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Connect America Fund, ETC Annual Reports and Certifications, Petition of USTelecom for Forbearance From Obsolete ILEC Regulatory Obligations That Inhibit Deployment of Next-Generation Networks; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58, 14–192; FCC 14–190]

Connect America Fund, ETC Annual Reports and Certifications, Petition of USTelecom for Forbearance From Obsolete ILEC Regulatory Obligations That Inhibit Deployment of Next-Generation Networks

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes momentous strides towards fully implementing a modernized universal service regime capable of meeting consumer demands for 21st century networks. The Commission also finalizes decisions necessary to proceed with the offer of support to price cap carriers in early 2015.

DATES: Effective February 26, 2015, except for §§ 54.313(a)(e) and 54.320 which contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, WC Docket Nos. 10–90, 14–58, 14–192; FCC 14–190, adopted on December 11, 2014 and released on December 18, 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: *https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-190A1.pdf.*

I. Introduction

1. With this Report and Order (Order), the Commission takes another momentous stride towards fully implementing a modernized universal service regime capable of meeting consumer demands for 21st century networks. The Commission finalizes the decisions necessary to proceed with the offer of support to price cap carriers in early 2015, thereby paving the way for the deployment of new broadband infrastructure to millions of unserved Americans. In the coming months, the Commission will turn our attention to finalizing the rules for the Phase II competitive bidding process that will occur in those states where the price cap carrier declines the offer of model-based support.

2. Throughout the universal service reform process, the Commission has sought to ensure that all consumers ''have access to . . . advanced telecommunications and information services'' and benefit from the historic technology transitions that are transforming our nation's communications services. This Report and Order continues down that path. The Commission adopts several revisions to Connect America Phase II to account for changes in the marketplace since the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, was adopted. In particular, the Commission revises the minimum speed requirement that recipients of high-cost universal service must offer. The Commission finds that it is in the public interest to require recipients of high-cost support subject to broadband performance obligations to serve fixed locations to provide at least a minimum broadband speed of 10 Mbps downstream.

3. The Commission adopts targeted changes to the framework established for the offer of model-based support to price cap carriers. Specifically, the Commission makes an adjustment to the term of support, adopts more evenly spaced interim deployment milestones, and concludes that adjustments of up to five percent in the number of locations that must be served with corresponding support reductions are appropriate to ensure that deployment obligations recognize conditions in the real world. The Commission also forbears from the federal high-cost universal service obligation of price cap carriers to offer voice service in low-cost areas where they do not receive high-cost support, in areas served by an unsubsidized competitor, and in areas where the price cap carrier is replaced by another eligible telecommunications carrier (ETC).

4. In addition, the Commission addresses where Phase II support will be available, both for the offer of model-based support to price cap carriers and the subsequent Phase II competitive bidding process. First, the Commission will exclude from the offer of Phase II model-based support any census block served by a subsidized facilities-based terrestrial competitor that offers fixed residential voice and broadband services meeting or exceeding 4 Mbps downstream and 1 Mbps upstream (4/1 Mbps), using 3 Mbps downstream/768 kbps upstream (3 Mbps/768 kbps) as a proxy for this standard, as determined by the Wireline Competition Bureau (Bureau) upon completion of the Phase II challenge process. The Commission also reaffirms its decision to exclude from the offer of model-based support any census block served by an unsubsidized competitor that meets or exceeds the 3 Mbps/768 kbps performance metrics. Second, the Commission concludes that those high-cost blocks served by a subsidized carrier that are excluded from the offer of model-based support—including blocks with service meeting or exceeding the new 10 Mbps downstream/1 Mbps upstream (10/1 Mbps) speed requirement—will be eligible for support in the Phase II competitive bidding process. Third, the Commission concludes that any area served by an unsubsidized facilities-based terrestrial competitor that offers 10/1 Mbps will be ineligible for support in the Phase II competitive bidding process.

5. In the April 2014 *Connect America Fund FNPRM,* 79 FR 39196, July 9, 2014, the Commission sought comment on a number of near-term and longer-term reforms for rate-of-return carriers, including developing and implementing a ''Connect America Fund'' for rate-of-return carriers. Although a number of parties have submitted proposals that may have promise, the Commission finds that further analysis and development of these proposals is necessary. The Commission will continue to explore the possibility of a voluntary path to model-based support for those rate-of-return carriers that choose to pursue it. The Commission also expects to continue to develop the record and act in the coming year on alternatives for those who do not elect to receive model-based support.

6. In this Order, the Commission focuses on near-term reforms for rate-of-return carriers. Specifically, the Commission adopts a revised methodology for applying the cap on high-cost loop support to distribute that support on a more equitable basis. The Commission also addresses the proposals from the *April 2014 Connect America FNPRM* regarding the 100 percent overlap rule.

7. In the *USF/ICC Transformation Order,* the Commission established a ''uniform national framework for accountability'' that replaced the various data and certification filing deadlines that carriers previously were

required to meet. In this Order, the Commission takes several steps to strengthen that framework, including codifying the reasonable comparability pricing requirement for broadband services, adjusting the reductions in support for late-filed annual ETC reports and certifications, and providing greater specificity regarding how the Commission will address non-compliance with the Commission's service obligations for voice and broadband.

8. The actions the Commission takes in this Order, combined with the implementation of the rural broadband experiments and the reforms the Commission implemented earlier in the year, will allow the Commission to continue to advance further down the path outlined in the *USF/ICC Transformation Order.* The Commission expects the Bureau to complete the Connect America Phase II challenge process and then make a final determination as to which census blocks will be eligible for the offer of model-based Phase II support by early 2015. That final determination will allow the Commission to extend the offers of Phase II model-based support to price cap carriers to fund the deployment of voice and broadband-capable infrastructure in their territories. The carriers will then have 120 days to consider the offer, and in those states where the price cap carrier declines the offer of support, the Commission will move forward with the Phase II competitive bidding process to determine support recipients.

II. Public Interest Obligations

A. Evolving Speed Obligations

9. *Discussion.* In this section, the Commission adopts a new minimum speed standard of 10 Mbps downstream and 1 Mbps upstream (10/1 Mbps) to further the statutory goal in section 254 of ensuring that consumers in rural and high-cost areas of the country have access to advanced telecommunications and information services that are reasonably comparable to those services in urban areas, at reasonably comparable rates. The marketplace for broadband has continued to evolve since the Commission established its initial minimum speed benchmark of 4/1 Mbps in 2011, and will continue to do so, given consumer demand for an ever growing range of services and applications. Our task is to implement policies with our available funds that will extend broadband to high-cost and rural areas where the marketplace alone does not currently provide a minimum level of broadband connectivity.

10. The most recent State Broadband Initiative (SBI) data for December 2013 show that 99 percent of Americans living in urban areas have access to fixed broadband with speeds of at least 10 Mbps downstream/768 kbps upstream (10 Mbps/768 kbps), and a majority of Americans have already chosen to adopt such service. Moreover, fixed broadband services with even higher speeds, such as 25 Mbps downstream/3 Mbps upstream (25/3 Mbps) or higher, are available to the vast majority of urban households. In contrast, the SBI data indicate that 31 percent of the population residing in rural census blocks lack access to fixed broadband providing at least 10 Mbps/768 kbps speeds.

11. Our objective with high-cost support is to extend broadband-capable infrastructure to as many high-cost locations as efficiently as possible, and at the same time ensure that the Commission is best utilizing the funds that consumers and businesses pay into the universal service system. The Commission finds that raising the minimum downstream speed requirement to 10 Mbps is an appropriate way at the present time to implement the statutory language in section 254 regarding reasonable comparability. As noted above, where available, a majority of households adopt fixed broadband with speeds of at least 10 Mbps/768 kbps. This is not surprising, as fixed broadband with speeds of at least 10 Mbps downstream offers more functionality to consumers than 4 Mbps downstream, particularly when multiple users are relying upon the broadband connection. For users browsing the Web, the total time needed to load a page decreases with higher speeds up to about 10 Mbps. High definition video requires 5 Mbps downstream. Although VoIP services are adequately supported by lower speeds, VoIP quality may suffer when household bandwidth is shared by other services. When rural households have access to speeds of 10 Mbps or more, they are just as likely to adopt a 10 Mbps service as households in urban areas.

12. The Commission is setting a standard that is achievable in the near term with support from the Connect America Fund, while mindful of the need to balance the interests of both recipients and contributors to the Fund. The Commission encourages recipients of funding to deploy to the extent possible future proof infrastructure that will be capable of meeting evolving broadband performance obligations over the longer term. That will ensure that our policies will continue to support an evolving level of universal service in the future.

13. Based on the record before us, the Commission finds ample basis for revising the current broadband performance obligations to require minimum speeds of 10 Mbps downstream. In contrast, while a few commenters supported raising the upstream speed, there is little analysis in this docket regarding the potential advantages and disadvantages associated with raising the minimum upstream speed above 1 Mbps for purposes of high-cost funding. The Commission therefore does not adjust the minimum upstream speed required for high-cost support recipients at this time, but expect to consider the matter again when the Commission revisits our broadband performance obligations for recipients of high-cost support in the future. Accordingly, pursuant to section 254, the Commission adopts a minimum speed standard of 10/1 Mbps to ensure that Connect America funding is used efficiently, to deploy broadband-capable networks to meet ever evolving consumer demand.

14. As the Commission explained in the *April 2014 Connect America FNPRM,* by increasing the current broadband downstream speed benchmark, the Commission is primarily focusing on the minimum standard for *new* deployments of broadband-capable infrastructure. Consistent with the approach the Commission adopted for the previous speed benchmark, high-cost support recipients will be expected to achieve the new standard over a period of years, as they utilize that support to extend and upgrade networks in high-cost areas that are otherwise uneconomic to serve. Price cap carriers accepting a state-level commitment will be required to offer at least 10/1 Mbps broadband service to the requisite number of high-cost locations in a given state by the end of the support term. Rate-of-return carriers will be required to offer at least 10/1 Mbps broadband service upon reasonable request, consistent with past guidance regarding our expectations regarding the reasonable request standard. If a request for 10/1 Mbps is not reasonable in a given circumstance, but offering 4/1 Mbps is reasonable, the Commission would expect a rate-of-return carrier to offer 4/1 Mbps.

15. The Commission is not persuaded by arguments that increasing the downstream speed benchmark to 10 Mbps requires fundamental changes in the terms of the offer to price cap carriers that accept a state-level commitment. Although price cap carriers generally support a 10 Mbps

speed benchmark, they contend concurrent changes should be made to other terms of the state-level offer. The Commission does not agree that by increasing the required broadband speed the Commission is upending the ''delicate balance'' adopted by the Commission in the *USF/ICC Transformation Order.* The Commission made clear in 2011 that it expected broadband performance obligations to evolve, committed to initiating a proceeding in three years to re-examine the standard, and noted that carriers were expected to build ''robust, scalable networks.'' Moreover, at that time, the Commission delegated authority to the Bureau to require price cap carriers accepting model-based support to deploy service delivering at least 6/1.5 Mbps to a number of supported locations. Thus, the framework adopted by the Commission in 2011 expressly anticipated that a higher minimum speed standard would be necessary in the future to provide an evolving level of universal service.

16. Although the Commission recognizes that carriers upgrading their networks may incur additional capital investment costs to offer 10/1 Mbps as opposed to 4/1 Mbps, how much more costly this is in the real world depends on circumstances that vary by carrier, such as the location of existing facilities and distances to unserved locations. The fact that achieving this revised standard may require additional network investment than would be the case if the speed standard remained 4/1 Mbps is not a justification, however, for not adjusting the standard at all. Rather as discussed more fully below, the Commission makes other modest adjustments to the Phase II framework to ensure that the support provided is sufficient to meet the obligations that are accepted through the state-level commitment. To the extent a carrier believes the support offered is insufficient to meet the obligations, it may turn down the offer of Phase II model-based support.

17. The Commission expects carriers planning upgrades to their networks today would take into account near term and future consumer demand. As noted above, current data show that a majority of broadband subscribers today purchase at least 10/1 Mbps. A comparison of adoption rates from 2011 to 2013 show a steady increase in adoption for this level of service. The Commission therefore finds that it is reasonable to assume that many carriers upgrading their networks with Phase II support would aim to provide the capability to provide at least 10/1 Mbps, with higher speeds available to a subset of locations.

18. Rate-of-return carriers are expected to take into account the revised 10/1 Mbps speed standard when considering whether and where to upgrade existing plant in the ordinary course of business and will be required to report on progress toward this goal in annual updates to their five-year service quality plans. As the Commission emphasized in proposing the revised speed standard, however, a rate-of-return carrier will only be required to meet the higher speed standard if the request for service is reasonable. Rate-of-return carriers will be able to comply with the revised speed standard because the Commission already has adopted a more flexible approach to determining compliance with our broadband performance obligations for this segment of the industry. The Commission previously have stated that a ''reasonable request is one where the carrier could cost-effectively extend a voice and broadband-capable network to that location. In determining whether a particular upgrade is cost effective, the carrier should not consider only its anticipated end-user revenues, for the services to be offered over that network, both voice and broadband internet access, but also other sources of support, such as federal and, where available, state universal service funding.'' Among other things, the Commission has explained that a request would not be reasonable if the incremental cost of undertaking the necessary upgrades to a particular location exceed the revenues that could be expected from that upgraded line. The Commission has determined that carriers may take into account backhaul costs or other unique circumstance that make it cost-prohibitive to extend service to particular customers. Moreover, rate-of-return carriers have no obligation to extend broadband-capable infrastructure in any census block that is served by a competitor that meets the Commission's revised performance standards.

19. Nor is the Commission persuaded that increasing the broadband speed requirement requires enlarging the budget for rate-of-return carriers. As discussed above, carriers evaluating whether or not a request for service is reasonable may consider the cost of upgrading the network and the support available. If, for instance, the cost of extending fiber sufficiently close to a requesting customer to be able to offer 10/1 Mbps service is more than a rate-of-return carrier could cover with existing universal service support and anticipated end-user revenues, but it would be able to cover the cost of extending fiber to provide 4/1 Mbps service, the Commission would expect the carrier to extend 4/1 Mbps service.

20. The Commission is confident that these carriers will deploy broadband-capable infrastructure meeting these new requirements to the extent economically feasible in their communities and will continue to work on creative ways to partner with each other and other entities to provide service meeting these requirements. The Commission notes that rate-of-return carriers have continued to deploy broadband-capable infrastructure since the Commission adopted the landmark reforms in the *USF/ICC Transformation Order,* and the Commission expects they will continue to do so in the future. As discussed below, the Commission adopts modifications to the current high-cost loop support mechanism to provide a more equitable method of distributing funding among carriers serving high-cost areas, ensuring that some carriers in high-cost areas do not precipitously lose support. In the *April 2014 Connect America FNPRM,* the Commission proposes longer-term reforms for rate-of-return carriers, including a voluntary path to model-based support. The Commission remains interested in finding a way to distribute support on an equitable basis that will provide support for investment in infrastructure capable of delivering 10/1 Mbps where reasonable in areas served by rate-of-return carriers.

21. The Commission also rejects arguments that the Commission should increase the high-cost universal service budget, as a means of advancing broadband deployment in rural areas to an even greater degree than the Commission already does in this Order. ''[T]he Commission has to balance the principles of section 254(b) to ensure that support is sufficient but does not impose an excessive burden on all ratepayers.'' The Commission previously conducted just such a balancing in adopting the budget at issue here, and the Commission is not persuaded to depart from it at this time. In particular, ''any determination about whether the Commission has adequately implemented section 254 must look at the cumulative effect of the four support programs, acting together.'' The Commission has been undertaking comprehensive reforms of its universal service programs to facilitate broadband deployment, and the Commission continues to advance that objective through the reforms adopted in this Order. Although the Commission recognizes that there are possible broadband goals the Commission could

advance even more broadly here, the ratepayer impact that already will occur as a result of its universal service programs collectively, coupled with the particular circumstances here, persuade the Commission to proceed cautiously when weighing any benefits from increased support against the burden on ratepayers.

22. In that regard, the record here does not persuade the Commission that an increased high-cost budget is warranted. When comprehensively reforming the high-cost support mechanism to better advance broadband deployment, the Commission began implementing certain reforms immediately, while setting out a plan to advance broadband even more widely over time through additional initiatives. For example, noting that some areas may be too costly to serve with traditional wireline or terrestrial wireless broadband technologies, the Commission established the Remote Areas Fund to provide support for such ''extremely high-cost'' areas and set a budget of ''at least'' $100 million. In April 2014, the Commission concluded that extremely high-cost areas would be eligible for the Phase II competitive bidding process. In the coming year, the Commission expects to develop the rules for the Phase II auction and how to address the areas that remain unserved after that competitive bidding process. The Commission also is considering, among other things, long term high-cost universal service reforms for rate-of-return study areas. Against the backdrop of these and other existing and planned efforts, some commenters nonetheless advocate making increased high-cost support available here, but fail to meaningfully quantify or demonstrate—even in an aggregate way—the incremental cost (and associated burden on ratepayers) required to achieve an incremental advancement of broadband deployment beyond what the Commission already is achieving through the reforms adopted here and through our universal service programs more broadly. The Commission thus is not persuaded to increase high-cost universal service support further. Instead, the Commission advances our broadband universal service goals through the high-cost fund to the extent the Commission is able within the existing budget. The Commission also notes that the states have an important role to play in advancing universal service goals. The Commission welcomes and encourages states to supplement our federal funding, whether through state universal service funds or other mechanisms.

23. Finally, the Commission concludes that recipients of support through the Phase II competitive bidding process will be required to meet an evolving broadband speed standard over the ten-year term. Given the historical and anticipated trajectory of broadband speeds, the Commission anticipates that consumers will increasingly demand greater upstream speeds as well as downstream speeds. The Commission would expect to initiate a proceeding to review the performance standards for the Connect America Fund no later than 2018. While the Commission will establish the specific performance obligations and auction design in an upcoming order regarding the Phase II competitive bidding process, the Commission decides now that 10/1 Mbps should not be our end goal for recipients of support over a ten-year term. The Commission recognizes that competitive bidding is likely to be more efficient if potential bidders can predict what their performance obligations will be for the length of the term. The Commission therefore now adopts a methodology for determining the minimum speeds that will be required by the end of the ten-year term for entities receiving support through the Phase II competitive bidding process. The Commission concludes that the minimum speed shall be based on the highest speed adopted by a majority of households, as reported in the most recent Form 477 data available at the time the Commission next revisits the specific performance obligations for the Connect America Fund. The Commission encourages parties receiving ten years of support through the Phase II competitive bidding process to deploy future-proof networks that are capable of meeting future demand.

B. Term of Support for Price Cap Carriers Accepting Phase II Model-Based Support

24. The Commission makes a modest adjustment to the framework the Commission adopted in 2011 for the Connect America Fund and adopts a six-year term of support, which will begin in 2015 and extend through 2020, with an option for a seventh year in certain circumstances. The Commission recognizes that upgrading existing networks to provide 10/1 Mbps requires deploying fiber further into the distribution network. The Commission is not persuaded, however, that the ten-year term advocated by some is warranted. When the Commission adopted the five-year term it emphasized ''the limited scope and duration of the state-level commitment procedure'' and expected that ''support after such five-year period will be awarded through a competitive bidding process in which all eligible providers will be given an equal opportunity to compete.'' The Commission continues to believe that it should move to competitive bidding processes in a timely manner in those areas where support initially is awarded through the acceptance of state-level commitments. In particular, the Commission expects to conduct a competitive bidding process no later than the end of 2019 to ensure there is continuity and a transition path to Connect America Phase III.

25. To the extent a price cap carrier that accepts the offer of Phase II model-based support in a particular state is a winning bidder in the Phase III auction, it will commence receiving that support in 2021. In the event that carrier either does not win in the Phase III auction, or chooses not to bid on such support, its term of Phase II support will be completed at the end of 2020. The Commission will provide such carriers the option to elect one additional year of support, however, with Phase II support continuing in calendar year 2021 as a gradual transition to the elimination of support. This is consistent with the principle established in the *USF/ICC Transformation Order* of ''no flash cuts,'' while also recognizing that additional funding may be appropriate in particular circumstances in those states where six years of support is insufficient to cover the capital investment necessary to meet the revised 10 Mbps downstream standard. The Commission also notes that even if a new entrant is authorized to begin receiving Phase III support in 2020, there will be a certain amount of time before that new provider will be able to deploy its network and begin offering service. Providing another year of Phase II support to the incumbent provider through the end of 2021 will ensure that there is an appropriate transition from the incumbent to new ETCs.

C. Flexibility in Meeting Deployment Obligations

26. In the *April 2014 Connect America FNPRM,* the Commission sought comment on a number of measures that would provide recipients of Phase II support greater flexibility in meeting their deployment obligations. In response, price cap carriers argue that if the Commission requires 10 Mbps, it should increase the build-out period of the state-level commitment to eight or ten years. They claim that building

networks capable of providing 10/1 Mbps will take more time and more funding than networks meeting the current 4/1 Mbps speed requirement, because it will require extending fiber further into the network and deploying additional remote terminals. In addition to taking more time for planning network upgrades and obtaining necessary permits, they also argue that the broadband construction industry as a whole may not be capable of meeting the demand in a shorter timeframe.

27. Here, the Commission addresses flexibility for price cap carriers accepting Phase II model-based support. The Commission expects to provide similar flexibility to recipients of support awarded through the Phase II competitive bidding process, which will be addressed in a future order adopting the rules for the competitive bidding process.

1. Interim Deployment Obligations

28. The Commission modifies the build-out requirements established for price cap carriers accepting model-based support to create straight line interim milestones over the revised six-year term, rather than front-loading the deployment obligations in the first three years of the term. When the Commission adopted the interim deployment milestone of deploying to 85 percent of locations by the end of the third year, it noted that ''there were few concrete suggestions in the record on what those interim milestones should be.'' The Commission recognizes that the first task for any major network upgrade is to complete an overall plan and then undertake detailed engineering analyses in the field to plan the construction of particular routes. Recipients of support—whether price cap carriers or bidders in a competitive auction—will likely then proceed incrementally, route by route, working to complete construction evenly over the course of the term required for deployment. For that reason, rather than requiring price cap carriers accepting a state-level commitment to offer broadband service meeting the minimum requirements to at least 85 percent of their high-cost locations by the end of the third year, the Commission instead adopts evenly spaced annual interim milestones for price cap carriers to offer at least 10/1 Mbps to an additional 20 percent of the requisite number of high-cost locations each year, as shown in Table 1 below. Completing construction to 40 percent of the requisite number of locations in a state by the end of calendar year 2017, instead of 85 percent by mid-2018 year, is a more realistic expectation, given that carriers will not accept the offer of support until mid-year in 2015 and once authorized to receive support, will then be developing detailed network construction plans.

TABLE 1—DEPLOYMENT MILESTONES FOR PRICE CAP CARRIERS ACCEPTING PHASE II MODEL-BASED SUPPORT

	Current requirement	Revised interim milestones
Year 1 ..	....	**%.
Year 2 ..	....	**%.
Year 3 ..	85% of locations	40%. End of 2017.
Year 4 ..	....	60%. End of 2018.
Year 5 ..	100% of locations	80%. End of 2019.
Year 6 ..	....	100% End of 2020.

29. The Commission recognizes that price cap carriers may choose to prioritize construction in certain states in any given year and therefore do not expect them to be deploying new facilities in every state in every year of the Phase II term. However, the Commission does require that carriers annually deploy new infrastructure to some locations that previously lacked 4/1 Mbps in the earlier years of the Phase II term so that consumers benefit from the availability of new broadband services as early as possible. By the end of calendar year 2017, the Commission requires that, at the holding company level, at least five percent of the nationwide total of funded locations that have been reported as newly served in the annual reports must be locations that previously lacked 4/1 Mbps.

2. Number of Locations

30. In addition, the Commission recognizes that the ''facts on the ground'' when price cap carriers are deploying facilities may necessitate some additional flexibility regarding the scope of the deployment obligations. At the outset, the Commission notes that there may be some variance between the number of funded locations as specified by the forward-looking cost model adopted by the Bureau and the actual number of locations in a given area. For instance, the price cap carrier model utilizes GeoResults study area boundaries, which in some instances may be inaccurate, which in turn may result in the inaccurate assignment of certain locations to a particular price cap territory. The model also utilizes GeoResults business location data, which in some instances may be inaccurate in terms of either business counts or actual physical locations; this in turn may result in too many or too few locations in a given census block. While these minor inaccuracies should cancel one another out in most instances across multiple census blocks, the Commission recognizes that in particular areas that may not be the case, and the total number of locations assigned to a particular price cap carrier in a given state according to the model simply does not necessarily reflect the actual number of locations. The Commission also recognizes that there may be a variety of unforeseen factors, after the initial planning stage, that can cause significant changes as a network is actually being deployed in the field, and a variety of factors that can affect the time needed to deploy a planned route. Finally, the Commission notes that the customer location data utilized in the model reflect location data at a particular point in time. The precise number of locations in some funded census blocks is likely to change over time for a variety of reasons, which may impact the orderly progress of the planned construction cycle.

31. Given all of these factors, rather than requiring deployment to 100 percent of funded locations as identified by the model in a given state, the Commission will permit a modest adjustment to the number of model-determined funded locations in a given state with a corresponding reduction in support in certain instances. Price cap carriers taking advantage of this flexibility will be required to refund support based on the number of required locations without access to broadband. The Commission balances this flexibility with our goal of advancing the availability of broadband to these high-cost locations. Therefore, the Commission will require deployment to at least 95 percent of the funded locations, but in order for a price cap carrier to take advantage of this flexibility, the Commission requires them to identify by December 31, 2015, any specific census blocks where they do not intend to meet their deployment commitments, with those blocks covering at least two percent of their total eligible locations in a state. The Commission recognizes there may be discrete census blocks identified during the early planning stages that will be challenging to serve. By requiring the price cap carriers to identify up front those particular census blocks that they know they will not deploy to during Phase II, the Commission can make those census blocks eligible for support in the Phase II competitive bidding process. For those carriers that elect to

take advantage of this flexibility, the Commission then allows them to identify an additional number of the eligible locations left unserved at of the end of the term, up to three percent.

32. The Commission finds that requiring deployment to at least 95 percent of the number of funded locations will provide some flexibility to price cap carriers in meeting their deployment obligations. The Commission is not persuaded by commenters who argue that the Commission should provide much more flexibility. For example, price cap carriers argue that those accepting a state-level commitment should be permitted to deploy to as few as 90 percent of their funded locations. Although they propose to forego funding on a pro rata basis for the remaining locations, the Commission is concerned that providing that degree of flexibility across the board is inconsistent with the Commission's rationale for providing these carriers the offer of model-based support in the first instance: to ensure ubiquitous coverage. Rather, the Commission may address unique situations through the waiver process where specific circumstances justify additional flexibility.

33. Nor is the Commission persuaded by commenters who argue that requiring anything less than 100 percent would allow recipients to ''cherry pick'' and opt out of serving the highest-cost locations. As discussed above, there are a number of legitimate reasons why it may not be possible for a provider—whether a price cap carrier or a competitive provider awarded support in a competitive bidding process—to deploy to 100 percent of the funded locations in Phase II areas by the end of the deployment term. The Commission concludes that the benefits of providing some flexibility to a price cap carrier to address any variance between the cost model and real world circumstances outweigh the theoretical risk that the carrier could systematically identify and exclude the five percent of locations that are highest-cost and are likely sprinkled throughout its funded territory.

34. The Commission will require price cap Phase II recipients that have deployed to at least 95 percent, but less than 100 percent, of the number of funded locations to refund support based on the number of funded locations left unserved in the state at the end of their support term. The Commission recognizes that many factors determine a carrier's deployment decisions, and affect costs even after those decisions are made, so the Commission doubts that a carrier would or could systematically exclude the highest cost locations. At the same time, it is reasonable to assume that many of the locations left unserved would have higher than the average costs calculated by the model. A higher amount per location than the average therefore is appropriate. Moreover, the Commission wants to provide more incentive to carriers to build out to 100 percent of the required number of locations. On a nationwide basis, the average support for the top five percent of the highest-cost funded locations is 3.77 times the average support for all funded locations. The Commission recognizes that costs will vary by state and carrier, but find that the administrative simplicity of using one-half of the nationwide aggregate factor outweighs the benefits of false precision. Accordingly, the Commission will require a price cap carrier at the end of its support term to refund an amount based on the number of locations left unserved and the average Phase II support the carrier receives in a state multiplied by 1.89.

35. The Commission concludes that the administrative simplicity of this method outweighs the potential benefit of reducing support based on a more complicated determination based on the relative costs of particular locations as determined by the forward-looking cost model. As discussed below, the Commission will require price cap carriers to include in the final annual progress report that they submit with their section 54.313 reports the total number and geocodes of all funded locations to which they have deployed facilities capable of delivering broadband meeting the requisite requirements, which will provide an objective, easily verifiable basis for USAC to determine the amount of support to recover in the event there is less than 100 percent compliance with the deployment obligation.

36. Finally, for those carriers accepting Phase II model-based support, the Commission declines to adopt the proposal to substitute unserved locations within partially served census blocks for locations within funded census blocks. While the Commission will continue to explore this issue, questions remain in the record how best to determine whether or not a particular location in a partially served block is served or unserved without placing significant burdens on interested parties and Bureau staff. The Commission notes that all parties potentially interested in Connect America support—both incumbents and new entrants alike—have an interest in building economically efficient networks, and those networks do not neatly align with census boundaries. Therefore, the Commission encourages all stakeholders interested in the Phase II competitive bidding process to work together to propose for future Commission consideration an administratively feasible method for ensuring that unserved consumers in partially served census blocks are not left behind.

D. Obligations of Carriers Serving Non-Contiguous Areas That Elect Phase II Frozen Support

37. *Discussion.* Based on the record before the Commission, it concludes that the best approach is to adopt tailored service obligations for each of the non-contiguous carriers that elect to continue to receive frozen support amounts for Phase II in lieu of the offer of model-based support. The Commission recognizes that non-contiguous carriers face unique circumstances in the areas they serve and experience different challenges in deploying broadband service in those areas. Consequently, a ''one-size-fits-all'' approach would leave some of these carriers potentially unable to fulfill their service obligations. The Commission believes that tailoring specific service obligations to the individual circumstances of each non-contiguous carrier that elects to continue receiving frozen support for Phase II will best ensure that Connect America funding is put to the best possible use.

38. Because the amount of frozen support may in some cases be greater than the amount of model-based support, the Commission must reserve sufficient funds for frozen support before generally making the offer of support to price cap carriers in order to ensure that the Commission does not exceed the overall budget for the offer of model-based support. The Commission requires each non-contiguous carrier to notify the Bureau no later than 15 days after the release of this Order whether it is interested in Phase II frozen support in lieu of model-based support. The Bureau then will be able to determine the appropriate maximum amount of money that should be reserved out of the $1.8 billion budget for those carriers. The Commission concludes that waiting to extend the offer of model-based support until it adopts tailored service obligations for each non-contiguous carrier would unnecessarily delay the offer of model-based support to all other price cap carriers.

39. As the Commission stated in the *April 2014 Connect America FNPRM,* the Commission expects that any tailored service obligations would be consistent with the Commission's goal

of ensuring universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions. The Commission anticipates being able to adopt these tailored service obligations no later than the time the Commission adopts the rules for the Phase II competitive bidding process. The non-contiguous carriers then will have 60 days to determine whether to accept or decline the Phase II frozen support. If any non-contiguous carrier declines Phase II frozen support with tailored service obligations, those areas may be eligible in the Phase II competitive bidding process.

40. Though the Commission does not determine at this time specific service obligations for non-contiguous carriers receiving Phase II frozen support, the Commission concludes that carriers serving non-contiguous areas will not be permitted to use Phase II frozen support in any areas where there is a terrestrial provider of fixed residential voice and broadband service that meets Phase II requirements, as modified in this Order. Therefore, the Commission prohibits non-contiguous carriers receiving frozen support from using that support in any census block where there is a competitor providing service of 10/1 Mbps or greater. If a carrier is unable to meet this requirement in certain areas, the Commission requires it to relinquish the relevant Phase II frozen support for those areas.

E. ETC Obligations as Funding Transitions to New Mechanisms

41. *Discussion.* Based on the Commission's consideration of the relevant statutory framework and the record before it, the Commission now concludes that it is in the public interest to forbear, pursuant to section 10 of the Communications Act of 1934, as amended (the Act) from enforcing a federal high-cost requirement that price cap carriers offer voice telephony service throughout their service areas pursuant to section 214(e)(1)(A) in three types of geographic areas: (1) Census blocks that are determined to be low-cost, (2) all census blocks served by an unsubsidized competitor, as defined in our rules, offering voice and broadband at speeds of 10/1 Mbps to all eligible locations, and (3) census blocks where a subsidized competitor—*i.e.,* another ETC—is receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations. They will remain obligated, however, to maintain existing voice service unless and until they receive authority under section 214(a) to discontinue that service. They also will remain subject to the obligation to offer Lifeline service to qualifying low-income households throughout their service territory.

42. Effectively, as a result of this limited forbearance, price cap carriers that accept the state-level commitment for Phase II support will continue to have a federal high-cost universal service obligation to offer voice telephony services in those census blocks that are deemed to be extremely high-cost, unless and until they are replaced by another ETC in those areas. The Commission does not address at this time and in particular do not forbear from enforcing the section 214(e) obligation of a price cap carrier to offer voice telephony services in extremely high-cost areas where it is not receiving support, except for the two circumstances expressly described herein: Those extremely high-cost census blocks served by an unsubsidized competitor or where the price cap carrier is replaced by another ETC selected through a competitive bidding process that is required to offer voice and broadband services to fixed locations that meet the Commission's public service obligations. Price cap carriers that decline the state-level commitment will have the federal high-cost universal service obligation to offer voice telephony services in those census blocks that are determined to be high-cost or extremely high-cost, and unserved by an unsubsidized competitor, until they are replaced by another ETC that is required to offer voice and broadband service to fixed locations that meet the Commission's public service obligations.

43. As the Commission explained in the *USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011, states have primary authority for designating ETCs and defining their service areas except in cases where they lack jurisdiction over the entity seeking designation. In such situations, the Act gives the Commission responsibility for designating the entity as an ETC. Once an entity is designated as an ETC it must ''throughout the service area for which the designation is received . . . offer the services that are supported by Federal universal service support mechanisms under section 254(c).'' The Commission defined the service supported by universal service support mechanisms under section 254(c)(1) to be ''voice telephony'' in the *USF/ICC Transformation Order.* An ETC's ''service area'' is defined to be the geographic area as established by the relevant state commission within which an ETC has universal service obligations and may receive universal service support.

44. The Commission previously interpreted section 214(e) of the Act to require that an ETC offer voice telephony service throughout its designated service area. But with the Bureau's adoption of the CAM, the Commission is now able to determine on a more granular level which areas are low-cost and therefore do not need a subsidy because price cap carriers can recoup their costs through reasonable end-user rates. The Commission notes that these low-cost census blocks already have voice telephony service with rates well below the reasonable comparability benchmark for voice service. And in the other census blocks where the Commission now grants limited forbearance, an unsubsidized competitor exists that is offering voice telephony service at reasonably comparable rates, or there is another ETC with an obligation to offer reasonably comparable voice telephony service. Thus, the Commission no longer finds that it is necessary as a matter of federal universal service policy to require price cap carriers to offer voice telephony service in these areas to achieve the section 254(b)(3) principle of ensuring that ''[c]onsumers in all regions of the Nation . . . should have access to telecommunications . . . services, . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.''

45. Accordingly, as discussed below, the Commission concludes that forbearance from the federal high-cost requirement that price cap carriers offer voice telephony services throughout their service area is warranted in these limited circumstances. The Act requires the Commission to forbear from applying any requirement of the Act or our regulations to a telecommunications carrier if the Commission determines that: (1) Enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest. The Commission concludes each of these statutory criteria is met for the specific types of areas described above.

46. *Just and Reasonable.* The Commission concludes that enforcement of the section 214(e)(1)(A) federal requirement that price cap carriers offer voice telephony throughout their service areas is not necessary to ensure that the charges, practices, or classifications of price cap carriers are just and reasonable and not unjustly or unreasonably discriminatory in specific geographic areas. The areas where the Commission forbears from enforcing the federal requirement that price cap carriers offer voice telephony services are census blocks (1) that have been deemed low-cost, (2) where there is an unsubsidized competitor meeting the Commission's standards, or (3) where there is another ETC required to offer voice and broadband services to fixed locations that meet the Commission's public service obligations.

47. ETCs receiving Connect America support will be required to offer reasonably comparable voice and broadband services in their funded high-cost census blocks at rates that are reasonably comparable to urban areas. Therefore, there is no need to require a price cap carrier that declines the offer of model-based support to offer voice telephony in those census blocks where another ETC is subject to that reasonable comparability requirement.

48. Moreover, in all the census blocks where the Commission grants forbearance, the price cap carrier will remain subject to other Title II requirements that ensure that voice telephony rates remain just and reasonable and not unjustly or unreasonably discriminatory. Price cap carriers will continue to be subject to sections 201 and 202 of the Act, which place nondiscrimination obligations on common carriers. Additionally, the Commission defers to the states' judgment in assuring that the local rates that price cap carriers offer in the areas from which the Commission forbears remain just and reasonable. It also is reasonable to expect that the rates that price cap carriers charge in these areas for voice telephony will constrain the rates of other providers. And finally, in the event that the price cap carrier seeks to cease offering voice telephony in these areas, it will be subject to the section 214(a) discontinuance process that the Commission addresses more fully below, during which any concerns that may be raised by the price cap carrier's decision to cease offering voice service can be addressed if necessary. The Commission concludes that these circumstances ensure just, reasonable, and nondiscriminatory offerings in the areas where the Commission grants forbearance. For these reasons, the Commission finds that the first prong of section 10(a) is met.

49. *Protection of Consumers.* The Commission finds that, in the three types of census blocks subject to this forbearance determination, other mechanisms will be sufficient to protect consumers, and therefore it is unnecessary to enforce the obligation of price cap carriers to offer voice telephony services to ensure that consumers are protected.

50. First, there are several safeguards that will prevent the consumers living in these areas from losing access to voice telephony services. Not enforcing the high-cost ETC obligation of price cap carriers to offer voice telephony services in these areas does not mean that price cap carriers can immediately cease providing voice telephony service. Pursuant to section 214(a) of the Act and section 63.71 of the Commission's rules, all carriers must provide notice to their customers and the relevant states in writing that they plan to discontinue service and then file an application with the Commission before discontinuing voice telephony service in an area. Outside parties have the opportunity to provide comment on the application, and the Commission may then decide that the application should not be automatically granted. The discontinuance rules are designed to ensure that customers are fully informed of any proposed change that will reduce or end service, ensure appropriate oversight by the Commission of such changes, and provide an orderly transition of service, as appropriate. This process allows the Commission to minimize harm to customers and to satisfy its obligation under the Act to protect the public interest.

51. The Commission has discretion to grant a discontinuance request in whole or in part, and may attach conditions as necessary to protect consumers and the public interest. Given the fact-intensive nature of this inquiry for each affected market, the Commission is not persuaded by suggestions in the record that it should grant blanket discontinuance to price cap carriers in the areas where it grants forbearance. Where there is a question as to appropriate alternatives available to consumers or whether the present or future public convenience and necessity will be adversely affected, the Commission will scrutinize the discontinuance application, consistent with its statutory obligations. In evaluating a section 214 discontinuance application, the Commission generally considers a number of factors, including the existence, availability, and adequacy of alternatives. Through consideration of these factors, the Commission ensures that the removal of a choice from the marketplace occurs in a manner that respects consumer expectations and needs. The Commission will not authorize a proposed discontinuance of service if customers or other end users would be unable to receive service or a reasonable alternative, or the public convenience and necessity would be otherwise adversely affected. In such circumstances, the Commission will require price cap carriers to continue offering voice telephony services in those areas in those instances where there is no reasonable alternative. Moreover, if an area is unserved and no common carrier will serve that area, the relevant state commission (or the Commission if applicable) is directed by the Act to designate an ETC to serve the area with voice telephony service.

52. Second, it is reasonable to expect that price cap carriers will continue to offer voice service in these areas even after they have been relieved of the federal ETC requirement to do so. They already have existing networks and customers in these areas. They have an economic incentive to continue to serve these customers and to offer them innovative new services.

53. Third, even if price cap carriers were to exit these areas, in areas where there is an unsubsidized competitor or another ETC receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations, there will be at least one provider in that area offering a voice telephony service that is reasonably comparable to service available in urban areas. Because consumers in these areas will have at least one other option for fixed voice telephony service at reasonable rates, there is no need to require price cap carriers to continue to offer such services as a federal ETC obligation. And as explained above, whether appropriate substitutes exist in all of the geographic areas in which the Commission grants limited forbearance will be addressed through the section 214(a) discontinuance process; thus, the Commission is comfortable that there is no need to continue to apply ETC obligations in these areas.

54. The Commission disagrees with the claim that the Commission should not forbear from section 214(e) because the Commission should ensure that there is at least one carrier that has a federal obligation to provide voice telephony service to all consumers in a particular area. As explained above, there are existing regulatory protections that provide reasonable assurance that

consumers in the areas where the Commission forbears from the federal high-cost ETC obligation to provide voice telephony service will continue to have access to voice telephony service. And as the Commission explains below, our decision to grant forbearance in these limited circumstances does not disturb existing state carrier of last resort obligations and does not preclude states that do not have carrier of last resort obligations from imposing such obligations. In sum, the Commission finds that consumers will be protected, and the second prong of section 10(a) is satisfied.

55. *Public Interest.* The Commission concludes that it is in the public interest to forbear from the federal high-cost obligation to offer voice service throughout the service territory because enforcement of that obligation is unnecessary to preserve voice service. As noted above, the section 214 discontinuance process will ensure that consumers will continue to have access to voice service. Price cap carriers that are granted the ability to discontinue their voice telephony service as a matter of federal law because there are alternatives available will no longer be required to spend their resources on maintaining existing voice telephony services or deploying new infrastructure to offer voice telephony service in newly constructed homes where there are already reasonable substitutes. Instead, price cap carriers can reallocate their resources towards making upgrades to their networks to meet the broadband needs of their existing or new customers.

56. The Commission also finds that limited forbearance from section 214(e)(1)(A) will promote competitive market conditions by giving price cap carriers the flexibility to compete on a more equal regulatory footing in the voice telephony market with competitors that already have the opportunity to make business decisions about how best to offer voice telephony service. Accordingly, the Commission's decision is consistent with the principle that universal service policies be equitable and nondiscriminatory and the principle of competitive neutrality.

57. The Commission does not take the further steps suggested by some commenters of reinterpreting section 214(e)(1) to sunset all existing ETC designations and require states to re-designate ETCs so that their service areas include only high-cost funded areas, imposing rules on state ETC designations, adopting a federal process to redefine service areas, or preempting states. State commenters argue that these approaches would give insufficient consideration to the important role that Congress has given the states in defining service areas and designating ETCs. The Commission's decision to grant limited forbearance does not redefine price cap carriers' service areas or revoke price cap carriers' ETC designations in these areas, and the Commission emphasizes that it does not preempt price cap carriers' obligation to continue to comply with any state requirements, including carrier of last resort obligations to the extent applicable. The Commission also notes that it does not relieve ETCs of their other ''incumbent-specific obligations'' like interconnection and negotiating unbundled network elements pursuant to sections 251 and 252 of the Act. The continued existence of these obligations supports the Commission's finding that the forbearance it grants in this Order is consistent with the public interest.

58. The Commission's public-interest finding is also supported by the fact that any incumbent price cap carrier must still comply with the requirements of section 214(e)(4) of the Act regarding relinquishment of ETC designation. The Commission is not persuaded that its decision to not preempt state obligations constitutes a taking. The Commission notes that no party has articulated which specific state obligations constitute a taking, submitted specific evidence to show how those state obligations are burdensome, or provided detailed analysis as to how the preemption standard has been met for these obligations.

59. *Timing.* Because many ETCs will no longer receive support for discrete census blocks upon full implementation of Phase II in price cap territories, the Commission believes that it is appropriate to clarify its expectations regarding the specific timing of this forbearance. The Commission finds that in the first month that support is disbursed to another ETC that is required to serve particular census blocks with voice and broadband service to fixed locations, incumbent price cap carriers not receiving such support will be immediately relieved of their federal high-cost ETC obligation to offer voice telephony in those specific census blocks. Also, incumbent price cap carrier ETCs will be relieved of the federal high-cost ETC obligation to offer voice telephony service in the low-cost census blocks where Phase II support is not available and also in census blocks where the average cost is above the funding benchmark where an unsubsidized provider is already providing service. Incumbent price cap carriers shall be relieved of their existing federal high-cost universal service obligations to offer voice telephony service in low-cost census blocks beginning on the date on which they accept or decline to make a state-level commitment. Incumbent price cap carriers shall be relieved of their existing federal high-cost universal service obligations to offer voice telephony service in census blocks served by unsubsidized competitors on the date that there is a determination that there is an unsubsidized competitor offering 10/1 Mbps in those census blocks.

60. Price cap carriers subject to this limited forbearance in these three specific types of census blocks must continue to satisfy all Lifeline ETC obligations. Therefore, they will effectively become Lifeline-only ETCs in the specific census blocks that are the subject of this forbearance. As such, they must continue to offer voice telephony service to qualifying low-income households in those areas unless or until they relinquish their ETC designations in those areas pursuant to section 214(e)(4), and, in any event, must continue to offer voice more generally until they receive discontinuance authority under section 214.

III. Eligibilty of Areas for Phase II Support

A. Areas Served by Competitors

61. *Discussion.* Upon consideration of the record, the Commission now adopts these proposals with certain modifications. First, to ensure support is targeted to areas lacking 4/1 Mbps, the Commission will exclude from the offer of Phase II model-based support to price cap carriers any census block served by a subsidized facilities-based terrestrial competitor that offers fixed residential voice and broadband services meeting or exceeding 3 Mbps/768 kbps speed requirement, as determined by the Bureau. Second, the Commission concludes that any such high-cost blocks served by a subsidized carrier that are excluded from the offer of model-based support—including blocks with service meeting or exceeding the new 10/1 Mbps speed requirement—will instead be eligible for support in the Phase II competitive bidding process. Third, the Commission concludes that any area served by an unsubsidized facilities-based terrestrial competitor that offers 10/1 Mbps will be ineligible for support in the Phase II competitive bidding process.

62. The Commission excludes areas served by subsidized competitors providing 3 Mbps/768 kbps or greater

service from the offer of model-based support because the Commission is persuaded that whether another provider receives high-cost universal service support should not be the determining factor in excluding a high-cost census block from the offer of model-based support. In the *USF/ICC Transformation Order,* the Commission eliminated the identical support rule and established Phase II of the Mobility Fund as the mechanism to provide ongoing support for mobile services. Competitive ETCs offering broadband services that meet the performance standards, however, only have the opportunity to compete for ongoing support if price cap companies decline the state-level commitment. Upon further consideration, the Commission now concludes that areas served by a subsidized facilities-based terrestrial competitor offering fixed residential voice and broadband services meeting or exceeding 3 Mbps/768 kbps should not be part of the price cap carrier state-level commitment.

63. By excluding these areas from the offer of Phase II model-based support and instead including them in the Phase II competitive bidding process, the Commission gives competitive ETCs serving these areas the opportunity to compete for ongoing support in their high-cost areas, regardless of whether a price cap incumbent accepts or declines the state-level commitment. This modification recognizes that these areas are high-cost and, absent such ongoing support, it may not be economically feasible for providers in these areas to continue providing service. Removing these census blocks from the offer of model-based support and instead immediately opening these areas to competitive bidding allows competition to drive support to efficient levels, to be awarded to the provider that will most effectively use funds.

64. Changing the minimum speed threshold for network deployment to 10/1 Mbps does not mean, however, that the Commission should use the 10/1 Mbps coverage map in determining what areas are served by either unsubsidized or subsidized competitors for purposes of the offer of Phase II model-based support. The version of the CAM adopted by the Bureau for purposes of identifying the initial list of eligible census blocks provides support for census blocks with an average cost per location per month of between $52.50 and $207.81 and that are unserved by an unsubsidized competitor offering 3 Mbps/768 kbps broadband service. While adjusting the CAM to provide support for census blocks not served with 10/1 Mbps service would increase the number of locations eligible for the offer of model-based support, this increase would be predominately the result of the extremely high-cost threshold shifting downwards. The end result would be that locations in those blocks that are more expensive to serve, relatively speaking, that currently do not receive even 3 Mbps/768 kbps service would no longer be eligible for the offer of model-based support. In contrast, using the same 3 Mbps/768 kbps coverage map to target the offer of Phase II model-based support to locations in these higher cost census blocks will result in Connect America model-based funding being targeted to the very same areas that the Commission intended to be subject to the offer of model-based support when it adopted the *USF/ICC Transformation Order* in 2011—those lacking the most basic Internet access.

65. The Commission is not persuaded by the suggestion that it would be more efficient to use the 10/1 Mbps coverage map because that will result in more locations being served. The fact that areas that currently have 3 Mbps/768 kbps service but not 10/1 Mbps are excluded from the offer of model-based support does not mean there is no mechanism to ensure that consumers in those areas have access to service meeting the newly established standard. Instead, the Commission concludes that any area lacking service from a facilities-based terrestrial competitor that meets our new 10/1 Mbps standard and existing latency/usage/pricing requirements will be eligible for support in the Phase II competitive bidding process. The Commission concludes it is preferable to address these areas in the competitive bidding process, as competitive forces will drive support to efficient levels in those geographic areas that now lack broadband by virtue of our adjustment of the minimum speed threshold.

66. The Commission also is not persuaded by arguments that using the 10/1 Mbps coverage map to determine eligibility for the offer of model-based support is necessary to enable price cap carriers to build more efficient networks. The Commission notes that price cap carriers—like all other providers—will be able to bid on these census blocks in the Phase II competitive bidding process, providing them with an opportunity to gain additional territory for network efficiency.

67. Utilizing the 3 Mbps/768 kbps coverage map to exclude areas eligible for model-based support also is administratively efficient. Excluding areas served by qualifying competitors providing at least 10/1 Mbps service would require the Bureau to conduct a new challenge process to determine which areas that have 3 Mbps/768 kbps lack 10/1 Mbps service. The Phase II challenge process has been underway since June 2014, and with the record now closed, the Bureau is poised to complete these adjudications. The Commission believes that undertaking such an effort to conduct a supplemental challenge process would unnecessarily delay the offer of model-based support that otherwise would occur in early 2015. The Commission therefore directs the Bureau to complete the challenge process for the offer of model-based support and to remove from eligibility any blocks it determines are served by a qualifying competitor providing service of at least 3 Mbps/768 kbps.

68. Finally, the Commission concludes that any area served by an unsubsidized facilities-based terrestrial competitor that offers 10/1 Mbps will be ineligible for support in the Phase II competitive bidding process. Because these areas already have service that meets or exceeds the new speed requirement without receiving high-cost funding, the Commission does not have the same concern as it does for areas served by subsidized competitors—that it may not be economically feasible for providers in these areas to continue providing service absent support. The Commission believes that it would be an inefficient use of Connect America support to provide funding in these areas. The Commission expects to update the list of census blocks that will be excluded from eligibility from the Phase II competitive bidding process based on the most current data available at the time shortly before that auction to take into account any new deployment that is completed in the coming year.

69. The Commission also notes that any areas left unserved after the Phase II competitive bidding process will be addressed through the Remote Areas Fund. The Commission does not establish a separate Remote Areas Fund at this time, as the Commission has concluded that parties should be free in the Phase II competitive bidding process to submit bids to bring service to the highest cost, most remote areas of the nation. Once that Phase II competitive bidding process occurs, and the Commission has determined which winning bidders are authorized to receive support, the Commission will be in a much better position to determine what areas, if any, remain unserved and can be addressed through a separate Remote Areas Fund.

B. Rural Broadband Experiments

70. *Discussion.* The Commission now establishes a process to enable the selection of next-in-line bidders for rural broadband experiments support, in the event any of the provisionally selected bidders defaults by failing to meet our technical and financial requirements before the time the Bureau finalizes the list of census blocks that will be offered to the price cap carriers. All bidders in the rural broadband experiments that wished to remain in consideration for rural broadband experiment support should have filed their financial and technical information no later than 7 p.m. EST on Tuesday, January 6, 2015, in WC Docket No. 14–259. In particular, they must file the most recent three consecutive years of audited financial statements, including balance sheets, net income, and cash flow, in order to enable a thorough financial review. They also must submit a description of the technology and system design that would be used to deliver voice and broadband service meeting the requisite speeds to all locations in the funded census blocks, including a network diagram, which must be certified by a professional engineer. This will enable Bureau staff quickly to identify additional provisionally selected bidders in the event that any of the initially selected bidders default before the Bureau finalizes the list of eligible census blocks for the offer of model-based support, which the Commission expects may occur in early 2015. All bidders that wish to remain under consideration must seek confidential treatment of their filing in order to protect the integrity of the competitive bidding process.

71. The Commission concludes that excluding from the offer of model-based support any census block included in a non-winning rural broadband experiment application submitted in funding category one will ensure the more efficient use of Connect America support. The Commission will only exclude those census blocks where a losing bidder has indicated that it wishes to remain in consideration for rural broadband experiment support as described above. The Commission will not exclude from the offer of model-based support any area where the rural broadband experiment applicant is seeking a waiver of one or more requirements established for rural broadband experiments, including the submission of the requisite financial and technical information. The Commission concludes that the time necessary to resolve such waiver requests to determine which blocks to remove from the offer of model-based support would unnecessarily delay the implementation of Phase II. The Commission emphasizes that it has no intention of delaying the offer of model-based support to the price cap carriers, and expect to proceed with that offer in early 2015.

72. The Commission determines that rural broadband experiment proposals submitted in funding category one that facially meet the requirements for submission of financial and technical information could help us achieve our universal service goals in a cost-effective manner. Though all rural broadband experiment proposals seek an amount of support at or below model-calculated levels, proposals in funding category one are required to commit to constructing networks that are capable of providing 100/25 Mbps. The Commission is not convinced that providing model-based support to a price cap carrier in an area where another entity has demonstrated an interest to provide service that so significantly exceeds the Commission's new speed requirements, for an amount at or below the model-determined support, would be an efficient use of funding. Further, because the proposals the Commission received in funding category one requested support below the level of support that the model would otherwise provide, excluding these areas from the offer of model-based support and instead making them available in the Phase II competitive bidding process should enable us to stretch our finite Connect America budget even further.

73. The Commission is not persuaded by concerns that this approach could result in an opportunity for gaming by allowing a party to submit a rural broadband experiments application that the party never intended to honor simply to reserve its opportunity to participate in the Phase II competitive bidding process. The Commission believes that the parameters it establishes above—that only rural broadband experiment proposals in category one for which the applicant submits the required technical and financial information will be excluded from the offer of model-based support—alleviate any concerns that the Commission's decision would enable applicants to game the system. The submission of a network engineering diagram certified by a professional engineer and audited financial statements as described above provides some assurance that these are serious bidders prepared to participate in the Phase II competitive bidding process. Through such action, these parties will demonstrate a baseline understanding of Commission regulations and procedures. Moreover, entities with three years of audited financial statements by definition are ongoing businesses.

74. This decision also reflects our balancing of section 254(b) principles under the circumstances here. In the *USF/ICC Transformation Order,* the Commission concluded—and it now reaffirms—that the CAF ''should ultimately rely on market-based mechanisms, such as competitive bidding, to ensure the most efficient and effective use of public resources.'' The Commission adopted a mechanism to offer incumbent price cap carriers a right of first refusal to provide service in exchange for model-based support due to its recognition that the continued existence of legacy obligations could complicate the transition to competitive bidding and might cause consumer disruption. The Commission also reasoned that the offer would generally include only areas where the incumbent price cap carrier would likely have the only wireline facilities, and that other bidders may have the ability to deliver scalable broadband meeting the Commission's requirements over time. It was also ''our predictive judgment that the incumbent LEC is likely to have at most the same, and sometimes lower, costs compared to a new entrant in many of these areas.'' Under the analysis in the *USF/ICC Transformation Order,* these considerations weighed against strict application of the competitive neutrality principle and other factors that might, on their own, otherwise have led us to move more quickly to competitive bidding.

75. The Commission is persuaded to revisit that balancing in certain targeted ways here. Today, the rural broadband experiments give the Commission more of an ability to identify areas that are likely to be candidates to transition more quickly to competitive bidding, and it is the Commission's predictive judgment that those areas will be better served, and the Connect America budget better used, by excluding those areas from price cap carrier's right of first refusal, enabling both incumbents and competitors to seek support through a competitive process. In light of these new circumstances, and against the backdrop of other changes adopted in this Order, the Commission finds that moving more quickly to competitive bidding in certain respects as a result of the changes adopted here is warranted under the Commission's reevaluation of the balancing of the competitive

neutrality principle against other universal service goals.

76. The Commission does recognize the possibility that if it removes these areas from the offer of model-based support, both the price cap carrier and the rural broadband experiment applicant ultimately may opt not to bid on such areas in the Phase II competitive bidding process. That risk exists as well for areas where the price cap carrier declines the offer of model-based support. On balance, however, the Commission concludes that this risk is outweighed by the public policy benefits potentially, and the Commission believes likely, to be gained of having consumers in these areas receive higher-quality service from a competitor at or below the amount of model-based support and being able to ensure that additional consumers are served with that unused funding. The Commission also notes that any areas left unserved after the Phase II competitive bidding process will be addressed through the Remote Areas Fund.

IV. Phase II Transitions

77. In this section, the Commission addresses several issues relating to the implementation of Phase II in areas currently served by price cap carriers. First, the Commission adopts our proposal to align the funding years for price cap carriers accepting model-based Phase II support with the calendar year, but clarify that the deployment obligation will commence on the date of public notice of authorization for Phase II funding. Second, the Commission eliminates the transition year formerly adopted by the Commission in the *USF/ICC Transformation Order.* Third, the Commission clarifies that Phase I incremental support should not be included in the calculations of transitional support for those price cap carriers that choose to accept model-based support that is less than frozen support in a given state.

A. Aligning Connect America Phase II Funding and Calendar Years

78. *Discussion.* The Commission adopts its proposal to align the funding years for the offer of model-based support with the calendar year. Thus, the Commission adopts its proposal to disburse a lump sum amount to those carriers for whom model-based support in a given state will be greater than Connect America Phase I support. This lump sum will represent the additional amount of model-based support (above the frozen support that price cap carriers already receive) that would accrue for the beginning months of the year while price cap carriers are considering the offer of model-based support. Thus, as discussed above, carriers accepting model-based support will receive such support in calendar years 2015 through 2020.

79. The Commission anticipates extending the offer of model-based support in early 2015, with carriers responding 120 days later. Then, the Bureau will issue a Public Notice authorizing USAC to disburse the new funding amounts for those providers electing model-based support. The Commission directs USAC to disburse the lump sum payment in the month after the issuance of this Public Notice, drawing the funds from the broadband reserve account. The Commission will, however, provide an option for a carrier to elect to defer this lump sum payment until calendar year 2016, in recognition that may be the first year in which significant capital investments are made to meet the deployment obligations established for Phase II.

80. The Commission clarifies that while carriers will receive a full year of Phase II support in calendar year 2015, the deployment obligation commences on the date of the Public Notice authorizing Phase II-model based support. The Commission acknowledges recipients that accept model-based support thus will be subject to different obligations for the time periods before and after they are authorized to receive Phase II support in calendar year 2015, and direct USAC to take that into account when conducting beneficiary compliance reviews of price cap carrier ETCs for calendar year 2015.

B. Transition Where Model-Based Support is Greater Than Connect America Phase I Support

81. *Discussion.* The Commission adopts its proposal to eliminate the transition period for price cap carriers that elect to receive model-based support in states where such support is greater than the frozen support they receive under Phase I. Because the affected price cap carriers will be receiving more support in these states than they did in Phase I, the Commission finds that it is unnecessary to provide a transition year for these carriers to adjust to receiving Phase II support. Instead, it is in the public interest and will further our Connect America goals immediately to provide these price cap carriers with their full Phase II support, recognizing that significant capital investments will be required to deploy voice and broadband capable networks to unserved areas. The Commission also concludes that it will lessen administrative costs for USAC: once the Bureau issues the Public Notice authorizing model-based support for those entities electing to make a state-level commitment, that monthly support amount will remain unchanged for the duration of the term of support, rather than making adjustments to account for a transition year.

C. Base Support Amount for Transition To Connect America Phase II

82. *Discussion.* The Commission adopts its proposal to clarify that for purposes of transitioning from Connect America Phase I to Phase II, the Commission will only provide a percentage of Connect America Phase I frozen support; Phase I incremental support will not be included in this transition. Because Phase I incremental support was intended to be a one-time ‘‘immediate boost to broadband deployment’’ while the Commission worked on implementing Phase II, the Commission concludes that there is no need for price cap carriers to continue to receive a percentage of that support as ongoing support as they transition to Phase II.

V. Reforms in Rate-of-Return Study Areas

83. In the *April 2014 Connect America FNPRM,* the Commission sought comment on several proposals for near-term reform of high-cost universal service support for rate-of-return carriers. The Commission addresses these here. First, the Commission adopts a revised methodology for applying the cap on HCLS so that support is distributed more equitably among all high-cost carriers, and so that carriers with the highest loop costs have better incentives to curb waste in the operation of their study areas. Second, the Commission adopts its proposals regarding the 100 percent overlap rule, concluding that the Bureau should determine whether there is a 100 percent overlap every other year, and the prior year's support should be used as the basis for the phase-down in support for any study area with a 100 percent overlap. The Commission concludes that the Bureau should not determine 100 percent overlap based on the existence of a subsidized provider.

84. The Commission does not, at this time, take action with regard to any of the proposals for long term reform for rate-of-return carriers. Although a number of parties have submitted proposals that may have promise, the Commission find that further analysis and development of these proposals is necessary. The Commission expects to

continue to develop the record and act on long-term reform in the coming year.

A. HCLS Reimbursement Rates Under the Cap

85. In the *April 2014 Connect America FNPRM,* the Commission noted that it ''continues to have significant concerns regarding the structure and incentives created under the existing high-cost mechanisms for rate-of-return carriers, such as the 'race to the top' incentives that exist under HCLS and the 'cliff effect' of the annual adjustment of the HCLS cap.'' The Commission addresses this concern for the near-term by modifying the methodology for reimbursements under HCLS.

86. The indexed cap on HCLS has seen steady reductions in recent years as a result of decreasing numbers of working loops and low inflation rates. As a result, carriers with costs close to the ever rising NACPL risk losing all HCLS for prior investments, while carriers with a higher cost per loop are sheltered from the impact of the HCLS cap. The carriers with the highest loop costs relative to the national average have minimal incentive to reduce their expenses and eliminate waste: between HCLS and interstate common line support, it is possible for 100 percent of their incremental loop costs to be recovered through universal service. The Commission observes that these carriers with the highest HCLS reimbursement rates have steadily increased their reported loop costs (by 36 percent since 2004), while carriers with lower reimbursement rates have had stable or reduced loop costs. In combination, the decreasing HCLS cap and the increasing demand from the carriers reporting the highest cost per loop create yearly increases in the NACPL used to calculate HCLS, precluding many carriers from receiving any HCLS and significantly reducing support for others with costs per loop close to the NACPL. A comparison of the 646 study areas that submitted cost studies for each year from 2004 to 2013 shows what has occurred over the last decade: in 2006, 579 of the 646 study areas were receiving HCLS support, but by 2015, only 461 of them are projected to receive support, meaning that 118 or 20 percent of these study areas fell ''off the cliff'' over this ten-year period. These features of the HCLS rule were not altered in the *USF/ICC Transformation Order.*

87. In the *April 2014 Connect America FNPRM,* the Commission proposed to mitigate these deficiencies by reducing support proportionally among all HCLS recipients through decreased reimbursement percentages for all carriers instead of adjusting the NACPL. Specifically, the Commission proposed to freeze the NACPL that is used to determine support and instead to decrease HCLS proportionately among all HCLS recipients. As specified in the proposed rule, the reduction would be achieved by multiplying each carrier's calculated HCLS by the ratio of the indexed HCLS cap to the aggregate amount of HCLS initially calculated for all carriers using the frozen NACPL. This effectively would freeze the NACPL at the capped amount as a date certain, such as December 31, 2014.

88. This proposal initially received widespread support from commenters responding to the FNPRM. Subsequent to the closing of the comment cycle, however, the Rural Associations argued the Commission's proposed methodology should be modified to lessen the impact on the companies with the highest reported cost per loop by continuing to raise the NACPL as is done under the current methodology. In particular, the Rural Associations propose that if HCLS as initially calculated based on the frozen NACPL exceeds the indexed cap, then the NACPL would be adjusted so the HCLS amounts equal the indexed cap plus half of the difference between the initially calculated amount and the indexed cap. The HCLS amounts calculated using this adjusted NACPL would then be reduced proportionally so that total HCLS matched the indexed cap. The Rural Associations argue that their proposal would mitigate what they consider disproportionate effects on the carriers with the highest cost per loop.

89. *Discussion.* After full consideration of the record, the Commission now adopts their proposal, as described in the *April 2014 Connect America Order and FNPRM,* 79 FR 39164, July 9, 2014 and 79 FR 39196, July 9, 2014. The Commission finds that this targeted rule change will be effective in addressing the lack of incentives to curb waste that results from the race to the top and providing a more equitable distribution of support to all high-cost rate-of-return carriers, including those currently facing a loss of support due to the cliff effect.

90. The Commission declines to adopt the Rural Associations' proposed modification. Under their proposal current recipients of HCLS would continue to lose HCLS as the HCLS cap is lowered, albeit not to the same extent as occurs today. Yet addressing the cliff effect was one of the core objectives of the Commission's proposal. Although the Rural Associations' proposal may, to some degree, mitigate both the cliff effect and the race to the top as compared to our current methodology, based on the record before the Commission, it finds it would be less effective at addressing both objectives than the Commission's proposal. In a set of examples provided by the Rural Associations, the two lowest cost companies in the set each would receive approximately 40 percent less in the first year after implementation of the proposed rule than they would under the Commission's proposals and would have their HCLS entirely eliminated by the fifth year of operation. Indeed, under NTCA's proposal, the cliff effect would immediately eliminate support from 11 study areas that would continue to receive support under the Commission's proposal. In other words, the cliff effect would remain significant if the Rural Associations' proposal were implemented. Similarly, the Rural Associations' proposal significantly preserves the advantages under HCLS of being a company reporting a relatively higher cost per loop, even if it does eliminate the possibility that a carrier could recover 100 percent of any marginal loops costs it incurs.

91. Although the Rural Associations express concern that the Commission's proposal may have a disproportionate effect on the carriers with the highest cost per loop, in their own examples, the Commission does not believe that this will result in insufficient support for any carrier. Using NTCA's analysis, the highest cost carrier would lose only seven percent of HCLS as compared to the current rules (and receives only three percent less than it would receive under the Commission's proposal). Because that carrier would likely also be receiving a significant amount of ICLS, the reduction as a fraction of total support would be even less than seven percent. Moreover, the fact that reported costs have increased for some high-cost recipients at rates substantially above that for other high-cost recipients suggests that the current construct of the rule does not create structural incentives for these carriers to take measures to reduce their expenses to the extent possible. There are several potential reasons why reported costs per loop for certain carriers are increasing at rates in excess of that for other high-cost recipients: They are investing more, they are subject to greater competition and therefore experiencing line loss, or they are spending imprudently. One of the Commission's goals as it considers proposals for longer-term reform is to provide a more equitable opportunity for all carriers in high-cost areas to invest in broadband-capable infrastructure. In the meanwhile, the

rule change the Commission is adopting in this Order will strengthen the incentive for the carriers with the highest reported costs per loop to manage their expenditures in light of the existence of the cap on HCLS.

92. The Commission also is not persuaded by commenters arguing that these changes are unnecessary. TCA argues that the $250 per-line per month cap effectively addresses the race to the top. In fact, the $250 per-line cap affects only a small number of the very highest cost carriers and, for the reasons explained above, does not, it concludes, comprehensively address the race to the top or the cliff effect. Those higher cost carriers not subject to the $250 per-line cap still have limited incentive to curb waste, and numerous others are hurt by the cliff effect.

93. The Commission does not agree with the Concerned Rural ILECs that the race to the top is a budgetary problem and could be solved by increasing the size of the HCLS budget. Although significantly increasing the HCLS budget might address the cliff effect, it would, if anything, exacerbate the race to the top by eliminating the limited constraints the HCLS mechanism currently has on carrier spending and undermining the carriers' incentives to curb wasteful expenses related to common line costs.

94. The Commission disagrees with TCA's contention that it should not adopt its proposal due to retroactivity. As a matter of law, the proposed rule is not impermissibly retroactive. The Commission notes that the Tenth Circuit recently rejected arguments that the changes the Commission made to the HCLS and Safety Net Additive (SNA) rules in the *USF/ICC Transformation Order* violated the presumption against retroactivity. The court there found that ''the Order . . ., which makes only prospective changes to the reimbursement framework, including the elimination of SNA, is not retroactive.'' A rule does not operate retroactively merely because it is ''applied in a case arising from conduct antedating [its] enactment'' or ''upsets expectations based on prior law.'' Rather, a rule operates retroactively if it ''takes away or impairs vested rights acquired under existing law, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past.'' The application of the rules adopted here will not take away or impair a vested right, create a new obligation, impose a new duty, or attach a new disability in respect to the carriers' previous expenditures. There is no statutory provision or Commission rule that provides companies with a vested right to continue to receive support at particular levels or through the use of a specific methodology. Although application of these rules may affect the amount of support a carrier receives for expenditures made in 2013, it does not change the legal landscape in which those expenditures were made. Rather, as the Commission observed in the *USF/ICC Transformation Order,* ''section 254 directs the Commission to provide support that is sufficient to achieve universal service goals, [but] that obligation does not create any entitlement or expectation that ETCs will receive any particular level of support or even any support at all.''

95. Moreover, as a matter of policy, the Commission is not persuaded that even the highest cost rate-of-return carriers will be unduly harmed by this rule. As noted above, in the Rural Associations' examples, the highest cost company sees a reduction of only six percent of its HCLS (and a smaller fraction of its total high-cost support) as a result of this rule. TCA nonetheless argues that this rule change ''unfairly penalizes'' rate-of-return carriers ''that have made investments to bring broadband to their customers in accordance with the FCC's goals.'' TCA provides no basis, however, for distinguishing between carriers that have, in fact, prudently invested in broadband facilities and those that have failed to curb wasteful expenses. The Commission notes that if any rate-of-return carrier suffers significant harm as a result of this rule change and the carrier's earlier prudent investment, it may seek waiver of our rules.

96. The Commission declines to adopt the Eastern Rural Telecom Association's (ERTA) proposal that the frozen NACPL be indexed to inflation or some other low-growth factor as a method of removing the cliff effect. The Commission finds that the other steps taken here will effectively address this issue. Moreover, because the Commission anticipates that it will adopt more comprehensive reforms for rate-of-return carriers in the coming year, indexing the NACPL is unlikely to have a material effect.

97. The Commission recognizes that NTCA's analysis is sensitive to a number of forecasting assumptions, including line growth or loss and changes in cost per loop. For that reason, the Commission will closely monitor the effects of this rule change on rate-of-return carriers and will revisit this issue in the event that it has unanticipated results. In sum, however, the Commission is not convinced based on the record before us that the Rural Associations' proposal is superior to what the Commission proposed in the *April 2014 Connect America NPRM.*

B. 100 Percent Overlap Rule

98. *Discussion.* The Commission previously 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.'' The Commission expects the Bureau will, in 2015, review study area boundary data in conjunction with other data collected via FCC Form 477 or the State Broadband Initiative to determine whether and where 100 percent overlaps exist. The Bureau will publish its preliminary determination of those areas subject to 100 percent overlap and then provide an opportunity for comment on these preliminary determinations, building on experience gained in conducting the Phase II challenge process in price cap areas. Once the comment period is complete, the Bureau then will finalize its determination of where there is a 100 percent overlap. The Commission directs the Bureau to repeat this process every other year to determine whether additional study areas have become subject to the 100 percent overlap rule. Finally, the Commission adopts its proposal to base support reduction phase down on the amount of support awarded in the year prior to the determination, rather than 2010. Because implementation of the 100 percent overlap determinations for rate-of-return carriers has taken longer than initially anticipated, the Commission believes that basing reductions on current support will lead to a smoother transition.

99. The Commission declines to modify the 100 percent overlap rule to eliminate support in any study area with a qualifying competitor, as opposed to an unsubsidized competitor. As explained above, the reason the Commission is removing high-cost census blocks with a qualifying competitor from eligibility for Connect America Phase II model support is to provide an opportunity for all parties to compete for support for those areas through a competitive bidding process. There is no comparable process in place in rate-of-return study areas for several subsidized competitors to compete with each other for support to serve the study area. In the case of rate-of-return carriers, removing study areas from eligibility where there are qualifying competitors would mean that there is no mechanism to provide support for high-cost areas that presumably need support in order for consumers to have access to voice and broadband services, once the

phase-down in competitive ETC support is complete.

VI. Accountability and Oversight

100. In this section, the Commission takes several steps to strengthen the uniform national framework for accountability that the Commission adopted in the *USF/ICC Transformation Order.* First, the Commission codifies a broadband reasonable comparability rates certification requirement for all recipients of high-cost support that are subject to obligations to deploy broadband to fixed locations. Second, the Commission requires price cap carriers that accept model-based support to submit specific location information with their service quality improvement plans and progress reports to enhance the Commission's ability to monitor their use of Connect America support. Third, the Commission adjusts the framework for reduction in support for late-filed section 54.313 and 54.314 reports and certifications. Fourth, the Commission adopts measures to be used in the event specific ETCs do not meet certain terms and conditions of high-cost support.

A. Reasonably Comparable Rates Certification for Broadband

101. *Discussion.* The Commission amends section 54.313(a) to include a new subsection 12 that requires recipients of high-cost and/or Connect America Fund support that are subject to broadband performance obligations to submit a broadband reasonable comparability rate certification with their annual section 54.313 report (FCC Form 481). In that certification, support recipients must certify that the pricing of the broadband offering they are relying upon to meet their broadband performance obligation is no more than the applicable benchmark as specified in a public notice annually issued by the Bureau, or is no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in the state or U.S. Territory where that high-cost support recipient receives support. Recognizing that high-cost support recipients are permitted to offer a variety of broadband service offerings as long as they offer at least one standalone voice service plan and one service plan that provides broadband that meets our requirements, the Commission only requires that they make the above certification for one of their broadband service offerings that satisfies all of the Commission's requirements, including that the service be offered throughout the high-cost support recipient's supported area in the relevant state or U.S. Territory, or for rate-of-return carriers, be made available upon reasonable request. The Commission concludes that requiring high-cost support recipients to make this certification will ensure that the Commission can monitor their compliance with conditions that fulfill the section 254(b) principle that ''[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.''

102. The Commission requires high-cost support recipients that elect to certify that their pricing of services in rural areas is no greater than their pricing in urban areas to rely upon the non-promotional prices charged for comparable *fixed wireline* services. The Commission declines to permit high-cost support recipients to certify that the pricing they offer for their broadband services is no more than the non-promotional prices charged for comparable ''broadband'' services. The Commission notes that the applicable benchmark adopted by the Bureau is two standard deviations above the average urban rates for a specific set of service characteristics, consistent with the Commission's precedent for the voice reasonable comparability benchmark. The Commission also already provides a presumption for high-cost support recipients that offer rates that exceed the applicable benchmark that those rates are reasonably comparable if they are the same as rates being offered in urban areas for a comparable fixed wireline service. Fixed wireless services tend to be more expensive than fixed wireline services even when data usage allowances and the speeds offered are taken into account. Moreover, consumers living in urban areas typically have the choice of obtaining broadband service from at least one fixed wireline provider. The Commission therefore concludes it is appropriate to use fixed wireline services in urban areas as the reference point for reasonably comparable rates, recognizing that rates in rural areas may be higher than urban areas.

103. This certification will be included in the FCC Form 481 to be filed in 2016, addressing performance during 2015, after the requirement has received Paperwork Reduction Act (PRA) approval from the Office of Management and Budget. All parties subject to a broadband public interest requirement to serve fixed locations that file this report in 2016 will be required to make the certification, and annually thereafter.

104. Recipients of funding through the Phase II competitive bidding process must submit their first certification with the first section 54.313 annual report they are required to submit after support is authorized, and each year thereafter with their annual report.

B. Monitoring Progress in Meeting Deployment Obligations

105. *Discussion.* Here, the Commission takes action to enhance our ability to monitor the use of Connect America support and ensure that price cap carriers that accept model-based support use that support for its intended purpose. Specifically, as proposed by USTelecom, the Commission requires all price cap carriers accepting model-based support to include in the annual progress report that they submit each year with their section 54.313 annual reports a list of the geocoded locations to which they have newly deployed facilities capable of delivering broadband meeting the requisite requirements with Connect America support in the prior year. The list must identify which locations are located in a Phase II-funded block and which locations are located in extremely high-cost census blocks. The first list must be submitted with their July 2016 annual report, reflecting deployment status through the end of 2015. This first list should also include the geocoded locations that a price cap carrier had already built out to with service meeting the Commission's requirements before receiving Phase II support. In subsequent years, the list should provide the relevant information for newly built locations in the prior calendar year. The last list that price cap carriers submit with their July 2021 annual reports must include the total number and geocodes of all supported locations to which they have deployed facilities capable of delivering broadband meeting the requisite requirements.

106. The Commission concludes that it is in the public interest to require price cap carriers accepting model-based support to provide this data on an annual basis. The Commission and USAC will analyze the data to determine how Connect America support is being used to ''improve broadband availability, service quality, and capacity,'' consistent with a recent recommendation of the Government Accountability Office. The Commission also intends to make such data available to the public on its Web site in a user-friendly manner so that the public will be able to see at a granular level how

high-cost funds are being used to invest in new broadband infrastructure to bring new services to the area. The Commission finds that the benefits in collecting this data outweigh any potential burdens on the price cap carriers in reporting this data annually, given that the Commission expects that price cap carriers will already be collecting such data for their own business purposes and to be prepared to respond to the compliance reviews that the Commission directs USAC to undertake.

107. The Commission will also collect from price cap carriers in their annual section 54.313 reports the total amount of Connect America Phase II support, if any, they used for capital expenditures in the previous calendar year. The Commission concludes that the benefit to the Commission of being able to determine how price cap carriers are using Phase II funding outweighs any potential burden on price cap carriers in submitting this information given that it expects that price cap carriers will track their capital expenditures for Phase II in the regular course of business.

108. The Commission directs USAC to review Phase II recipients' compliance with deployment obligations and the Commission's public interest obligations at the state level—that is, whether the carrier is meeting interim and final deployment obligations for the total number of locations required for the state. As discussed above, the Commission concludes that conducting compliance reviews at the state level would be less administratively burdensome for the Commission, USAC, and the recipients of Phase II support than at the census block level. The Commission expects USAC to review compliance with the deployment obligations for all price cap recipients over the course of the Phase II support term. This will ensure the Commission is able to fulfill our responsibility to monitor each Phase II recipient's use of high-cost support in areas subject to the state-level commitment.

C. Reduction in Support for Late Filing

109. *Discussion.* The Commission adopts a rule to reduce on a pro-rata daily basis the support for ETCs that miss certification and data submission deadlines. Based on the Commission's experience to date with the current support reduction scheme, it has determined that reducing support for late filers on a quarterly basis is unduly harsh given that most late filings are inadvertent, particularly for those recipients that file closer to the beginning of the quarter than the end of the quarter. The Commission concludes that readjusting the support reductions to more closely calibrate the reduction of support with the period of non-compliance is a more reasonable approach for handling the recurring problem of an occasional failure to file.

110. The Commission will impose a minimum reduction of support of seven days given the importance of ETCs meeting filing deadlines. After the initial seven days, support will be reduced further on a day-by-day basis until the high-cost recipient files the required report or certification, plus the minimum seven-day reduction. Reducing support on a day-by-day basis plus an additional seven-day reduction is an appropriate measure to create incentives for high-cost recipients to make their filings as soon as they have determined that they have missed the applicable deadlines.

111. The Commission recognizes that despite its best efforts, an ETC may miss a deadline due to an administrative oversight but still file within a few days of the deadline. For a late filer, the Commission finds that it is appropriate to provide a one-time grace period of three days so that an ETC that quickly rectifies its error within three days of the deadline will not be subject to the seven-day minimum loss of support. The Commission directs USAC to send a letter to such an ETC notifying the ETC that its filing was late but cured within the grace period. If the ETC again files any high-cost filing late, the grace period will not be available. Repeated mistakes, even inadvertent, are indicative of a lack of adequate policies and procedures to ensure timely filing. If an ETC misses a filing deadline more than once due to its inadvertence, the Commission finds that the support reductions that it adopts should provide an incentive to ETCs to revise their procedures to ensure that such inadvertence does not become a pattern.

112. The Commission disagrees with arguments that it should lengthen the one-time grace period because new ETCs receiving support may be unfamiliar with high-cost filing requirements or that ETCs may inadvertently forget to file. The Commission imposes support reductions on late filers to impress upon high-cost recipients the importance of understanding obligations that come with high-cost funding and the need for the Commission and USAC to receive the data in a timely manner so that it can properly administer the Universal Service Fund. A one-time grace period of three days achieves an appropriate balance between requiring strict compliance with our rules and providing an opportunity for ETCs that may be first time filers or that make an uncharacteristic mistake to rectify quickly an error.

113. Although ETCs are required to submit separate filings for each operating company, the Commission notes that many holding companies administer the filings for all of their operating companies that may hold an ETC designation. The Commission expects that holding companies will take measures to ensure that all of their operating companies meet the required deadlines. Thus, the Commission will apply the grace period at the holding company level. If an ETC misses the deadline and exercises the grace period in a prior year, that grace period will not be available for all subsequent years to another one of the holding company's operating companies that holds an ETC designation to serve a different study area.

114. The Commission is not persuaded by the Rural Associations' argument, relying on precedent related to the Eighth Amendment to the Constitution ''Excessive Fines'' clause, that the support reductions are ''unreasonable'' and ''excessive penalties.'' Because ETCs have no property interest in or right to continued universal service support, nor any right to support other than as provided for by the Commission's rules, the reduction of an ETC's universal support payment does not constitute a payment by the ETC to the government that is subject to the Excessive Fines clause of the Eighth Amendment.

115. In any case, even if that framework were viewed as applicable, given the important role these data and certifications play in the administration of the Universal Service Fund, the Commission finds that the support reductions that it adopts are sufficiently proportional to the harm caused by late filings. The reductions increase as the length in delay of the filings increase, and thus are proportional to the amount of harm that is caused when the Commission, state commissions, and USAC are delayed in being able to monitor the use of universal service funds. Moreover, by basing the support reductions on each ETC's daily support amount, the Commission has calibrated the amount of support that a late filer will have reduced with the benefit they receive from the Universal Service Fund. Contrary to the arguments of some commenters, the Commission finds that the benefits for consumers nationwide of an effective oversight scheme outweigh the potential impact of support reductions on the customers of late filing ETCs. Congress gave the Commission broad discretion under

section 254 to determine support levels and adjust them as needed, and hence any reductions in support provided for under the Commission's rules are well within our legislative mandate.

116. The Commission is not persuaded by suggestions that the Commission should refrain from imposing support reductions for untimely filings and instead rely on Commission enforcement authority in the event of non-compliance. If the Commission were to conduct an enforcement proceeding every time an ETC misses a deadline, that would divert Commission resources from other Commission priorities. Instead, by adopting a clear and predictable support reduction scheme, the Commission, USAC, and ETCs will know exactly what consequences will result under the rules if filings are missed, rather than having to handle each issue on a case-by-case basis. Similarly, the Commission is not persuaded that support reductions are unnecessary because ETCs are already motivated to file on time to avoid a delay in receiving their support. Support reductions provide more of an incentive to file on time because ETCs actually lose support under the mechanism established in our rules rather than simply have it delayed if they do not meet a deadline.

117. Given the Commission's decision to modify the support reductions for late filings, the Commission adopts its proposal to require strict adherence to filing deadlines. The Commission will cease the practice of finding there is good cause for a waiver of high-cost filing deadlines in circumstances where an ETC has missed the deadline due to an administrative or clerical oversight and where that ETC has promised to revise its procedures to ensure future compliance, as proposed in the *April 2014 Connect America FNPRM.* The Commission expects all ETCs, even those new to the Commission's processes or with small staffs, to implement appropriate procedures to ensure compliance with the Commission's filing deadlines and other regulatory requirements.

D. Measures To Address Non-Compliance

118. *Discussion.* In this Order the Commission adopts specific measures that the Bureau will take in the event that certain ETCs do not meet their high-cost support deployment obligations for fixed services or do not offer rates for fixed services that are reasonably comparable to rates offered in urban areas.

119. In addition, the Commission reminds all ETCs that they may also be subject to other sanctions for non-compliance with the terms and conditions of high-cost funding, including, but not limited to, potential revocation of ETC designation and suspension or debarment. The Commission emphasizes that it will enforce the terms and conditions of high-cost support vigorously. The Enforcement Bureau may initiate an enforcement proceeding in situations where waiver is not appropriate. In proposing any forfeiture, consistent with the Commission's rules, the Enforcement Bureau shall take into account the nature, circumstances, extent, and gravity of the violations.

1. Non-Compliance With Deployment Obligations

120. For ETCs that must meet specific build-out milestones, the Commission adopts a framework for support reductions that are calibrated to the extent of an ETC's non-compliance with these deployment milestones. The Commission concludes that adopting support reductions that scale with the extent of an ETC's non-compliance will create incentives for ETCs to come into compliance as soon as possible, and that a support reduction scheme that is tied to specific milestones is a clear, straightforward approach.

121. The Commission has given rate-of-return carriers greater flexibility to build out their networks by requiring that they deploy service meeting the Commission's requirements upon reasonable request. Because rate-of-return carriers are not at this time required to build out to a certain number of locations, the Commission concludes it is appropriate to handle matters regarding their potential non-compliance on a case-by-case basis.

122. *Trigger for Default.* A default will occur if an ETC is receiving support and then fails to meet its high-cost support deployment obligations. For example, a default will occur if a recipient of Phase II funding fails to meet a build-out milestone. The Commission directs USAC to confirm that Phase II ETCs are in fact meeting the terms and conditions of that support by verifying the build-out certifications that recipients of Phase II support are required to provide to ensure that Connect America funds are being used to deploy infrastructure to eligible locations.

123. To the extent that an ETC determines that it will not meet a build-out milestone, that ETC must notify the Commission, USAC, and the relevant state or U.S. Territory, and Tribal government as appropriate, no later than ten business days after the relevant deadline, rather than waiting until the filing of the next annual report. The Commission also expects that the states, U.S. Territories, and Tribal governments will continue to aid us in our joint oversight role and notify the Commission when an ETC is not meeting its obligations.

124. *Support Reductions for ETCs with Defined Build-Out Milestones.* If an ETC begins receiving support and the Bureau subsequently determines that the ETC has defaulted, the Bureau will issue a letter documenting the default, and USAC will take the steps outlined below in the following month. The measures that will be taken will be dependent on the extent of an ETC's non-compliance.

125. Specifically, for interim milestones that occur during the support term:

- Tier 1: If an ETC has a compliance gap of at least five percent but less than 15 percent of the number of locations that the ETC is required to have built out to by the interim milestone, the Bureau will issue a letter to that effect. The ETC will then be required to file quarterly reports identifying the geocoded locations to which the ETC has newly deployed facilities capable of delivering broadband meeting the requisite requirements with Connect America support in the previous quarter. The ETC must continue to file these quarterly reports until the ETC reports that it has reduced the compliance gap to less than five percent of the required number of locations for that interim milestone and the Bureau issues a letter to that effect.
- Tier 2: If an ETC has a compliance gap of at least 15 percent but less than 25 percent of the number of locations that the ETC is required to have built out to by the interim milestone, USAC will withhold 15 percent of the ETC's monthly support for the state and the ETC will be required to file quarterly reports. Once the ETC has reported that it has reduced the compliance gap to less than 15 percent of the required number of locations for that interim milestone for that state, the Bureau will issue a letter to that effect, USAC will stop withholding support, and the ETC will receive all of the support that had been withheld. The ETC will then move to Tier 1 status.
- Tier 3: If an ETC has a compliance gap of at least 25 percent but less than 50 percent of the number of locations that the ETC is required to have built out to by the interim milestone, USAC will withhold 25 percent of the ETC's monthly support for the state and the ETC will be required to file quarterly reports. Once the ETC has reported that it has reduced the compliance gap to

less than 25 percent of the required number of locations for that interim milestone, the Bureau will issue a letter to that effect, the ETC will move to Tier 2 status, and USAC will withhold 15 percent of its monthly support for that state until the ETC reports that it is eligible to move to Tier 1 status. Once the ETC has reported that it qualifies for Tier 1 status, and the Bureau issues a letter to that effect, it will be eligible to have all of its support restored, the ETC will receive all of the support that had been withheld, and it will move to Tier 1.

• Tier 4: If an ETC has a compliance gap of 50 percent or more of the number of locations that the ETC is required to have built out to by the interim milestone, USAC will withhold 50 percent of the ETC's monthly support for the state, and the ETC will be required to file quarterly reports. As with the other tiers, as the ETC reports that it has lessened the extent of its non-compliance, and the Bureau issues a letter to that effect, it will move down the tiers until it reaches Tier 1 (or no longer is out of compliance with the relevant interim milestone). At that point, the ETC will be eligible to have all of its support restored, the ETC will receive all of the support that had been withheld, and, if it now is meeting the interim milestone, it will no longer be required to file quarterly reports.

On the other hand, if after having 50 percent of its support withheld for six months the ETC has not reported that it is eligible for Tier 3 status (or one of the other lower tiers), USAC will withhold 100 percent of the ETC's support for that state and will commence recovery action for a percentage of support that is equal to the ETC's compliance gap plus ten percent of the ETC's support that has been paid to that point. For example, if an ETC has not built out to 75 percent of the required number of locations in a state, USAC would recover 85 percent of the ETC's support that had been paid to that point. The Commission concludes that recovering the additional ten percent of the ETC's support that has been disbursed up to that point will deter ETCs from deciding that they would rather return the support than meet their commitments for the supported area. Because these are high-cost areas that lack unsubsidized providers at the outset of the support term, an ETC's refusal to serve these locations could potentially leave the locations with no options for reasonably comparable service.

• If at any point during the support term the ETC reports that it is eligible for Tier 1 status, it will have its support fully restored including any support that had been withheld, USAC will repay any funds that were recovered, and the ETC will move to Tier 1 status.

126. As noted above, the Commission requires ETCs to report to the Commission, USAC, and the relevant state or U.S. Territory, and Tribal government as appropriate, within ten business days of the final build-out milestone if they have missed this milestone. If an ETC misses the final build-out milestone, it must identify by what percentage it has missed the final build-out milestone. Absent an extension of time for circumstances beyond the ETC's control, the ETC will then have twelve months from the date of the final build-out milestone deadline to come into full compliance with this milestone. If an ETC does not report that it has come into full compliance within twelve months, the Bureau will issue a letter to this effect. USAC will then recover an amount of support that is equal to 1.89 times the average amount of support per location received in the state over the six-year term for the relevant number of locations that the ETC has failed to deploy to, plus ten percent of the ETC's total Phase II support received in the state over the six-year term. As explained above, the Commission concludes that recovering an additional ten percent of the ETC's total Phase II support will deter ETCs from deciding to return their support rather than build out to more than a de minimis number of locations.

127. If after the ETC's support term has ended, USAC determines in the course of a compliance review that the ETC has not retained sufficient evidence to demonstrate that it has built out to all of the locations required by the final build-out milestone, USAC must recover support from that ETC. Specifically, if the ETC does not have sufficient evidence to demonstrate that it has built out to the total number of required locations, USAC will recover an amount of support that is equal to 1.89 times the average amount of support per location received in the state over the six-year term for the relevant number of locations for which the ETC has failed to retain sufficient evidence, plus ten percent of the ETC's total support received in that state over the six-year term. The Commission expects that ETCs will have strong incentives to adopt policies and procedures to retain sufficient evidence to aid the Commission and USAC in our oversight responsibility.

128. Table 2 below summarizes the regime the Commission adopts in this Order.

TABLE 2—NON-COMPLIANCE MEASURES

Tier	Compliance gap	Non-compliance measure
1	5% to less than 15%	Quarterly reporting.
2	15% to less than 25%	Quarterly reporting + withhold 15% of monthly support.
3	25% to less than 50%	Quarterly reporting + withhold 25% of monthly support.
4	50% or more	Quarterly reporting + withhold 50% of monthly support for six months; after six months withhold 100% of monthly support and recover percentage of support equal to compliance gap plus 10% of support disbursed to date.
Recovery after Last Milestone.	If carrier elects the flexibility option: its compliance gap will be determined by the percentage of total locations it does not build to after subtracting the percentage of locations it has identified it will not serve (*e.g.*, if a carrier is offered 100 total locations, and it elects not to serve 4 locations but by the end of the term it has not served 20 locations, its compliance gap is 16% (20% minus 4% = 16%)). If carrier does not elect flexibility option: anything less than 100% compliance.	Twelve months to come into full compliance; after twelve months recover support equal to 1.89 times the average amount of support per location received in the state over the six-year term for the relevant locations, plus 10% of total Phase II support.

129. The Commission provides the following example in Table 3 of how these compliance measures will be implemented for a price cap carrier that accepts the state-level commitment. For simplicity, the Commission assumes the price cap carrier must serve 100 total locations and does not elect the flexibility option.

TABLE 3—NON-COMPLIANCE MEASURES EXAMPLE

Milestone	Tier	Compliance gap
December 31, 2017—40% of total locations (40 locations)	1	Serves 35 to 38 locations.
	2	Serves 31 to 34 locations.
	3	Serves 21 to 30 locations.
	4	Serves 20 locations or fewer.
December 31, 2018—60% of total locations (60 locations)	1	Serves 52 to 57 locations.
	2	Serves 46 to 51 locations.
	3	Serves 31 to 45 locations.
	4	Serves 30 locations or fewer.
December 31, 2019—80% of total locations (80 locations)	1	Serves 69 to 76 locations.
	2	Serves 61 to 68 locations.
	3	Serves 41 to 60 locations.
	4	Serves 40 locations or fewer.
December 31, 2020—100% of total locations (100 locations)	Recovery	Serves 99 locations or fewer.

130. The Commission concludes that the approach it adopts in the Order is preferable to the other alternative the Commission sought comment on—permitting ETCs to submit a plan to USAC for coming into compliance before support reductions would begin. Such an approach would likely to be resource-intensive for Commission staff and USAC because each default would need to be handled on a case-by-case basis. When there are clear milestones that must be met, such an approach is unnecessary. Moreover, it likely would take a significant amount of time for an ETC to develop a compliance plan and for the plan to be approved, and then it will take even more time for the ETC to come into full compliance. During this extended period consumers will be without service meeting the Commission's requirements. The Commission finds that the more automatic support reduction scheme it adopts above will more quickly motivate ETCs to come into compliance and is a clearer, less resource-intensive process for the Commission, USAC, and ETCs.

131. *Non-Compliance Measures for Rate-of-Return Carriers.* The Commission will determine on a case-by-case basis whether rate-of-return carriers are fulfilling their obligation to provide voice and broadband services meeting the Commission's requirements upon reasonable request. The Commission clarifies that rate-of-return carriers should report any requests that are deemed unreasonable as unfulfilled requests in their section 54.313 annual reports. The Commission expects that USAC will verify that rate-of-return carriers have sufficient evidence to demonstrate that any unfulfilled requests were in fact unreasonable. Rate-of-return carriers should consult the *Declaratory Ruling* contained in the *April 2014 Connect America Order,* 79 FR 39164, July 9, 2014, for guidance on what constitutes an unreasonable request to determine the types of evidence they should retain to demonstrate that unfilled requests were unreasonable. The Commission declines at this time to specify a schedule of support reductions for rate-of-return carriers because they are not subject to defined build-out milestones. To the extent USAC determines in the course of an audit that a carrier has insufficient evidence to support a decision to deny a request for service, such findings shall be reported as ''other matters.'' Because rate-of-return carriers are not required to serve a set number of locations, and the Commission only recently issued guidance on the reasonable request standard, the Commission does not have sufficient experience to create specific milestones that would require support reductions. However, the Commission reserves the right to adopt a more automatic support reduction framework for rate-of-return carriers at a future date.

132. *Adjustment of Deployment Obligations.* In the event an ETC is unable to meet the required deployment obligations due to circumstances beyond its control (*e.g.,* a severe weather event, an inability to secure a right of way, or an unforeseen obstacle that prevents building to a location), that ETC may petition for an extension of time or waiver of the relevant build-out milestone pursuant to section 1.3 of the Commission's rules. The Commission notes that to the extent the ETC is seeking an extension or waiver of a specific build-out milestone, the Commission expects that the ETC would file its petition seeking that relief no later than 30 days prior to the build-out milestone. The Commission encourages ETCs that submit such petitions to continue to work diligently towards meeting the terms and conditions of their support while their petitions are pending. If the petitioning ETC is unable to meet the terms and conditions by the time the build-out milestone occurs, then the Bureau will issue a letter finding default, and if applicable, reporting obligations and support reductions will begin as described above. If an extension of time or waiver subsequently is granted, the petitioning ETC will have all of the funds that have been withheld or recovered restored and will be entitled to receive its subsequent disbursements.

2. Non-Compliance With Reasonably Comparable Pricing Obligations

133. The Commission concludes that this issue is best dealt with on a case-by-case basis for the time being for all ETCs that must certify that the rates they offer are reasonably comparable. The Commission finds that it would not be appropriate to apply a uniform support reduction to all ETCs that fail to offer reasonably comparable prices. It would be inequitable to reduce support by the same percentage amount regardless of whether the ETC was charging prices a few dollars above what is considered to be reasonably comparable or charging much higher prices. Similarly, because the pricing benchmarks for voice and broadband are

presumptions, not mandates, the Commission must provide an opportunity for affected ETCs to present information to rebut the presumption. Because there may be a variety of factors that go into determining whether prices are reasonably comparable (*e.g.,* speeds and data usage limits being offered), the Commission is not prepared at this time to establish a method for scaling the support reductions based on a level of non-compliance. The Commission finds that it would be beneficial to consider each potential instance of non-compliance separately and gather more information to inform future judgments as to what is a reasonable approach.

134. The Commission directs USAC to gather additional information when ETCs fail to make the reasonably comparable certification about their voice or broadband rates in their section 54.313 annual report and transmit that information to the Commission. The ETC may present factual evidence explaining the unique circumstances that preclude it from offering service at a rate meeting the requisite benchmark. Based on this information, the Commission will be in a better position at a future date to determine the appropriate steps to take when there is non-compliance with this requirement.

VII. Procedural Matters

A. Paperwork Reduction Act Analysis

135. 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, the Commission 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).

B. Final Regulatory Flexibility Analysis

136. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated in the *April 2014 Connect America FNPRM.* The Commission sought written public comment on the proposals in the *April 2014 Connect America FNPRM,* including comment on the IRFA. The Commission did not receive any relevant comments on the *April 2014 Connect America FNPRM* IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

137. With this Order, the Commission takes another momentous stride towards fully implementing a modernized universal service regime capable of meeting consumer demands for 21st century networks. The Commission finalizes the decisions necessary to proceed with the offer of support to price cap carriers in early 2015, thereby paving the way for the deployment of new broadband infrastructure to millions of unserved Americans. In the coming months, the Commission will turn its attention to finalizing the rules for the Phase II competitive bidding process that will occur in those states where the price cap carrier declines the offer of model-based support.

138. Throughout the universal service reform process, the Commission has sought to ensure that all consumers ''have access to . . . advanced telecommunications and information services'' and benefit from the historic technology transitions that are transforming our nation's communications services. The Order continues down that path. The Commission adopts several revisions to Connect America Phase II to account for changes in the marketplace since the *USF/ICC Transformation Order* was adopted. In particular, the Commission revises the minimum speed requirement that recipients of high-cost universal service must offer. The Commission finds that it is in the public interest to require recipients of high-cost support subject to broadband performance obligations to serve fixed locations to provide at least a minimum broadband speed of 10 Mbps downstream.

139. The Commission adopts targeted changes to the framework established for the offer of model-based support to price cap carriers. Specifically, the Commission makes an adjustment to the term of support, adopts more evenly spaced interim deployment milestones, and concludes that adjustments of up to five percent in the number of locations that must be served with corresponding support reductions are appropriate to ensure that deployment obligations recognize conditions in the real world. The Commission also forbears from the federal high-cost universal service obligation of price cap carriers to offer voice service in low-cost areas where they do not receive high-cost support, in areas served by an unsubsidized competitor, and in areas where the price cap carrier is replaced by another ETC.

140. In addition, the Commission addresses where Phase II support will be available, both for the offer of model-based support to price cap carriers and the subsequent Phase II competitive bidding process. First, the Commission will exclude from the offer of Phase II model-based support any census block served by a subsidized facilities-based terrestrial competitor that offers fixed residential voice and broadband services meeting or exceeding the 3 Mbps downstream/768 kbps upstream (3 Mbps/768 kbps) performance metrics, as determined by the Bureau upon completion of the Phase II challenge process. The Commission also reaffirms its decision to exclude from the offer of model-based support any census block served by an unsubsidized competitor that meets or exceeds the 3 Mbps/768 kbps performance metrics. Second, the Commission concludes that those high-cost blocks served by a subsidized carrier that are excluded from the offer of model-based support—including blocks with service meeting or exceeding the new 10 Mbps downstream/1 Mbps upstream (10/1 Mbps) speed requirement—will be eligible for support in the Phase II competitive bidding process. Third, the Commission concludes that any area served by an unsubsidized facilities-based terrestrial competitor that offers 10/1 Mbps will be ineligible for support in the Phase II competitive bidding process. Fourth, the Commission excludes from the offer of model-based support those areas that are the subject of category one bids that were not selected for the rural broadband experiments and where a losing bidder has filed specific information indicating that it wishes to remain in consideration for rural broadband experiment support.

141. In the *Connect America Fund FNPRM,* the Commission sought comment on a number of near-term and longer-term reforms for rate-of-return carriers, including developing and implementing a ''Connect America Fund'' for rate-of-return carriers. Although a number of parties have submitted proposals that may have promise, the Commission finds that further analysis and development of these proposals is necessary. The Commission will continue to explore the possibility of a voluntary path to model-based support for those rate-of-return carriers that choose to pursue it. The Commission also expects to continue to develop the record and act in the coming year on alternatives for

those who do not elect to receive model-based support.

142. In this Order, the Commission focuses on near-term reforms for rate-of-return carriers. Specifically, the Commission adopts a revised methodology for applying the cap on high-cost loop support to distribute that support on a more equitable basis. The Commission also addresses the proposals from the *April 2014 Connect America FNPRM* regarding the 100 percent overlap rule.

143. In the *USF/ICC Transformation Order,* the Commission established a ''uniform national framework for accountability'' that replaced the various data and certification filing deadlines that carriers previously were required to meet. In the Order, the Commission takes several steps to strengthen that framework, including codifying the reasonable comparability pricing requirement for broadband services, adjusting the reductions in support for late-filed annual ETC reports and certifications, and providing greater specificity regarding how the Commission will address non-compliance with the Commission's service obligations for voice and broadband.

144. The actions the Commission takes in this Order, combined with the implementation of the rural broadband experiments and the reforms the Commission implemented earlier in the year, will allow the Commission to continue to advance further down the path outlined in the *USF/ICC Transformation Order.* The Commission expects the Bureau to complete the Connect America Phase II challenge process and then make a final determination as to which census blocks will be eligible for the offer of model-based Phase II support by early 2015. That final determination will allow the Commission to extend the offers of Phase II model-based support to price cap carriers to fund the deployment of voice and broadband-capable infrastructure in their territories. The carriers will then have 120 days to consider the offer, and in those states where the price cap carrier declines the offer of support, the Commission will move forward with the Phase II competitive bidding process to determine support recipients.

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

145. There were no relevant comments filed that specifically addressed the rules and policies proposed in the *April 2014 Connect America FNPRM* IRFA. Nonetheless, the agency considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden for all small entities in order to reduce the economic impact of the rules enacted herein on such entities.

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

146. 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.

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

148. 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, 3144 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.

149. 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.

150. 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

151. 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.

152. 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.

153. 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.

154. 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.

155. 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.

156. 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.

157. 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.

158. 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.

159. 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.

160. 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.

161. 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.

162. 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.

163. 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.

164. 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.

165. 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.

166. 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.

167. 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.

168. 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.

169. 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.

170. 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.

171. 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.

172. 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.

173. 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).

174. 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.

175. 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.

176. 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.

177. 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.

178. 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.

179. 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.

180. Aviation and Marine Radio Services. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of the Commission's evaluations in this analysis, it 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.

181. 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.

182. 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.

183. 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.

184. 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.

185. 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.

186. 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.

187. 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.

188. 3650–3700 MHz band. In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, the Commission estimates that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

189. 24 GHz—Incumbent Licensees. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications ''firms'' does not track the number of ''licenses''. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is 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.

190. 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.

191. 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.

192. 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.

193. 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.

194. 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.

195. 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.

196. 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 the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

197. 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.

198. Internet Service Providers. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 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.

199. 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.

200. 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.

201. 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

202. In the Order, the Commission amends section 54.313(a) to include a new subsection 12 that requires recipients of high-cost and/or Connect America Fund support that are subject to broadband performance obligations to submit a broadband reasonable comparability certification with their annual section 54.313 report (FCC Form 481). In that certification, support recipients must certify that the pricing of the broadband offering they are relying upon to meet their broadband performance obligation is no more than the applicable benchmark as specified in a public notice issued by the Bureau, or is no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in the states or U.S. Territories where the high-cost support recipient receives support. For purposes of the latter certification, the Commission does not require that the high-cost support recipient offer a particular rate nationwide; rather it is sufficient if for each state or U.S. Territory where the high-cost support recipient receives funding, the high-cost support recipient or another provider offers the same rate for a comparable fixed wireline service in an urban area in that state or U.S. Territory. Recognizing that high-cost support recipients are permitted to offer a variety of broadband service offerings as long as they offer at least one standalone voice service plan and one service plan that provides broadband that meets the Commission's requirements, it only requires that they make the above certification for one of their broadband service offerings that satisfies all of the Commission's requirements, including that the service be offered throughout the high-cost support recipient's supported area, or for rate-of-return carriers, be made available upon reasonable request.

203. The Commission concludes that requiring high-cost support recipients to make this certification will ensure that the Commission can monitor their compliance with the section 254(b) principle that ''[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services that are reasonably comparable to rates charged for similar services in urban areas.''

204. The Commission requires that high-cost support recipients that elect to certify that their pricing of services in rural areas is no greater than their pricing in urban areas to rely upon the non-promotional prices charged for comparable *fixed wireline* services. This certification will be included in the FCC Form 481 to be filed in 2016, addressing performance during 2015, after the requirement has received Paperwork Reduction Act (PRA) approval from the Office of Management and Budget. All parties subject to a broadband public interest requirement that file this report in 2016 will be required to make the certification, and annually thereafter. Recipients of funding through the Phase II competitive bidding process must submit their first certification with the first section 54.313 annual report they are required to submit after support is authorized, and each year thereafter with their annual report.

205. In the Order, the Commission requires all price cap carriers accepting model-based support to include in the annual progress report that they submit with their section 54.313 annual reports a list of the geocoded locations to which they have newly deployed facilities capable of delivering broadband meeting the requisite requirements with Connect America support in the prior year. The list must identify which locations are located in a Phase II-funded block and which locations are located in extremely high-cost census blocks. The first list must be submitted with their July 2016 annual report, reflecting deployment status through the end of 2015. This first list should also include the geocoded locations that a price cap carrier had already built out to with service meeting the Commission's requirements before receiving Phase II support. The Commission will also collect from price cap carriers accepting model-based support in their annual section 54.313 reports the total amount of Connect America Phase II support, if any, they used for capital expenditures in the previous calendar year. In the Order, the Commission finds that it is in the public interest to require price cap carriers accepting model-based support to provide this data on an annual basis.

206. In the Order, the Commission also takes a necessary step to ensure the most efficient use of high-cost support by reducing on a pro-rata daily basis the support of any ETC that misses certification or data submission deadlines. The Commission recognizes that despite its best efforts, an ETC may miss a deadline due to an administrative oversight but still file within a few days of the deadline, and therefore implement a one-time grace period of three days. A one-time grace period of three days achieves an appropriate balance between requiring strict compliance with our rules and providing an opportunity for ETCs that may be first time filers or that make an uncharacteristic mistake to rectify quickly an error.

207. Given our decision to modify the support reductions for late filings, the Order announces that the Commission otherwise requires strict adherence to filing deadlines. The Commission will cease the practice of finding there is good cause for a waiver of high-cost filing deadlines in circumstances where an ETC has missed the deadline due to an administrative or clerical oversight and where that ETC has promised to revise it procedures to ensure future compliance.

208. Lastly, the Commission adopts specific measures in the event that certain ETCs do not meet their high-cost obligations for fixed services. Specifically, in the Order, the Commission adopts a support reduction regime for ETCs that fail to meet their

deployment obligations subsequent to accepting Connect America Phase II support. For price cap ETCs the Commission adopts a framework for support reductions that are calibrated to the extent of an ETC's non-compliance with these deployment milestones. Because rate-of-return carriers are not at this time required to build out to a certain number of locations, the Commission concludes it is appropriate to handle matters regarding their potential non-compliance on a case-by-case basis. Additionally, the Commission concludes that non-compliance of the reasonable comparability requirement is best dealt with on a case-by-case basis for all ETCs that must certify that the rates they offer are reasonably comparable. The Commission finds that it would not be appropriate to apply a uniform support reduction to all ETCs that fail to offer reasonably comparable prices.

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

209. 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.

210. The rules that the Commission adopts in the Order provide flexibility in meeting the public interest obligations that are a condition of the receipt of high-cost support for those price cap carriers accepting the offer of model-based support, the Commission adopts targeted adjustments to the framework established by the Commission in the *USF/ICC Transformation Order* to provide carriers flexibility. Specifically, the Commission adopts evenly spaced annual interim milestones for price cap carriers to offer at least 10/1 Mbps to an additional 20 percent of the requisite number of high-cost locations each year. The Commission also modifies the build-out requirements established for price cap carriers accepting model-based support to create evenly spaced annual interim milestones. The Commission requires price cap carriers accepting model-based support to complete construction to 40 percent of the requisite number of locations in a state by the end of calendar year 2017, instead of 85 percent by the mid-2018, which is a more realistic expectation, given that carriers will not accept the offer of support until mid-year in 2015 and then will be developing detailed network construction plans. The Commission also will permit a modest adjustment to the number of model-determined funded locations in a given state with a corresponding reduction in support. The Commission expects the flexibility in deployment for price-cap carriers accepting model-based Phase II support will minimize the economic impact on small entities.

211. Additionally, as the Commission did in 2011, it continues to offer a more flexible approach to deploying broadband for rate-of-return carriers. Rate-of-return carriers are only required to meet the higher speed if the request for service is reasonable—meaning that the carrier could cost effectively extend voice and broadband-capable network to that location, given its anticipated end-user revenues and other sources of support. Rate-of-return carriers will be required to offer at least 10/1 Mbps broadband service upon reasonable request, consistent with past guidance regarding our expectations regarding the reasonable request standard. If a request for 10/1 Mbps is not reasonable in a given circumstance, but offering 4/1 Mbps is reasonable, the Commission would expect a rate-of-return carrier to offer 4/1 Mbps.

212. The Commission also concludes, based on our consideration of the relevant statutory framework and the record before us, that it is in the public interest to forbear from enforcing a federal high-cost requirement that price cap carriers offer voice telephony service throughout their service areas pursuant to section 214(e)(1)(A) of the Act in three types of geographic areas: (1) Census blocks that are determined to be low-cost, (2) census blocks served by an unsubsidized competitor, and (3) census blocks where a subsidized competitor—*i.e.,* another ETC—is receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations. The Commission finds that limited forbearance from section 214(e)(1)(A) will promote competitive market conditions by giving affected carriers the flexibility to compete on a more equal regulatory footing in the voice telephony market with competitors that already have the opportunity to make decisions about how best to offer voice telephone service.

213. For those price cap carriers serving non-contiguous areas that elect to continue receiving frozen support amounts in lieu of the offer of model-based support, the Commission recognizes that such carriers face unique circumstances in the areas they serve and experience different challenges in deploying broadband service in those areas. Consequently, a ''one-size-fits-all'' approach would leave some of these carriers potentially unable to fulfill their service obligations. The Commission is confident that tailoring specific service obligations to the individual circumstances of each non-contiguous carrier that elects to continue receiving frozen support will best ensure that Connect America funding is put to the best possible use.

214. The Commission institutes a broadband reasonably comparable rate certification on all ETCs that receive ongoing high-cost support in areas served by price cap carriers and rate-of-return carriers. Although the Commission notes that filing deadlines will be strictly enforced, it adjusts the reduction of support for all ETCs, including small entities, and provides a grace period to ensure it is not unduly punitive given the nature of non-compliance.

215. The Commission also adopts specific measures that the Bureau will take in the event that certain ETCs do not meet their high-cost support deployment obligations for fixed services or does not offer rates that are reasonably comparable to rates offered in urban areas. The reductions represent a detailed calculus to ensure that no carrier is penalized inappropriately for its non-compliance. As such, price cap ETC support reductions scale with the extent of an ETC's non-compliance, and create incentives for ETCs to come into compliance as soon as possible. For rate-of-return ETCs, given that their obligation is to provide voice and broadband service upon reasonable request and the Commission does not have sufficient experience to create specific deployment milestones, the Commission finds it appropriate to handle matters regarding their potential non-compliance on a case-by-case basis. Additionally, determined that non-compliance with the reasonable comparability requirement is best dealt with on a case-by-case basis for all ETCs because of the variety of factors that go into determining whether prices are reasonably comparable. Accordingly, the Commission determined that it would not be appropriate to apply a uniform support reduction to all ETCs that fail to offer reasonably comparable prices.

6. Report to Congress

216. The Commission will send a copy of the Order, 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, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRA (or summaries thereof) will also be published in the **Federal Register**.

7. Additional Information

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

218. *Additional Information.* For additional information on this proceeding, contact Alexander Minard of the Wireline Competition Bureau, Telecommunications Access Policy Division, *Alexander.Minard@fcc.gov,* (202) 418–7400, or Suzanne Yelen of the Wireline Competition Bureau, Industry Analysis and Technology Division, *Suzanne.Yelen@fcc.gov,* (202) 418–7400.

VIII. Ordering Clauses

219. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 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, 160, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.427, and 1.429, that this Report and Order, IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval, and except as otherwise provided below. It is the Commission's intention in adopting these rules that if any of the rules that it retains, 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.

220. IT IS FURTHER ORDERED that the requirement for non-contiguous carriers that wish to elect Phase II frozen support in lieu of model-based support discussed in paragraph 39 and the requirement that bidders in the rural broadband experiments that wish to remain in consideration for rural broadband experiment support discussed in paragraph 71 are effective upon release.

221. IT IS FURTHER ORDERED that for the reasons stated in paragraph 71 the Commission finds good cause exists to make excluding from the offer of model-based support any census block included in a non-winning rural broadband experiment application submitted in funding category one discussed in paragraph 72 effective upon **Federal Register** publication.

222. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 CFR part 54, IS AMENDED as set forth below, and such rule amendments SHALL BE EFFECTIVE February 26, 2015, except for §§ 54.313(a)(e) and 54.320 which contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

223. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 160, 214 and 254, the petition for forbearance filed by the United States Telecom Association on October 6, 2014, IS GRANTED IN PART to the extent described herein.

224. 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 August 8, 2014, IS DISMISSED to the extent described herein.

225. 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 National Exchange Carrier Association, Inc., et al. on August 8, 2014, IS DISMISSED to the extent described herein.

226. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

227. 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, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

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

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

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

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 is revised to read as follows:

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

■ 2. Amend § 54.5 by adding the following term and definition ''Qualifying competitor'' in alphabetical order to read as follows:

§ 54.5 Terms and definitions.

* * * * *

Qualifying competitor. A ''qualifying competitor'' is a facilities-based terrestrial provider of residential fixed voice and broadband service access meeting or exceeding 3 Mbps downstream and 768 kbps upstream.

* * * * *

■ 3. Amend § 54.201 by revising paragraph (d) introductory text and adding paragraph (d)(3) to read as follows:

§ 54.201 Definitions of eligible telecommunications carriers, generally.

* * * * *

(d) A common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and, except as described in paragraph (d)(3) of this section, shall throughout the service area for which the designation is received:

* * * * *

(3) *Exception.* Price cap carriers that serve census blocks that are identified by the forward-looking cost model as low-cost, census blocks that are served by an unsubsidized competitor as defined in § 54.5 meeting the requisite public interest obligations specified in § 54.309, or census blocks where a subsidized competitor is receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations, are not required to comply with paragraphs (d)(1) and (2) of this section in these specific geographic areas. Such price cap carriers remain obligated to maintain existing voice telephony service in these specific geographic areas unless and until a discontinuance is granted pursuant to § 63.71 of this chapter.

* * * * *

■ 4. Add § 54.308 to read as follows:

§ 54.308 Broadband public interest obligations for recipients of high-cost support.

(a) Rate-of-return carrier recipients of high-cost support are required to offer broadband service at actual speeds of at least 10 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, upon reasonable request. If a request for broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream is unreasonable, and offering broadband service at actual speeds of at least 4 Mbps downstream/1 Mbps upstream is reasonable, rate-of-return recipients of high-cost support are required to offer broadband service at actual speeds of at least 4 Mbps downstream/1 Mbps upstream. For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the applicable benchmark to be announced annually by public notice issued by the Wireline Competition Bureau, or no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in the state or U.S. Territory where the eligible telecommunications carrier receives support.

(b) [Reserved]

■ 5. Revise § 54.309 to read as follows:

§ 54.309 Connect America Fund Phase II Public Interest Obligations.

(a) Recipients of Connect America Phase II model-based support are required to offer broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas. For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the applicable benchmark to be announced annually by public notice issued by the Wireline Competition Bureau, or no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in the state or U.S. Territory where the eligible telecommunications carrier receives support.

(b) [Reserved]

■ 6. Amend § 54.310 by revising paragraphs (b) and (c) to read as follows:

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

* * * * *

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

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

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

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

* * * * *

■ 7. Amend § 54.313 by adding paragraph (a)(12) and revising paragraphs (e) and (j) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

(a) * * *

(12) A certification that the pricing of a service that meets the Commission's broadband public interest obligations is no more than the applicable benchmark to be announced annually in a public notice issued by the Wireline Competition Bureau, or is no more than the non-promotional price charged for a comparable fixed wireline service in urban areas in the states or U.S. Territories where the eligible telecommunications carrier receives support.

* * * * *

(e) In addition to the information and certifications in paragraph (a) of this section, any price cap carrier that elects to receive Connect America Phase II model-based support shall provide:

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

(2) On July 1, 2017 and every year thereafter ending July 1, 2021, a progress report on the company's service quality improvement plan, including the following information:

(i) A certification that it is meeting the interim deployment milestones as set forth;

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

(iii) A list of the geocoded locations to which the eligible telecommunications carrier newly deployed facilities capable of delivering broadband meeting the § 54.309 public interest obligations with Connect America support in the prior year. The final progress report filed on July 1, 2021 must include the total number and geocodes of all the supported locations that a price cap carrier has built out to with service meeting the § 54.309 public interest obligations; and

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

(3) On July 1, 2018, a certification that the recipient offered broadband meeting the requisite public interest obligations specified in § 54.309 to 40% of its supported locations in the state on December 31, 2017.

(4) On July 1, 2019, a certification that the recipient offered broadband meeting the requisite public interest obligations specified in § 54.309 to 60% of its supported locations in the state on December 31, 2018.

(5) On July 1, 2020, a certification that the recipient offered broadband meeting the requisite public interest obligations specified in § 54.309 to 80% of its supported locations in the state on December 31, 2019.

(6) On July 1, 2021, a certification that the recipient offered broadband meeting the requisite public interest obligations specified in § 54.309 to 100% of its supported locations in the state on December 31, 2020.

* * * * *

(j) *Filing deadlines.* (1) In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this section annually by July 1 of each year. Eligible telecommunications carriers that file their reports after the July 1 deadline shall receive a reduction in support pursuant to the following schedule:

(i) An eligible telecommunications carrier that files after the July 1 deadline, but by July 8, will have its support reduced in an amount equivalent to seven days in support;

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

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

* * * * *

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

§ 54.314 Certification of support for eligible telecommunications carriers.

* * * * *

(d) *Filing deadlines.* (1) In order for an eligible telecommunications carrier to receive federal high-cost support, the state or the eligible telecommunications carrier, if not subject to the jurisdiction of a state, must file an annual certification, as described in paragraph (c) of this section, with both the Administrator and the Commission by October 1 of each year. If a state or eligible telecommunications carrier files the annual certification after the October 1 deadline, the carrier subject to the certification shall receive a reduction in its support pursuant to the following schedule:

(i) An eligible telecommunications carrier subject to certifications filed after the October 1 deadline, but by October 8, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier subject to certifications filed on or after October 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction.

(2) *Grace period.* If an eligible telecommunications carrier or state submits the annual certification required by this section after October 1 but before October 5, the eligible telecommunications carrier subject to the certification will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to § 54.313(a)(8) have not missed the October 1 deadline in any prior year.

■ 9. Revise § 54.319 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 rate-of-return 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 10 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 high-cost support in the immediately preceding calendar year or $3000 times the number of reported lines as of year-end for the immediately preceding calendar year;

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

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

(c) The Wireline Competition Bureau shall update its analysis of where there is a 100 percent overlap on a biennial basis.

■ 10. Amend § 54.320 by adding paragraph (d) to read as follows:

§ 54.320 Compliance and recordkeeping for the high-cost program.

* * * * *

(d) Eligible telecommunications carriers subject to defined build-out milestones must notify the Commission and USAC, and the relevant state, U.S. Territory, or Tribal government, if applicable, within 10 business days after the applicable deadline if they have failed to meet a build-out milestone.

(1) *Interim build-out milestones.* Upon notification that an eligible telecommunications carrier has defaulted on an interim build-out milestone after it has begun receiving high-cost support, the Wireline Competition Bureau will issue a letter evidencing the default. The issuance of this letter shall initiate reporting obligations and withholding of a percentage of the eligible telecommunication carrier's total monthly high-cost support, if applicable, starting the month following the issuance of the letter:

(i) *Tier 1.* If an eligible telecommunications carrier has a compliance gap of at least five percent but less than 15 percent of the number of locations that the eligible telecommunications carrier is required to have built out to by the interim milestone, the Wireline Competition Bureau will issue a letter to that effect. Starting three months after the issuance of this letter, the eligible telecommunications carrier will be required to file a report every three months identifying the geocoded locations to which the eligible telecommunications carrier has newly deployed facilities capable of delivering broadband meeting the requisite requirements with Connect America support in the previous quarter. Eligible telecommunications carriers that do not file these quarterly reports on time will be subject to support reductions as specified in § 54.313(j). The eligible telecommunications carrier must continue to file quarterly reports until the eligible telecommunications carrier reports that it has reduced the compliance gap to less than five percent of the required number of locations for that interim milestone and the Wireline Competition Bureau issues a letter to that effect.

(ii) *Tier 2.* If an eligible telecommunications carrier has a compliance gap of at least 15 percent but less than 25 percent of the number of locations that the eligible telecommunications carrier is required to have built out to by the interim milestone, USAC will withhold 15 percent of the eligible telecommunications carrier's monthly support for that state and the eligible telecommunications carrier will be required to file quarterly reports. Once the eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 15 percent of the required number of locations for that interim milestone for that state, the Wireline Competition Bureau will issue a letter to that effect, USAC will stop withholding support, and the eligible telecommunications carrier will receive all of the support that had been withheld. The eligible telecommunications carrier will then move to Tier 1 status.

(iii) *Tier 3.* If an eligible telecommunications carrier has a compliance gap of at least 25 percent but less than 50 percent of the number of locations that the eligible telecommunications carrier is required to have built out to by the interim milestone, USAC will withhold 25 percent of the eligible telecommunications carrier's monthly support for that state and the eligible telecommunications carrier will be required to file quarterly reports. Once the eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 25 percent of the required number of locations for that interim milestone for that state, the Wireline Competition Bureau will issue a letter to that effect, the eligible telecommunications carrier will move to Tier 2 status.

(iv) *Tier 4.* If an eligible telecommunications carrier has a compliance gap of 50 percent or more of the number of locations that the eligible telecommunications carrier is required to have built out to by the interim milestone:

(A) USAC will withhold 50 percent of the eligible telecommunications carrier's monthly support for that state, and the eligible telecommunications carrier will be required to file quarterly reports. As with the other tiers, as the eligible telecommunications carrier reports that it has lessened the extent of its non-compliance, and the Wireline Competition Bureau issues a letter to that effect, it will move down the tiers until it reaches Tier 1 (or no longer is out of compliance with the relevant interim milestone).

(B) If after having 50 percent of its support withheld for six months the eligible telecommunications carrier has not reported that it is eligible for Tier 3 status (or one of the other lower tiers), USAC will withhold 100 percent of the eligible telecommunications carrier's monthly support and will commence a recovery action for a percentage of support that is equal to the eligible telecommunications carrier's compliance gap plus 10 percent of the ETC's support that has been disbursed to that date.

(v) If at any point during the support term, the eligible telecommunications carrier reports that it is eligible for Tier 1 status, it will have its support fully restored, USAC will repay any funds that were recovered or withheld, and it will move to Tier 1 status.

(2) *Final build-out milestone.* Upon notification that the eligible telecommunications carrier has not met a final build-out milestone, the eligible telecommunications carrier will have twelve months from the date of the final build-out milestone deadline to come into full compliance with this milestone. If the eligible telecommunications carrier does not report that it has come into full compliance with this milestone within twelve months, the Wireline Competition Bureau will issue a letter to this effect. USAC will then recover the percentage of support that is equal to 1.89 times the average amount of support per location received in the state over the six-year term for the relevant number of locations plus 10 percent of the eligible telecommunications carrier's total Phase II support over the six-year term for that state.

(3) *Compliance reviews.* If subsequent to the eligible telecommunications carrier's support term, USAC determines in the course of a compliance review that the eligible telecommunications carrier does not have sufficient evidence to demonstrate that it has built out to all of the locations required by the final build-out milestone, USAC shall recover a percentage of support from the eligible telecommunications carrier as specified in paragraph (d)(2) of this section.

■ 11. Amend § 54.1309 by revising paragraphs (a) introductory text, (c) introductory text, and (c)(2) and adding paragraph (d) to read as follows:

§ 54.1309 National and study area average unseparated loop costs.

(a) *National average unseparated loop cost per working loop.* Except as provided in paragraphs (c) and (d) 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. Until June 30, 2015 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 is frozen at $240.00.

* * * * *

(c) Until June 30, 2015, the national average unseparated loop Cost per working loop shall be the greater of:

* * * * *

(2) An amount calculated to produce the maximum rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment allowable pursuant to § 54.1302(a).

(d) Beginning July 1, 2015, the national average unseparated loop cost per working loop shall be frozen at the national average unseparated loop cost per working loop as recalculated by the National Exchange Carrier Association to reflect the March 2015 update filing.

■ 12. Revise § 54.1310 to read as follows:

§ 54.1310 Expense adjustment.

(a) Until June 30, 2015, 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 (a)(1) and (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.

(b) Beginning July 1, 2015, the expense adjustment for each study area calculated pursuant to paragraph (a) of this section will be adjusted as follows:

(1) If the aggregate expense adjustments for all study areas exceed the maximum rural incumbent local exchange carrier portion of nationwide loop cost expense adjustment allowable pursuant to § 54.1302(a) (the HCLS cap), then each study area's expense adjustment will be reduced by multiplying it by the ratio of the HCLS cap to the aggregate expense adjustments for all study areas.

(2) If the aggregate expense adjustments for all study areas are less than the HCLS cap set pursuant to § 54.1302(a), then the expense adjustments for all study areas pursuant to paragraph (a) of this section shall be recalculated using a cost per loop calculated to produce an aggregate amount equal to the HCLS cap in place of the national average cost per loop.

(c) The expense adjustment calculated pursuant to paragraphs (a) and (b) of this section 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 paragraphs (a) and (b) of this section 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 paragraphs (a) and (b) of this section for the following year.

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