55. For 2014, the Bureau's survey determined that the average urban rate is $19.81 plus $0.65 in state fees (a total of $20.46). Because the survey average for flat-rate local service is more than four dollars higher than the Commission anticipated, the Commission agrees with commenters that a more gradual approach to the reductions to universal service support under section 54.318(b) is warranted, and waiver of this rule is appropriate.

56. Therefore, the Commission waives the application of section 54.318(b) for lines reported July 1, 2014, with a rate of $14 or above. Commencing January 2, 2015 (reflecting rates as of December 1, 2014), and thereafter, through June 30, 2016, the Commission waives section 54.318(b) to the extent reported lines are less than $16. For the period between July 1, 2016, and June 30, 2017, it waives section 54.318(b) to the extent reported rates are less than $18, or the 2016 rate floor, whichever is lower. For the period between July 1, 2017, and June 30, 2018, we waive section 54.318(b) to the extent reported rates are less than $20, or the 2017 rate floor, whichever is lower. The Commission believes that this four-year transition should provide sufficient time for carriers and state commissions to determine whether and how to make adjustments, without unreasonable effects on carriers and consumers. Further, because the Commission is extending implementation of the support reductions associated with the next rate floor until July 2016, it does not believe that it is necessary to change the annual date on which the annual rate floor goes into effect. Because ETCs otherwise are required to submit their annual reports on July 1 each year, the Commission thinks it will be easier to keep the rate floor effective date consistent with these other filings. The Commission leaves flexibility to the affected parties to determine whether and, if they seek to adjust their rates, how to do so over the next four years. The Commission emphasizes, however, that nothing in our rules requires carriers affected by the rate floor to adjust their local rates.

57. While the Commission understands some parties are concerned about significant rate hikes, it is not convinced based on the information before us that implementation of the approach adopted herein will lead to widespread rate hikes. Our experience with the implementation of the rule thus far suggests that not all carriers will raise rates to meet the rate floor. The $14 rate floor went into effect on July 1, 2013, and carriers have now had two opportunities to report the number of lines below that rate floor. The rate floor increased from $10 in 2012 to $14 in 2013, a 40 percent increase. When this occurred, interested parties were largely silent and voiced little opposition. The Commission notes that three-quarters of the lines subject to support reductions this year (based on the rates in effect on December 1, 2013) were price cap carrier lines, while one-quarter of the lines affected were reported by rate-of-return carriers. The fact that many carriers continue to report some lines with rates well below the $14 rate floor suggests that they may have made a business decision to grandfather the lower rates for those customers and accept the associated support reductions. Indeed, the Commission notes that more than two years after the Commission adopted the $14 rate floor to be implemented in 2013, carriers in 34 study areas in 16 states still are reporting a number of lines with residential local service charges of $5 or less, further reinforcing our view that individual carriers may choose not to raise rates in response to the current rate floor. The Commission therefore can predict that, although there could be increases in some rates, it is unlikely that there will be a significant number of dramatic increases.

58. In response to the NARUC petition, the Commission notes that the Bureau has posted on the Commission's Web site the data used to develop the rate floor with explanatory notes, effectively granting that aspect of NARUC's petition. Moreover, the Commission also notes that our action today to phase-in the effect of the rule over a four-year period effectively responds to NARUC's suggestion that ''at a minimum, delay and perhaps a phasing in of the new floor is warranted.'' NARUC also suggests that the Commission should seek comment on how to calculate the benchmark. In the *Rate Floor Order,* 78 FR 29063, May 17, 2013, the Bureau clearly explained that the sample would be drawn using FCC Form 477 data from fixed terrestrial providers in urban census tracts, and that the average urban rate would be calculated based on the non-promotional rate for stand-alone voice service. To the extent that NARUC is challenging that methodology, its request is an untimely petition for reconsideration of the *Rate Floor Order.* If the intent of NARUC's petition is to challenge the Bureau's decision to use

only incumbent LEC data in computing the average urban rate, we note that this decision resulted in a lower rate floor than would have resulted if the Bureau had used the data from all providers. Therefore, seeking comment on that aspect of the methodology would not advance NARUC's objective, and the Commission see no other reason to do so. The Commission therefore grants in part and deny in part NARUC's petition.

59. The Commission is not persuaded by arguments that it should artificially cap the 2014 rate floor to be a figure lower than what was calculated by the rate survey. The rate floor rule is separate from the rule requiring reductions in support for rates below the rate floor; there is no reason why it is necessary to ''cap'' the rate floor itself.

60. The Commission does not waive section 54.313(h) of our rules. The announced urban rate floor is $20.46; incumbent ETCs must report their rates to USAC to the extent that their rates plus state fees are below this amount. Having information regarding ETC rates below the urban rate floor will facilitate our ability over the next four years to monitor the impact of this rule on carriers and consumers. Effective July 1, 2016, the rate floor will be determined by the next urban rate survey. The Commission directs the Bureau to conduct the next survey in sufficient time to announce the results in early 2015 and to announce the 2016 rate floor no later than January 31, 2016.

61. The Commission agrees with the Maine Office of Public Advocate that a carrier should not be subject to universal service support reductions as a result of the rate floor for those lines provided to Lifeline customers. The Commission has consistently emphasized its commitment to ensuring that its reforms do not negatively impact Lifeline customers. The Commission therefore waives application of section 54.318(i) for lines provided to customers enrolled in the Lifeline program. The Commission concludes that allowing carriers to maintain rate plans that are priced below the rate floor for Lifeline subscribers strikes the appropriate balance between ensuring that consumers across America are not funding below-average rates for selected consumers, while providing targeted relief to ensure this rule does not negatively impact Lifeline subscribers. Therefore, the Commission waives section 54.318(i) and direct USAC to take steps to ensure there will be no reductions in high-cost support for lines provided to customers enrolled in the Lifeline program.

62. The Commission declines to reconsider the adoption of a rate floor. Such requests effectively are untimely petitions for reconsideration of the original decision in the *USF/ICC Transformation Order* to adopt the rate floor. The Commission denied petitions for reconsideration of the adoption of the rate floor in the *Third Order on Reconsideration.* Moreover, as noted above, the Commission adopted the rate floor as a matter of fairness to ensure that consumers throughout the country do not support consumers and states with very low rates. While parties may disagree with the particular operation of the current rule, that does not change the fact that consumers across the country otherwise would be continuing to subsidize, through federal universal service support, excessively low rates in some areas. As explained above, in no sense does this policy require carriers to raise their rates, nor does it preclude states from subsidizing low prices through their own universal-service mechanisms. The Commission thus continues to believe that the rate floor is necessary to maintain fairness in the universal service support mechanism and accordingly grant in part and deny in part the Associations' Petition to the extent described herein.

B. Waiver of Fees for Study Area Boundary Waivers

63. The Commission's rules require carriers filing petitions for waiver of the study area boundary freeze to submit a $7,990 application fee with their petitions. Historically, the Commission has imposed application fees to recoup a portion of the direct cost it incurs to provide specific services to individuals and companies. The $7,990 fee is a uniform fee that applies to all petitions for waiver of Part 32 accounting rules, Part 36 separations rules, Part 43 reporting requirements, Part 64 cost allocation rules, Part 65 rate of return rules, and Part 69 access charge rules.

64. *Discussion.* In response to informal inquiries from state commissions and others, the Commission now waives on our own motion the $7,990 application fee for carriers seeking a study area waiver to transfer lines below the exchange level. The Commission notes that the Bureau generally considers petitions seeking to transfer lines at the sub-exchange level as routine. This burden and cost has been reduced even further by the streamlined study area boundary freeze waiver process instituted in the *USF/ICC Transformation Order.* The administrative burden and cost associated with reviewing these petitions and issuing decisions, therefore, is relatively small, while the amount of the fee is a deterrent to transferring lines at the sub-exchange level. Accordingly, there is good cause to grant this limited waiver.

V. Memorandum Opinion and Order

65. In this section, the Commission addresses two applications for review of the Bureau's *Phase II Service Obligations Order* related to the requirements for a provider to be designated an unsubsidized competitor. Alaska Communications Systems (ACS) requests review of the Bureau's statement that it will consider challenges to a competitor's unsubsidized status even if that competitor is receiving high-cost support that is being phased out. The National Cable and Telecommunications Association (NCTA) requests review of the decision to use the same criteria for determining whether a provider is an unsubsidized competitor as are used in setting the obligations for Phase II funding recipients. For the reasons set forth below, the Commission denies ACS's application, and it dismisses NCTA's application. The Commission concludes that it is appropriate for the Bureau to commence the Phase II challenge process under the framework established in the *Phase II Service Obligations Order.*

66. In the *USF/ICC Transformation Order,* the Commission decided that all ETCs ''will be required to offer broadband service in their supported areas that meets certain basic performance requirements.'' In setting those performance requirements for Phase II model-based funding recipients, the Commission stated that those recipients must ''offer broadband at actual speeds of at least 4 Mbps downstream and 1 Mbps upstream, with latency suitable for real-time applications, such as VoIP, and with usage capacity reasonably comparable to that available in comparable offerings in urban areas,'' offered at rates that are reasonably comparable to the rates offered in urban areas. In determining the areas that will be eligible for Connect America Phase II support, the Commission stated that it will ''exclude areas where an unsubsidized competitor offers broadband service that meets the [above-mentioned] broadband performance requirements.'' The task of assigning quantifiable metrics to the Commission's general performance criteria, both for Phase II recipients and for unsubsidized competitors, was delegated to the Bureau.

67. In the *Phase II Service Obligations Order,* the Bureau implemented the Commission's direction that Connect America Phase II funding recipients

meet certain performance criteria. The Bureau specified the performance metrics that would be required of recipients of Phase II model-based support. The Bureau also specified how those criteria would be used in determining what areas would be considered served by an unsubsidized competitor, and therefore ineligible for support. The Bureau noted that, per the Commission's direction, ''an unsubsidized competitor must be offering broadband and voice service that would meet the Commission's requirements for price cap carriers receiving model-based support.'' Thus, in order to qualify as an unsubsidized competitor, a provider must offer broadband with speeds of 4 Mbps downstream and 1 Mbps upstream (4 Mbps/1 Mbps), roundtrip provider network latency of 100 ms or less, minimum usage allowances of at least 100 GB per month, and pricing that is reasonably comparable to that in urban areas.

A. ACS Application for Review

68. In the *Phase II Service Obligations Order*, the Bureau stated that it would ''presume that any recipient of high-cost support at the time the challenge process is conducted'' would not meet the definition of ''unsubsidized competitor,'' but it would ''entertain challenges to that presumption from any competitive [ETC] that otherwise meets or exceeds the performance standards established [for price cap carriers accepting model-based support] and whose high-cost support is scheduled to be eliminated during the five-year term of Phase II.'' It further stated that this would ''provide an opportunity for the Commission to consider whether to waive application of the 'unsubsidized' element of the unsubsidized competitor definition in situations that would result in Phase II support being used to overbuild an existing broadband-capable network.''

69. ACS requests that the Commission review and reverse the Bureau's decision. For the reasons discussed below, the Commission denies ACS's application.

70. The *USF/ICC Transformation Order* states, ''[i]n determining the areas eligible for support, [the Commission] will also exclude areas where an unsubsidized competitor offers broadband service that meets the broadband performance requirements described above, with those areas determined by the Wireline Competition Bureau as of a specified future date as close as possible to the completion of the model.'' ACS argues that allowing a provider to challenge its unsubsidized status even if it continues to receive support after the start of Phase II violates the requirement that the determination be made ''as close as possible to the completion of the model.''

71. The Commission concludes that the Bureau's action falls within its delegated authority to interpret and implement the requirements of the unsubsidized competitor rule. ACS's arguments fail for two reasons. First, while the Commission required that the list of eligible areas be determined as close as possible to the completion of the cost model, that does not necessarily translate to a requirement that the unsubsidized status of a provider be determined based on whether that provider is receiving funding at the time the cost model is completed. While the former is a decision made by the Commission, the latter is an interpretation of what it means to be ''unsubsidized,'' and the authority to make that interpretation is delegated to the Bureau.

72. Second, ACS's argument is not ripe for our consideration. The Bureau has not ruled that any and all providers receiving support after the start of Phase II qualify as unsubsidized. Quite the opposite: the Bureau presumes such providers are subsidized and requires that they come forward to present evidence if they wish to challenge that designation. In light of this, all the Bureau did was provide a procedural vehicle through which interested parties could—if they so choose—present certain evidence for consideration. Recognizing that the Commission delegated to the Bureau the implementation of the challenge process, the Commission is not persuaded that it was beyond the Bureau's delegated authority to invite parties to bring such evidence to the agency's attention.

73. Ultimately, the issue of the Bureau's delegated authority is moot, however, because the Commission agrees that the Phase II challenge process is the appropriate venue for parties to present evidence that they serve areas with a service that meets the standards established for Phase II, and that those areas should be excluded from the offer of support to price cap carriers. The Commission therefore affirms the Bureau's invitation to interested parties to present such evidence in the challenge process. ACS will suffer no substantial prejudice by the challenge process proceeding as the Bureau has outlined, as there will be time to make any final determinations on this topic based on a full record before the offer of support is extended. It is appropriate and timely for the Bureau to move forward with the Phase II challenge process now.

74. To provide all interested parties, including those outside Alaska, the opportunity to weigh in more broadly on how the Commission can use Connect America funding most efficiently, it seeks comment more generally on this topic in the concurrently adopted FNPRM. Specifically, the Commission proposes to exclude areas with competitors, whether or not subsidized, from Phase II eligibility in certain circumstances. Parties are free to raise substantive arguments in response to the concurrently adopted FNPRM as to whether this approach would harm universal service. As such, the Commission declines to address ACS's substantive policy arguments at this time, and it denies ACS's Application for Review.

B. NCTA Application for Review

75. NCTA challenges the Bureau's determination that the standards used for Phase II recipients' service obligations will also be used in assessing whether a provider qualifies as an unsubsidized competitor. The Commission concludes that the arguments advanced by NCTA are not appropriate for consideration in an application for review. The Commission therefore dismisses NCTA's Application for Review.

76. NCTA seeks review of the Bureau's determination that uniform standards will be used in assessing whether areas are served by unsubsidized competitors as well as setting the requirements that apply to recipients of Phase II model-based support. NCTA argues that using the same standards for both groups will result in wasteful and inefficient use of universal service funds; that the decision is tantamount to directly regulating broadband rates, terms, and conditions; and that unsubsidized competitors should not be held to the same performance standards as Phase II recipients, but rather should be evaluated based only on the speed of their offerings.

77. NCTA's arguments constitute an untimely petition for reconsideration of the decisions made in the *USF/ICC Transformation Order*, and, therefore, are not proper for an application for review. The decision for which NCTA seeks review is not an action taken by the Bureau on delegated authority; therefore, the matter is not properly addressed in an application for review. In the *USF/ICC Transformation Order,* the Commission affirmatively decided

that a uniform standard will apply in determining what areas are served by an unsubsidized competitor as well as in setting the performance obligations for recipients of Phase II model-based support. Rather than constituting a new decision made under delegated authority, the Bureau's *Phase II Service Obligations Order* simply implements the Commission's prior direction to use a uniform standard. Per the Commission's rules, a party may file an application for review if it is ''aggrieved by any action taken pursuant to delegated authority.'' But NCTA is not challenging a decision the Bureau made on delegated authority. Rather, NCTA challenges the Bureau's implementation of a prior Commission decision. An application for review of a Bureau decision implementing a Commission directive may not be used as a vehicle to seek reconsideration of the Commission's earlier decision. The proper method for challenging the Commission's decision on this point would have been for NCTA to seek reconsideration of the *USF/ICC Transformation Order.* However, the window for filing such a petition has passed. The Commission therefore dismisses NCTA's Application for Review of the *Phase II Service Obligations Order* as improper on the grounds that the application does not seek review of any Bureau action taken pursuant to delegated authority; to the extent the filing should be viewed as a petition for reconsideration of the Commission's decision in the *USF/ICC Transformation Order,* it dismisses it as untimely.

78. The Commission concludes that NCTA's application is procedurally defective. Therefore, the Commission dismisses NCTA's Application for Review.

VI. Seventh Order on Reconsideration

79. In this section, the Commission addresses several petitions for reconsideration of certain aspects of the *USF/ICC Transformation Order*, making adjustments where appropriate. First, to provide a more measured transition for rate-of-return carriers that would have qualified for SNA support based on their significant network investment, the Commission permits such carriers to receive SNA for such investments made in 2010 and 2011. Second, the Commission denies a petition challenging the imposition of broadband public interest conditions on recipients of high-cost support, concluding that does not constitute common carrier regulation. Third, the Commission eliminates the HCLS benchmarking rule so that carriers' HCLS will no longer be limited by benchmarks calculated using the QRA methodology.

A. Safety Net Additive

80. When the Commission adopted SNA, the number of access lines was growing. At that time, the Commission did not anticipate that incumbent telephone companies would lose access lines as they have over the past decade. Because incumbent LECs qualified for SNA support by realizing growth in TPIS on a per-line basis, decreasing access lines resulted in the majority of carriers receiving SNA support due to significant loss of lines, rather than significant increases in investment. For example, in 2009 and 2010, close to sixty percent of incumbent LECs that qualified for SNA did so because of line loss rather than increased investment.

81. In the 2011 *USF/ICC Transformation Order,* the Commission made the decision to eliminate and phase out SNA. The Commission found that the mechanism was not fulfilling its purpose of encouraging ''additional significant investment in telecommunications plant'' because the majority of incumbent carriers qualified for SNA due to line loss rather than network investment. The Commission decided that carriers that qualified for SNA support due to a 14 percent or greater increase in total TPIS over the prior year would continue to receive support for the full five-year period for which they were eligible. The Commission concluded that other carriers—i.e., those qualifying for SNA based on line loss—would have their SNA support phased down by 50 percent in 2012 and completely eliminated in 2013 because such support was not being paid on the basis of significant investment in telecommunications plant. Because the Commission eliminated SNA effective December 29, 2011, carriers that otherwise would have newly received SNA in 2012 or 2013 based on qualifying investments prior to the effective date of the Commission's action were no longer eligible for SNA.

82. Since the release of the *USF/ICC Transformation Order,* rate-of-return carriers have urged the Commission to reconsider its decision to eliminate SNA support. NECA, OPASTCO, and WTA (NECA et al.) also argue that, rather than eliminating SNA support, the Commission should revise the qualification requirements for SNA so that only those carriers that increase their total network investment from year-to-year—i.e., carriers that experience total year-over-year, rather than per-line, TPIS growth—would qualify for SNA support. Both NECA et al. and USTelecom urge the Commission to extend the SNA phase down schedule for carriers that qualified for SNA based on line loss. On December 20, 2012, North Central Telephone Cooperative, Inc. (North Central) filed a petition seeking waiver of the Commission's rules to enable it to receive SNA support for investments the company made in 2010. North Central alleges that the decrease in support as a result of the elimination of SNA has caused it to defer investments that would have resulted in lower annual operating costs and increased broadband availability and adoption in very rural areas.

83. *Discussion.* On reconsideration, the Commission concludes that a more measured transition for carriers that qualified for SNA based on investment is appropriate. Specifically, the Commission will allow carriers that would have qualified for SNA based on increased investment—an increase of at least 14 percent in their total TPIS in 2010 or 2011—to receive such support. This relief applies only to carriers that would have qualified for such support based on investment undertaken in 2010 or 2011 that led to a 14 percent or greater increase in total TPIS, not carriers that would have qualified due to line loss. The Commission concludes that providing SNA support for this limited group of carriers is consistent with our goal of increasing rural broadband deployment by promoting investment in modern networks. Moreover, providing SNA for this discrete group of carriers is consistent with the Commission's goal of ''phas[ing] in reform with measured but certain transitions, so companies affected by reform have time to adapt to changing circumstances.'' Because of the relief granted herein, the Commission dismisses North Central's petition as moot.

84. The Commission reiterates that carriers are not entitled to universal service support simply because they may have an expectation of such support. However, the Commission believes that providing a more measured transition for carriers is not only consistent with the original intent of the SNA mechanism, but also furthers the goals of the *USF/ICC Transformation Order,* which was intended to expand modern communications networks in rural communities throughout the country.

85. The Commission notes that our decision, by focusing only on those carriers who qualify for SNA based on significant network investments, will have a limited budgetary impact. In 2013, USAC disbursed approximately

$20 million in SNA support to eligible carriers. The Commission estimates that allowing SNA support for carriers qualifying for SNA based on investment in 2010 and 2011 will result in an increase of approximately $31.5 million in SNA support in 2014, $12 million annually in 2015 and 2016, and $4.5 million in 2017.

86. The Commission otherwise finds that parties have presented no new evidence or raised new arguments that convince us to delay or reverse the Commission's general decision to eliminate and phase out SNA. Accordingly, the Commission denies other requests to reconsider actions relating to SNA.

87. As the Commission explained in the *USF/ICC Transformation Order,* allowing qualification based on growth in total investment rather than per line investment, as petitioners suggest, ''would not address [the Commission's] overarching concern that [SNA] as a whole does not provide the right incentives for investment in modern communications networks.'' For example, the rule provided support for investment in terrestrial wireline networks in extremely high-cost areas where it may be more cost effective to deploy alternative technologies. The rule also provided SNA to carriers for investments in areas served by an unsubsidized competitor. Therefore, simply modifying the qualification requirement, rather than eliminating SNA altogether, would fail to provide sufficient assurance that carriers receiving support in the future would make reasonable or cost-efficient investments or target these investments to areas that would not otherwise be served, contrary to the goals of the *USF/ICC Transformation Order.*

88. The Commission also declines to alter the phase down of support for carriers that qualified for SNA due to line loss prior to or during 2009. The phase down adopted by the Commission was part of a total package of reforms designed to balance the Commission's objectives of advancing the availability of modern networks capable of supporting broadband and voice services at reasonably comparable rates and encouraging efficient investment while minimizing the burden on consumers and businesses. The Commission found that the SNA mechanism was not well designed to meet its intended purpose. Extending the phase down for two additional years would thwart the Commission's reform goals and reward inefficiency.

89. The Commission also is not persuaded by USTelecom's argument that it should extend the phase down of SNA support for incumbent rate-of-return carriers that qualified for SNA support due to line loss to provide treatment equivalent to that provided to competitive ETCs. In the *USF/ICC Transformation Order*, the Commission established a five-year transition period for competitive ETCs' existing high-cost universal service support in recognition of the fact that they were losing all support with the elimination of the identical support rule. The Commission adopted this phase down to eliminate legacy support entirely for competitive ETCs. Rate-of-return carriers remain eligible to receive support from existing high-cost support mechanisms as reformed by the *USF/ICC Transformation Order*, as well as CAF–ICC support. As such, the different approach for competitive ETCs makes sense in the context of the overall set of reforms.

B. Broadband Public Interest Conditions

90. For price cap carriers, the Commission began the process of transitioning high-cost support to the Connect America Fund. In Connect America Phase I, the Commission froze existing high-cost support for price cap carriers and their rate-of-return affiliates until Connect America Phase II is implemented. As a condition of receiving this frozen support, the Commission required price cap carriers to use a portion of that support ''to build and operate broadband-capable networks'' necessary ''to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor.''

91. The *USF/ICC Transformation Order* also implemented a number of reforms for rate-of-return carriers. Relevant here, the Commission determined that rate-of-return carriers would continue to receive support under existing universal service support mechanisms (subject to some modifications to improve the efficiency and effectiveness of those mechanisms). As a condition on the continued receipt of high-cost loop support, interstate common line support, and support from the CAF–ICC recovery mechanism, the Commission required rate-of-return carriers to provide broadband service meeting the specified performance requirements upon reasonable request for service and within a reasonable amount of time.

92. In its petition for reconsideration, USTelecom claims that the Commission ''lacks authority'' to condition the receipt of ''legacy'' federal universal support on these broadband public interest conditions. It argues that these conditions constitute ''common-carrier regulation,'' and that because broadband is classified as a Title I information service, the Commission is precluded from imposing such conditions on support pursuant to section 3(51) of the Act. That section provides, in relevant part, that ''[a] telecommunications carrier shall be treated as a common carrier under this [Act] only to the extent that it is engaged in providing telecommunications services.''

93. *Discussion.* The broadband public interest conditions that the *USF/ICC Transformation Order* imposes on the receipt of federal universal service subsidies do not constitute a *per se* common carrier obligation. After the *USF/ICC Transformation Order,* as before, carriers or their affiliated Internet Service Providers are free to offer or decline to sell broadband Internet access service to any end user. Carriers need not hold themselves out to offer service indiscriminately to anyone. Instead, carriers only have to provide broadband service to a customer if the carrier seeks designation as an ETC from a state commission or the FCC and requests federal subsidies. As such, the *USF/ICC Transformation Order* imposes funding conditions, not ''regulation''—and certainly not a *per se* common carrier obligation. Indeed, as the United States Court of Appeals for the Tenth Circuit has explained, conditions placed on the receipt of federal universal service subsidies—even though they may be similar to the duties imposed on common carriers—do not amount to a *per se* common carrier obligation because carriers voluntarily assume the conditions in the first instance and ''retain[] the ability to opt out of them entirely by declining . . . federal universal service subsidies.'' USTelecom concedes that price cap carriers ''may decline [Connect America] Phase I incremental support if they 'cannot meet [the Commission's] broadband deployment requirement' and may decide not to accept [Connect America] Phase II support.'' The same holds true with respect to legacy support—price cap carriers have the option of declining legacy high-cost support if they do not want to comply with the broadband public interest conditions in the *USF/ICC Transformation Order.*

94. The Commission is not persuaded by the argument that the broadband public interest obligations are not a voluntarily assumed condition on the receipt of federal subsidies because incumbent LECs cannot recover the costs they incur fulfilling various other regulatory obligations in the absence of high-cost universal service support and, therefore, incumbent LECs have no

choice but to comply with the broadband public interest conditions. Implicit in this argument is the notion that incumbent LECs are entitled to universal service subsidies. The Commission considered and rejected a variation on this argument, which is analogous to a takings claim, in the *USF/ICC Transformation Order.* Indeed, consistent with our view, reviewing courts have uniformly rejected similar entitlement claims, recognizing that the ''purpose of universal service is to benefit the customer, not the carrier.''

95. Moreover, all incumbent LECs are subject to regulatory obligations as incumbents, irrespective of whether they receive high-cost universal service support. Thus, those obligations, which are distinct from the universal service objectives of section 254, do not entitle some subset of incumbent LECs to high-cost universal service support. Further, incumbent LECs recover the costs associated with many of those obligations from other sources. Accordingly, the Commission does not agree that incumbent LECs have no choice but to comply with the broadband public interest conditions because they will not be able to recover their costs in the absence of federal subsidies.

96. Likewise, the Commission does not share the view that support is not '' 'sufficient . . . to preserve and advance universal service.' '' The Commission explained, at length, the basis of its predictive judgment that federal universal service subsidies would be sufficient to support both voice and broadband in the *USF/ICC Transformation Order,* and nothing leads us to reconsider that determination. As the courts have held, consumers are the intended beneficiaries of universal service subsidies. Properly viewed from the customer's perspective, the evidence demonstrates that support is sufficient for purposes of section 254(b)(5).

97. Marketplace trends since the Commission adopted the *USF/ICC Transformation Order* support the Commission's conclusion that support is sufficient to meet the broadband public interest obligations. For example, there has been an increase in broadband deployment by incumbent LECs, both price-cap and rate-of-return carriers. Likewise, there have been increases in both broadband and telephone penetration rates since the adoption of the *USF/ICC Transformation Order.* If support was insufficient the Commission would expect those rates to stagnate or decline. The Commission also finds no evidence that the broadband public interest obligations have proved to be too onerous for incumbent LECs. To the contrary, since the Commission adopted the *USF/ICC Transformation Order* in 2011, only 14 out of the nation's approximately 740 rate-of-return carriers have sought waivers of universal service support reductions. Given the dearth of such waiver requests, the Commission finds no merit to the claim that it's providing incumbent LECs insufficient support to satisfy the broadband public interest conditions.

98. Even if the broadband public interest conditions amounted to regulation, which they do not, they fall far short of a *per se* common carrier obligation. The DC Circuit has held that a carrier is ''being relegated to common carrier status'' if that carrier ''is forced to offer service indiscriminately and on general terms.'' USTelecom's petition for reconsideration, which lacks any discussion of how the broadband public interest conditions are commensurate with a *per se* common carrier obligation under Title II of the Act, fails to demonstrate that those conditions impose such a duty on universal service support recipients. After the *USF/ICC Transformation Order,* as before, providers are free to set their own prices for broadband service and may charge different rates to different end-user customers. Indeed, the broadband public interest conditions only require ETCs to offer broadband service if they request federal subsidies, and then to do so at rates in rural areas that are ''reasonably comparable'' to those in urban areas. In other words, ETCs are free to offer their broadband services on terms they choose, and may offer different pricing structures to different areas of the country, subject only to the condition that the rates they offer in rural areas fall within a ''reasonable range of urban rates for reasonably comparable broadband service.''

99. If, for example, a customer such as a community anchor institution negotiated terms and pricing for broadband services with an ETC to address the unique needs of that institution, the *USF/ICC Transformation Order* does not then require the ETC to offer those same terms to any—let alone all—of the ETC's other customers. As such, the broadband public interest conditions ''leave[] substantial room for individualized bargaining and discrimination in terms,'' distinguishing them from common carriage.

C. Elimination of the Benchmarking Rule

100. In the February 2013 *Sixth Order on Reconsideration,* 78 FR 16808, March 19, 2013, the Commission reconsidered some aspects of the benchmarking rule. WTA, ERTA, and NECA (the Rural Associations) filed a petition for reconsideration of that Order. In their petition, the Rural Associations claim that the current benchmarking methodology results in unpredictable support and discourages investment in telecommunications and broadband infrastructure; they urge the Commission to reconsider its conclusion that the rule produces predictable support, or use at a minimum benchmarks solely as a trigger to determine if a carrier's costs require further examination.

101. Subsequently, the Bureau implemented a data collection to update study area boundaries used in developing the geographical variables in the regression analysis. In July 2013, the Bureau took several additional measures to provide greater clarity regarding the support amounts that rate-of-return carriers would receive in 2014.

102. *Discussion.* The Commission remains firmly committed to the goal of ensuring that universal service support is utilized efficiently to preserve voice and extend broadband-capable networks in high-cost areas in rural America. As discussed in the *USF/ICC Transformation Order,* the Commission has taken steps to reform the universal service mechanisms that support rate-of-return carriers ''to address the misaligned incentives'' of the previous regime ''by correcting program design flaws, extending successful safeguards, ensuring basic fiscal responsibility, and closing loopholes to ensure our rules reward only prudent and efficient investment in modern networks.''

103. The Commission now concludes, however, that the benchmarking rule is not effectively advancing those objectives. When the Commission adopted the benchmarking rule in the *USF/ICC Transformation Order,* it anticipated that the rule would encourage carriers to make fiscally responsible investments in their infrastructure and that the support redistributed by the rule would encourage new investment in voice and broadband-capable networks. Based on our further experience with the rule, however, the Commission concludes that it is not functioning as originally intended. Therefore, on reconsideration, the Commission eliminates the benchmarking rule.

104. The Commission now finds that the rule unintentionally has encouraged carriers that were not subject to the benchmarks to believe that they too needed to limit their investment in broadband-capable networks. This was due in part to the fact that the new rule

relied on a statistical methodology that was unfamiliar to many affected stakeholders.

105. The evidence before us does not permit us to draw a firm conclusion regarding the actual impact of the rule in question; much of the concern appears to be focused on potential other reforms that might be implemented in the future. A number of trade associations, carriers, and consultants have expressed to the Commission that the benchmarking rule has been discouraging investment. According to the Rural Associations, 69 percent of the NTCA members that responded to a survey stated that they were ''postponing or cancelling fixed network upgrades'' due to ''uncertainty surrounding'' the benchmarking rule and other reforms in the *USF/ICC Transformation Order.* On the other hand, the Bureau's *Universal Service Implementation Progress Report* noted that in the year following the April 2012 implementation of the benchmarking rule, there was a 10 percent increase in the number of census bocks reported by rate-of-return carriers in which service at speeds of at least 3 Mbps/768 kbps was available. Investment thus has continued to occur post-*USF/ICC Transformation Order,* and we would expect the steps we take today will lead to even greater investment in the deployment of next-generation broadband networks.

106. While the Bureau staff and affected stakeholders have proceeded in good faith to implement the directives of the Commission in the *Sixth Order on Reconsideration,* the Commission anticipates it still would take many months for the Bureau develop new regressions, seek public input on potential equations, and finalize the methodology to be used to calculate support in 2014 and beyond. No party has provided any concrete suggestions as to what standards should be applied to determine excessive costs if the benchmarking rule were used as a trigger for further examination of costs. Thus, the Commission declines to adopt the Rural Associations' suggestion that it use the QRA as a trigger to determine if a carrier's costs require further examination, although it is firmly committed to developing standards for what are reasonable and appropriate investments for rate-of-return carriers. The Commission now concludes that eliminating the benchmarking rule at this time is a prudent step that should enable rate-of-return carriers to evaluate realistically the impact of the reforms adopted in the *USF/ICC Transformation Order* on their business operations and extend broadband-capable infrastructure where economically appropriate. As a result of this decision, carriers' HCLS support will no longer be capped by benchmarks calculated using the QRA methodology. Instead, the Commission is leaving in place the HCLS mechanism that the Rural Associations themselves argue is predictable, while it continues to evaluate alternative ways to ensure that rate-of-return carriers have structural incentives to operate efficiently and make prudent expenditures with universal service support.

107. With the elimination of the benchmarking rule, carriers' HCLS support will be distributed as it previously had been prior to the *USF/ICC Transformation Order.* Nothing in today's decision disturbs the other rules governing eligibility for HCLS, such as the HCLS indexed cap, which limits the total amount of HCLS provided to rate-of-return carriers and has been in effect for decades. Likewise, the $250 monthly per-line cap on total high-cost federal universal service support and the corporate operations expense limitations for ICLS remain in place for all rate-of-return carriers.

108. The Commission continues to have significant concerns with the ''race to the top'' incentives that exist under the HCLS rule. Given the perception of and concerns with the benchmarking rule, however, the Commission concludes it is appropriate to eliminate it while it considers options to increase incentives for efficient investment of universal service funds. The Commission will press forward with efforts to ensure that these funds are disbursed efficiently and in the public interest. Such efforts are essential if the Commission is to remain within the budget framework established by a unanimous Commission in the *USF/ICC Transformation Order.* The Commission seeks comment in the concurrently adopted FNPRM on several specific reforms to the existing support mechanisms for rate-of-return carriers, while inviting additional proposals that will create an appropriate framework for network investment and expansion over the longer term.

109. *ASTAC and CVTC's Application for Review.* The Commission also takes this opportunity to dismiss ASTAC and CVTC's untimely filed application for review of the *Sixth Order on Reconsideration.* The *Sixth Order on Reconsideration* was not properly subject to an application for review, because it was adopted by the Commission and not by the Bureau on delegated authority. Moreover, even if the Commission were to treat the application as a petition for reconsideration, it dismisses the pleading pursuant to section 1.429(d) and (i) of the Commission's rules. Not only does the application address an issue that is wholly unrelated to and outside the scope of the *Sixth Order on Reconsideration* (the QRA's climate variable), but the application was also filed 30 days late—petitions for reconsideration must be filed within 30 days of public notice, and whereas the *Sixth Order on Reconsideration* was published in the **Federal Register** on March 19, 2013, the application for review was not filed until May 18, 2013.

VII. Procedural Matters

A. Paperwork Reduction Act Analysis

110. 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 are 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. Final Regulatory Flexibility Analysis

111. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated in the *Further Notice of Proposed Rule Making (USF/ICC Transformation FNRPM).* The Commission sought written public comment on the proposals in the *USF/ICC Transformation FNRPM,* including comment on the IRFA. The Commission did not receive any relevant comments on the *USF/ICC Transformation FNPRM* IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

112. The Report and Order adopts several rules to establish the foundation for the award of support in price cap areas where the price cap carrier declines the offer of model-based support. Specifically, the Commission

concludes that all areas where the average cost per location equals or exceeds a specified cost benchmark are eligible for Phase II support in the competitive bidding process. The Commission sets a support term of 10 years for support awarded through the competitive bidding process. Finally, the Commission permits price cap carriers that decline model-based support to participate in the competitive bidding process.

113. The Commission also addresses more generally provider eligibility for support through the competitive bidding process and the Remote Areas Fund. The Commission permits entities to seek designation as eligible telecommunications carriers (ETC) after notification they are winning bidders for the offer of Phase II Connect America funding. The Commission also concludes that recipients of support through the competitive bidding process or Remote Areas Fund must certify as to their financial and technical capabilities to provide the required services within the specified timeframe in the geographic area for which they seek support.

114. The Commission issues a declaratory ruling to provide rate-of-return carriers greater clarity regarding their obligations to extend broadband service upon reasonable request.

115. In the Order, the Commission phases in support reductions associated with the 2014 rate floor of $20.46 over a multi-year period to provide time for incumbent carriers and state commissions to make any adjustments they deem necessary. In particular, the Commission defers any support reductions for lines that have rates of $14 or greater until January 2, 2015. Between January 2, 2015, and June 30, 2016, the Commission implements support reductions only to the extent rates are below $16; between July 1, 2016 and June 30, 2017, it implements support reductions only for lines with rates under $18 or the rate floor established by the 2016 rate survey, whichever is lower; and between July 1, 2017 and June 30, 2018, the Commission implements support reductions only for lines with rates under $20 or the 2017 rate floor, whichever is lower. Thus, the impact of this rule is phased in over a four-year period. In addition, the Commission waives any support reductions associated with lines provided to customers enrolled in the Lifeline program. This will minimize the effect of rate-floor-related support reductions on small entities with Lifeline customers.

116. The Commission also reconsiders certain aspects of the *USF/ICC Transformation Order* in response to petitions from a variety of stakeholders. These modifications reflect our continuing commitment in the universal service reforms to efficiency and creating the appropriate incentives to invest and operate modern voice and broadband-capable networks. First, to provide a more measured transition for rate-of-return carriers that would have qualified under the prior rules for certain support known as Safety Net Additive (SNA) based on their significant network investment, the Commission permits such carriers to receive SNA for such investments made in 2010 and 2011. Second, the Commission eliminates the high-cost loop support (HCLS) benchmarking rule so that rate-of-return carriers' support will no longer be limited by benchmarks calculated using quantile regression analysis (QRA).

117. In addition, the Commission waives the application fees for carriers seeking a study area waiver to transfer lines below the sub-exchange level. Prior to this decision, study area waivers required an application fee of $7,990 regardless of the number of lines involved. Because the processing of sub-exchange level transfers is now routine, the burden and cost associated with reviewing these petitions has been reduced and the application fee, which is a deterrent to transferring lines, is no longer necessary. The Commission also denies a petition for reconsideration of the Commission's decision to impose broadband public interest obligations on recipients of high-cost support, and in the Memorandum Opinion and Order the Commission dismisses or denies two applications for review of the Wireline Competition Bureau's (Bureau) *Phase II Service Obligations Order.*

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

118. There were no relevant comments filed that specifically addressed the rules and policies proposed in the *USF/ICC Transformation FNPRM* IRFA.

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

119. 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.

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

121. *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.

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

123. *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.

124. 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.

125. *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.

126. *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.

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

128. *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.

129. *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.

130. *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.

131. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

132. *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.

133. *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.

134. *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.

135. *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.

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

2,093 licenses. A fourth auction, 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.

137. *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.

138. *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.

139. *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.

140. 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.

141. 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.

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

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

143. 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.

144. *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.

145. 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.

146. *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).

147. *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.

148. *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.

149. *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.

150. 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.

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

152. *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.

153. *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 our evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Order.

154. *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.

155. *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.

156. *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.

157. *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.

158. *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.

159. *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.

160. *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.

161. *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 7,433 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.

162. *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 we 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 our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

163. *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.

164. *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.

165. 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.

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

167. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

168. *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.

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

170. *Open Video Services.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the 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.

171. *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, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this

size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

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

173. *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.

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

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

175. In the Report and Order, the Commission requires that entities participating in the Phase II competitive bidding process and the Remote Areas Fund certify as to their financial and technical capabilities to provide the required services within the specified timeframe in the geographic area for which they seek support.

176. The Commission also makes a procedural rule amendment to require all ETCs to file their section 54.313 and 54.314 reports and certifications in WC Docket No. 14–58.

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

177. 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.

178. The rules that the Commission adopts in the Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, and Seventh Order on Reconsideration provide flexibility by streamlining certain processes for all carriers, including small entities. For example, the Commission permits entities that wish to participate in the Phase II competitive bidding process to seek ETC designation for the Phase II competitive bidding process and Remote Areas Fund after being notified they are winning bidders for the offer of the award of Phase II Connect America funding. The Commission recognized that some qualified bidders, including small entities, may be hesitant to invest resources to apply for an ETC designation prior to the competitive bidding process without any sense of whether they are likely to be awarded Phase II support.

179. In the Order, the Commission also removes a deterrent for all carriers, including small carriers, that wish to transfer or acquire parts of exchanges. The Commission waives on our own motion the $7,990 application fee for carriers filing petitions for waiver of the study area boundary freeze for transfers at the sub-exchange level. This change could be especially beneficial to small entities that may have found the application fee prohibitive. The Order also delays any support reductions associated with the rate floor rule over a multi-year period, giving carriers, including small carriers, more time to adjust to the requirement.

180. The rules that the Commission adopts for the Phase II competitive bidding process also provide flexibility for all participants, including small entities, to determine the most cost-effective way to serve areas where they are awarded support through the competitive bidding process. By permitting participants to select to bid on extremely high-cost areas, the Commission permits participants to build integrated networks that span both types of areas in adjacent census blocks as appropriate. And by providing a funding term of 10 years (subject to existing requirements and the availability of funds), the Commission seeks to stimulate greater interest in the competitive bidding process.

181. The Commission declines to adopt a transition period for competitive ETCs that receive support through the Phase II competitive bidding process because competitive ETCs, including small entities, have the ability to determine the level of support necessary to support an area through their bid, and thus a transition period is unnecessary.

182. The Commission also takes steps to provide greater certainty to rate-of-

return carriers, many of which are small entities. For example, in the Declaratory Ruling, the Commission clarifies its requirements for rate-of-return carriers relating to the extension of broadband services upon reasonable request. And in the Seventh Order on Reconsideration, the Commission eliminates the HCLS benchmarking rule after finding that the rule unintentionally has encouraged carriers that were not subject to the benchmarks to believe that they too needed to limit their investment in broadband-capable networks. In the Seventh Order on Reconsideration, the Commission also adopts a more measured transition for carriers that qualified for SNA based on investment. In the *USF/ICC Transformation Order,* the Commission made the decision to eliminate and phase out SNA effective December 29, 2011. Because there is a two year lag between when carriers qualify for SNA support and receive support, this decision precluded carriers that would have qualified for SNA support in 2010 and 2011, before the Commission's decision to eliminate SNA, from receiving SNA. The Commission reconsiders this decision and permit carriers that that would have qualified for SNA in 2010 or 2011 based on an increase in their investment (not due to line loss) to receive SNA.

6. Report to Congress

183. The Commission will send a copy of the Report and Order, Declaratory Ruling, Memorandum Opinion and Order, Seventh Order on Reconsideration, and concurrently adopted Further Notice of Proposed Rulemaking, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and concurrently adopted Further Notice of Proposed Rulemaking, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order, Declaratory Ruling, Memorandum Opinion and Order, Seventh Order on Reconsideration, and concurrently adopted Further Notice of Proposed Rulemaking (or summaries thereof) will also be published in the **Federal Register**

VIII. Ordering Clauses

184. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 2, 4(i), 5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429, that this Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and the 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 (1) those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval, (2) the waiver of sections 1.1105, 54.318(b), and 54.318(i) of the Commission's rules to the extent described herein which shall become effective upon release pursuant to sections 1.4(b)(2) and 1.103 of the Commission's rules (47 CFR 1.4(b)(2), 1.103), and (3) the elimination of the benchmarking rule, which shall become effective as of the first month following publication of a summary of this order in the **Federal Register**. It is our intention in adopting these rules that if any of the rules that the Commission retain, modify, or adopt herein, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

185. *It is further ordered* that Parts 36, 54, and 69 of the Commission's rules, 47 CFR Parts 36, 54, and 69, *are 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.

186. *It is further ordered* that, pursuant to the authority contained in sections 1, 2, and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), and section 1.3 of the Commission's rules, 47 CFR 1.3, the Petition for Extension of Time filed by the Eastern Rural Telecom Association, the Independent Telephone & Telecommunications Alliance, the National Exchange Carrier Association, NTCA—The Rural Broadband Association, the United States Telecom Association, and WTA—Advocates for Rural Broadband on March 11, 2014, *is granted in part* and *is denied in part* to the extent described herein.

187. *It is further ordered* that, pursuant to the authority contained in section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(5), and section 1.115(g) of the Commission's rules, 47 CFR 1.115(g), the Application for Review filed by Alaska Communication Systems on November 26, 2013, *is denied.*

188. *It is further ordered* that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(5), and section 1.115(g) of the Commission's rules, 47 CFR 1.115(g), the Application for Review filed by the National Cable and Telecommunications Association on December 23, 2013, *is dismissed.*

189. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration and Clarification filed by the National Exchange Carrier Association, Inc., the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance on December 29, 2011, *is granted in part and denied in part* to the extent described herein.

190. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by the United States Telecom Association on December 29, 2011, *is denied in part* to the extent described herein.

191. *It is further ordered* that the petition for waiver of section 36.605 of the Commission's rules, 47 CFR 36.605, eliminating eligibility of local exchange carriers to receive Safety Net Additive support with respect to qualifying investments made during the year 2010, filed by North Central Telephone Cooperative, Inc. on December 20, 2012, *is dismissed* as described herein.

192. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by the Western

Telecommunications Alliance, The Eastern Rural Telecom Association, and the National Exchange Carrier Association on April 18, 2013, is *granted* to the extent described herein.

193. *It is further ordered* that, pursuant to the authority contained in sections 5 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 155(c), 405, and sections 1.115 and 1.429 of the Commission's rules, 47 CFR 1.115, 1.429, the Application for Review filed by Arctic Slope Telephone Association Cooperative, Inc. and Copper Valley Telephone Cooperative on May 20, 2013 and dated May 18, 2013, is *dismissed* as described herein.

194. *It is further ordered* that, pursuant to the authority contained in sections 1, 2, and 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 405, and sections 1.3 and 1.429 of the Commission's rules, 47 CFR 1.3, 1.429, the petition filed by the National Association of Regulatory Utility Commissioners on April 15, 2014 *is granted in part* and *denied in part* to the extent described herein.

195. *It is further ordered* that, pursuant to the authority contained in sections 1, 2, and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), and sections 1.3,1.4(b)(2), and 1.103 of the Commission's rules, 47 CFR 1.3, 1.4(b)(2), 1.103 on our own motion, section 1.1105 of the Commission's rules, 47 CFR 1.1105 is *waived* to the extent described herein effective upon release.

196. *It is further ordered* that, pursuant to the authority contained in sections 1, 2, and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), and sections 1.3, 1.4(b)(2), and 1.103 of the Commission's rules, 47 CFR 1.3, 1.4(b)(2), 1.103, sections 54.318(b) and 54.318(i) of the Commission's rules, 47 CFR 54.318(b), (i) are *waived* to the extent described herein effective upon release.

197. *It is further ordered* that the Commission *shall send* a copy of this Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, 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).

198. *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, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and concurrently adopted Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis and the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

47 CFR Part 54

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

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 36, 54, and 69 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 303(r), 403, 410, and 1302 unless otherwise noted.

Subpart F—[Removed and Reserved]

■ 2. Remove and reserve subpart F, consisting of §§ 36.601, 36.603 through 36.605, 36.611 through 36.613, 36.621, 36.622 and 36.631.

PART 54—UNIVERSAL SERVICE

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

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

■ 4. Amend § 54.302 by revising paragraph (b) to read as follows:

§ 54.302 Monthly per-line limit on universal service support.

* * * * *

(b) For purposes of this section, universal service support is defined as the sum of the amounts calculated pursuant to §§ 54.1304 and 54.1310, and §§ 54.305, and 54.901 through 54.904. Line counts for purposes of this section shall be as of the most recent line counts reported pursuant to § 54.1306(i).

* * * * *

■ 5. Amend § 54.305 by revising paragraphs (d) and (e) to read as follows:

§ 54.305 Sale or transfer of exchanges.

* * * * *

(d) Transferred exchanges in study areas operated by rural telephone companies that are subject to the limitations on loop-related universal service support in paragraph (b) of this section may be eligible for a safety valve loop cost expense adjustment based on the difference between the rural incumbent local exchange carrier's index year expense adjustment and subsequent year loop cost expense adjustments for the acquired exchanges. Safety valve loop cost expense adjustments shall only be available to rural incumbent local exchange carriers that, in the absence of restrictions on high-cost loop support in paragraph (b) of this section, would qualify for high-cost loop support for the acquired exchanges under § 54.1310.

(1) For carriers that buy or acquire telephone exchanges on or after January 10, 2005, from an unaffiliated carrier, the index year expense adjustment for the acquiring carrier's first year of operation shall equal the selling carrier's loop-related expense adjustment for the transferred exchanges for the 12-month period prior to the transfer of the exchanges. At the acquiring carrier's option, the first year of operation for the transferred exchanges, for purposes of calculating safety valve support, shall commence at the beginning of either the first calendar year or the next calendar quarter following the transfer of exchanges. For the first year of operation, a loop cost expense adjustment, using the costs of the acquired exchanges submitted in accordance with §§ 54.1305 and 54.1306, shall be calculated pursuant to § 54.1310 and then compared to the index year expense adjustment. Safety valve support for the first period of operation will then be calculated pursuant to paragraph (d)(3) of this section. The index year expense adjustment for years after the first year of operation shall be determined using cost data for the first year of operation

of the transferred exchanges. Such cost data for the first year of operation shall be calculated in accordance with §§ 54.1305, 54.1306, and 54.1310. For each year, ending on the same calendar quarter as the first year of operation, a loop cost expense adjustment, using the loop costs of the acquired exchanges, shall be submitted and calculated pursuant to §§ 54.1305, 54.1306, and 54.1310 and will be compared to the index year expense adjustment. Safety valve support for the second year of operation and thereafter will then be calculated pursuant to paragraph (d)(3) of this section.

(2) For carriers that bought or acquired exchanges from an unaffiliated carrier before January 10, 2005, and are not subject to the exception in paragraph (c) of this section, the index year expense adjustment for acquired exchange(s) shall be equal to the rural incumbent local exchange carrier's high-cost loop expense adjustment for the acquired exchanges calculated for the carrier's first year of operation of the acquired exchange(s). At the carrier's option, the first year of operation of the transferred exchanges shall commence at the beginning of either the first calendar year or the next calendar quarter following the transfer of exchanges. The index year expense adjustment shall be determined using cost data for the acquired exchange(s) submitted in accordance with §§ 54.1305 and 54.1306 and shall be calculated in accordance with § 54.1310. The index year expense adjustment for rural telephone companies that have operated exchanges subject to this section for more than a full year on August 8, 2014 shall be based on loop cost data submitted in accordance with § 54.1306 for the year ending on the nearest calendar quarter following August 8, 2014. For each subsequent year, ending on the same calendar quarter as the index year, a loop cost expense adjustment, using the costs of the acquired exchanges, will be calculated pursuant to § 54.1310 and will be compared to the index year expense adjustment. Safety valve support is calculated pursuant to paragraph (d)(3) of this section.

(3) Up to fifty (50) percent of any positive difference between the transferred exchanges loop cost expense adjustment and the index year expense adjustment will be designated as the transferred exchange's safety valve loop cost expense adjustment and will be available in addition to the per-line loop-related support transferred from the selling carrier to the acquiring carrier pursuant to paragraph (b) of this section. In no event shall a study area's safety valve loop cost expense adjustment exceed the difference between the carrier's study area loop cost expense adjustment calculated pursuant to § 54.1310 and transferred support amounts available to the acquired exchange(s) under paragraph (b) of this section. Safety valve support shall not transfer with acquired exchanges.

(e) The sum of the safety valve loop cost expense adjustment for all eligible study areas operated by rural telephone companies shall not exceed five (5) percent of the total rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment calculated pursuant to § 54.1302. The five (5) percent cap on the safety valve mechanism shall be based on the lesser of the rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment calculated pursuant to § 54.1302 or the sum of rural incumbent local exchange carrier expense adjustments calculated pursuant to § 54.1310. The percentage multiplier used to derive study area safety valve loop cost expense adjustments for rural telephone companies shall be the lesser of fifty (50) percent or a percentage calculated to produce the maximum total safety valve loop cost expense adjustment for all eligible study areas pursuant to this paragraph. The safety valve loop cost expense adjustment of an individual rural incumbent local exchange carrier also may be further reduced as described in paragraph (d)(3) of this section.

* * * * *

■ 6. Amend § 54.310 by revising paragraphs (a) and (b) and adding paragraphs (e) and (f) to read as follows:

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

(a) *Geographic areas eligible for support.* Connect America Phase II support may be made available for census blocks or other areas identified as eligible by public notice, including locations identified by the forward-looking cost model as extremely high-cost. The number of supported locations will be identified for each area eligible for support will be identified by public notice.

(b) *Term of support.* Connect America Phase II model-based support shall be provided to price cap carriers that elect to make a state-wide commitment for five years. Connect America Phase II support awarded through a competitive bidding process shall be provided for ten years.

* * * * *

(e) *Provider eligibility.* Any eligible telecommunications carrier is eligible to receive Connect America Phase II support in eligible areas.

(1) An entity may obtain eligible telecommunications carrier designation after public notice of winning bidders in a competitive bidding process for the offer of Phase II Connect America support. An applicant in the competitive bidding process shall certify that it is financially and technically qualified to provide the services supported by Connect America Phase II in order to receive such support.

(2) To the extent an applicant in the competitive bidding process seeks eligible telecommunications carrier designation prior to public notice of winning bidders for Phase II Connect America support, its designation as an eligible telecommunications carrier may be conditional subject to the receipt of Phase II Connect America support.

(f) *Transition to model-based support.* Eligible telecommunications carriers electing model-based support in states where that support is less than their Phase I frozen support will transition to model-based support as follows: In addition to model-based support, in the first year of Phase II, they will receive 75% of the difference between Phase I frozen support and model-based support; in the second year of Phase II, they will receive 50% of the difference between Phase I frozen support and model-based support; and in the third year of Phase II, they will receive 25% of the difference between Phase I frozen support and model-based support.

■ 7. Amend § 54.313 by revising paragraphs (f)(1) introductory text and (i) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(f) * * *

(1) *Beginning July 1, 2015.* A progress report on its five-year service quality plan pursuant to § 54.202(a) that includes the following information:

* * * * *

(i) All reports pursuant to this section shall be filed with the Office of the Secretary of the Commission clearly referencing WC Docket No. 14–58, with the Administrator, and with the relevant state commissions or relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

* * * * *

■ 8. Amend § 54.314 by revising paragraph (c) to read as follows:

§ 54.314 Certification of support for eligible telecommunications carriers.

* * * * *

(c) *Certification format.* (1) A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 14–58, and with the Administrator of the high-cost support mechanism, on or before the deadlines set forth in paragraph (d) of this section. If provided by the appropriate regulatory authority for the State, the annual certification must identify which carriers in the State are eligible to receive federal support during the applicable 12-month period, and must certify that those carriers only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. A State may file a supplemental certification for carriers not subject to the State's annual certification. All certificates filed by a State pursuant to this section shall become part of the public record maintained by the Commission.

(2) An eligible telecommunications carrier not subject to the jurisdiction of a State shall file a sworn affidavit executed by a corporate officer attesting that the carrier only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. The affidavit must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 14–58, and with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth in paragraph (d) of this section. All affidavits filed pursuant to this section shall become part of the public record maintained by the Commission.

* * * * *

■ 9. Amend § 54.318 by revising paragraphs (d) and (g) to read as follows:

§ 54.318 High-cost support; limitations on high-cost support.

* * * * *

(d) For purposes of this section, high-cost support is defined as the support available pursuant to § 54.1310 and frozen high-cost support provided to price cap carriers to the extent it is based on support previously provided pursuant to § 54.1310 or former high-cost proxy model support.

* * * * *

(g) Any reductions in high-cost support under this section will not be redistributed to other carriers that receive support pursuant to § 54.1310.

* * * * *

■ 10. Add § 54.319 to subpart D to read as follows:

§ 54.319 Elimination of high-cost support in areas with 100 percent coverage by an unsubsidized competitor.

(a) Universal service support shall be eliminated in an incumbent local exchange carrier study area where an unsubsidized competitor, or combination of unsubsidized competitors, as defined in § 54.5, offers to 100 percent of residential and business locations in the study area voice and broadband service at speeds of at least 4 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas.

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

(1) In the first year, two-thirds of the lesser of the incumbent's total 2010 high-cost support or $3000 times the number of reported lines as of year-end 2010;

(2) In the second year, one-third of the lesser of the incumbent's total 2010 high-cost support or $3000 times the number of reported lines as of year-end 2010;

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

■ 11. Amend § 54.903 by revising paragraphs (a)(1) and (2) to read as follows:

§ 54.903 Obligations of rate-of-return carriers and the Administrator.

(a) * * *

(1) Beginning July 31, 2002, each rate-of-return carrier shall submit to the Administrator in accordance with the schedule in § 54.1306 the number of lines it serves, within each rate-of-return carrier study area showing residential and single-line business line counts and multi-line business line counts separately. For purposes of this report, and for purposes of computing support under this subpart, the residential and single-line business class lines reported include lines assessed the residential and single-line business End User Common Line charge pursuant to § 69.104 of this chapter, and the multi-line business class lines reported include lines assessed the multi-line business End User Common Line charge pursuant to § 69.104 of this chapter. For purposes of this report, and for purposes of computing support under this subpart, lines served using resale of the rate-of-return local exchange carrier's service pursuant to section 251(c)(4) of the Communications Act of 1934, as amended, shall be considered lines served by the rate-of-return carrier only and must be reported accordingly.

(2) A rate-of-return carrier may submit the information in paragraph (a) of this section in accordance with the schedule in § 54.1306, even if it is not required to do so. If a rate-of-return carrier makes a filing under this paragraph, it shall separately indicate any lines that it has acquired from another carrier that it has not previously reported pursuant to paragraph (a) of this section, identified by customer class and the carrier from which the lines were acquired.

* * * * *

■ 12. Add subpart M to part 54 to read as follows

Subpart M—High Cost Loop Support for Rate-of-Return Carriers

Sec.

Subpart M—High Cost Loop Support for Rate-of-Return Carriers

§ 54.1301 General.

(a) This subpart addresses support for loop-related costs included in § 54.1308. The expense adjustment calculated pursuant to this subpart M shall be added to interstate expenses and deducted from state expenses after expenses and taxes have been apportioned pursuant to subpart D of part 36 of this chapter. Beginning January 1, 2012, this subpart will only apply to incumbent local exchange carriers that are rate-of-return carriers not affiliated, as ''affiliated companies'' are defined in § 32.9000 of this chapter, with price cap local exchange carriers. Rate-of-return carriers and price cap local exchange carriers are defined pursuant to § 54.5 and § 61.3(bb) of this chapter, respectively.

(b) The expense adjustment will be computed on the basis of data for a preceding calendar year which may be updated at the option of the carrier pursuant to § 54.1306(a).

§ 54.1302 Calculation of incumbent local exchange carrier portion of nationwide loop cost expense adjustment for rate-of-return carriers.

(a) Beginning January 1, 2013, and each calendar year thereafter, the total annual amount of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall not exceed the amount for the immediately preceding calendar year, multiplied times one plus the Rural Growth Factor calculated pursuant to § 54.1303.

(b) The annual rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall be reduced to reflect the transfer of rural incumbent local exchange carrier access lines that are eligible for expense adjustments pursuant to § 54.1310. The reduction shall equal the amount of the § 54.1310 expense adjustment available to the transferred access lines at the time of the transfer and shall be effective in the next calendar quarter after the access lines are transferred.

(c) Safety net additive support calculated pursuant to § 54.1304, and transferred high-cost support and safety valve support calculated pursuant to § 54.305 of this part shall not be included in the rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment.

§ 54.1303 Calculation of the rural growth factor.

(a) The Rural Growth Factor (RGF) is equal to the sum of the annual percentage change in the United States Department of Commerce's Gross Domestic Product—Chained Price Index (GPD–CPI) plus the percentage change in the total number of rural incumbent local exchange carrier working loops during the calendar year preceding the July 31st filing submitted pursuant to § 54.1305. The percentage change in total rural incumbent local exchange carrier working loops shall be based upon the difference between the total number of rural incumbent local exchange carrier working loops on December 31 of the calendar year preceding the July 31st filing and the total number of rural incumbent local exchange carrier working loops on December 31 of the second calendar year preceding that filing, both determined by the company's submissions pursuant to § 54.1305. Loops acquired by rural incumbent local exchange carriers shall not be included in the RGF calculation.

(b) Beginning July 31, 2012, pursuant to § 54.1301(a), the calculation of the Rural Growth Factor shall not include price cap carrier working loops and rate-of-return local exchange carrier working loops of companies that were affiliated with price cap carriers during the calendar year preceding the July 31st filing submitted pursuant to § 54.1305.

§ 54.1304 Calculation of safety net additive.

(a) *Safety net additive support.* Only those local exchange carriers that qualified for safety net additive based on 2011 or prior year costs shall be eligible to receive safety net additive pursuant to paragraph (c) of this section. A local exchange carrier shall not receive safety net additive unless the carrier's realized total growth in Telecommunications Plant in Service (TPIS) was more than 14 percent in 2011 or earlier, pursuant to paragraph (c) of this section.

(b) *Calculation of safety net additive support for companies that qualified based on 2011 or prior year costs.* Safety net additive support is equal to the amount of capped support calculated pursuant to this subpart M in the qualifying year minus the amount of support in the year prior to qualifying for support subtracted from the difference between the uncapped expense adjustment for the study area in the qualifying year minus the uncapped expense adjustment in the year prior to qualifying for support as shown in the following equation: Safety net additive support = (Uncapped support in the qualifying year − Uncapped support in the base year) − (Capped support in the qualifying year − Amount of support received in the base year).

(c) *Operation of safety net additive support for companies that qualified based on 2011 or prior year costs.* (1) In any year in which the total carrier loop cost expense adjustment is limited by the provisions of § 54.1302, a rate-of-return incumbent local exchange carrier shall receive safety net additive support as calculated in paragraph (b) of this section, if in any study area, the rural incumbent local exchange carrier realizes growth in end of period TPIS, as prescribed in § 32.2001, on a per loop basis, of at least 14 percent more than the study area's TPIS per loop investment at the end of the prior period.

(2) If paragraph (c)(1) of this section is met, the rural incumbent local exchange carrier must notify the Administrator; failure to properly notify the Administrator of eligibility shall result in disqualification of that study area for safety net additive, requiring the rural incumbent local exchange carrier to again meet the eligibility requirements in paragraph (c)(1) of this section for that study area in a subsequent period.

(3) Upon completion of verification by the Administrator that the study area meets the stated criterion in paragraphs (a), (b), or (c) of this section, the Administrator shall:

(i) Pay to any qualifying rural telephone company safety net additive support for the qualifying study area in accordance with the calculation set forth in paragraph (b) of this section; and

(ii) Continue to pay safety net additive support in any of the four succeeding years in which the total carrier loop expense adjustment is limited by the provisions of § 54.1302. Safety net additive support in the succeeding four years shall be the lesser of:

(A) The sum of capped support and the safety net additive support received in the qualifying year; or

(B) The rural telephone company's uncapped support.

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

(a) In order to allow determination of the study areas and wire centers that are entitled to an expense adjustment pursuant to § 54.1310, each incumbent local exchange carrier (LEC) must provide the National Exchange Carrier Association (NECA) (established pursuant to part 69 of this chapter) with the information listed for each study area in which such incumbent LEC operates, with the exception of the information listed in paragraph (h) of this section, which must be provided for each study area. This information is to be filed with NECA by July 31st of each year. The information provided pursuant to paragraph (i) of this section must be updated pursuant to § 54.1306. Rural telephone companies that acquired exchanges subsequent to May 7, 1997, and incorporated those acquired exchanges into existing study areas shall separately provide the information required by paragraphs (b) through (i) of this section for both the acquired and existing exchanges.

(b) Unseparated, i.e., state and interstate, gross plant investment in Exchange Line Cable and Wire Facilities (C&WF) Subcategory 1.3 and Exchange Line Central Office (CO) Circuit Equipment Category 4.13. This amount shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

(c) Unseparated accumulated depreciation and noncurrent deferred federal income taxes, attributable to Exchange Line C&WF Subcategory 1.3 investment, and Exchange Line CO Circuit Equipment Category 4.13 investment. These amounts shall be calculated as of December 31st of the calendar year preceding each July 31st filing, and shall be stated separately.

(d) Unseparated depreciation expense attributable to Exchange Line C&WF Subcategory 1.3 investment, and Exchange Line CO Circuit Equipment Category 4.13 investment. This amount shall be the actual depreciation expense for the calendar year preceding each July 31st filing.

(e) Unseparated maintenance expense attributable to Exchange Line C&WF Subcategory 1.3 investment and Exchange Line CO Circuit Equipment Category 4.113 investment. This amount shall be the actual repair expense for the calendar year preceding each July 31st filing.

(f) Unseparated corporate operations expenses, operating taxes, and the benefits and rent proportions of operating expenses. The amount for each of these categories of expense shall be the actual amount for that expense for the calendar year preceding each July 31st filing. The amount for each category of expense listed shall be stated separately.

(g) Unseparated gross telecommunications plant investment. This amount shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

(h) Unseparated accumulated depreciation and noncurrent deferred federal income taxes attributable to local unseparated telecommunications plant investment. This amount shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

(i) The number of working loops for each study area. For universal service support purposes, working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service. These figures shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

§ 54.1306 Updating Information Submitted to the National Exchange Carrier Association.

(a) Any incumbent local exchange carrier subject to § 54.1301(a) may update the information submitted to the National Exchange Carrier Association (NECA) on July 31st pursuant to § 54.1305 one or more times annually on a rolling year basis according to the schedule.

(1) Submit data covering the last nine months of the previous calendar year and the first three months of the existing calendar year no later than September 30th of the existing year;

(2) Submit data covering the last six months of the previous calendar year and the first six months of the existing calendar year no later than December 30th of the existing year;

(3) Submit data covering the last three months of the second previous calendar year and the first nine months of the previous calendar year no later than March 30th of the existing year.

(b) [Reserved]

§ 54.1307 Submission of Information by the National Exchange Carrier Association.

(a) On October 1 of each year, the National Exchange Carrier Association (NECA) shall file with the Commission and Administrator the information listed below. Information filed with the Commission shall be compiled from information provided to NECA by telephone companies pursuant to § 54.1305.

(1) The unseparated loop cost for each study area and a nationwide-average unseparated loop cost.

(2) The annual amount of the high cost expense adjustment for each study area, and the total nationwide amount of the expense adjustment.

(3) The dollar amount and percentage of the increase in the nationwide average unseparated loop cost, as well as the dollar amount and percentage increase for each study area, for the previous 5 years, or the number of years NECA has been receiving this information, whichever is the shorter time period.

(b) [Reserved]

§ 54.1308 Study Area Total Unseparated Loop Cost.

(a) For the purpose of calculating the expense adjustment, the study area total unseparated loop cost equals the sum of the following:

(1) Return component for net unseparated Exchange Line C&WF subcategory 1.3 investment and Exchange Line CO Circuit Equipment Category 4.13 investment. This amount is calculated by deducting the accumulated depreciation and noncurrent deferred Federal income taxes attributable to C&WF Subcategory 1.3 investment and Exchange Line Category 4.13 circuit investment reported pursuant to § 54.1305(b) from the gross investment in Exchange Line C&WF Subcategory 1.3 and CO Category 4.13 reported pursuant to § 54.1305(a) to obtain the net unseparated C&WF Subcategory 1.3 investment, and CO Category 4.13 investment. The net unseparated C&WF Subcategory 1.3 investment and CO Category 4.13 investment is multiplied by the study area's authorized interstate rate of return.

(2) Depreciation expense attributable to C&WF Subcategory 1.3 investment, and CO Category 4.13 investment as reported in § 54.1305(c).

(3) Maintenance expense attributable to C&WF Subcategory 1.3 investment, and CO Category 4.13 investment as reported in § 54.1305(d).

(4) Corporate Operations Expenses, Operating Taxes and the benefits and rent portions of operating expenses, as reported in § 54.1305(e) attributable to investment in C&WF Category 1.3 and COE Category 4.13. This amount is calculated by multiplying the total amount of these expenses and taxes by the ratio of the unseparated gross exchange plant investment in C&WF Category 1.3 and COE Category 4.13, as reported in § 54.1305(a), to the unseparated gross telecommunications plant investment, as reported in § 54.1305(f). Total Corporate Operations Expense for purposes of calculating high-cost loop support payments beginning January 1, 2012 shall be limited to the lesser of § 54.1308(a)(4)(i) or (ii).

(i) The actual average monthly per-loop Corporate Operations Expense; or

(ii) A monthly per-loop amount computed according to paragraphs (a)(4)(ii)(A), (a)(4)(ii)(B), (a)(4)(ii)(C), and (a)(4)(ii)(D) of this section. To the extent that some carriers' corporate operations expenses are disallowed pursuant to these limitations, the national average unseparated cost per loop shall be adjusted accordingly.

(A) For study areas with 6,000 or fewer total working loops the amount monthly per working loop shall be $42.337 − (.00328 × the number of total working loops), or, $63,000/the number of total working loops, whichever is greater;

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

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

(D) Beginning January 1, 2013, the monthly per-loop amount computed according to paragraphs (a)(4)(ii)(A), (a)(4)(ii)(B), and (a)(4)(ii)(C) of this section shall be adjusted each year to reflect the annual percentage change in the United States Department of Commerce's Gross Domestic Product-Chained Price Index (GDP–CPI).

(b) [Reserved]

§ 54.1309 National and study area average unseparated loop costs.

(a) *National average unseparated loop cost per working loop.* Except as provided in paragraph (c) of this section, this is equal to the sum of the Loop Costs for each study area in the country as calculated pursuant to § 54.1308(a) divided by the sum of the working loops reported in § 54.1305(h) for each study area in the country. The national average unseparated loop cost per working loop shall be calculated by the National Exchange Carrier Association. Beginning July 1, 2001, the national average unseparated loop cost for purposes of calculating expense adjustments for rural incumbent local exchange carriers, as that term is defined in § 54.5 of this part is frozen at $240.00.

(1) The national average unseparated loop cost per working loop shall be recalculated by the National Exchange Carrier Association to reflect the September, December, and March update filings.

(2) Each new nationwide average shall be used in determining the additional interstate expense allocation for companies which made filings by the most recent filing date.

(3) The calculation of a new national average to reflect the update filings shall not affect the amount of the additional interstate expense allocation for companies which did not make an update filing by the most recent filing date.

(b) *Study area average unseparated loop cost per working loop.* This is equal to the unseparated loop costs for the study area as calculated pursuant to § 54.1308(a) divided by the number of working loops reported in § 54.1305(i) for the study area.

(1) If a company elects to, or is required to, update the data which it has filed with the National Exchange Carrier Association as provided in § 54.1306(a), the study area average unseparated loop cost per working loop and the amount of its additional interstate expense allocation shall be recalculated to reflect the updated data.

(2) [Reserved]

(c) The national average inseparated loop Cost per working loop shall be the greater of:

(1) The amount calculated pursuant to the method described in paragraph (a) of this section; or

(2) Beginning July 1, 2001, for rural carriers, an amount calculated to produce the maximum rural incumbent local exchange carrier portion of nationwide loop cost expense adjustment allowable pursuant to § 54.1302(a).

§ 54.1310 Expense adjustment.

(a) [Reserved]

(b) [Reserved]

(c) Beginning January 1, 1988, for study areas reporting 200,000 or fewer working loops pursuant to § 54.1305(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (c)(1) through (2) of this section.

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

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

(d) Beginning April 1, 1989, the expense adjustment calculated pursuant to § 54.1310(c) shall be adjusted each year to reflect changes in the amount of high-cost loop support resulting from adjustments calculated pursuant to § 54.1306(a) made during the previous year. If the resulting amount exceeds the previous year's fund size, the difference will be added to the amount calculated pursuant to § 54.1310(c) for the following year. If the adjustments made during the previous year result in a decrease in the size of the funding requirement, the difference will be subtracted from the amount calculated pursuant to § 54.1310(c) for the following year.

PART 69—ACCESS CHARGES

■ 13. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

■ 14. Revise § 69.413 to read as follows:

§ 69.413 High cost loop support universal service fund expenses.

Beginning April 1, 1989, expenses allocated to the interstate jurisdiction pursuant to §§ 54.1310 and 36.641 of this chapter shall be assigned to the Universal Service Fund Element.

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