

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 1 and 54**

[GN Docket No. 20–32; FCC 20–150; FRS 17211]

**Establishing a 5G Fund for Rural America****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission or FCC) acts on its proposal to retarget universal service funding for mobile broadband and voice in the high-cost program to support the deployment of 5G services by establishing the 5G Fund for Rural America as a replacement for the Mobility Fund Phase II and adopting the basic framework for implementing the 5G Fund.

**DATES:** Effective December 28, 2020, except for §§ 1.21001(b)(1), 1.21001(b)(2), 1.21001(b)(3), 1.21001(b)(4), 1.21001(b)(5), 1.21001(b)(6), 1.21001(b)(7), 1.21001(b)(8), 1.21001(b)(9), 1.21001(b)(10), 1.21001(b)(11), 1.21001(b)(12), 1.21001(b)(13), 1.21001(e), 1.21002(e), 1.21002(f), 54.313(n), 54.322(b), 54.322(c)(4), 54.322(g), 54.322(h), 54.322(i), 54.322(j), 54.1014(a), 54.1014(b)(2), 54.1016(b), 54.1018(a), 54.1018(b), 54.1018(c), 54.1019(a)(1), 54.1019(a)(2), 54.1019(a)(3), 54.1019(a)(4), 54.1020(a), 54.1020(b), 54.1020(c)(1), and 54.1020(c)(2), which are delayed and for which we will publish a document in the **Federal Register** announcing the effective date.

**ADDRESSES:** Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Valerie M. Barrish, Office of Economics and Analytics, Auctions Division, (202) 418–0660 or [Valerie.Barrish@fcc.gov](mailto:Valerie.Barrish@fcc.gov). For information regarding the PRA information collection requirements contained in this PRA, contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s *5G Fund Report and Order* in GN Docket No. 20–32, FCC 20–150, adopted on October 27, 2020 and released on October 29, 2020. The full text of this document is available on the Commission’s website at <https://www.fcc.gov/document/fcc-establishes-5g-fund-rural-america-0>. To

request materials in accessible formats for people with disabilities, send an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

**Synopsis****I. Introduction**

1. Our nation is at the dawn of the 5G era of wireless connectivity. Recently, nationwide mobile wireless providers have deployed 5G networks covering more than 200 million Americans. And today we ensure that all Americans benefit from the country’s 5G future, no matter where they live. We act on our proposal to replace the Mobility Fund Phase II with the 5G Fund for Rural America and make certain that our limited Universal Service Fund dollars are directed to support the deployment of state-of-the-art wireless networks that are more responsive, more secure, and faster than today’s 4G LTE networks. Moreover, by establishing the 5G Fund, we further secure our nation’s leadership in 5G, which will promote technological innovation in the United States, enhance our economic prosperity and protect our national security.

2. Many urban and suburban areas of our nation are already benefiting from the evolution to 5G networks. Nationwide providers have begun deploying 5G service in more populated parts of our country, with even more widely-available 5G service expected in the near future. For example, T-Mobile has made enforceable commitments to the Commission as part of its acquisition of Sprint to deploy 5G service covering 85% of the population in rural areas and 97% of all Americans within three years, with coverage rising to 90% of the population in rural areas and 99% nationwide within six years. Moreover, it committed to deploy 5G service meeting minimum download speed performance benchmarks of at least 50 Mbps available to 90% of the rural population, with two-thirds of rural Americans able to receive download speeds of at least 100 Mbps. Late last year, T-Mobile announced that it switched on its 5G network across the nation using low-band spectrum.

3. 5G networks will improve the lives of Americans living and working in rural areas by providing much needed access to telehealth, telework, remote learning opportunities, precision agriculture, and other services and applications. We anticipate that the deployment of 5G-capable networks in rural areas will drive job creation and have a powerful impact on the nation’s economy. The framework for the 5G

Fund that we adopt today will bring technological innovation and economic benefits to the parts of our country that need them the most. We embark on this new 5G era recognizing that the next decade and beyond hold significant promise for rural America, and we envision that the 5G Fund will be an important catalyst to propel the nationwide deployment of networks capable of closing the digital divide, once and for all.

4. The 5G Fund for Rural America will use multi-round reverse auctions to distribute up to \$9 billion, in two phases, bringing voice and 5G broadband service to those rural areas of our country that, absent subsidies, would be unlikely to see the deployment of 5G-capable networks. Based on lessons learned from the Mobility Fund, and overwhelming record support, we adopt our proposal to determine which areas will be eligible for 5G Fund support through improved mobile broadband coverage data that will be gathered through the Commission’s Digital Opportunity Data Collection proceeding. Although this approach will not be the fastest possible path to the Phase I auction, it will allow us to identify with greater precision those areas of the country where support is most needed and will be spent most efficiently.

**II. Background**

5. Since 2011, the Commission has taken numerous steps to comprehensively reform the universal service program to focus our limited funds on ensuring access to fixed and mobile broadband for unserved Americans living in rural, insular, and high cost areas of the country. As part of these efforts, in the *USF/ICC Transformation Order*, 76 FR 73830, Nov. 29, 2011, the Commission froze high-cost support being provided to competitive eligible telecommunications carriers (ETCs), commenced a process to phase down this high-cost support over five years, and established a two-phased Mobility Fund to ensure that universal service support for mobile services would be targeted in a cost-effective manner. The Commission determined it would pause the phase down of the frozen “legacy” high-cost support for competitive ETCs to provide mobile wireless service at the 60% frozen support level in the event that the second phase of the Mobility Fund was not operational by July 1, 2014.<sup>1</sup> However, the Commission

<sup>1</sup> We use the term “legacy high-cost support” and “legacy support” herein to refer specifically to the high-cost support that was frozen in the *USF/ICC*

planned to adopt additional mobile broadband public interest obligations as a condition for the continued receipt of such support if the legacy support phase down was paused at any point.

6. In Mobility Fund Phase I, the Commission awarded almost \$300 million, along with an additional \$50 million for Tribal Mobility Fund Phase I, in one-time universal service support through two reverse auctions. Before adopting rules for Phase II of the Mobility Fund, Commission staff conducted a review of mobile wireless providers' FCC Form 477 submissions to identify the specific areas of the country that were lacking 4G LTE coverage as well as to examine the efficiency of the distribution of legacy high-cost support. Staff analysis revealed that almost 75% of legacy high-cost support was being distributed to carriers in areas where 4G LTE service was already being provided by an unsubsidized provider. Furthermore, according to the report, only approximately 20% of the land area of the United States outside of Alaska either lacked 4G LTE service entirely or had 4G LTE service provided only by a subsidized carrier. Mobile wireless carriers were therefore receiving approximately \$300 million or more each year in subsidies that were unnecessary to ensure the continued availability of 4G LTE service in those areas.

7. Recognizing the need to redirect universal service funds to target areas of the country that were unlikely to receive 4G LTE service without subsidies, in its 2017 *Mobility Fund Phase II Report and Order*, 82 FR 15422, Mar. 28, 2017, the Commission adopted rules to move forward with Mobility Fund Phase II, and established the framework for a challenge process to resolve disputes about areas that were found to be presumptively ineligible for support. Mobile wireless providers were required to submit 4G LTE coverage maps by January 4, 2018, to be followed by a process in which parties could challenge the submitted coverage maps. In December 2018, after questions over the accuracy of the submitted coverage maps arose, the Commission launched an investigation into the 4G LTE coverage data submitted by some providers and suspended the response phase of the Mobility Fund Phase II challenge process pending the investigation.

8. On December 4, 2019, the Rural Broadband Auctions Task Force released a staff report on the results of

that investigation. Staff determined that the Mobility Fund Phase II coverage maps submitted by certain carriers overstated actual coverage and did not reflect on-the-ground performance in many instances. The staff report recommended that the Commission terminate the challenge process, concluding that the coverage maps were not a sufficiently reliable or accurate basis upon which to complete the challenge process as designed.

9. On April 23, 2020, we adopted the *5G Fund NPRM*, 85 FR 31616, May 26, 2020, which proposed to terminate the planned Mobility Fund Phase II auction and replace it with a 5G Fund for Rural America, using multi-round reverse auctions to distribute up to \$9 billion to bring voice and 5G broadband service to rural areas of our country that are unlikely to see unsubsidized deployment of 5G-capable networks. We further proposed to modernize frozen mobile legacy support in order to ensure that advanced networks are deployed in areas served by providers continuing to receive legacy support.

### III. Discussion

10. To meet our obligation of ensuring that all Americans have access to services reasonably comparable to those in urban areas and to achieve our goal of ensuring that all Americans experience the benefits of next-generation 5G technology, we now adopt a path forward for the 5G Fund for Rural America. The rapid pace of deployment of 5G networks in many parts of the country, combined with T-Mobile's commitment to cover 90% of rural Americans with its 5G network, supports our conclusion that it is no longer the time to begin a 10-year support program to deploy 4G LTE networks. We adopt our proposals to replace Mobility Fund Phase II with the 5G Fund for Rural America and to distribute up to \$9 billion in universal service support to bring mobile voice and 5G broadband service to rural areas of our country. In adopting our proposal to replace Mobility Fund Phase II with the 5G Fund, we terminate the Mobility Fund Phase II challenge process and dismiss as moot several petitions for waiver in that proceeding which are unnecessary to address given the termination of the Mobility Fund Phase II challenge process. We also adopt our proposals to impose 5G public interest obligations and performance requirements on carriers continuing to receive legacy mobile high-cost support to help ensure that the areas they serve enjoy the benefits that 5G promises. Our actions here will ensure that rural communities can connect to the digital

economy and benefit from the opportunities for enhanced education, employment, healthcare, and civic and social engagement that access to advanced mobile broadband communications can provide.

#### A. *Collecting New Mobile Coverage Data Before Funding 5G Rural America*

11. We adopt our proposal, known in the *5G Fund NPRM* as Option B, to award 5G Fund support based on new, more precise, verified mobile coverage data collected through the Commission's Digital Opportunity Data Collection. While the Commission continues to lack a congressional appropriation necessary to implement the new data collection, we believe—and the record supports our view—that the risk of any delay in holding an auction is outweighed by the ability to target auction support with greater precision. That risk is further mitigated by the public interest obligations we adopt for competitive ETCs that receive legacy high-cost support for mobile wireless services.

12. In proposing to establish a 5G Fund for Rural America, we sought comment on two different options to determine the areas that would be eligible for support in the Phase I auction: One would be based upon existing governmental data on the ruralness of an area and allow us to proceed more quickly to the auction, and the other would be based upon new mobile coverage data but would, by necessity, delay the start of the auction. These two approaches represented a fundamental tradeoff between more precisely targeting support to areas that need it and the time required to collect, process, and analyze the data necessary for such precision. In the *5G Fund NPRM*, we estimated that basing 5G Fund eligibility on the new collection of mobile coverage data would add 18–24 months to the process of preparing for an auction, even if Congress were to appropriate funds sufficient to implement the statute, which it still has not done.

13. Most commenters urge us to collect new mobile coverage data prior to holding the 5G Fund Phase I auction, with some citing in particular the findings of the *Mobility Fund Phase II Investigation Staff Report*. We agree that requiring new mobile coverage data will result in a better understanding of the unserved areas most in need of our limited universal service funds than existing data.

14. We disagree with those comments arguing that the Broadband Deployment Accuracy and Technological Availability (Broadband DATA) Act

*Transformation Order* and is disbursed to competitive ETCs to provide mobile wireless service.

expressly prohibits the award of 5G Fund support until after collecting new mobile coverage data, precluding Option A. The Broadband DATA Act requires the Commission to collect mobile coverage data generated using standardized parameters and, from these data, release mobile broadband deployment maps. “[A]fter creating the maps[,]” the statute requires the Commission to use those maps when awarding new funding to deploy broadband service. We agree with RWA that the language of the Broadband DATA Act does not prevent us from awarding support prior to creating the mobile broadband deployment maps in the Digital Opportunity Data Collection. As RWA notes, the plain wording of the statute is clear that the Commission “is required to use new maps to award funding, but only ‘after’ such maps are created.” We therefore conclude that the statute does not yet impose any limitations on the data we may use to award new funding.

15. Several commenters support moving forward quickly with the 5G Fund Phase I auction based on existing U.S. Census Bureau and U.S. Department of Agriculture data under our Option A proposal, or some variant of it. We recognize the pressing need to bring 5G to unserved rural areas; however we agree with the concerns raised by some commenters that reliance upon 10-year-old U.S. Department of Agriculture data as a proxy for rurality and to award funding that will continue for an additional 10 years risks both directing support to areas where support is not needed and also missing areas where support is needed. Option B will allow us to more efficiently allocate 5G Fund support by identifying areas that are already served by an unsubsidized provider and thus should not be ineligible for support. Establishing eligibility under Option A using a degree of rurality would not have allowed us target funds in this manner. We conclude, therefore, that on balance it is not in the public interest to follow the Option A approach. We also decline to adopt the 5G Fund Supporters’ proposal for an “Initial Tranche” of support targeted at particular historically disadvantaged communities that this commenter contends should be given priority because of similar concerns about the accuracy of available data. We will take all appropriate steps to implement Option B as quickly as we can without jeopardizing the quality or accuracy of the new data we will collect.

16. While urging us to first collect new mobile coverage data, many commenters supporting Option B make

various suggestions for expediting the Phase I auction. We agree on the need to move quickly toward an auction and will take steps to minimize the delay caused by our decision. However, we disagree with suggestions that we should collect new mobile coverage data prior to implementation of the Digital Opportunity Data Collection. We are unconvinced that those approaches would provide reliable coverage data in a shorter timeframe. In particular, while carriers may have experience generating and submitting mobile coverage data as part of their required FCC Form 477 filings, or as part of the one-time collection of 4G LTE coverage data for Mobility Fund Phase II, we would need to develop the processes and IT systems necessary to allow for the submission and verification of mobile coverage data and allow for a public-facing challenge process regardless of whether or not the collection is implemented through the Digital Opportunity Data Collection. Although we have recently adopted new requirements for the Digital Opportunity Data Collection stemming from the Broadband DATA Act, the Commission still lacks funding to implement the statute’s requirements. Implementation of any alternative data collection and public challenge process would run into the same logistical and funding hurdles, and staff estimates it would take at least as long to complete. Such arguments also overlook the fact that we originally tasked the Universal Service Administrative Company (USAC) with implementation of the Digital Opportunity Data Collection, work which came to a halt when Congress expressly prohibited the Commission from delegating responsibility for these tasks to USAC in the Broadband DATA Act.

#### *B. Determining Eligible Areas Using Updated Mobile Coverage Data*

17. We will determine the areas eligible for support in the 5G Fund Phase I auction based upon where new mobile coverage data submitted in the Digital Opportunity Data Collection show a lack of unsubsidized 4G LTE and 5G broadband service by at least one service provider, broadly in line with our Option B proposal. In determining which areas are subsidized for this purpose, we will use Geographic Information Systems (GIS) data from USAC delineating the boundaries of the subsidized service areas of each competitive ETC receiving mobile legacy high-cost support. While most providers are still in the early stages of deploying their 5G networks in rural areas, we expect that a new collection of mobile coverage data in 2021 or 2022

will show significant 5G broadband deployments. Because these areas will have already seen deployment of 5G without subsidy, we will exclude such areas from eligibility consistent with our longstanding policy of avoiding overbuilding competitive networks. Moreover, we will also exclude from eligibility those areas where new coverage data gathered in the Digital Opportunity Data Collection show unsubsidized 4G LTE networks have been deployed. Given the rapid state of competitive 5G deployment in the marketplace, combined with enforceable merger commitments from T-Mobile, we believe that subsidizing 5G deployments where unsubsidized 4G LTE networks have been deployed is unnecessary and risks preempting reasonably near-term 5G deployments we could expect in those areas.

18. Commenters that support Option B also generally support our proposal to define as eligible those areas where new coverage data show a lack of 4G LTE broadband service. However, one commenter suggests also making eligible under Option B those areas that historically lacked 4G LTE service. Given the potential for allocating inefficient support to areas more likely to see competitive 5G deployments and concerns over the accuracy of historical FCC Form 477 and Mobility Fund Phase II 4G LTE mobile coverage data, we are unconvinced that there is a meaningful basis upon which to allocate support to some areas otherwise served by unsubsidized 4G LTE networks. We likewise decline to prioritize any areas based upon historical 3G and 4G LTE coverage data. While we proposed a similar approach in the context of Option A, we conclude that such prioritization is unnecessary in light of our decision to base eligibility on more precise Digital Opportunity Data Collection maps. Moreover, our concerns with developing a meaningful way to incorporate less reliable historical data sources into our eligibility determinations are equally applicable. There is likely significant overlap between areas that have historically lacked 3G or 4G LTE service and the areas that currently lack unsubsidized 4G LTE service, more than 10 years after the technology was first deployed. Moreover, we believe that use of an adjustment factor that considers terrain and potential business case will provide adequate prioritization to ensure historically underserved or unserved areas will receive support in the Phase I auction.

19. We adopt our proposal to exclude from eligibility for the 5G Fund those areas in Alaska, for which high-cost

support is provided via the mobile portion of the Alaska Plan, as well as areas in Puerto Rico and the U.S. Virgin Islands where the Commission has already provided high-cost support, including support for 5G mobile broadband, a proposal that RWA supports. We disagree with commenters suggesting that the Commission include Alaska in the roll out of the 5G Fund. The Commission established the Alaska Plan in 2016 for a 10-year term, apart from earlier efforts to reform the mobile high-cost program due to the “‘uniquely challenging operating conditions’” in Alaska. The Commission explained in the *Mobility Fund Phase II Report and Order* that because it “‘adopt[ed] the Alaska Plan for mobile carriers as an Alaska-specific substitute mechanism for mobile high-cost support, . . . there will be no support provided under Mobility Fund Phase II or Tribal Mobility Fund Phase II for mobile services within Alaska.’” Since we today establish the 5G Fund to replace Mobility Fund Phase II, we similarly conclude that the Alaska Plan should remain the sole high-cost support mechanism for mobile carriers in Alaska. Moreover, we do not believe the framework that we adopt for the 5G Fund is appropriate for Alaska given the unique circumstances faced by carriers deploying mobile services in that state, and because it would undermine the comprehensive support mechanism the Commission adopted to address those challenges.

### C. Framework for the 5G Fund

20. We adopt the basic framework we proposed for the 5G Fund for Rural America, with a few specific modifications to the requirements we proposed for competitive ETCs receiving legacy high-cost support for mobile wireless service. We will require both legacy high-cost support recipients and 5G Fund auction support recipients to meet public interest obligations to provide voice and 5G broadband service, and to satisfy distinct, measured performance requirements as a condition of receiving support. Recipients of both legacy high-cost support and 5G Fund auction support must meet minimum baseline performance requirements for data speed, latency, and data allowance, including: (1) Deploying 5G networks that meet at least the 5G–NR (New Radio) technology standards developed by the 3rd Generation Partnership Project with Release 15 (or any successor release that may be adopted by the Office and Bureau after appropriate notice and comment) with median download and upload speeds of

at least 35 Mbps and 3 Mbps with minimum cell edge download and upload speeds of 7 Mbps and 1 Mbps; (2) meeting end-to-end round trip data latency measurements of 100 milliseconds or below; and (3) offering at least one service plan that includes a minimum monthly data allowance that is equivalent to the average United States subscriber data usage. We adopt performance goals and measures for the 5G Fund similar to those that the Commission has implemented in recent high-cost support proceedings and direct the Office and Bureau to adopt others. Designing and adopting oversight and accountability measures when adopting a new or modified universal service program not only ensures that the Commission meets its obligations under the Act, but also facilitates our compliance with government-wide obligations for the efficient and effective design and implementation of federal programs.

21. These performance requirements, along with public interest obligations for reasonably comparable rates, collocation, and voice and data roaming, will ensure that rural areas receive service comparable to high-speed, mobile broadband service available in urban areas. We also adopt interim and final 5G service deployment milestones for 5G Fund auction support recipients, and reporting requirements to monitor the progress of all recipients in meeting the distinct performance requirements that we adopt.

#### 1. Establishing a Two-Phased 5G Fund for Rural America

22. We adopt our proposal to award support from the 5G Fund for Rural America through a competitive reverse auction in two phases. In Phase I, we will target support nationwide to all eligible rural areas that lack unsubsidized 4G LTE and 5G broadband service, and in Phase II we will focus support to specifically target the deployment of technologically innovative 5G networks that facilitate precision agriculture.

23. We conclude that a reverse auction is the appropriate mechanism for allocating scarce universal service resources to the carriers that will use them most efficiently. The Commission has long endorsed competitive bidding for distributing support. In the *USF/ICC Transformation Order*, the Commission recognized the value of competitive bidding for awarding award high-cost support, both fixed and mobile, noting that a reverse auction “‘is the best available tool for identifying’” areas where support can make the largest difference, as well as the associated

support amounts. In the existing mobile legacy high-cost support program, on the other hand, neither the areas for which legacy support is currently disbursed nor the amount of support carriers receive have a direct nexus to the areas most in need of support or the amount needed to provide service therein.

24. Our experience using competitive bidding in the Mobility Fund Phase I, Tribal Mobility Fund Phase I, and Connect America Fund Phase II auctions confirms the Commission’s prediction that it is the most efficient and effective mechanism for awarding universal service support. An auction mechanism allows us to distribute support in a transparent, speedy, and efficient manner, and provides a straightforward means of identifying those providers that are willing to provide 5G service at the lowest cost to the Universal Service Fund by determining support levels that winning bidders are willing to accept in exchange for the public interest obligations and performance requirements we impose.

25. Consistent with our decision to base eligibility on new, granular Digital Opportunity Data Collection mobile broadband coverage data, as well as our decision to adopt 5G performance requirements and public interest obligations for legacy high-cost recipients, we decline to adopt RWA’s proposal for a three-phase approach that would award support to certain existing legacy high-cost recipients. Under RWA’s proposal, the 5G Fund would create a \$1.5 billion “Phase 0” for current legacy support recipients with 500,000 or fewer subscribers so that those carriers could build out 5G in areas eligible under Option A before proceeding to an auction with remaining funds. NTCA supports RWA’s three-phase proposal, but proposes that the Commission should base eligible areas for both the Phase I and Phase II auctions on Option B.

26. RWA argues that its approach would provide certainty to small rural carriers and promote faster 5G deployment, while NTCA claims that its approach can leverage existing high-cost support recipients’ networks. Based on the record before us, and our experience with competitive bidding mechanisms, we are not convinced that this approach would be a more efficient or effective means of awarding support than an auction. We are unpersuaded that a three-phase approach improves our ability to better target support or to significantly accelerate 5G deployment in rural areas. While we do not doubt that recipients of mobile legacy high-

cost support have been “good stewards of universal service funds” as NTCA states, neither proposal is consistent with our decade-long efforts to reform universal service high-cost support. Moreover, to the extent RWA and NTCA are correct that carriers receiving legacy high-cost support can deploy 5G networks in their service areas more efficiently, we anticipate they will have an advantage against bidders that do not already serve those eligible areas in the auction.

27. We agree with AT&T that implementing a Phase 0 approach risks continuing to provide legacy high-cost support to fund service in areas that may already have unsubsidized 4G LTE (or even 5G) service from one or more providers. Further, we agree with T-Mobile that setting aside funds for a limited subset of providers would be an inefficient use of our scarce resources, and could limit our ability to expand 5G coverage to as many unserved areas as possible. This concern is amplified by the fact that we would risk overpaying for 5G networks in some areas that another provider (or even the same legacy support recipient) would be willing to serve for less support through an auction.

## 2. Budget

28. We adopt a budget of \$9 billion for the 5G Fund, to be awarded in two phases: Up to \$8 billion for Phase I, of which we will reserve \$680 million of support for service to Tribal lands, and at least \$1 billion in Phase II, as well as any unawarded funds from Phase I. We further adopt our proposal to repurpose the Mobility Fund Phase II budget for the 5G Fund.

29. Given the apparent overstatement of coverage data the Commission staff investigation discovered, we anticipate that the more precise and granular mobile broadband coverage data that will become available in the Digital Opportunity Data Collection proceeding will show that the number of areas unserved by unsubsidized 4G LTE is greater than the Commission originally estimated, and the number of areas unserved by 5G will likewise be substantial. Insofar as almost two years have passed since the Commission ceased the Mobility Fund II challenge process, however, we note that some carriers will have expanded their 4G LTE footprint; therefore, all of the areas that were eligible for a Mobility Fund II auction may not be eligible for a 5G Fund Phase I auction. The deployment of networks capable of providing this 5G service undoubtedly will be expensive, particularly given the need to build high quality infrastructure beyond just our

rural roadways. We therefore conclude that significantly more funds than those budgeted for Mobility Fund Phase II will be necessary to achieve our rural 5G goals. By repurposing the entire \$4.53 billion budget originally adopted for Mobility Fund Phase II, and essentially doubling our financial commitment to deploying mobile broadband in rural areas, we will have a greater likelihood of achieving the Commission’s goals while incentivizing carriers to participate in the auction.

30. In establishing the total budget for the 5G Fund, we are mindful that the cost of universal service programs is ultimately borne by the consumers and businesses that pay to fund these programs, and we have a corresponding obligation to exercise fiscal responsibility by avoiding excessive subsidization and overburdening communications consumers. Courts have recognized that over-subsidizing universal service programs can actually undermine the statutory principles set forth in section 254(b) of the Communications Act of 1934, as amended (the Act). With this in mind, we adopt a 5G Fund budget that seeks to balance the various competing objectives in section 254 of the Act, including the objective of providing support that is sufficient, but not so excessive so as to impose an undue burden on consumers and businesses. Our approach is consistent with judicial interpretation of these objectives, as well as our own.

31. As we have repeatedly emphasized since we began reforming of our universal service programs, ratepayer funds are not unlimited and must be prioritized to achieve our policy goals. We conclude that the budget of \$8 billion that we adopt today for Phase I of the 5G Fund incentivizes competition from carriers that wish to participate in the Phase I auction in order to deploy 5G consistent with the public interest obligations and performance requirements we propose for the 5G Fund. We further conclude that a budget of at least \$1 billion for Phase II of the 5G Fund will be necessary for carriers to commit to the deployment of technologically innovative 5G networks that facilitate precision agriculture. Dedicating at least \$1 billion to this second phase of the 5G Fund will help close the remaining digital divide but also direct funds to networks supporting innovative agricultural solutions, increasing our nation’s economic efficiency and encouraging economic growth in rural areas, especially in vast areas of agricultural lands that currently remain unserved.

32. For these same reasons, we decline to allot a larger portion of the total 5G Fund budget to the Phase II auction, as some commenters suggest. Such an approach risks significantly increasing the number of areas that remain unserved after the Phase I auction. Moreover, because the amount of funds necessary to cover the phase down of legacy high-cost support will not be known until the conclusion of the Phase I auction, we decline to reduce the Phase I budget by the amount necessary to fund the phase down, which should provide maximum certainty to prospective bidders.

33. Although some commenters suggest that the total budget may be insufficient to deploy 5G networks to all eligible areas, none of those commenters proposed an alternative amount for the total 5G Fund budget. Those same commenters also support reassessing the Phase II budget following Phase I. Aside from the commenters suggesting a three-phase approach for the 5G Fund, no commenters addressed our request for comment on an alternative total budget.

34. Although it did not offer an alternative total budget amount, we note that AST&Science comments that we should “ earmark a small portion (10% to 15%) of the 5G Fund for “*qualified applicants* who commit to use innovative, non-traditional systems to serve *areas that are highly unlikely to receive service* even with the benefit of support.” We decline to adopt this suggestion, as we have others, because it does not serve our primary policy goal of awarding support to as many eligible areas as possible with the limited funds available. For the same reason, we decline to adopt Lynk Global Inc.’s request that we set aside 1% of the 5G Fund as a reimbursable expense to satellite operators that successfully enable access to connectivity via mobile phones everywhere in the United States and its territories.

35. We acknowledge concerns of commenters that contend that funds necessary to deploy 5G-capable networks in rural areas may be significantly higher than our total 5G Fund budget. The Commission’s experience in the CAF Phase II auction demonstrates that competitive bidding can bring costs below projections: The aggregate reserve price of more than 713,000 locations assigned in that auction was \$5 billion, compared to total winning bids of \$1.5 billion. Moreover, we anticipate that many providers will use private capital in conjunction with the 5G Fund support they receive to build their 5G networks. By establishing the budget at \$9 billion, we also recognize the risk of

overburdening consumers that contribute to the Universal Service Fund. Of course, the Commission will have the opportunity to reassess the Phase II budget following Phase I in the event it determines it is insufficient.

### 3. Support for Tribal Lands

36. We adopt our proposal to reserve up to \$680 million of the \$8 billion 5G Fund Phase I budget to support networks serving eligible areas in Tribal lands. Under the approach we adopt, only eligible areas on Tribal lands will be assigned support from this reserve. This doubles the minimum amount that the Commission intended to reserve to support Tribal lands from the Mobility Fund Phase II budget. Most commenters favored our proposal to reserve support for Tribal lands in the 5G Fund, but some express concern that \$680 million will still be insufficient to ensure that these areas receive reasonably comparable service at affordable prices. We are mindful of these concerns, and we recognize that deploying networks that support 5G service will require a significant undertaking, particularly on Tribal lands where services often lag behind even non-Tribal rural lands. For those reasons, we acknowledge that we may need to revisit the amount of the budget reserved for Tribal lands after the conclusion of a Phase I auction, and, if necessary, we will do so at that time.

37. We adopt our proposal that bidding under the Tribal reserve budget and bidding under the unreserved portion of the budget will take place simultaneously as part of the single 5G Fund Phase I auction. The Cherokee Nation expresses concern with this approach maintaining that we should conduct additional auctions as needed to ensure that the support reserved for Tribal lands in the 5G Fund auction serves Tribal lands. These concerns are unwarranted. Contrary to the Cherokee Nation's assumption, conducting bidding simultaneously creates no disincentive for bidders because fewer bids on Tribal lands under the reserved Tribal lands budget will not lead to more funds being transferred to the unreserved budget. Rather, Tribal areas with winning bids will receive a greater share of the Tribal budget. Accordingly, we do not believe that reserving those funds for a subsequent auction for support for Tribal lands will be a timely or practical approach to enhance 5G Tribal land deployments.

38. Consistent with past practice, the details and final bidding procedures for a 5G Fund auction will be developed during our standard pre-auction process, and we anticipate that the procedures we adopt after notice and

comment will ensure that support levels assigned from the Tribal reserve will not be less than support assigned from the unreserved budget, except possibly in cases where more than one bidder is competing for support in the same area.

39. We decline to adopt Smith Bagley, Inc.'s Remote Tribal Areas Plan, which proposes allowing carriers serving Tribal lands to participate in an opt-in funding plan similar to the Alaska Plan, as an alternative mechanism for providing support to remote Tribal areas. We are not convinced that this approach would improve the outcome on Tribal lands over awarding support to Tribal areas through a reverse auction. As the Commission explained in rejecting a similar proposal in the Mobility Fund Phase II proceeding, the Commission adopted the Alaska Plan not because of the existence of Tribal lands in Alaska, but because of the need for support to be flexible enough to accommodate Alaska's unique conditions, like its "remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season." We again conclude that adopting such an approach for all remaining states would be inconsistent with our decision to use a reverse auction as an efficient mechanism for deciding where to allocate Tribal support. Based on the \$680 million budget that we are reserving for support for Tribal lands, we anticipate that 5G Fund support will meaningfully flow to Tribal areas.

40. We also decline to adopt Standing Rock Telecommunications, Inc.'s request that we use a Tribal entity weighting factor as a mechanism to provide Tribal entities with the opportunity to become the winning bidder to provide supported 5G service on their Tribal lands. The \$680 million reserved Tribal lands budget we adopt will create a powerful incentive for service providers to bid to serve Tribal lands. We are unpersuaded that creating a preference for a particular type of entity will advance our goals and produce greater deployment on Tribal lands. Indeed, including an additional weighting factor for Tribal entities could deter non-Tribal entities from bidding to serve Tribal lands, reducing both the competitiveness of the Phase I auction and the potential reach of our finite funds.

41. *Identifying Tribal Lands.* We adopt our proposal to amend the definition of "Tribal lands" in section 54.5 of the Commission's rules to allow for the designation of certain non-Tribal

areas and communities as Tribal lands, consistent with the rules for the Lifeline program. All commenters who addressed this proposal support it. This designation process permits expansion of the definition of Tribal lands for the high-cost program upon an appropriate showing that certain areas or communities that fall outside the boundaries of existing Tribal lands—*i.e.*, off-reservation lands other than those already covered by the definition in section 54.5—have the same characteristics as existing Tribal lands. Although this designation process was adopted solely for the Lifeline program, the Commission previously has relied on precedent for the Lifeline program when adopting, interpreting, and expanding the definition of Tribal lands for purposes of the high-cost program. We find that the adoption and use of the designation process for the high-cost program is in the public interest because it will: (1) Reflect the flexibility that the Commission has used to adjust, as appropriate, the definition of Tribal lands in the universal service context; and (2) enable us to maximize bidding by all eligible bidders to serve Tribal lands in a 5G Fund auction and any future universal service auctions by grouping together existing Tribal lands and associated off-reservation lands, thereby making those areas more attractive for bidders and facilitating coverage to Tribal lands, as well as promoting competitive bidding for funding of such coverage.

42. We designate three types of off-reservation lands as Tribal lands for purposes of the high-cost program. First, we designate as Tribal lands any federally recognized off-reservation trust lands, Tribal designated statistical areas (TDSAs), or joint use areas from the Census Bureau's American Indian, Alaska Native, and Native Hawaiian boundaries. In effect, we will thus include as Tribal lands all areas from the U.S. Census Bureau's American Indian, Alaska Native, Native Hawaiian dataset that are classified as federally recognized, regardless of the area's census code, classification, or component type in the data. Because many Tribal citizens live and work in, or travel to such off-reservation trust lands, TDSAs, or joint use areas, or are otherwise areas which are near federally-recognized reservations that we unambiguously consider Tribal lands, we conclude that the "Tribal character of" such off-reservation lands is clear. Moreover, in the context of the high-cost program, such areas face many of the same barriers to service as faced by on-reservation land—*e.g.*, low

population density, high levels of poverty, lack of infrastructure, and historical lack of service. We find that including off-reservation areas in our definition of Tribal lands will help ensure we close the digital divide by facilitating carriers availing themselves of Tribal support mechanisms in our high-cost programs to serve more expansive areas with many of the same characteristics. We acknowledge that Commission staff previously concluded that certain TDSAs did not qualify as “Tribal lands” under the section 54.5 definition for purposes of the Tribal Mobility Fund Phase I auction. For the reasons previously stated, however, we now consider all TDSAs as Tribal lands for the 5G Fund and other high-cost program mechanisms. Second, we designate as Tribal lands those areas within the study area boundaries of the Eastern Navajo Agency and Sacred Wind Communications in New Mexico to allow so-called “checkerboard” Tribal and non-Tribal land areas in this section of New Mexico to be aggregated as Tribal lands for purposes of the high-cost program, including the 5G Fund, consistent with past Commission waivers. Under this approach, all Tribal land with the same four-digit census code within the minimum geographic area for bidding will be grouped together to allow bidders to bid on Tribal areas grouped by Tribal entity. For Tribal land that is not part of the Census Bureau’s federally recognized American Indian, Alaska Native, and Native Hawaiian boundaries, we will assign such land the census code for the appropriate Tribal entity. Because there is no individual Alaska Native village associated with areas in Alaska that are not part of the American Indian, Alaska Native, and Native Hawaiian boundary data, we will identify these areas with the appropriate Alaska Native Regional Corporation identifier. Specifically, we will identify as part of the Navajo Nation the portions of the study area boundaries of the Eastern Navajo Agency and Sacred Wind Communications in New Mexico that fall outside of any Tribal boundary from the Census Bureau’s data. Lastly, we designate as Tribal lands any areas within the geographic boundaries reflected in the Historical Map of Oklahoma (1870–1890), including the Cherokee Outlet, consistent with the Commission’s interpretation of the “former reservations in Oklahoma” in section 54.400(e). We note the Supreme Court’s recent decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), holding that land reserved for the Creek Nation since the 19th century remains

“Indian country” for purposes of the Major Crimes Act and recognizing approximately half of the state of Oklahoma as Native American reservation land, but further note that this decision does not impact the approach to defining and identifying Tribal lands for purposes of the high-cost program we adopt here because the lands at issue in that decision were already considered to be Tribal lands under our proposal.

43. Commenters generally support our proposals concerning identification of Tribal lands. Smith Bagley supports the definitional change to the Eastern Navajo Agency to capture so-called “checkerboard” areas consisting of multiple land classifications, so that residents have access to the 5G Fund, and all future universal service programs, consistent with past Commission waivers. It submits that it is the correct course for the Commission to identify as part of the Navajo Nation the portions of the study area boundaries of the Eastern Navajo Agency and Sacred Wind Communications in New Mexico that fall outside of any Tribal boundary from the Census Bureau’s data, and submits that solidifying the Eastern Navajo Agency’s status as Tribal land will save Commission resources, bring certainty to carriers serving these areas, and generally serve the public interest.

44. The Cherokee Nation states that it interprets the Commission’s proposal to mean that the Cherokee Nation’s former reservation lands, the Cherokee Outlet, will be assigned to the Cherokee Nation because the Cherokee Nation is the only tribe to have treaty rights to the Cherokee Outlet, and that any “former reservation lands” of the Iowa, Kickapoo, and Pawnee will be assigned to them respectively, but asks for clarity regarding which particular “former reservation lands” will be assigned to each of the four Tribal entities. RWA supports the Cherokee Nation’s request. We clarify that the area not currently designated as Tribal in the U.S. Census Bureau’s American Indian, Alaska Native, and Native Hawaiian data but identified as the Cherokee Outlet on the Oklahoma Historical Map (1870–1890) will be considered Tribal under the definition we adopt. Similarly, areas not currently designated as Tribal in the Census Bureau data but identified as Iowa, Kickapoo, or Pawnee based upon the “former reservations in Oklahoma” identified on the Oklahoma Historical Map (1870–1890) will be considered Tribal.

45. The Council of Athabascan Tribal Governments and the Mount Sanford Tribal Consortium each state that the

Commission’s proposal to include Alaska in the definition of “Tribal lands” but exclude Alaska from the 5G Fund is inconsistent and will create confusion unless the Commission either deletes the reference to Alaska, or notes in the definition that areas in Alaska are not eligible for 5G Fund support. We note that the existing definition of “Tribal lands” in section 54.5 of the Commission’s rules defines that term for purposes of high-cost support and thus applies to all high-cost support programs. The Commission did not propose in the *5G Fund NPRM* a new definition of “Tribal lands” that is unique to the 5G Fund for Rural America. The amendments to section 54.5 proposed in the *5G Fund NPRM*—which we adopt here—are not specific to the 5G Fund and will apply to all high-cost support programs going forward, including the new 5G Fund, and for this reason, we do not qualify the reference to Alaska in the definition of “Tribal lands.” Instead, consistent with our policy of not providing high-cost support funding to more than one mobile competitive ETC in a geographic area, we proposed in the *5G Fund NPRM* to exclude areas in Alaska, for which high-cost support is already being provided via the mobile portion of the Alaska Plan, from the areas eligible for 5G Fund support. In formally adopting our proposal to exclude areas in Alaska from eligibility for 5G Fund support today, we make clear that such areas are not eligible for 5G Fund support.

#### 4. Term of Support

46. We adopt a 10-year support term for each phase of the 5G Fund, with monthly disbursements to winning bidders. As we recently explained in adopting a 10-year support term for the Rural Digital Opportunity Fund in the *Rural Digital Opportunity Fund Report and Order*, 85 FR 13773, Mar. 10, 2020, a support term of 10 years encourages long-term investment and contributed to the robust participation in the successful Connect America Fund Phase II auction. We conclude that the same incentives apply here.

47. Commenters largely agree that a 10-year support term will provide the certainty and stability needed to encourage deployment of 5G service in rural areas while allowing providers to recover the cost of deploying their networks over time. We decline to shorten the term of support to five years as one commenter suggests, because we conclude that a five-year support term is too short to encourage long-term investment. For similar reasons, we also reject the suggestion that we should



accelerate the disbursement of funds by increasing support awarded during the first year, because our decision to disburse support on a monthly basis best ensures our ability to safeguard universal service funds in the event that service providers do not comply with our performance requirements and public interest obligations, and provides predictability for the Fund's contributions mechanism. Moreover, monthly disbursements provide 5G support recipients with reliable and predictable payments that conform to a variety of business cycles.

#### 5. A Multi-Round, Descending Clock Auction

48. We adopt our proposal to rely on the Commission's existing Part 1, Subpart AA competitive bidding process rules for universal service support for the 5G Fund, with specific detailed clock auction bidding and bid processing procedures to be developed through our ordinary pre-auction notice and comment process. For Phase I and Phase II of the 5G Fund, we will use a multi-round, descending clock auction to identify the areas that will receive support, the carriers that will receive support in those areas, and the amount of support that each winning bidder will be eligible to receive. This descending clock auction will consist of sequential bidding rounds according to an announced schedule. Using multi-round auctions will enable bidders to adjust their bidding strategies over the course of the bidding so as to create viable aggregations of geographic areas in which to construct networks. The Commission has found that this approach to developing competitive bidding procedures—first defining important elements of the basic structure while later considering the detailed procedures for implementation—gives it necessary flexibility for integrating its auction objectives and high-level decisions into a workable and consistent auction process. Most commenters support our proposal. CCA, however, cautions against the use of reverse auctions because they can “drive support to lowest cost options,” specifically citing the use of equipment that may be subject to security concerns. We do not find this argument compelling. Firms generally face an incentive to minimize costs not limited to reverse auction bidders. Moreover, the Commission generally ensures equipment safety and security standards, and those concerns are not limited to competitive bidding in a reverse clock auction.

49. For both the Phase I and Phase II auctions, we adopt our proposal to

accept bids and identify winning bids using a support price per adjusted square kilometer. Each eligible area will have an associated number of square kilometers which will be adjusted by an adjustment factor, described below. We will determine support amounts for an area by multiplying an area's associated adjusted square kilometers by the relevant price per square kilometer. For example, an area with 100 square kilometers and an adjustment factor of 1.2 would have  $100 \times 1.2$  or 120 adjusted square kilometers. This approach will ensure that carriers bidding to serve the hardest-to-serve parts of the country can compete efficiently and fairly in the auction. Commenters did not oppose these specific proposals.

50. During the pre-auction processes for Phase I and Phase II, as is the Commission's normal practice, we will seek comment on and adopt an opening price per adjusted square kilometer that is high enough that even carriers requiring a very high level of support will be able to compete in the auction. The opening price multiplied by the number of adjusted square kilometers in the area will represent the highest support amount that a winning bidder could receive for the area in the auction. The same opening price and subsequent clock prices, in dollars per adjusted square kilometer, will apply to all the eligible areas in the auction. The clock price will be decremented in subsequent rounds of the auction, implying lower support amounts for each area. Since the opening price is intended to serve as a starting point for bidding and not an estimate of final prices, we anticipate that the opening price that we propose will be based on rough estimates of the cost of providing service in hard-to-serve areas, taking into account any adjustments that are adopted.

#### 6. Minimum Geographic Area for Bidding

51. We conclude that the minimum geographic area for bidding—*i.e.*, the geographic area by which areas eligible for 5G Fund support will be grouped for bidding—in a 5G Fund auction will be no larger than a census tract and no smaller than a census block group, as designated by the U.S. Census Bureau. Our goal in adopting a minimum geographic area for bidding is to ensure that a wide variety of interested bidders, including small entities, have the flexibility to design a network that matches their business model and technical capabilities and that allows service providers to achieve their performance benchmarks and public interest obligations efficiently. Thus, as

the Commission did in the CAF Phase II and Rural Digital Opportunity Fund proceedings, we will determine the exact geographic area for grouping eligible areas during the pre-auction process when we finalize the auction design and have better data for determining eligible areas. Commenters are split on whether the minimum geographic area for bidding in a 5G Fund auction should be smaller than a census tract, and none support larger ones. In considering whether to use a minimum geographic area smaller than a census tract, we are mindful of the concerns of commenters that the number of square kilometers in a census tract may not correspond well with the low population density of that large a geographic area and that it may be difficult for carriers meet the 5G Fund performance requirements.

52. We also conclude that the minimum geographic area for bidding for a 5G Fund auction will be larger than individual census blocks, which are smaller than census tracts and census block groups. Although at least one commenter supports using individual census blocks, as we recently concluded in the context of the CAF Phase II and Rural Digital Opportunity Fund auctions, doing so would significantly increase the complexity of the bidding process both for bidders and the bidding system and minimize the potential for broad coverage by winning bidders. Furthermore, using census blocks as the minimum geographic area could create more challenges for providers in putting together a bidding strategy that aligns with their intended network construction or expansion.

53. In order to provide interested parties greater certainty, and insofar as no commenter objected to it, we also adopt our proposal to remove from a 5G Fund auction any geographic area that has *de minimis* eligible areas, which we define as an area of one square kilometer or less within the geographic area that we ultimately adopt. We believe there would be little or no demand for these *de minimis* areas, the administrative burdens would outweigh any potential benefits, and that the amount of the winning bid associated with such areas would be so small in terms of monthly disbursements that the cost to distribute it would outweigh its utility in benefitting a support recipient.

54. Moreover, because we decide to allocate funds reserved for support to Tribal lands from a separate Tribal lands budget, we also adopt our proposal to identify the eligible areas that coincide with an area of a specific Tribal entity by overlaying the boundaries of Tribal lands for each federally recognized



Tribal entity on the eligible areas within each minimum geographic area that we adopt. We note that while commenters generally did not address this proposal, two commenters—Smith Bagley and the Cherokee Nation—are generally supportive of our proposals to identify and group Tribal areas with the appropriate entity for purposes of the high-cost program and 5G Fund.

#### 7. Adjustment Factor

55. We adopt our proposal to incorporate an adjustment factor into the 5G Fund auction that will assign a weight to each geographic area and will apply that adjustment factor to bidding for support amounts, and to apply that adjustment factor to the methodology for disaggregating legacy high-cost support. This weighting will reflect the relative cost of serving areas with differing terrain characteristics, as well as the potential business case for each area, with less profitable areas receiving greater weight and therefore greater support. The descending clock auction format we will use is one in which a uniform support rate is offered across all eligible areas, and carriers indicate which specific areas they would serve at that rate. If the sum of all payments that would be made at a specific rate given carriers' expressed willingness to serve exceeds the 5G Fund budget, then the rate is reduced and carriers express their willingness to serve at the lower rate. This process continues until the payment is equal to the 5G Fund budget. Under this process, carriers will be willing to serve fewer areas as the rate falls, but if the same rate is offered for all remaining areas, more support than is needed will flow to the less costly-to-serve and more profitable remaining areas. The adjustment factor will, however, for any given support rate, allocate a multiple of the support rate to more costly and less profitable areas, thereby making them more attractive to serve and increasing the support to such areas.

56. Using an adjustment factor to help distribute 5G Fund support to, and disaggregate legacy support in, a range of areas across the country that are geographically and economically diverse serves the public interest. As stated in the *5G Fund NPRM*, however, we do not expect an adjustment factor to capture the full differences between the costs and benefits of providing service to different types of geographic areas. In addition, we may cap the adjustment factor if we believe that it would be helpful to do so in balancing our goals of providing broad and equitable support for 5G.

57. As directed in the *5G Fund Order*, 85 FR 34525, Jun. 5, 2020, the Office and Bureau proposed and sought comment in the *5G Fund Adjustment Factor Public Notice*, DA 20–594, rel. Jun. 5, 2020, on specific adjustment factor values and the underlying methodologies used to develop them. Consistent with our decision to adopt the use of an adjustment factor, the adjustment factor values that are adopted by the Office and Bureau will be used in both bidding in the 5G Fund auction and for the disaggregation of legacy support.

58. Commenters broadly support our proposal to adopt an adjustment factor, although they differ in how to calculate and apply it. T-Mobile argues that an adjustment factor will “encourage investment in areas that are more costly or less profitable to serve.” The Massachusetts Department of Telecommunications and Cable also supports using an adjustment factor to score auction bids, but argues that the Commission should “account for all relevant differences in 5G deployment and operating costs between locations, not just differences in terrain.” AST&Science strongly supports incorporating an adjustment factor into the 5G Fund auction design “in order to increase support to areas that are more costly and less profitable to serve.” RWA believes that adjustment factors are “an effective way of targeting support to hard-to-serve rural areas” in an auction.

59. Our application of an adjustment factor in bidding in the 5G Fund auction and for the disaggregation of legacy support recognizes the variability of costs of deploying service, especially mobile service, across the country, and in that way advances our core universal service goal of ensuring access to reasonably comparable services in all areas of the country. We accordingly decline to adopt a disaggregation methodology allocating universal service support uniformly throughout a provider's subsidized service area; doing so would ignore the significant additional costs that wireless providers incur to deploy service in more difficult terrain and economic conditions. Instead, consistent with the direction in the *5G Fund Order*, the Office and Bureau will apply a disaggregation methodology that uses an adjustment factor as a proxy for determining areas that are relatively more costly for potential bidders and current legacy support recipients.

60. We adopt our proposal to use an adjustment factor that accounts for both the relative costs and business cases of deploying a 5G network given the

differing terrain and economic conditions throughout the United States. The adopted adjustment factor will ensure that bids to serve areas that tend to be less profitable to serve, such as more economically disadvantaged areas and areas with more challenging terrain, are given greater weight in the auction and are not disadvantaged. We defer the final determination of the precise manner in which the adjustment factor will be incorporated into the auction mechanism to the pre-auction process.

61. We disagree with Verizon that applying such an adjustment factor to bidding is untested. In the CAF Phase II auction, the Commission's cost model adjusted reserve prices based on variations in the deployment costs of fixed networks due to factors like geography and regional costs. This cost-based adjustment to the bid amount is effectively the same as we adopt here—albeit designed here for application to mobile networks—and we will build on our experience in that auction. We also disagree with RWA that the adjustment factor should not be applied to the disaggregation of legacy support. Using an adjustment factor is appropriate because it will alleviate potential concerns over a carrier losing a disproportionate amount of its legacy support resulting from a disaggregation methodology in which more costly areas would be treated the same as less costly areas with respect to subsidies received. For example, a hypothetical carrier serving one mountainous census tract and one flat census tract of equal size in its subsidized service area might require 75% of its support to serve the mountainous tract and 25% to serve the flat tract. Were an unsubsidized carrier to enter the flat tract, which may be more likely given the relatively lower costs in the flat tract, if we did not apply the adjustment factor in calculating disaggregated support, the carrier would lose 50% of its funding and would be unable to continue serving the mountainous tract. However, applying an adjustment factor of three to the mountainous area would result in the carrier retaining 75% of its original support amount and allow it to continue serving the mountainous tract.

62. We decline to adopt the Massachusetts Department of Telecommunications and Cable's proposal to explicitly account for all 5G capital and ongoing cost differences in the calculation of the adjustment factor. We first note that two of the models presented in the *5G Fund Adjustment Factor Public Notice*, the Entry and Auction Bidding models, do reflect differences across geographic areas in

capital and ongoing costs, including the differences in labor rates, utility rates and other factors cited by the Massachusetts Department of Telecommunications and Cable. These models estimate differences in total profitability from deployment, and as such, capture differences in capital and ongoing costs as well as revenues from subscriber demand. Also, as we observed in the *5G Fund NPRM*, we do not intend for the adjustment factor to be an exhaustive accounting of all cost and demand differences across every area. Rather, it is to allow bidders in less profitable to serve areas to effectively compete in the auction while at the same time allowing the auction, rather than a cost model, to determine the most economically efficient allocation of winning bidders and funding levels across geographic areas.

#### *D. Public Interest Obligations and 5G Service Performance Requirements for Legacy High-Cost Support and 5G Fund Auction Support Recipients*

##### 1. 5G Public Interest Obligations for Legacy High Cost Support Recipients

63. To bring accountability and ensure deployment of 5G technology in each carrier's subsidized service area, we establish broadband public interest obligations that will require competitive ETCs receiving legacy high-cost support for mobile wireless service to provide mobile, terrestrial voice and data services that comply, at a minimum, with 5G-NR technology as defined by 3GPP Release 15 (or any successor release that the Office of Economics and Analytics and the Wireline Competition Bureau may require after notice and comment). Specifically, we adopt our proposal to require that legacy support recipients use an increasing percentage of their support toward 5G service. We will also require competitive ETCs receiving legacy high-cost support to meet specified coverage requirements until such legacy support begins to phase down or otherwise ceases.

64. We note that the Commission has already begun phasing down support for those competitive ETCs that receive legacy high-cost support to provide service to fixed locations, and will similarly exempt entirely from new obligations and requirements competitive ETCs receiving legacy high-cost support for mobile wireless service in Alaska, Puerto Rico, and the U.S. Virgin Islands, areas for which the Commission adopted alternative support mechanisms and that are not otherwise eligible for 5G Fund support. We further note that competitive ETCs may voluntarily relinquish receipt of

legacy high-cost support for a subsidized service area, and upon so doing, will no longer be required to meet these public interest obligations. However, in cases where a carrier voluntarily relinquishes legacy support at some point after effective date of these rules, the Commission may seek up to full recovery of all legacy support the carrier received after the effective date of these rules which was not spent toward the deployment, operation, and/or maintenance of 5G services consistent with the non-compliance framework we adopt herein.

65. No commenter disputes our reliance on the Commission's determination in the *USF/ICC Transformation Order* that any pause in the phase down of legacy high-cost support should be accompanied by additional public interest obligations and performance requirements for these support recipients. Rural Americans deserve timely deployment of service by legacy recipients of high-cost support that is comparable to what is being offered in urban areas, and our stewardship of the Universal Service Fund demands that we specify and clarify the obligations of legacy support recipients.

66. Because we recognize that the amount of legacy high-cost support received by each competitive ETC varies considerably and bears no direct relation to the size of its subsidized service area or to the expected cost of deploying 5G service, we do not adopt our proposal to require recipients to meet uniform 5G service deployment milestone coverage requirements largely mirroring those we adopt herein for 5G Fund support recipients. Instead, we adopt a general requirement for competitive ETCs receiving legacy high-cost support to meet deployment coverage requirements, and direct the Office and Bureau to develop and adopt, after notice and comment, specific 5G broadband service deployment coverage requirements and service deployment milestone deadlines for each legacy support recipient that take into consideration the amount of legacy support the carrier receives. In so doing, we direct the Office and Bureau to analyze the costs of 5G deployment in subsidized service areas and to evaluate the adequacy of legacy support to meet the particular deployment coverage requirements ultimately adopted.

67. Some parties raise objections to or otherwise question our directing the Office and Bureau to develop 5G deployment coverage requirements for legacy support recipients. We disagree and believe that these workstreams can proceed in parallel. Without more

rigorous and objective 5G deployment obligations, we are concerned that legacy support may not ensure the timely deployment of 5G service to rural areas, that we will lack adequate information by which to measure the effectiveness of this support, and that legacy recipients may not be properly incentivized to participate in a 5G Fund auction. We therefore disagree with these concerns and anticipate that the Office and Bureau will adopt appropriate carrier-specific coverage deployment requirements expeditiously.

68. We note as a threshold matter that each ETC receiving high-cost support has an existing public interest obligation to offer broadband service throughout its subsidized service area. The details of the technical characteristics and deployment requirements of this broadband public interest obligation differ for each of the specific mechanisms under which carriers receive high-cost support, but the obligation to offer broadband service applies broadly, including to competitive ETCs that continue to receive legacy high-cost support to provide mobile services. Our decision today thus helps to complete the reform of the high-cost program begun in 2011 by effectuating this broadband service public interest obligation for legacy high-cost support recipients, whose broadband-specific public interest obligations for mobile services were not previously detailed. In so doing, we also effectuate the Commission's expectation that any pause in the phase down would include additional mobile broadband public interest obligations and performance requirements for the continued receipt of support. For the reasons stated in the *5G Fund NPRM*, we adopt our proposal to require legacy high-cost support recipients to meet additional public interest obligations and performance requirements and will require recipients of legacy high-cost support to meet the specific public interest obligations and performance requirements detailed herein.

69. Each competitive ETC receiving legacy high-cost support for mobile wireless services must now use an increasing percentage of its legacy support toward the deployment, maintenance, and operation of voice and broadband networks that support 5G meeting the performance requirements we adopt today within its subsidized service areas. Specifically, legacy support recipients must use at least one-third of the legacy support they receive in 2021 and at least two-thirds of the legacy support they receive in 2022 for these purposes. Some carriers raise a concern that budgets and

deployment plans for 2021 are largely complete, which could make it difficult for some legacy support recipients to achieve the 2021 requirement. As such, we will also afford a carrier the flexibility to use less than one-third of its legacy support in 2021 and make up any shortfall in 2021 by proportionally increasing the requirement in 2022 (above the two-thirds of its support the carrier is required to spend on 5G in that year). For example, a legacy high-cost support recipient that receives \$9 million per year in legacy support could meet this requirement by spending on 5G: \$3 million in 2021 and \$6 million in 2022; \$1.5 million in 2021 and \$7.5 million in 2022; or even \$0 in 2021 and \$9 million in 2022. To take advantage of this flexibility, a carrier receiving legacy support must certify to the Bureau by March 31, 2021 (or 30 days after the Commission receives Paperwork Reduction Act approval, whichever is later) as to the amount of 2021 legacy support it will use for the 5G deployment requirements and certify that it will make up any shortfall in 2022. For legacy support received in 2023 and for each subsequent year, the full amount of legacy support a carrier receives in the calendar year must be used for these purposes by the end of the calendar year until its legacy support for an area begins to phase down or otherwise ceases. We note that this requirement is not intended to prohibit a competitive ETC from using a portion of its legacy support on the maintenance or operation of 4G LTE or previous generation services in its subsidized service area as part of a network otherwise capable of providing 5G service meeting the performance requirements, for example, in order to continue to support older generation consumer handsets. In line with the geographic flexibility we adopt herein, the percentage of legacy support that a competitive ETC must use will be calculated against the total amount of legacy high-cost support that the carrier receives for all of the subsidized service areas for which it (or any affiliated competitive ETCs) receives support at 60% of the frozen high-cost support level, calculated pursuant to section 54.307(e)(2)(iii).

70. We conclude that adopting uniform coverage requirements for 5G broadband service deployment similar to those we adopt for 5G Fund winning bidders without first estimating the sufficiency of support amounts to meet a coverage requirement could give some carriers a windfall for little deployment while imposing impossible expectations on others. On the other hand, requiring

that an increasing percentage of legacy support be used to deploy 5G service does not present similar concerns about the sufficiency of support. For example, a competitive ETC that receives \$10 million per year to provide service across a state would thus, presumably, be able to deploy 5G broadband service on a faster timeline and covering more area (e.g., perhaps to 85% of its subsidized service area within four years) than would a competitive ETC that receives only \$1 million per year to provide service to a similar sized area across the same state. Nevertheless, both legacy support recipients would be able to spend the same proportion of legacy support toward deployment of 5G service in order to meet their broadband public interest obligations. Requiring a gradual shift to spending on 5G service, as we do today, will broadly align with the schedule for 5G deployment in unsubsidized and urban areas, and will help ensure that high-cost areas do not fall behind.

71. Several commenters oppose our proposal to require legacy support recipients to meet uniform 5G coverage requirements as part of the public interest obligations and performance requirements we tentatively concluded we should adopt. AT&T argues that requiring 5G deployment in areas after support has been phased down would “violate[] the Commission’s obligation [under section 254(b)(5) of the Act] to establish support mechanisms that provide sufficient funding.” We expressly proposed in the *5G Fund NPRM* to exempt from any 5G broadband service deployment public interest obligation areas where the legacy support recipient is subject to two-year phase down of support, both during the two-year phase down period and also after legacy support ceases, a proposal which we adopt herein. In other words, contra AT&T’s suggestion, there will be no requirement to deploy 5G broadband service in areas where support is being or has been phased down. The Coalition of Rural Wireless Carriers (CRWC) similarly argues that requiring 5G deployment public interest obligations without evaluating the costs required to deploy service is arbitrary and capricious and would violate the statute. Smith Bagley opposes 5G deployment requirements for legacy support recipients on remote Tribal lands, where, it states, costs are so high and current support levels are insufficient to provide even 4G LTE service in many areas and that “the Commission cannot require carriers to improve facilities and service levels in uneconomic high-cost areas unless it

provides support that is explicit and sufficient . . . .” We agree with these commenters that requiring legacy support recipients to meet uniform coverage requirements for 5G broadband service buildout without further analysis of the amount of legacy support each competitive ETC receives is premature. We have therefore directed the Office and Bureau to evaluate the adequacy of legacy support to meet particular deployment coverage requirements and to adopt specific 5G broadband service deployment coverage requirements and service deployment milestone deadlines for each legacy support recipient that take into consideration the amount of legacy support the carrier receives after notice and comment.

72. Three commenters support alternative frameworks that would require the deployment of 5G broadband service over a 10-year period in return for the same or an increased amount of legacy support carriers receive. Both RWA and NTCA suggest requiring modified 5G broadband service deployment obligations and performance requirements of legacy support recipients, but only as part of their respective “5G Small Carrier Fund” proposals. These proposals, which are largely modeled on the Commission’s Alaska Plan, would offer legacy support recipients an increase in their support amounts over 10 years to deploy 5G and which we declined to adopt above. Smith Bagley proposes a “Remote Tribal Areas Plan” that would similarly offer the same amount of support, or a modified amount determined by the Commission, over 10 years for legacy support recipients that serve remote Tribal lands to deploy 5G in such areas. While we recognize the challenges of small carriers and those that provide service to Tribal areas, as we explain above in declining to adopt the alternate proposals advanced by RWA, NTCA, and Smith Bagley, the Commission’s experience awarding support via competitive bidding has shown it to be an effective use of ratepayer funds and none of these commenters has convinced us that departing from that approach is warranted. We further conclude that the broadband public interest obligations and performance requirements we adopt today will help bring 5G service to existing high-cost areas while incentivizing current legacy high-cost support recipients, including small carriers and those that serve Tribal lands, to participate in the 5G Fund Phase I auction, ultimately ensuring that

the largest number of rural areas receive support.

73. Finally, recognizing that there may be particular circumstances where the amount of legacy support received is so low or the costs of any steps toward the deployment of 5G service so high as to frustrate any 5G broadband public interest obligation, we direct the Office and Bureaus to consider adopting, after notice and comment, a *de minimis* exception to any 5G deployment public interest obligations that the Office and Bureau may adopt as part of the proceeding to develop carrier-specific coverage requirements. In so doing, we direct the Office and Bureau to consider in setting any *de minimis* exceptions the amount of legacy support a carrier receives in relation to the administrative costs of establishing and verifying 5G deployment.

## 2. 5G Public Interest Obligations for 5G Fund Auction Support Recipients

74. We adopt our proposal to establish public interest obligations for 5G Fund support recipients to provide terrestrial mobile voice and data services that comply, at a minimum, with 5G–NR technology defined as 3GPP Release 15 (or any successor release that the Office and Bureau may require 5G Fund support recipients to comply with after appropriate notice and comment) and to meet measured performance requirements as a condition of receiving support. We also adopt our proposal to require 5G Fund support recipients to meet baseline performance requirements for minimum data speed, maximum data latency, and a minimum monthly data allowance.

75. Commenters generally support requiring specific public interest obligations and performance requirements for 5G Fund support recipients, and most support requiring the deployment of 5G service. CCA, however, suggests allowing 5G Fund support recipients to deploy 4G LTE-Advanced and provide a plan to transition to 5G–NR within a set period. In its reply comments, RWA disagrees with CCA’s suggestion that 5G Fund support recipients be allowed to deploy 4G LTE-Advanced and suggests that the 5G buildout requirements require 5G–NR 3GPP Release 15 or later.

76. We agree with RWA and find it imperative that consumers in rural America receive service meeting the minimum industry standard to be considered 5G in order to ensure the 5G Fund is consistent with our goal to bridge the digital divide. We therefore adopt the requirement that 5G service deployed to meet public interest obligations and performance

requirements for 5G Fund support recipients comply with the 5G–NR standard defined as 3GPP Release 15 (or any successor release with which the Office and Bureau may require 5G Fund support recipients to comply after notice and comment). In so doing, we also decline to adopt the suggestion of the 5G Fund Supporters who argue that the Commission should add an extension of the Cable Procurement Rule to the 5G Fund public interest obligations to ensure that minority- and women-owned businesses apply for the many procurement opportunities that will owe their creation to the 5G Fund. Our experience using reverse auctions to distribute support successfully in the Mobility Fund Phase I and CAF Phase II auctions supports our decision that competitive bidding without specific preferences provides the most efficient and effective mechanism to award universal service support.

77. *5G Service Milestones.* To ensure that 5G Fund support recipients meet their public interest obligation to provide 5G service in areas where they receive support, we adopt interim and final service deployment milestones to monitor progress in timely meeting the 5G Fund performance requirements. Specifically, we adopt our proposal for interim service deployment milestones requiring a 5G Fund support recipient to offer 5G service meeting established performance requirements to at least 40% of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state by the end of the third full calendar year following authorization of support, to at least 60% of the total square kilometers by the end of the fourth full calendar year, and to at least 80% of the total square kilometers by the end of the fifth full calendar year.

78. We also adopt our proposed final service deployment milestone that requires a 5G Fund support recipient to offer 5G service that meets the established 5G Fund performance requirements to at least 85% of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state by the end of the sixth full calendar year following authorization of support. Additionally, we adopt our proposal to require a 5G Fund support recipient to demonstrate by the end of the sixth full calendar year following authorization of support that it provides service that meets the established 5G performance requirements to at least 75% of the total square kilometers within each of its individual biddable areas.

79. NTCA generally supports our proposed interim and final service deployment milestones, and the New York Public Service Commission similarly supports our proposals. We decline to adopt an alternative milestone schedule for deployment of 5G service suggested by RWA that would require recipients to cover 40% of the areas for which 5G Fund support is authorized by the end of year four, 60% by the end of year six, and 85% by the end of year 10. While RWA claims that deployment of a 5G network is “more complex and time consuming than building out prior generation networks” and will be difficult for legacy high-cost support recipients to do as part of its Phase 0 proposal, RWA provides no persuasive reason why 5G Fund support recipients should follow this delayed schedule. We are unconvinced that 5G Fund support recipients, which are able to factor in the cost and complexity of meeting service deployment milestones when placing bids in an auction, will find it overly burdensome to meet the deployment milestones we adopt.

80. We decline to adopt the proposal of the California Public Utilities Commission to adopt a higher service deployment milestone coverage requirement—90% by the end of year six and 100% by the end of year seven. There may be isolated areas that are particularly challenging to serve even in terrain that is otherwise not difficult to serve, and adopting a 100% coverage requirement could drastically increase costs in a 5G Fund auction if bidders reasonably conclude that certain areas they would otherwise be interested in serving are cost prohibitive due to an especially challenging terrain feature like a ravine or mountaintop. Such a requirement would thus potentially distort the 5G Fund auction with little gain. At the same time, we disagree with Verizon’s suggestion to reduce the required coverage percentage within each biddable unit with particularly challenging areas, based on an alternate deployment requirement focusing on road miles and population. We believe that deviating from our area-coverage approach in the 5G Fund would undercut our focus on ensuring widespread availability of 5G services, including in sparsely populated areas like agricultural lands. Moreover, while we acknowledge that achieving 5G deployment covering 85% required by the final service deployment milestone may be difficult to achieve in particularly challenging terrain, bidders in a 5G Fund auction will be able to factor in the costs of deployment in

such environments when placing bids in the auction.

81. Lastly, we adopt the interim and final service milestones for 5G Fund support recipients as proposed in the *5G Fund NPRM* because we conclude it is imperative that carriers receiving 5G Fund support make significant progress toward providing 5G service early in their support term, and then continue to make progress toward overall coverage goals throughout the remainder of the term. We note that the service milestones we adopt for the 5G Fund are similar to those adopted for the Rural Digital Opportunity Fund and CAF Phase II, as well as in the Uniendo a Puerto Rico Fund and Connect USVI Fund proceeding. Adopting a consistent approach here ensures that we act as responsible stewards of universal service funds. The requirement that 5G Fund support recipients cover at least 75% of the total square kilometers within each biddable unit also ensures that support recipients do not cherry-pick the easiest-to-serve areas and leave more difficult regions cut off from service and from other potential service providers.

### 3. 5G Service Performance Requirements

82. We adopt our proposal to require recipients of legacy high-cost support and 5G Fund support to meet baseline performance requirements for minimum data speed, maximum latency, and minimum monthly data allowance. In the *5G Fund NPRM*, we proposed minimum baseline performance requirements for legacy and 5G Fund support recipients to deploy 5G service speeds of at least 35/3 Mbps, sought comment on whether the required data speed should be a median, mean, or another percentile of probability, proposed 100 milliseconds or lower round-trip latency, and proposed a minimum monthly data allowance that would correspond to the average U.S. subscriber data usage. Consistent with these proposals, we will require that support recipients deploy 5G-NR service with median speeds of at least 35/3 Mbps, minimum cell edge speeds of at least  $\frac{7}{1}$  Mbps, and have round-trip latency of 100 milliseconds or less. We do not adopt additional standardized propagation modeling requirements as proposed. As discussed further in Section III.E.1 and III.G.1, we will instead defer to the propagation modeling standards adopted for reporting of 5G mobile broadband coverage in the Digital Opportunity Data Collection. Additionally, we will require that support recipients offer at least one service plan in the areas for

which legacy support is disbursed or 5G Fund support is authorized that includes a data allowance that is equivalent to the average United States subscriber data usage.

83. We disagree with CCA's suggestion to fund both 5G deployments and 4G LTE-Advanced deployments using equipment that can subsequently be upgraded to 5G. As RWA and CRWC demonstrate, many competitive ETCs receiving legacy high-cost support have already deployed 4G LTE equipment in their network core using legacy support, which should significantly reduce the burden of using future legacy support to upgrade these networks to 5G service meeting at least the 5G-NR standard we adopt. Consistent with our overall approach in this proceeding, we believe support is best directed to modern 5G deployments rather than further deployments of 4G LTE technology. Moreover, we agree with RWA that "[o]nly real 5G will allow the provision of flexible broadband services, increased speed, reduced latency, and reduced energy consumption, [among] other 5G capabilities that 4G (or '5G Lite') simply cannot provide."

84. RWA is the only commenter to directly address adopting these performance requirements specifically for legacy high-cost support recipients, which it generally supports albeit with a longer deployment buildout timeframe and as part of its "Phase 0" proposal. RWA and AT&T otherwise support our proposed data speeds of 35/3 Mbps, and we agree with these commenters that a median speed of 35/3 Mbps, combined with the requirement that supported networks meet 3GPP's 5G-NR standard, recognizes that network speeds will vary across service areas and will allow a variety of 5G applications in rural areas. We disagree with CCA's claims that data speeds of 35/3 Mbps are arbitrary and will not be attainable for rural carriers without substantial cost. The Commission has previously required minimum speeds of 35/3 Mbps for 5G service in the high-cost program and to date most eligible carriers have accepted that funding and associated obligation to deploy at those speeds. While it is true that 5G service is not defined by a particular speed, we conclude that setting both minimum cell edge and median target speeds based upon what we believe to be achievable with a minimum amount of spectrum will help align the services funded with 5G Fund support with the performance of 5G service in unsubsidized areas. We note that a review of the Commission's public Universal Licensing System indicates that the licenses held by competitive

ETCs receiving legacy high-cost support provide the minimum amount of bandwidth that we find to be necessary to support 5G services (at least 10 megahertz x 10 megahertz using frequency division duplex (FDD) or 20 megahertz using time division duplex (TDD)) meeting these speeds in more than 95% of subsidized service areas. We consequently believe even small and mid-size rural providers will be reasonably capable of meeting a 35/3 Mbps standard with available spectrum.

85. We also disagree with suggestions from Next Century Cities, Juniper Networks, and Verizon that we should adopt higher speeds for the 5G Fund, ranging from 50/5 Mbps to 1 Gbps. While many 5G networks will be capable of higher speeds, the 5G Fund is intended to support networks in even the most sparsely populated and hardest-to-serve parts of the country. Setting network speeds too high risks raising the costs of deploying in those areas so high that service providers are unwilling to bid. As we have noted, we believe 35/3 Mbps will be achievable by the vast majority of potential 5G Fund bidders and legacy support recipients, and is consistent with other 5G universal support requirements in insular areas. We likewise disagree with CRWC's suggestion to use signal strength requirements and a link budget as the manner of measuring compliance with performance requirements, rather than data speed and latency. We do not believe there is, and CRWC does not offer, a meaningful way to impose a single set of signal strength and link budget parameters that can reliably predict network performance for every network design and configuration.

86. Though AST&Science argues that low-earth orbit satellite service should be able to meet the 100 milliseconds or lower latency standard, other satellite companies seek to allow higher latency, perhaps via a tiered system similar to Rural Digital Opportunity Fund's performance and latency tiers. We agree with RWA that an increase in permitted latency could reduce service quality, however. We also decline to add the complexity of adopting a tiered system to the 5G Fund auctions. We believe that adopting a round-trip latency requirement of 100 milliseconds or better for all areas better achieves our goal of ensuring access to services reasonably comparable to those in urban areas. One of the key benefits of 5G over other mobile technologies is reduced latency.

87. While the New York Public Service Commission generally supported requiring a data allowance that corresponds to the average United

States subscriber data usage, we received no specific comments addressing a data source for the average United States subscriber data usage, on the time during the support term that any increases in the required data allowance should be established, or on whether there should be a cap on what minimum monthly data allowance should be required at future points during the support term. We continue to believe that tying the minimum monthly data allowance to average United States subscriber usage will ensure that rural Americans are not provided second-rate service, and we therefore adopt this standard for the minimum monthly data allowance. We defer to the proceeding in which the Office and Bureau adopt carrier-specific 5G coverage requirements for legacy support recipients and to the pre-auction process for 5G Fund auction support recipients to determine the data source from which we will evaluate the average United States subscriber data usage and the further parameters necessary to implement an evolving minimum monthly data allowance, respectively.

#### 4. Additional Public Interest Obligations

88. *Reasonably Comparable Rates.* Consistent with section 254(b)(3) of the Act, we will require as a public interest obligation for the receipt of mobile high-cost support that all legacy high-cost and 5G Fund support recipients offer 5G service in the areas where they receive support for deploying 5G service at rates that are reasonably comparable to rates they offer in urban areas, as proposed in the *5G Fund NPRM*. In the *USF/ICC Transformation Order*, the Commission concluded that, as a condition of receiving federal high-cost universal service support, all recipients of such support must offer broadband service in their supported area that meets certain basic performance requirements at rates in rural areas that are reasonably comparable to rates offered in urban areas.

89. For both voice and broadband services, the Commission considers rural rates to be “reasonably comparable” to urban rates under section 254(b)(3) if rural rates fall within a reasonable range of urban rates for reasonably comparable voice and broadband services. As an initial matter, we will define “urban” for this purpose consistent with the definition from the latest decennial U.S. Census Bureau data. Currently, the latest decennial data available from the U.S. Census Bureau for this purpose is from 2010. We anticipate that 2020 data will be available in the near future. Consequently, we will update our

definition of “urban” when new decennial data becomes available. Consistent with suggestions filed in the Mobility Fund Phase II docket and our decision in that proceeding, we conclude that if a legacy high-cost or 5G Fund support recipient is offering the same rates, terms, and conditions (including usage allowances, if any, for a specified rate) to both urban and rural customers, then it would fulfill the requirement that its rates are reasonably comparable. We also will allow a support recipient to demonstrate it provides reasonably comparable rates if one of its stand-alone voice plans and one service plan offering data are substantially similar to plans offered in urban areas. We note that we may define more precisely the circumstances under which a legacy or 5G Fund support recipient can demonstrate compliance with this certification in later proceedings, and retain our authority to look behind recipients’ certifications and take action to address any violations.

90. Where a legacy high-cost or 5G Fund support recipient does not serve urban areas and therefore cannot demonstrate that it is offering reasonably comparable rates based upon its own offerings, we will require the support recipient to identify the carrier and specific rate plans upon which it is basing its compliance certification so that we can verify that its rates are reasonably comparable. We note that allowing for cross-carrier comparison is broadly similar to our decision in the Mobility Fund Phase II Report and Order to require that a support recipient offer at least one service plan that includes a minimum monthly data allowance equivalent to a mid-level plan offered by a nationwide provider. In such a case, we will require that the support recipient submit corroborating evidence of reasonably comparable rates from the web page or other marketing materials of the other mobile carrier that does serve urban areas.

91. The New York Public Service Commission supports the proposed method for a support recipient to demonstrate that it offers reasonably comparable rates if it offers stand-alone voice plans and one service plan with data that is substantially like those offered in urban areas. NTCA also supports this approach, stating that “[a]ll who receive or win funding must . . . commit to offering a terrestrial mobile wireless product that is similar in features and price to the 5G mid-level plan offered in urban areas by large, nationwide providers.” We note that AST&Science supports our proposal to adopt a reasonably comparable rate

requirement, but suggests that we include handset costs when determining whether rates are reasonably comparable. We decline to mandate specific prices for handsets because handsets are broadly available from vendors other than service providers, and thus market forces establish handset prices. We received no comments on the proposed method of demonstrating reasonably comparable rates if the support recipient does not serve urban areas by identifying a carrier and specific rate plan upon which the support recipient is basing its compliance certification, and requiring the submission of corroborating evidence of reasonably comparable rates from the web page or other marketing materials of the mobile carrier serving urban areas on which the demonstration is based. We adopt this proposal as a reasonable and not burdensome method of demonstrating compliance with the reasonably comparable rate requirement.

92. Emphasizing the obligation to offer voice and broadband service at reasonably comparable rates further ensures that service made available with universal service funds in rural areas is not beyond the financial reach of rural customers. We note that all ETCs must advertise the availability of their voice services throughout their service areas, and we require support recipients also to advertise the availability of their broadband services within their service area.

93. *Collocation and Voice and Data Roaming.* We adopt our proposal to require competitive ETCs to allow collocation and voice and data roaming as a public interest obligation of the receipt of both legacy high-cost and 5G Fund support, and will require the same general collocation and voice and data roaming obligations that the Commission adopted for Mobility Fund Phase I, with certain minor changes for legacy support recipients. Until a competitive ETC ceases to receive legacy support, we will require the support recipient to allow reasonable collocation by other carriers of services that would meet the technological requirements of the 5G Fund on all cell-site infrastructure that it owns or manages in the subsidized service area for which it receives legacy support. For 5G Fund support recipients, to ensure that a support recipient does not use public funds to achieve unfair competitive advantage, we require that during the 5G Fund support term, a support recipient allow reasonable collocation by other providers of services that meet the technological requirements of the 5G Fund on all

newly-constructed 5G cell-site infrastructure that the support recipient owns or manages in the areas for which it receives support. We note that this public interest obligation for legacy high-cost support recipients differs slightly from what we adopt for 5G Fund support recipients and from the requirements adopted by the Commission in Mobility Fund Phase I and Mobility Fund Phase II. We conclude it is appropriate to apply a broader collocation requirement for legacy support recipients because we anticipate that such recipients will have already built their infrastructure and allowing reasonable collocation on those facilities serves our underlying policy goals of allowing other service providers to benefit from the public universal service funds. During the period of time that a carrier receives either legacy high-cost or 5G Fund support, we will also prohibit each support recipient from entering into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the respective cell-site infrastructure.

94. RWA purports to support this collocation proposal, but asserts that collocation should only be required to the extent that the tower can support multiple carriers, and suggests that any reinforcement or upgrade costs would have to be borne by the last provider desiring to collocate on the tower. We disagree with RWA's view regarding reasonable collocation because it conflicts with the underlying policy of ensuring that universal service support is used in a manner that does not allow one provider to gain an unfair competitive advantage over another. As the Commission explained in the context of adopting a similar requirement for Mobility Fund Phase II, the goal of having a public interest obligation to require reasonable collocation is to ensure that "publicly funded investments can be leveraged by other service providers." We decline to adopt RWA's position regarding collocation because we conclude it would place an undue burden on those service providers seeking to take advantage of the public benefits that can be gained for rural consumers from the 5G Fund, and would run counter to our efforts to close the digital divide. We remind both legacy high-cost and 5G Fund support recipients that they must also comply with the Commission's voice and data roaming requirements in effect as of the effective date of these rules on networks that are built using high-cost support.

#### *E. Additional Mobile Legacy High-Cost Support Requirements*

##### 1. Reporting Requirements

95. *Initial Report of Current Service Offerings.* We adopt our proposal to require each competitive ETC receiving legacy high-cost support for mobile wireless service to file an initial report of its current service offerings in each of its subsidized service areas detailing how it is using legacy support. Legacy support recipients must file this report no later than three months after the Commission receives Paperwork Reduction Act approval for this requirement. RWA broadly supported requiring an initial report since "[t]his information will help the Commission ensure that support is actually being used for its intended purpose." We agree. No other commenters discussed this point. We note that RWA addressed this proposed requirement only at a high-level, as was proposed in the *5G Fund NPRM*, and not the specific certifications and requirements that we adopt herein. Moreover, we disagree with RWA's suggestion that the initial report of current service offerings should be required only after the Commission determines the final areas eligible for support in the 5G Fund Phase I auction, as doing so would unnecessarily delay our efforts to bring accountability to the high-cost program and to gain a more complete understanding of how legacy high-cost support is being used.

96. Consistent with our decision herein to require annual reports from legacy support recipients, we will require initial reports to be filed with USAC via a web portal, and the reports will be made available to the Commission and the relevant state, territory, and Tribal governmental agencies, as applicable. A legacy support recipient must maintain the accuracy and completeness of the information provided its initial report, and any substantial change in the accuracy or completeness of any initial report submitted by a legacy support recipient must be reported within 10 business days after the reportable event occurs. We retain our authority to look behind recipients' initial reports and to take action to address any violations. We additionally direct the Office and Bureau to further specify the process by which legacy high-cost support recipients will be required to file their initial reports.

97. In order to have a complete understanding of current service offerings, we will require in the initial report information about the service each legacy support recipient offers in

each subsidized service area where it receives legacy support. Such information will include an indication of the highest level of technology deployed, a target date for when 5G broadband service meeting the performance requirements we adopt today will be deployed within the subsidized service area (for any service area in which 5G has not been deployed), and an estimate of the percentage of area covered by 5G deployment meeting the adopted performance requirements (for any area in which 5G has been deployed). To help us better understand the services offered, we will also require that each recipient provide infrastructure information on the cell sites that the carrier uses to provide mobile service within each subsidized service area in a standardized template. We note that we are currently considering in our Digital Opportunity Data Collection proceeding whether to require from all mobile service providers the submission of infrastructure information more generally across providers' networks. Our decision to adopt a requirement here that legacy support recipients provide infrastructure information for subsidized service areas is without prejudice to the matter of whether to adopt a similar requirement in the Digital Opportunity Data Collection proceeding. We recognize that carriers may consider infrastructure information to be sensitive, and so we will treat such data submitted as part of the initial report as presumptively confidential. While the Commission and USAC will treat as presumptively confidential and withhold from public inspection infrastructure information submitted as part of this report, USAC will provide these data to the Commission and the relevant state, territory, and Tribal governmental entities that have jurisdiction over a particular service area, as applicable.

98. We will require each legacy support recipient to provide, as part of the initial report, a brief narrative describing its current service offerings and providing a high-level accounting of how it has used legacy high-cost support received for the 12-month period prior to the deadline for the initial report. We direct the Office and Bureau to issue further guidance on the level of detail required and manner in which such initial accounting information must be provided consistent with our decision. Finally, we will require that each legacy support recipient provide certain certifications related to its current service offerings and use of legacy high-cost support, as



part of its initial report. These will include, among other certifications, a certification that the carrier has filed relevant deployment data (either via FCC Form 477 or the Digital Opportunity Data Collection, as appropriate) that reflect its current deployment covering its subsidized service area. To the extent that the Digital Opportunity Data Collection is not yet in place at the time that the initial report of current service offerings is due, we will require that each legacy support recipient certify to submitting coverage data consistent with the specifications adopted in the Digital Opportunity Data Collection proceeding via the existing FCC Form 477 system.

99. *Annual Reports.* We also adopt our proposal to require recipients of mobile legacy high-cost support to file annual reports regarding their efforts to provide 5G services throughout their subsidized service areas meeting the public interest obligations and performance requirements we adopt today. To that end, we will require that each legacy high-cost support recipient submit an annual report by July 1 in each year that includes updated information about the carrier's service offerings for the previous calendar year in its subsidized service areas, and how legacy support is being used, as well as certifications that the support recipient is in compliance with its public interest obligations and performance requirements. RWA was the only commenter to address our annual reporting proposal, of which it was supportive. Similar to initial reporting requirements above, we conclude that requiring annual reports will ensure accountability in the high-cost program by ensuring that legacy support recipients meet their public interest obligations and performance requirements.

100. Legacy high-cost support recipients must file annual reports with USAC via a web portal and filing these reports will replace the carrier's current obligation to annually file the existing FCC Form 481 with USAC. The requirement for legacy high-cost support recipients to file annual reports, and that these reports will replace the current obligation to file the existing FCC Form 481, will take effect following submission of the initial report of current service offerings. As with the initial reports, we will require a legacy support recipient to report any substantial change in the accuracy or completeness of any annual report it submits within 10 business days after the reportable event occurs, and we retain our authority to look behind recipients' annual reports and to take

action to address any violations. And as with the initial reports, USAC will make the annual report filings available to the Commission and the relevant state, territory, and Tribal governmental agencies, as applicable. We direct the Office and Bureau to further specify the process by which legacy high-cost support recipients will be required to file their annual reports, including whether these reports will be incorporated into a modified FCC Form 481 or will be collected via a new form.

101. In addition to collecting the same general information collected as part of FCC Form 481, and broadly similar to the initial report, we will require annual reports to include updated information about the services each legacy support recipient offers in each subsidized service area where it receives legacy support for the previous calendar year, including the highest level of technology deployed, a target date for when 5G broadband service meeting the performance requirements will be deployed within the subsidized service area (for any service area in which 5G has not been deployed), and an estimate of the percentage of area covered by 5G deployment meeting the performance requirements we adopt today (for any area in which 5G has been deployed), as well as other relevant information that the Office and Bureau decide may be necessary. We will also require that each recipient provide updated infrastructure information on the cell sites that are located within each subsidized service area in a standardized template. As with the submission of these data as part of the initial report, we will treat infrastructure data submitted as part of an annual report as presumptively confidential.

102. We will require legacy support recipients to provide as part of each annual report an accounting of the support a carrier has received and how legacy support is being used, including a brief narrative with high-level accounting of how it used legacy high-cost support received for the previous calendar year. In addition, we will require that the legacy support recipient indicate which of these expenditures were for the deployment, maintenance, and/or operation of networks capable of offering 5G service that meet the performance requirements we adopt herein. Requiring this information will allow us to ensure that legacy support recipients meet their public interest obligation to use an increasing percentage of their legacy support toward the deployment of 5G service. We note that all ETCs that receive high-cost support remain subject to periodic

audits by USAC to ensure compliance, and while we will not require legacy support recipients to submit detailed accounting information on its expenditures as part of its annual reports, opting instead to require only a brief submission of a high-level narrative alongside certifications on the use of support, we emphasize to competitive ETCs that they should retain adequate accounting records as evidence that they have met their public interest obligations to spend a minimum percentage of legacy support on the deployment of 5G in the case of an audit.

103. Finally, we will require that each legacy support recipient provide a number of certifications related to its current service offerings and use of legacy high-cost support as part of its annual reports. These will include, among other certifications, a certification that the carrier has used the required minimum percentage of legacy support toward the deployment and/or operation of 5G service meeting the minimum performance requirements, as well as that it has filed relevant deployment data either as part of FCC Form 477 or in the Digital Opportunity Data Collection, as appropriate, that reflect its current deployment covering the subsidized service area. As with our decision to require an initial report of current service offerings, to the extent that the Digital Opportunity Data Collection is not yet in place at the time that an annual report is due, we will require that each legacy support recipient certify to submitting coverage data consistent with the specifications adopted in the Digital Opportunity Data Collection proceeding via the existing FCC Form 477 system.

104. *Service Milestone Reports.* We adopt a high-level requirement that legacy high-cost support recipients submit 5G service milestone reports, and direct the Office and Bureau to propose and adopt, after notice and comment, the content and schedule of such reports in the proceeding in which they adopt carrier-specific 5G service deployment coverage requirements. We anticipate that the particular service milestone report requirements that the Office and Bureaus adopt would be generally similar to the requirements we adopt herein for 5G Fund support recipients to file interim and final service milestone reports.

## 2. Demonstrating Compliance With Performance Requirements

105. We adopt a modified version of our proposal to require legacy support recipients to demonstrate compliance with performance requirements. This

decision is consistent with requiring legacy support recipients to spend an increasing percentage of support on the deployment, maintenance, and operation of networks capable of supporting 5G broadband service that meets the performance requirements we adopt. In the *5G Fund NPRM*, we proposed to require that legacy support recipients, as with 5G Fund support recipients, demonstrate compliance with performance requirements by submitting milestone coverage maps reflecting 5G service deployment in conjunction with comprehensive on-the-ground measurement testing. Because we are not specifying carrier-specific 5G broadband service coverage requirements at this time, we will require a legacy support recipient to demonstrate the performance of any 5G networks deployed using legacy support by certifying in its annual report that it filed the relevant mobile deployment data as part of its FCC Form 477 filing or in the Digital Opportunity Data Collection, as appropriate, and that such data reflect any 5G deployment covering its subsidized service area. To the extent that the Digital Opportunity Data Collection is not operational at the time that a legacy support recipient is required to demonstrate compliance via the submission of 5G coverage maps, the support recipient will be required to submit maps generated consistent with the propagation model parameters adopted in the Digital Opportunity Data Collection proceeding through the legacy FCC Form 477 system. Additionally, we adopt a high-level requirement that legacy support recipients substantiate deployment coverage data with on-the-ground measurement tests, but defer a decision on the precise requirements for such tests, as well as the methodologies for conducting and validating on-the-ground measurement tests for legacy support recipients, to the proceeding in which the Office and Bureau adopt carrier-specific 5G broadband service coverage requirements.

106. Because the requirements adopted for the filing of 5G coverage maps in the Digital Opportunity Data Collection proceeding mirror the propagation model parameters specified for 5G deployment maps proposed in the *5G Fund NPRM*, requiring that legacy support recipients verify to the submission of coverage data in their FCC Form 477 or Digital Opportunity Data Collection filings will still provide us with the same information. Deferring to the Digital Opportunity Data Collection's requirements for the generation and submission of mobile

coverage data therefore avoids the burden on legacy support recipients of having duplicative or conflicting requirements, as suggested by AT&T and CTIA, without undermining the public interest obligations and performance requirements we adopt. We note, however, that legacy support recipients will be required to file 5G broadband coverage maps otherwise generated using the standardized propagation model parameters adopted in the Digital Opportunity Data Collection proceeding for 5G coverage data (*i.e.*, minimum cell edge speeds of  $\frac{1}{4}$  Mbps with 50% cell loading and 90% cell edge probability) via FCC Form 477 prior to filing any annual reports, to the extent that a report is due prior to the first collection of mobile coverage data in the Digital Opportunity Data Collection.

107. Although we adopt a general requirement that legacy high-cost support recipients submit on-the-ground measurement tests to demonstrate compliance with 5G performance requirements, we do not adopt specific requirements at this time because of our decision deferring adoption of carrier-specific 5G broadband service coverage requirements for these recipients. Instead, we direct the Office and Bureau to adopt, after notice and comment, appropriate parameters for legacy high-cost support recipients to demonstrate compliance with 5G broadband public interest obligations and performance requirements, as necessary, concurrent with adoption of carrier-specific 5G broadband service coverage requirements for legacy support recipients. We anticipate that the test metrics and data specifications that the Office and Bureaus adopt, along with the methodologies for conducting on-the-ground tests and validating results, would be generally similar to the requirements we adopt herein for 5G Fund support recipients to demonstrate compliance.

108. Several commenters oppose the on-the-ground measurement testing methodology proposed in the *5G Fund NPRM*, or even the use of on-the-ground tests at all to demonstrate buildout. The Vermont Department of Public Service, on the other hand, argues that on-the-ground testing, including drive testing, is critical to verify deployment, though it "does not oppose [AT&T's] proposed approach of determining validation methodology for the 5G Fund through the [Digital Opportunity Data Collection] proceeding."

109. We agree with the Vermont Department of Public Service that on-the-ground testing is important to verify appropriate use of legacy support. We

nevertheless acknowledge commenters' concerns that on-the-ground testing may be burdensome, and expect the Office and Bureau will give appropriate weight to those concerns in determining the appropriating testing methodology for legacy support recipients. Although the issue of whether to adopt a requirement that service providers substantiate coverage maps with on-the-ground testing data remains open in the Digital Opportunity Data Collection proceeding, the outcome of that proceeding is not determinative here.

110. Because this is a universal service subsidy program, our obligations as stewards of the Fund require that we take steps to ensure that support is being used for its intended purpose and to minimize waste, fraud, and abuse. This view is consistent with our treatment of fixed broadband deployments in the universal service high-cost program, where support recipients' subsidized networks are subject to mandatory speed and latency testing, even though we did not adopt a similar testing requirement for fixed broadband networks in the Digital Opportunity Data Collection Proceeding.

### 3. Non-Compliance Measures for Failure To Comply With Public Interest Obligations and Performance Requirements

111. We adopt our proposal to terminate support payments to mobile competitive ETCs receiving legacy high-cost support that fail to comply with their public interest obligations and performance requirements. As stewards of the Universal Service Fund, it is our obligation to ensure that all Americans living in areas served by these carriers receive the most advanced wireless services. We do this, and create a powerful incentive to meet obligations, by ending support payments to legacy mobile competitive ETCs that fail to comply with their obligations and/or performance requirements. While ending support payments is a stricter consequence than what other high-cost support recipients face for failing to meet their public interest obligations and performance requirements, the continuation of legacy support is an interim mechanism in place as we implement the 5G Fund, and therefore, unlike the Commission's other modernized support mechanisms, the non-compliance measures here do not benefit from allowing legacy support recipients to come back into compliance prior to the end of the support term.

112. The rule we adopt is a modified version of our proposal. As we proposed, mobile competitive ETCs

receiving legacy high-cost support that fail to comply with public interest obligations or performance requirements must notify the Bureau and USAC within 10 business days of non-compliance. We initially proposed that upon receipt of this notification, we would deem the carrier to be in default, and the carrier would no longer be eligible to receive support disbursements, and would be subject to recovery of support disbursed since the effective date of the public interest obligations and performance requirements. We modify the language of the proposed rule in two ways. First, we make clear that in addition to basing a finding of default on a legacy high-cost support recipient's notification of its non-compliance, the Bureau or USAC may in the absence of any such notification determine that the support recipient is in default and subject to the same consequences if they become aware of a recipient's non-compliance. Second, to address concerns of "disproportionate penalties," we limit the amount of support that may be subject to recovery to the legacy support not spent on the deployment, operation, and/or maintenance on voice and broadband networks that support 5G meeting the performance requirements. The amount of support we make subject to recovery, therefore, goes beyond Verizon's proposal to simply adopt the approach that the Commission used for fixed legacy high-cost support. Under the approach we adopt, for example, if the amount of legacy high-cost support disbursed to a mobile competitive ETC since the effective date of the public interest obligations and performance requirements is \$10 million and the carrier spent \$2 million on 5G deployment at the time of default, the carrier would be subject to up to \$8 million in recovery. We conclude this modified approach for non-compliance better incentivizes 5G deployment, and thus we tweak our proposal in the *5G Fund NPRM* to avoid adverse outcomes. For instance, if a carrier foresaw its inability to meet its public interest obligations, under the approach proposed in the *5G Fund NPRM*, it could be incentivized to stop spending altogether knowing that all legacy support is subject to recovery. By making any support spent on 5G not subject to recovery, such a carrier is better incentivized to keep spending on 5G. While Verizon's proposal would incentivize continued spending, such spending would not necessarily be 5G related.

113. CRWC's argument that provisions in the Consolidated

Appropriations Act of 2020, Public Law 116–93 (2020 Appropriations Act), barring the Commission from modifying its rules to reduce competitive mobile ETCs' support below 60% of their monthly baseline support amount until the Commission begins disbursing Mobility Fund Phase II support has no bearing on our authority to impose the non-compliance measures we adopt. The 2020 Appropriations Act does not relieve competitive ETCs of their obligation to comply with the high-cost program's rules, including public interest obligations. Consequently, the Commission, even after enactment of the 2020 Appropriations Act, maintains its authority to subject competitive ETCs to reductions in support amounts for failing to comply with program rules. Nor does any provision of the 2020 Appropriations Act prohibit us from adopting new rules or obligations for mobile competitive ETCs, which if not adhered to, would result in reductions in support. Congress was aware that the Commission in 2011 had expressed its intent to subject legacy high-cost support recipients to additional mobile broadband public interest obligations if the phase down in support were paused when it passed the later-in-time 2016 Appropriations Act, Public Law 114–113. The proviso to the appropriations statute permits the adoption of additional public interest obligations. The proviso states that it "shall not prohibit the Commission from . . . adopting other support mechanisms as an alternative to Mobility Fund Phase II." Because this Report and Order implements a comprehensive alternative plan for mobile high-cost support that would replace Mobility Fund Phase II (much like the Alaska Plan, Uniendo a Puerto Rico Fund, and Connect USVI Fund), including a transition for legacy support recipients, the adoption of the 5G Fund and the associated public interest obligations on legacy support recipients are consistent with the statutory language.

114. In addition, the public interest obligations we adopt here do not "modify, amend, or change the rules or regulations of the Commission for universal service high-cost support for competitive eligible telecommunications carriers in a way that is inconsistent with" the relevant rules in place in 2015—support amounts for competitive ETCs that comply with their obligations are still determined pursuant to those rules. In fact, the public interest obligations we adopt today do not alter the support amounts competitive ETCs receive and are consistent with the statutory

requirement that recipients use support "for the provision, maintenance, and upgrading of facilities and services for which the support is intended." Finally, in enacting the 2020 Appropriations Act, Congress was legislating against the background of the established principle that we can impose additional conditions on the continued receipt of universal service funds.

#### 4. Geographic Flexibility on Use of Legacy High Cost Support

115. We adopt our proposal to give mobile competitive ETCs receiving legacy high-cost support for a particular subsidized service area the flexibility to use support for the provision, maintenance, and upgrading of facilities and services within any of the designated service areas for which they receive legacy mobile support. Mobile competitive ETCs may also use legacy support within any of the designated service areas of an affiliated mobile competitive ETC (*e.g.*, where several ETCs share a common holding company), regardless of whether those areas span more than one state. Our decision also applies to U.S. territories where competitive ETCs receive mobile legacy high-cost support. As we reasoned in the *5G Fund NPRM*, this allows for more efficient decisions about use of legacy support while still satisfying the statutory obligation to use support for its intended purposes." This effectively makes permanent a waiver, which has since expired, of the Commission's rules granted by the Bureau in response to the COVID-19 pandemic.

116. Commenters were generally supportive of our proposal, and we agree with CRWC that providing geographic flexibility on the use of legacy high-cost support "is a no-cost means of improving the efficiency of investments to cover the greatest number of rural citizens." AT&T supports providing legacy support recipients with this flexibility, but cautions that doing so could result in state regulators being "unwilling to include the carrier in its annual [section 54.314] certification, rendering the ETC ineligible for support the following year." AT&T proposes that the Commission "permit ETCs that avail themselves of this flexibility to certify directly to the Commission pursuant to section 54.314(b)." We believe adopting such a procedure at this time is premature because we cannot say whether this perceived issue will develop. Moreover, nothing we adopt permits a competitive ETC to use high-cost support to provide service outside of its or an affiliated competitive ETC's

designated service areas, nor do we permit any competitive ETC to use high-cost support for anything but its intended purposes. As such, we expect a state regulator to include a carrier that otherwise complies with its ETC obligations as required in its annual certification, and further note that we expect recipients that take advantage of this flexibility to be able to certify and produce evidence to document compliance as necessary.

#### 5. Freeze of Non-Frozen Legacy High-Cost Support

117. We adopt our proposal to freeze the mobile high-cost support of Standing Rock, the sole competitive ETC that continues to receive non-frozen support. Standing Rock, a competitive ETC in North Dakota (study area code: 389014) and South Dakota (study area code: 399020) has been exempt from the freeze and phase-down of competitive ETC support. The pause of the phase down of competitive ETC support in 2014 adopted in the *USF/ICC Transformation Order* extended Standing Rock's exemption. While the phase down of frozen support for every other legacy support recipient was paused at 60% level specified in section 54.307(e)(2)(iii) of our rules, in this particular case, we will treat Standing Rock's support amount for the most recent 12-month period prior to the effective date of this Report and Order as the level specified in section 54.307(e)(2)(iii) for purposes of transitioning such support to 5G Fund support. The Commission adopted this approach in 2011 in order to provide time for Standing Rock, a "nascent Tribally-owned ETC . . . to reach a sustainable scale so that consumers on the Reservation can realize the benefits of connectivity that, but for Standing Rock, they might not otherwise have access to." Standing Rock is no longer nascent and has had ample time—more time than the Commission anticipated in 2011—to reach a sustainable scale, and so the rationale for special treatment no longer exists and Standing Rock has not demonstrated a reason for continued special treatment. Accordingly, we now freeze Standing Rock's high-cost support at the level it received for the most recent 12-month period prior to the effective date of this Report and Order, after which it will be subject to the same disaggregation and phase-down rules we adopt for all competitive ETCs whose legacy support was frozen pursuant to the *USF/ICC Transformation Order*.

118. Standing Rock urges the Commission to delay freezing support until release of the final eligibility map

and in that time continue to use line counts for determining support amounts. It reasons that due to the COVID-19 pandemic, it "expects" line counts to increase (which would result in more support) as "Tribal residents continue to adapt to social distancing requirements and the need for online learning and online business." With increased line counts, Standing Rock's support will increase, and it claims that it will therefore be in a better position to meet the "needs of Tribal residents." However, Standing Rock offers no data to support this claim. Given that its comments were filed more than three months after the President declared a national emergency due to the COVID-19 pandemic, we would expect Standing Rock to demonstrate that its line counts have already increased, but it did not. Without adequate support for the claim, we find no reason to deviate from our proposal.

#### 6. Limitations on Mobile Legacy High-Cost Support

119. We now clarify, as we proposed, that only terrestrial mobile wireless carriers may receive mobile high-cost support, and that recipients of mobile legacy high-cost support must use such support only for the provision, maintenance, and upgrading of terrestrial mobile voice and broadband facilities and services. Consequently, carriers offering only non-terrestrial services, such as mobile-satellite service, will no longer be eligible to receive mobile legacy high-cost support after the effective date of these rules. We must ensure that we are funding advanced mobile services with our limited universal service funds, even for carriers receiving legacy support, and non-terrestrial services receiving legacy support cannot meet the appropriate broadband public interest obligations that we adopt for legacy support recipients. However, an affected carrier is not prohibited from bidding for, and winning, new 5G Fund support in an auction, provided that it is otherwise determined to be eligible. Moreover, we clarify that legacy support and 5G Fund support recipients may use whatever backend technologies, including satellite backhaul, to meet 5G public interest obligations so long as they offer to the end user terrestrial 5G service that complies with the 5G-NR standard and meets all performance requirements. We are not, therefore, categorically excluding satellite technology from networks supported by the 5G Fund so long as a carrier seeking 5G Fund support is capable of providing voice and 5G broadband terrestrial service

meeting necessary program requirements.

#### F. Schedule for Transition From Legacy High-Cost Support to 5G Fund Support

120. *Authority to Modify the Legacy High-Cost Support Rules.* We adopt our tentative conclusion that the 5G Fund constitutes a comprehensive mechanism for mobile high-cost support that serves as an alternative to Mobility Fund Phase II and likewise conclude that the framework we adopt for the 5G Fund is consistent with the Commission's statutory authority to modify the rules for legacy high-cost support. We reached similar conclusions with respect to both the Alaska Plan and the Uniendo a Puerto Rico Fund and the Connect USVI Fund.

121. The statutory language expressly allowed for the Commission to "consider[], develop[], or adopt[]" other support mechanisms as an alternative to Mobility Fund Phase II." Indeed, the Commission has adopted alternate support mechanisms and otherwise ceased disbursement of legacy high-cost support based upon the phase down schedule in section 54.307(e)(2) of our rules to mobile competitive ETCs in Alaska, as well as in Puerto Rico and the U.S. Virgin Islands. Similar to the schedule we adopt here, 12 months after release of the *Alaska Plan Order*, 81 FR 69772, Dec. 7, 2016, adopting the Alaska Plan as a "comprehensive alternative plan for high-cost mobile support in Alaska," the Commission commenced a three-year phase down of support for carriers in Alaska that did not elect to participate in the Alaska Plan. As with the adoption of those alternate support mechanisms, the 5G Fund for Rural America will serve as a comprehensive alternative mechanism for mobile legacy high-cost mobile support adopted as an alternative to Mobility Fund Phase II. Because the statute does not prohibit the Commission from adopting other comprehensive support mechanisms for high-cost mobile support as an alternative to Mobility Fund Phase II, we conclude that there is no legal issue with us adopting rules that will allow for the phase down of legacy support in areas that will be ineligible for 5G Fund support in the Phase I auction, and doing so prior to that auction.

122. In the *5G Fund NPRM*, we proposed a schedule for phasing down legacy high-cost support over two years for areas that are ineligible for 5G Fund support once the final eligible areas are known prior to conducting the 5G Fund Phase I auction. Several commenters question our legal authority to resume the phase down of legacy high-cost support before we conclude the 5G

Fund Phase I auction. These commenters focus on statutory language limiting our ability to modify our rules for competitive ETCs receiving legacy high-cost support in a manner inconsistent with sections 54.307(e)(5) and (e)(6) of our rules, as in effect in 2015. Section 54.307(e)(5) of the 2015 rules provided that legacy high-cost support competitive ETCs would continue to receive support at 60% of the frozen support level until “Mobility Fund Phase II is implemented.” We do not address former section 54.307(e)(6) because the language in that rule applies only to competitive ETCs that become eligible to receive Mobility Fund Phase II support, whereas our proposal to resume the phase down of legacy support prior to the 5G Fund Phase I auction to which some commenters object pertains only to those areas that are determined to be ineligible for support.

123. The assertion by CRWC that “a competitive ETC is currently entitled to receive 60 percent of its monthly base line support amount each month until Mobility Fund Phase II is implemented” widely misses the mark. As the Commission has consistently made clear and the courts have recognized, carriers are not “entitled” to receipt of universal service funds. The statutory provision is best read as a limitation on our ability to resume the currently-paused phase down of legacy support without ensuring that recipients can avail themselves of a high-cost support mechanism to replace legacy support, and not as establishing an “entitlement” for competitive ETCs to receive mobile legacy high-cost support at 60% of the frozen support level. As an alternative to Mobility Fund Phase II, the 5G Fund, along with the transition schedule adopted herein, provides an alternate comprehensive mechanism for distributing high-cost support as provided for within our statutory authority.

124. We also disagree with CRWC’s argument that we are “barred from finding that, by adopting new rules [the Commission] will have successfully ‘implemented’” the 5G Fund, which CRWC considers to be simply a “rebranded Mobility Fund [Phase II].” This “implementation” argument lacks merit because nothing in the express language of the statute precludes us from adopting rules for a comprehensive support mechanism that is an alternative to Mobility Fund Phase II, and in so doing, reducing the legacy support for areas that are found to be ineligible for support under this new, alternate mechanism. We also do not consider the 5G Fund simply to be

Mobility Fund Phase II by another name. Rather, this Report and Order establishes an entirely new program for mobile high-cost support that builds upon lessons we have learned from our previous efforts to reform high-cost support and close the digital divide, and includes an integrated plan with performance requirements, public interest obligations, and compliance provisions for both legacy high-cost support recipients and 5G Fund support recipients to ensure the efficiency and the good stewardship of our limited universal service fund dollars.

125. Even if our ability to reduce the amount of mobile legacy high-cost support that we distribute were to turn on whether we have “implemented” the 5G Fund, CRWC’s argument still fails. In finalizing the rules and determining the final map of areas eligible for 5G Fund support, we will have implemented the 5G Fund for ineligible areas because we will have “give[n] practical effect to” the new program and ensured its “actual fulfillment by concrete measures.” In reading the language of the statute and our rules, CRWC seemingly confuses the concept of adopting a support mechanism, *i.e.*, Mobility Fund Phase II, with the concept of holding the Mobility Fund Phase II *auction*, which was included in the framework of that support mechanism and was to be the means with which we would determine the amounts of support a recipient would receive. Indeed, in 2015, when Congress originally adopted the appropriations rider, the Commission had not even adopted the use of an auction to distribute Mobility Fund Phase II support, something we did only in 2017. By analogy here, the fact that steps will remain after we finalize both the rules for the 5G Fund and the final list of areas that will be eligible for support in the Phase I auction is also not dispositive, and is in fact irrelevant, to a determination of when the 5G Fund is “implemented.” To the extent that the time at which we determine final eligible areas would have been earlier under the Option A approach, which appears to be of concern to CRWC, we note that, consistent with our decision adopting Option B, we anticipate that the final eligible areas will be determined no earlier than the time at which we finalize the Phase I auction procedures as part of our typical pre-auction process. While CRWC contends that the 5G Fund would not be “implemented” until the first month that a winning bidder receives 5G Fund support, it is wholly unclear why such a particular action definitively marks

the implementation of the 5G Fund more plausibly than other actions, such as when the rulemaking is complete and final rules become effective, when the Phase I auction closes but before 5G Fund support is authorized, or when all winning bidders have either been authorized for 5G Fund support or defaulted. CRWC’s reading that only when new 5G Fund support is awarded can legacy high-cost support be reduced below the 60% level would seemingly mean that if we conducted a Phase I auction and no carriers were ultimately authorized for 5G Fund support (due to, *e.g.*, the auction failing to close, or auction defaults for failure to file a long form application) we would continue to be obligated to disburse legacy support indefinitely. Neither the Commission nor Congress would have intended such a result.

126. Further, we are also not persuaded by CRWC’s argument that its reading of the verb “implement” is most consistent with section 54.307(e)(5) and (e)(6) of our rules, as in effect in 2015. Former section 54.307(e)(5) specifies the legacy support amount that a competitive ETC shall receive “[i]n the event that the implementation of Mobility Fund Phase II has not occurred by” 2014, whereas former section 54.307(e)(6) specifies the “[e]ligibility after [i]mplementation of Mobility Fund Phase II” of a competitive ETC to continue receiving legacy support after it becomes eligible to receive Mobility Fund Phase II support. These rules are meant to override the general phase down schedule in section 54.307(e)(2), establishing the legacy high-cost support amounts that a competitive ETC is eligible to receive at points in time before and after future high-cost support amounts are determined via the support mechanism that replaces legacy high-cost support. In the 5G Fund, we will have determined the future high-cost support amounts for areas that are ineligible for 5G Fund (no support) after the final rules are effective and eligible areas are finalized.

127. Lastly, reading the statute and our rules in the manner that CRWC proposes, providing potentially endless entitlement to legacy high-cost support after a final conclusion that no support is warranted, would broadly conflict with our responsibility to be good stewards of universal service support and our long standing policy goal to reform our high-cost program. We do not believe Congress could reasonably have intended such a result. Indeed, this reading would provide a competitive ETC with legacy support at the same level until the close of the Phase I auction, even after we have made a final

determination that the area is no longer in need of ongoing support. CRWC would have us delay reform of the legacy support program for such areas for months or even longer after finalizing the rules and procedures for the program, regardless of whether we have made a determination that the supported area is currently being served by an unsubsidized competitor and is therefore ineligible for 5G Fund support in the Phase I auction. Such an outcome is not in the public interest, and CRWC has identified no reasons why Congress or the Commission intended to require this outcome. We therefore conclude that there is no legal bar to commencing phase down of legacy high-cost support in areas that are ineligible for 5G Fund support as soon as those areas are finalized. This is especially true because we are proceeding with Option B, and using new, granular mobile broadband data to render such determinations. Our decision here is guided by our need to balance competing priorities when managing our universal service support programs.

128. *Legacy High-Cost Support Transition Schedule.* We adopt a modified version of our proposed schedule for transitioning from legacy high-cost support to 5G Fund support that will reform mobile high-cost support while minimizing the disruption to carriers currently receiving legacy support. Similar to the transition schedule we adopted for Mobility Fund Phase II, legacy high-cost support will be converted to 5G Fund support, maintained for no more than five years to preserve service, or subject to phase down over two years depending upon whether the area was eligible for 5G Fund Phase I support and if eligible for the auction, whether there was a winning bidder for the area. We do not set an absolute date on which mobile legacy high-cost support would cease, regardless of when the 5G Fund Phase I auction is conducted. For legacy high-cost support that is subject to two-year phase down, support will be provided at two-thirds of the level of the disaggregated legacy support for the first 12 months, and one-third of the level of the disaggregated legacy support for the next 12 months. We will exempt competitive ETCs from 5G deployment public interest obligations and performance requirements for any areas where legacy support is being phased down, including the requirement that support recipients spend an increasing percentage of support on 5G services and that recipients demonstrate compliance through the submission of on-the-ground measurement tests. We

will continue to require that competitive ETCs meet public interest obligations relating to offering service at reasonably comparable rates, collocation and voice and data roaming requirements, and reporting requirements for subsidized service areas where legacy support is being phased down, however. Once legacy support has been completely phased down for a service area, the competitive ETC will no longer need to meet any public interest obligations for such an area. All legacy high-cost support received by a competitive ETC in areas subject to phase down will end no later than two years after announcement of the conclusion of the auction. With the exception of the timing of the phase down of legacy support in ineligible areas previously discussed or our proposal to cease all support after five years discussed below, commenters generally did not object to our general transition schedule, including our proposals to phase down support over two years or to continue legacy support for up to five years to preserve service.

129. Under the transition schedule we adopt, in areas determined not to be eligible for 5G Fund Phase I support, legacy support will be phased down starting the first day of the month after the release of the final map of areas eligible for 5G Fund support. Because we expect that carriers will not require support in order to deploy 5G service in areas ineligible for 5G Fund support, and legacy support recipients will not be able to win 5G Fund support in the 5G Fund Phase I auction for those areas, we conclude that it is not in the public interest to continue legacy support for ineligible areas. As previously discussed, we will exempt areas determined to be ineligible for support from the 5G broadband public interest obligations and performance requirements we adopt for legacy high-cost support recipients. However, legacy support recipients will continue to have a public interest obligation to file annual reports, offer services at reasonably comparable rates, and allow for reasonable collocation and voice and data roaming for areas ineligible for support until support is fully phased down and they cease to receive legacy high-cost support for such areas. We will commence the phase down of support in ineligible areas after release of the final map of eligible areas and prior to the conclusion of the Phase I auction. While CRWC asserts that it would be "arbitrary" to adopt the phase down of support in ineligible areas prior to the close of the 5G Fund Phase I auction because carriers' support funds

have already been committed through 2020 and 2021, in view of our decision to base the areas eligible for Phase I support on a new collection of coverage data, we now anticipate that it may be a year or more before this phase down would commence. Competitive ETCs that receive legacy high-cost support should therefore be able to factor into their capital expenditure plans that the amount of support they receive may be reduced in areas also served by an unsubsidized competitor in the near future.

130. However, we decline to adopt our proposal to end all legacy high-cost support to mobile carriers at the frozen high-cost support level no later than five years after the effective date of this Order, regardless of when the 5G Fund Phase I auction is conducted. No commenters support this proposal, and we agree that providing more certainty to legacy support recipients will promote expansive 5G deployment in these otherwise high-cost areas. Instead, for areas that are eligible for 5G Fund Phase I support, on the first day of the month following the release of a public notice announcing the close of the 5G Fund Phase I auction, legacy support for current recipients will either be maintained, pending authorization of the winning bidder to receive 5G Fund support, maintained in order to preserve service in areas without a winning bidder in the Phase I auction, or subject to phase down for all other legacy support recipients. That is, for eligible areas not won in the 5G Fund Phase I auction, legacy support will begin to phase down over two years or be maintained in order to preserve service for no more than five years after the Phase I auction closes regardless of whether the eligible area may be won in the 5G Fund Phase II auction.

131. In eligible areas won in the 5G Fund Phase II auction, legacy support (whether subject to phase down or preservation-of-service support) will either be maintained, pending authorization of the winning bidder to receive 5G Fund support, maintained in order to preserve service for the legacy support recipient receiving preservation-of-service support in areas without a winning bidder, or be subject to phase down beginning the first day of the month following release of a public notice announcing the close of the 5G Fund Phase II auction. Legacy high-cost support subject to phase down after the 5G Fund Phase I auction will continue to follow the original phase down schedule that commenced after the close of the 5G Fund Phase I auction for support recipients that were not the winning bidder in eligible areas won

during the 5G Fund Phase II auction. If the carrier receiving maintenance of support in order to preserve service is not the winning bidder for an eligible area won during the 5G Fund Phase II auction, that carrier would begin to receive phased down support at this time. Legacy high-cost support maintained to preserve service after the 5G Fund Phase I auction will continue for eligible areas not won during the 5G Fund Phase II auction, but for no more than five years after the close of the Phase I auction.

132. More specifically, we adopt our proposal that for a winning bidder that is receiving legacy support in the area of its bid, legacy support will cease and 5G Fund support will commence on the first day of the month following release of a public notice authorizing that carrier to receive 5G Fund support. For portions of a legacy support recipient's subsidized service area that are eligible for 5G Fund support but for which there is no winner in a 5G Fund auction, the carrier will continue to receive legacy support in areas that do not overlap another legacy support recipient's subsidized service area. In those portions where more than one carrier receives legacy support (*i.e.*,

overlapping subsidized service areas), the recipient that receives the lowest amount of disaggregated legacy support for that area among the carriers that have reported deployment of the highest level of technology—*e.g.*, 5G—in the state will continue to receive legacy support for the overlapping area while all others recipients will receive phase down support, based upon the recipients' submitted mobile broadband coverage data. In the case of ties where two carriers receive an identical amount of legacy support, we adopt our proposal to choose the preservation-of-service support recipient that has subsidized service areas covering a larger total area within the state. If the winning bidder defaults on its bid prior to authorization, or otherwise fails to be authorized, we will not award 5G Fund support for that area. However, to avoid perverse incentives, consistent with our decision to maintain support to preserve service only in areas that lack a winning bid, a carrier receiving legacy support in the area of its winning bid will not receive preservation-of-service support and will instead be subject to phase down if not authorized to receive 5G Fund support.

133. In eligible areas where there is no winning bidder in the 5G Fund Phase I auction, the legacy support recipient receiving the minimum level of sustainable support will continue to receive support until further Commission action, but for no more than five years after the first day of the month following the release of a public notice announcing the close of the 5G Fund Phase I auction. We adopt our proposal to define the minimum level of sustainable support to be the lowest amount of legacy support among carriers that have deployed the highest level of mobile technology within the state. In eligible areas where there is no winning bidder in the 5G Fund Phase II auction, the legacy support recipient receiving the minimum level of sustainable support would continue to receive such "preservation-of-service" support until further Commission action, but for no more than five years after the first day of the month following the release of a public notice announcing the close of the 5G Fund Phase I auction.

134. The following chart summarizes the schedule we adopt to transition from legacy support to 5G Fund support for areas in the 5G Fund Phase I auction:

TRANSITION SCHEDULE FOR LEGACY HIGH-COST SUPPORT TO 5G FUND SUPPORT

Area eligibility	Auction result	Bidder or recipient status	Support type & timing
Ineligible .....	.....	.....	2-year phase down commences after effective date of rules and release of final eligible areas.
Eligible .....	Won in auction .....	Carrier is the winning bidder and is a legacy support recipient for the area it won.	Legacy support ceases and 5G Fund support commences after auction closes and bidder is authorized for area.
Eligible .....	Won in auction .....	Carrier is a legacy support recipient but is not the winning bidder in the area for which it receives support.	2-year phase down of legacy support commences after auction closes.
Eligible .....	Not won in auction ....	Carrier is a legacy support recipient but does not receive the minimum level of sustainable support for the area for which it receives support.	2-year phase down of legacy support commences after auction closes.
Eligible .....	Not won in auction ....	Carrier is a legacy support recipient and receives the minimum level of sustainable support for the area for which it receives support.	Legacy support continues for no more than 5 years after auction close.

Consistent with the existing high-cost disbursement schedule, all legacy support transition schedule timing will be aligned to the first day of the month following a triggering action.

*G. Additional 5G Fund Support Requirements*

1. Reporting Requirements

135. Consistent with the requirements adopted for CAF Phase II and the Rural Digital Opportunity Fund, we will require that a 5G Fund support recipient file annual reports certifying its

compliance with the public interest obligations, performance requirements, and any other terms and conditions associated with receipt of 5G Fund support, and file interim and final service deployment milestone reports demonstrating that it has met the 5G Fund performance requirements for deployment of service. We also adopt a rule that would require a support recipient authorized to receive 5G Fund support and its agents to retain any documentation prepared for, or in connection with, the award of the 5G Fund support for a period of not less

than 10 years after the date on which the support recipient receives its final disbursement of 5G Fund support.

136. *Annual Reports.* We adopt our proposal to require that each 5G Fund support recipient file an annual report by July 1 of each year after the year in which it was authorized to receive 5G Fund support. We will require a support recipient's annual report to cover the preceding calendar year and will require the support recipient to certify that it has complied with the public interest obligations, performance requirements, and any other terms and conditions



associated with receipt of 5G Fund support in order to continue receiving 5G Fund disbursements. As each annual report covers the preceding calendar year, no report would be due in the year in which the auction is held. The annual report must be filed with USAC via a web portal, and USAC will make all such data available to the Commission and the relevant state, territory, and Tribal governmental entities, as applicable. A 5G Fund support recipient must maintain the accuracy and completeness of the information provided its annual reports. Any substantial change in the accuracy or completeness of any annual report submitted by a 5G Fund support recipient must be reported within 10 business days after the reportable event occurs. We retain our authority to look behind recipients' annual reports and to take action to address any violations. A 5G Fund support recipient must maintain the accuracy and completeness of the information provided its annual reports. Any substantial change in the accuracy or completeness of any annual report submitted by a 5G Fund support recipient must be reported within 10 business days after the reportable event occurs. Other than AST&Science's general agreement that the proposals for annual reports and interim and final milestone reports are consistent with the Commission's obligation to assure that fund recipients are meeting their public interest obligations, we received no comment on our annual reporting proposals, and we direct the Office and Bureau to develop further specifics of reporting instructions in the pre-auction process.

137. *Service Milestone Reports.* We adopt the *5G Fund NPRM's* proposal that 5G Fund support recipients must submit interim and final service milestone reports, but in an effort to reduce data collection burdens and streamline reporting for Universal Service Fund participants, we do not adopt the *5G Fund NPRM's* proposals regarding specific data to be collected in these reports, choosing instead to rely on the data reporting as developed further in the Digital Opportunity Data Collection proceeding that is considering more broadly applicable standards. The service milestone reports would include certifications as to compliance with the interim and final service milestones and the performance requirements for the 5G Fund, as substantiated by the timely submission of milestone 5G coverage maps in the Digital Opportunity Data Collection, or if the Digital Opportunity Data Collection is not yet operational at the

time 5G Fund reports are due, by the timely submission of its 5G coverage maps (generated consistent with the propagation modeling parameters adopted in the Digital Opportunity Data Collection proceeding) through the existing FCC Form 477 system.

138. The New York Public Service Commission supports the proposal to establish interim and final service milestones "to ensure 5G Fund support recipients meet their public interest obligations." We adopt interim and final service milestone reporting requirements to ensure that support recipients continually document their progress toward meeting their meeting 5G Fund public interest obligations and performance requirements, as a mechanism to reveal and remedy non-compliance. We will also require that each 5G Fund support recipient provide infrastructure information on the cell sites that the carrier uses to provide mobile service within the areas for which it is authorized to receive 5G Fund support in a standardized template as part of its interim and final milestone reports, as suggested by the Massachusetts Department of Telecommunications and Cable. We note that we are currently considering in the Digital Opportunity Data Collection proceeding whether to require from all mobile service providers the submission of infrastructure information more generally across providers' networks. Our decision to adopt a requirement that 5G Fund support recipients provide infrastructure information for areas in which the carrier is authorized to receive 5G Fund support is without prejudice to the matter of whether to adopt a similar requirement in the Digital Opportunity Data Collection proceeding. We recognize that carriers may consider infrastructure information to be sensitive, and so we will treat such data submitted as part of the initial report as presumptively confidential. While the Commission and USAC will treat as presumptively confidential and withhold from public inspection infrastructure information submitted as part of this report, USAC will provide these data to the relevant state, territory, or Tribal governmental entity that has jurisdiction over a particular service area, if applicable.

139. While we adopt our proposal from the *5G Fund NPRM* that these reports will be submitted to USAC, as adopted for CAF Phase II and the Rural Digital Opportunity Fund, we clarify that we will share the relevant coverage data submitted via the Digital Opportunity Data Collection portal to which 5G Fund support recipients

certify with USAC for the purposes of verifying these reports. USAC personnel would be responsible for verifying submitted data to determine compliance with 5G Fund requirements.

140. We adopt our proposal to require a support recipient to file interim and final service deployment milestone reports by March 1 of the calendar year following each applicable December 31 milestone deadline. Failing to timely submit a service milestone report that includes the required certification concerning performance and coverage requirements by the established deadline would subject support recipients to defined consequences (as specified in the non-compliance requirements below). We also adopt the proposal that standards for related data submissions align with those adopted for the Digital Opportunity Data Collection, as modified below.

## 2. Demonstrating Compliance With Performance Requirements

141. We adopt a modified version of our proposals regarding the 5G Fund support recipients' demonstration of compliance with performance requirements. We will not require customized propagation modeling and mapping data, as we proposed in the *5G Fund NPRM*, but instead will require 5G Fund support recipients to certify at the established interim and final milestones to filing, in the Digital Opportunity Data Collection portal, 5G mobile broadband coverage data reflecting deployments in the eligible areas for which they are authorized to receive 5G Fund support. We will also require that 5G Fund support recipients conduct on-the-ground measurement tests to substantiate 5G broadband coverage data, and adopt a modified version of the methodologies and requirements proposed in the *5G Fund NPRM* for conducting and validating results of such testing. The methodologies we adopt for conducting on-the-ground tests and validating test results are intended to be broadly consistent with the framework we proposed for the submission of governmental and third-party challenges in the Digital Opportunity Data Collection. We will defer to the pre-auction process, however, the adoption of additional requirements and parameters for on-the-ground measurement tests.

142. We decide neither to specify distinct 5G Fund requirements for propagation modeling nor to require the separate submission of coverage data because the requirements adopted for the filing of 5G coverage maps in the Digital Opportunity Data Collection proceeding mirror the propagation

model parameters specified for 5G deployment maps proposed in the *5G Fund NPRM*. Therefore, requiring that 5G Fund support recipients verify to the submission of coverage data in their Digital Opportunity Data Collection filings will provide us with the same information while reducing the burden of potentially duplicated or conflicting requirements, as suggested by some commenters, without undermining the public interest obligations and performance requirements we adopt here.

143. We will require 5G Fund support recipients to substantiate reported 5G deployment with on-the-ground measurement tests submitted at interim and final milestones, as proposed. Rather than adopt customized 5G Fund testing requirements at this time, we adopt as a starting point test metrics, data specifications, and permitted testing applications at least as stringent as those already adopted or that may be adopted for the governmental and third party challenges in the Digital Opportunity Data Collection proceeding. Such requirements will serve as a minimum for the on-the-ground tests that we require for the 5G Fund, and we defer to the pre-auction process specifying any additional parameters, to allow for similar matters to be resolved in the Digital Opportunity Data Collection proceeding. However, because we have a heightened obligation to ensure the prudent use of universal service support, we note that we may go further than the requirements adopted in the Digital Opportunity Data Collection proceeding, or otherwise adopt more stringent requirements during the pre-auction process.

144. As for the methodologies for conducting on-the-ground tests and validating test results, we adopt the *5G Fund NPRM*'s proposals with certain modifications that will reduce the burden on 5G Fund support recipients. We note that the methodology adopted herein for conducting on-the-ground testing may not be identical to that adopted for the purposes of ensuring that T-Mobile meets its transaction commitments. We note that 5G Fund support recipients must validate geographically based 5G deployment, whereas T-Mobile's commitments are population-based, and other obligations such as data speed requirements also differ between T-Mobile's commitments and requirements for 5G Fund support recipients. Similarly, this methodology may also not be identical to that used to determine whether DISH has met its commitments as set forth in the *Order of Modification and Extension of Time*

*to Construct*, DA 20–1072 (WTB Sept. 11, 2020). Specifically, we will require that 5G Fund support recipients submit on-the-ground measurement tests with at least three tests conducted per square-kilometer, measured by overlaying a uniform grid of one square kilometer (1 km by 1 km) on recipients' submitted 5G coverage maps within the area for which 5G Fund support was awarded, as we proposed, but only for a subset of grid cells. In response to concerns about the burdens of on-the-ground testing, we will require only that a support recipient conduct such tests in a percentage of all drive-testable grid cells where the recipient reports deployment of 5G by the service milestone. We will define as drive-testable any grid cell that has more than a *de minimis* amount of total roads, based upon the most recent roadway data from the U.S. Census Bureau available for this purpose, considering roads classified in the primary road (S1100), secondary road (S1200), local road (S1400), and service drive (S1640) categories. We defer to the pre-auction process establishing the *de minimis* road threshold for what is considered a drive-testable grid cell. Additionally, we will require that the minimum percentage of drive-testable grid cells tested equal the minimum percentage of coverage required for each service buildout milestone (*i.e.*, 40%, 60%, 80%, 85%). When verifying that the minimum number of grid cells have been tested, we will compare against the in-vehicle 5G broadband coverage maps modeled to a 7/1 Mbps minimum cell edge speed submitted by 5G Fund support recipients in the Digital Opportunity Data Collection portal. To avoid duplicative testing, we will only require such testing in grid cells that report new 5G deployment for each milestone, so that previously reported testing will be cumulative.

145. Finally, we adopt a methodology to validate results of on-the-ground testing based on the *5G Fund NPRM*'s proposed approach. To broadly align with the specifications for generating 5G mobile broadband coverage maps, we will require that cumulative test data results show at least 90% of measurements report 5G service record download and upload speeds of at least 7/1 Mbps, and record median download and upload speeds of at least 35/3 Mbps. Additionally, to avoid confusion and simplify alignment of requirements, we will reduce our proposed requirement that 96% of latency tests show data latency of 100 milliseconds or less, and will instead require that cumulative test data results show at least 90% of tests record data latency of

100 milliseconds or less at the cell edge. This modification will simplify testing requirements and reduce the burden on carriers by aligning the probability of meeting the cell edge latency requirement value (of 100 milliseconds or less) with the probability of meeting the cell edge speed requirement value (of 7/1 Mbps or greater).

146. The Vermont Department of Public Services generally supports on-the-ground testing, arguing it provides the most accurate information regarding availability of broadband, and would serve as a check on what is reported based on propagation modeling alone. We agree, and believe that requiring on-the-ground measurement testing will help ensure that 5G Fund support recipients are actually providing the level of service necessary to help close the digital divide. CTIA supports aligning the 5G Fund demonstrations of compliance and testing with the Digital Opportunity Data Collection proceeding and the Broadband DATA Act, noting that doing so will promote consistent information about mobile coverage, avoid confusion, and prevent wasted resources. AT&T urges the Commission not to adopt the *5G Fund NPRM*'s proposed Mobility Fund Phase II challenge process-like approach to demonstrating compliance with on-the-ground measurement testing and to allow the Digital Opportunity Data Collection process to be completed before establishing milestone mapping and speed test requirements for the 5G Fund so we can look at lessons learned from that proceeding in designing its validation methodology, but supports the proposal to require median speeds of 35/3 Mbps with a 7/1 Mbps cell edge as reasonable. AT&T specifically objects to any requirement that every kilometer in an eligible area be tested. Verizon emphasizes that all definitions and specifications of testing must be clear across propagation mapping and speed testing.

147. We agree with CTIA and AT&T that we should generally align the framework for 5G Fund support recipients to demonstrate compliance with public interest obligations and performance requirements with the Digital Opportunity Data Collection to the extent appropriate, and have taken steps to do just that. We also acknowledge the concerns raised by AT&T and have modified the requirements and methodologies proposed in the *5G Fund NPRM* to reduce the amount of area that must be tested, learning from the experience of the Mobility Fund Phase II challenge process. RWA, CTIA, and the CRWC advocate for changes to the proposed

on-the-ground testing methodology, or to avoid an on-the-ground testing requirement altogether, with more focus on sampling or propagation maps. CCA encourages the Commission to consider alternatives and grant waivers as necessary for the most rural and difficult to test areas. While we recognize that there is a cost to requiring 5G Fund support recipients to conduct on-the-ground measurement tests, we conclude that the burden of conducting such tests is justified by our obligation to responsibly manage ratepayer funds. Moreover, bidders in a 5G Fund auction will be able to factor in the expected costs of complying with these requirements when bidding in an auction.

148. The California Public Utilities Commission urges the Commission to require 5G Fund recipients to demonstrate milestone compliance with drive test data, until and unless recipients demonstrate that such test results validate the accuracy of propagation modeling and maps predicting coverage based on on-the-move radio frequency sampling. The California Public Utilities Commission notes that “drive tests” often includes two types of testing—tests taken from a moving vehicle and stationary tests taken at specific designated points—and that drive tests should be designed to capture the service parameters likely to be experienced by consumers and thus should be conducted using stationary testing, rather than testing from moving vehicles, because stationary testing will most accurately capture this user experience. The Institute for the Wireless Internet of Things at Northeastern University advocates for site surveying through unmanned aerial systems, with methodology hardened by experimentation at the AERPAW PAWR

platform or other test environments where controlled flights are permitted, and for realistic, at-scale validation and testing using the world’s largest radiofrequency emulation platform—Colosseum. We anticipate that the possible use of UAS for mobile coverage testing will be addressed subsequently along with other testing metrics and specifications.

149. In light of comments suggesting that we harmonize requirements in the 5G Fund with the Digital Opportunity Data Collection proceeding, we decline to adopt these alternative methods of demonstrating coverage. Our decision to align the test metrics, data specifications, and permitted testing applications as part of the 5G Fund’s reporting requirements with those already adopted or that may be adopted for the Digital Opportunity Data Collection moots many of the issues raised in these comments. We anticipate that standardizing the data required for compliance reporting will ease the burden on support recipients throughout universal service programs, while collecting sufficient data to confirm that the 5G Fund’s requirements have been met.

150. We disagree with the assertion that propagation modeling alone, in the absence of on-the-ground measurements to substantiate predicted coverage, is sufficient for 5G Fund support recipients, and note that our obligation to be good stewards of limited ratepayer funds weighs on our conclusion to also require on-the-ground tests. To the extent that commenters raise concerns about the burden of requiring such on-the-ground tests, we conclude that by relaxing the requirement to conduct a test in every grid cell, we have substantially reduced the burden of demonstrating compliance with 5G

Fund public interest obligations and performance requirements. Moreover, we believe that bidders in a 5G Fund auction will adequately take into account the expected costs of demonstrating compliance when placing their bids, and that such costs would be less than the cost to the fund, in the absence of any on-the-ground testing requirement, of providing support to carriers that have not fully met their obligations. We defer to the pre-auction process specifying any further speed test parameters.

3. Non-Compliance Measures

151. We adopt post-authorization non-compliance measures for the 5G Fund that are similar to the non-compliance measures and framework for support reductions applicable to all high-cost ETCs and the process adopted by the Commission for drawing on letters of credit for CAF Phase II and Rural Digital Opportunity Fund support recipients to address a support recipient’s failure to meet a service milestone. We will require any support recipient to notify the Commission, USAC, and the relevant state, U.S. Territory, or Tribal government, if applicable, within 10 business days of its non-compliance with any interim milestone. Upon such notification, the Bureau will issue a letter evidencing the default, and the issuance of this letter will initiate reporting obligations and withholding a percentage of the 5G Fund support recipient’s total monthly 5G Fund support, if applicable, starting the month after issuance of the letter. We will rely on the following non-compliance tiers for failure to meet the 5G Fund performance requirements as of the deadline for each interim service milestone:

NON-COMPLIANCE FRAMEWORK

Compliance gap	Non-compliance measure
Tier 1: 5% to less than 15% required square kilometers coverage.	Quarterly reporting.
Tier 2: 15% to less than 25% required square kilometers coverage.	Quarterly reporting + withhold 15% of monthly support.
Tier 3: 25% to less than 50% required square kilometers coverage.	Quarterly reporting + withhold 25% of monthly support.
Tier 4: 50% or more required square kilometers coverage.	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.

152. A compliance gap is the percentage of required square kilometers that a recipient has not served by the relevant service milestone. A 5G Fund support recipient will have the opportunity to move tiers as it comes

into compliance and will receive any support that has been withheld if it moves from one of the higher tiers (*i.e.*, Tiers 2–4) to Tier 1 status (or comes into full compliance) during the service milestones. Except that consistent with

what we adopted for the Rural Digital Opportunity Fund, non-compliance of 50% or more at the Year Three Interim Milestone will result in default with no additional time permitted to come back into compliance. Consistent with the

approach adopted for the CAF Phase II auction and for the Rural Digital Opportunity Fund, we reserve the right to impose reporting obligations in individual instances if a 5G Fund support recipient misses an interim milestone by less than 5% of the required coverage for that interim milestone where the support recipient shows no progress in addressing the shortfall by the fifth year of support.

153. We separately require a support recipient that has not deployed service that meets the performance requirements adopted for the 5G Fund to at least 20% of the total square kilometers associated with the eligible areas for which it is authorized to receive support in a state by the Year Three Interim Service Milestone deadline to notify the Commission and USAC within 10 business days of its non-compliance. Upon such notification, the Bureau will issue a letter evidencing the default, and the support recipient will be subject to full support recovery and will not be permitted to avail itself of the opportunity provided by the non-compliance tier framework to come into greater or full compliance.

154. We will require any support recipient to notify the Commission, USAC, and the relevant state, U.S. Territory, or Tribal government, if applicable, within 10 business days of its non-compliance with the Year Six Final Service Milestone. If a support recipient misses the Year Six Final Service Milestone, it will have 12 months from the date of the Year Six Final Service Milestone deadline within which to come into full compliance.

155. If the support recipient is not able to come into full compliance with the Year Six Final Service Milestone deployment requirements within this 12-month grace period, as verified by USAC, the Wireline Competition Bureau will issue a letter to that effect and support will be recovered as follows: (1) If the support recipient has deployed service to at least 80%, but less than the required 85%, of the total eligible square kilometers in a state, USAC will recover 1.25 times the average support amount per square kilometer that the recipient has received in the state times the number of square kilometers unserved, up to the 85% coverage requirement; (2) if the support recipient has deployed service to at least 75% but less than 80% of the total eligible square kilometers in a state, USAC will recover 1.5 times the average support per square kilometer that the recipient has received in the state times the number of eligible square kilometers unserved, up to the 85% coverage requirement, plus 5% of

the recipient's total 10-year support in the state; and (3) if the support recipient has deployed service to less than 75% of the total eligible square kilometers in a state, USAC will recover 1.75 times the average support per square kilometer that the recipient has received in the state times the number of eligible square kilometers unserved up to the 85% coverage requirement, plus 10% of the recipient's total 10-year support for the state.

156. We will apply the same support reduction if USAC subsequently determines in the course of a compliance review that a support recipient did not provide evidence to demonstrate that it was offering service at the required performance levels to the square kilometers required by the Year Six Final Service Milestone. The non-compliance measures we adopt are consistent with those adopted for the Rural Digital Opportunity Fund, with adjustments to account for the fact that we are proposing that the Year Six Final Service milestone require service to at least 85% of the total eligible square kilometers in a state.

157. We also adopt a service deployment requirement pursuant to which a 5G Fund support recipient must demonstrate that it provides service that aligns with the 5G Fund performance requirements established by the Commission to least 75% of the total square kilometers within each biddable area (e.g., census block group or census tract) for which it is authorized to receive support by the Year Six Final Service Milestone. If the support recipient is not able to come into full compliance with this service deployment requirement after the 12-month grace period we adopt, USAC will recover an amount of support that is equal to 1.5 times the average amount of support per square kilometer that the support recipient had received in the eligible area times the number of square kilometers unserved within that eligible area, up to the 75% requirement.

158. As for CAF Phase II and the Rural Digital Opportunity Fund, USAC will be authorized to draw on a 5G Fund support recipient's letter of credit to recover the full value of the support covered by the letter of credit in the event that a support recipient does not meet the relevant service milestones, does not come into compliance during the Year Six Final Service Milestone grace period, and does not repay the Commission the support associated with the non-compliance gap within a certain amount of time. If a support recipient is in Tier 4 status during the deployment period or has missed the Year Six Final Service Milestone, and USAC has

initiated support recovery as described above, the support recipient will have six months to pay back the support that USAC seeks to recover. If the support recipient does not repay USAC by the deadline, the Wireline Competition Bureau will issue a letter to that effect and USAC will draw on the letter of credit to recover all of the support covered by the letter of credit, with any remaining balance due being a debt owed to the Commission by the support recipient.

159. If a support recipient has closed its letter of credit and it is later determined that the support recipient have ceased offering service at the required performance levels to the required square kilometers of eligible area in a state during the 10-year term of support, the support recipient will be subject to additional non-compliance measures, such as withholding of monthly payments and enforcement action, if it does not repay the Commission after six months. As for other high-cost universal service support programs, the failure to comply with the public interest obligations or any other terms and conditions associated with receipt of 5G Fund support may subject the support recipient to the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designation, and/or suspension or debarment.

160. And as for CAF Phase II and the Rural Digital Opportunity Fund, 5G Fund support recipients will be subject to compliance reviews. If subsequent to the Year Six Final Service Milestone USAC determines that a support recipient does not have sufficient evidence to demonstrate that it continues to offer service that meets the performance requirements adopted for the 5G Fund to all of the eligible square kilometers in the state as required by the Year Six Final Service Milestone, USAC will immediately recover a percentage of support from the support recipient.

161. As we concluded in the *CAF Phase II Auction Order*, 81 FR 44413 (Jul. 7, 2016), "drawing on the letter of credit in the event that the ETC fails to repay the support that USAC is instructed to recover will ensure that the Commission will be able to recover the support in the event that the ETC is unable to pay." Through the support reduction framework we are adopting, a 5G Fund support recipient will have a number of opportunities to cure its non-compliance before we will seek to recover the support that is associated with the compliance gap. Moreover, we will only recover 100% of the support that has been disbursed in those cases

where a 5G Fund support recipient has not repaid the support associated with its compliance gap. Because a 5G Fund support recipient that fails to repay the support associated with its compliance gap is also unlikely to be able to meet its obligations to use the support to offer service that meets the 5G Fund performance requirements, we conclude that recovering 100% of the support will allow us to re-award such support through an alternative mechanism to an ETC that will be able to meet its obligations.

#### H. Eligibility Requirements

162. We adopt our proposal to require parties seeking 5G Fund support to satisfy eligibility requirements that are consistent with those adopted for Mobility Fund Phase I, CAF Phase II, and the Rural Digital Opportunity Fund.

##### 1. Eligible Telecommunications Carrier Eligibility Requirements

163. *ETC Designations.* We adopt the same flexibility adopted for CAF Phase II and the Rural Digital Opportunity Fund with respect to ETC designations and will not require an entity seeking to participate in a 5G Fund auction to obtain designation as an ETC in the areas where it seeks support prior to applying for or bidding in a 5G Fund auction. Rather, we will permit a 5G Fund auction winning bidder to be designated as an ETC after it is announced as a winning bidder for a particular area. A 5G Fund auction winning bidder will be required to obtain an ETC designation from the relevant state commission, or this Commission if the state commission lacks jurisdiction, that covers the each of the geographic areas in which it won support within 180 days after the release of the public notice announcing winning bidders.

164. As the Commission determined in CAF Phase II, permitting entities to obtain ETC designation after the announcement of winning bidders for support encourages broader participation in the competitive process by a wider range of entities. It will also conserve participants' resources by avoiding obligations for auction participants who do not win any coverage areas in the auction, as well as safeguarding potential bidding strategies of applicants seeking ETC designation before an auction. The Commission's experience with CAF Phase II indicates that most applicants were ultimately designated within the long-form review period, even if it took them longer than the deadline for submitting proof of ETC designation. If the ETC process takes longer than 180 days, we will entertain

requests from winning bidders for waiver of the ETC deadline. Consistent with the approach adopted for CAF Phase II and the Rural Digital Opportunity Fund, we will require such waiver requests to demonstrate that the ETC application was filed no later than 30 days after the release of the public notice announcing that it is a winning bidder or that the petitioner has a persuasive good-faith case for not having done so. As the Commission discovered with both the rural broadband experiments and CAF Phase II auction, there were various circumstances impacting the ability of individual bidders to file their ETC applications, and when an application was filed did not always determine whether an applicant was designated within the 150 remaining days. We note that any circumstances where a state will need more time due to procedural requirements or resource issues can be dealt with through the waiver process. The limited comment we received on our ETC designation eligibility requirement proposals support this approach.

165. *Forbearance from Service Area Redefinition Process.* Consistent with the approach adopted for Mobility Fund Phase I, CAF Phase II, and the Rural Digital Opportunity Fund, we will forbear from the statutory requirement that the ETC service area of a 5G Fund support recipient conform to the service area of the rural telephone company serving the same area. Following the approach the Commission adopted for CAF Phase II and the Rural Digital Opportunity Fund, we will likewise be maximizing the use of 5G Fund support by making it available for only one provider per geographic area. Thus, forbearance is appropriate and in the public interest. RWA, the only commenter that commented on our proposal to forbear from the service area redefinition process, supports this approach.

166. Therefore, for those entities that obtain ETC designations after becoming winning bidders in a 5G Fund auction, we forbear from applying section 214(e)(5) of the Act, insofar as this section requires that the service area of such an ETC conform to the service area of any rural telephone company serving an area eligible for 5G Fund support. We note that forbearing from the service area conformance requirement eliminates the need for redefinition of any rural telephone company service areas in the context of 5G Fund competitive bidding process. Accordingly, Commission rules regarding the redefinition process are inapplicable to petitions that are subject

to this Report and Order. However, if an existing ETC seeks support through the 5G Fund competitive bidding process for areas within its existing service area, this forbearance will not have any impact on the ETC's pre-existing obligations with respect to other support mechanisms and the existing service area. For the Mobility Fund Phase I auction, the Commission forbore from requiring that the service areas of an ETC conform to the service area of any rural telephone company serving the same area, pursuant to section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules. Similarly, the Commission concluded that like Mobility Fund Phase I, some of the price cap carrier study areas that may become eligible for the CAF Phase II and the Rural Digital Opportunity Fund competitive bidding processes meet the statutory definition so that the carrier serving those study areas would be classified as a rural telephone company.

167. We find that forbearance is warranted in these limited circumstances. Our objective is to distribute support to winning bidders as soon as possible so that they can begin the process of deploying new broadband service to consumers in those areas. Case-by-case forbearance would likely delay our post-selection review of entities once they are announced as winning bidders.

168. 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. We conclude each of these statutory criteria is met for the 5G Fund for the same reasons we concluded they were met for Mobility Fund Phase I, CAF Phase II, and the Rural Digital Opportunity Fund.

169. *Just and Reasonable.* We conclude that compliance with the service area conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is not necessary to ensure that the charges, practices, and classifications of carriers designated as ETCs in areas for which support will be authorized through a 5G Fund auction are just and reasonable

and not unjustly or unreasonably discriminatory. As discussed herein, we find that the three factors traditionally taken into account by the Commission and the states when reviewing a potential redefinition of a rural service area pursuant to section 214(e)(5) of the Act no longer apply in the context of designating ETCs in areas for which support will be authorized through a 5G Fund auction. Forbearance from the service area conformance requirement would not prevent the Commission from enforcing sections 201 or 202 of the Act, which require all carriers to charge just, reasonable, and non-discriminatory rates. We note that all ETCs—whether rural ETCs or other entities designated as ETCs in areas eligible for 5G Fund support in order to receive such support—will continue to be subject to the requirements of the Act that consumers have access to reasonably comparable services at reasonably comparable rates. Moreover, we adopt herein a public interest obligation for a 5G Fund support recipient to offer its services in the areas for which it is authorized to receive support at rates that are reasonably comparable to those rates offered in urban areas. In fact, as we discuss herein, the deployment of voice and 5G broadband-capable networks into these areas will expand the choice of telecommunications services for consumers in the relevant areas. The resulting competition is likely to help ensure just, reasonable, and nondiscriminatory offerings of services. For these reasons, we find that the first prong of section 10(a) is met.

170. *Consumer Protection.* We also conclude that it is not necessary to apply the service area conformance requirement to a winning bidder in the 5G Fund competitive bidding process to protect consumers. Forbearance from the service area conformance requirement in these limited circumstances will not harm consumers currently served by the rural telephone companies in the relevant service areas. To the contrary, these consumers will benefit from the use of 5G Fund support to deploy voice and 5G broadband-capable networks in these areas. Moreover, 5G Fund support recipients, like all ETCs, will be required to certify that they will satisfy applicable consumer protection and service quality standards in their service areas. For these reasons, we find that the second prong of section 10(a) is met.

171. *Public Interest.* We conclude that it is in the public interest to forbear from the service area conformance requirement in these limited circumstances. Because we adopt our proposal to distribute 5G Fund support

through competitive bidding, we set up a system under which only one ETC will receive support to serve a given area eligible for 5G Fund support. Geographic eligibility for 5G Fund support is based on whether specific areas show a lack of unsubsidized 4G LTE and 5G broadband service by at least one carrier, a definition that is unrelated to the boundaries of rural carrier service areas. Thus, a rural telephone carrier's service area is not a relevant consideration in determining where a 5G Fund support recipient that is awarded support through competitive bidding should be designated as an ETC. Accordingly, the analysis that the relevant state and the Commission historically undertook when deciding whether to redefine a rural telephone carrier's service area is not applicable to the 5G Fund competitive bidding process. Because the service area redefinition analysis is not relevant to the 5G Fund competitive bidding process, we find it is not in the public interest for the states and the Commission to work together to define the service area of 5G Fund support recipients serving rural telephone companies' service areas. However, we note that forbearance in these limited circumstances does not otherwise impact the state's primary role in designating ETCs. State commissions are still required to consider the public interest, convenience and necessity of designating an ETC in a rural area already served by a rural telephone company. We note that the redefinition process is still required for ETCs seeking other kinds of support, and that our action today does not disturb the roles of state commissions and this Commission in the ETC designation process or in the redefinition process in other circumstances where redefinition is required. We find that forbearing from the conformance requirement will encourage participation by assuring that obligations of new ETCs will not extend to portions of rural service areas for which a new ETC may not receive support. By providing this assurance, we reduce the cost of auction participation, encourage lower bids, and improve auction outcomes.

172. Similarly, enabling new ETC service areas to be defined in a more targeted manner for the 5G Fund is consistent with our approach of targeting support to areas with a specific need for the support, helps preserve those efficiencies, and thus serves the public interest. 5G Fund support will be determined by a competitive bidding process in which ETCs will bid for the support they need to serve a specific

area, rather than any larger area, such as an underlying rural telephone company study area. Absent forbearance, we find that entities seeking 5G Fund support may be required to take on unsupported ETC obligations in portions of rural carriers' study areas—areas that may not be eligible for support or for which they may not win support—and that this is likely to discourage participation in a 5G Fund auction. We conclude that requiring 5G Fund support recipients to serve a wider area runs counter to the Commission's recent and ongoing efforts to serve the public interest by focusing Universal Service Fund resources on defined areas of need.

173. We also note that requiring each 5G Fund support recipient to conform its service areas to those of the rural telephone companies in the states they seek to serve could result in lengthy redefinition proceedings, which may delay our post-auction review of winning bidders' long-form applications and consequently delay our distribution of 5G Fund support and the deployment of voice and 5G broadband services in the area(s) won by the support recipient.

174. In addition, we find that in these limited circumstances requiring conformance is not essential to protect the ability of rural telephone companies to continue to provide service. Past concerns that an ETC serving only a relatively low-cost portion of a rural carrier's service area might cream skim by receiving per line support based on the rural carrier's costs of serving the entire area are not relevant to 5G Fund support, which will be awarded through a competitive process. Unlike the legacy identical support rule, under which a competitive ETC received the same per-line support as an incumbent calculated based on the incumbent's cost of serving its entire service area, the amount of 5G Fund support is not linked to the support received by an overlapping rural carrier but is determined by the results of competitive bidding for support. Consequently, cream skimming concerns that arose under the identical support rule are not relevant for purposes of seeking 5G Fund support. Moreover, because the Commission decided in the *USF/ICC Transformation Order* that universal service could support both mobile and fixed services in a given area, we see no inherent conflict between a mobile provider receiving support to offer previously unavailable service in a portion of a rural telephone company's study area and the rural telephone company continuing to provide its pre-existing service. We note that our decision to grant forbearance in these limited circumstances does not impose any

additional administrative requirements on rural telephone companies.

175. For similar reasons, we conclude that forbearance in these limited circumstances will not harm competitive market conditions. The public interest benefits of forbearance go beyond efficiently enabling consumer access to 5G services. If anything, forbearance may enhance competition by introducing new service providers to the market and, as discussed above, will not eliminate any existing market participants or introduce concerns about cream skimming. ETCs that receive 5G Fund support will have the obligations of any other ETCs, including an obligation to make available Lifeline service to eligible low-income consumers, and thus an ETC deploying 5G services to new areas as part of the 5G Fund also will be making its services available to low-income consumers who may qualify to receive reduced charges for these advanced services. Moreover, as a 5G Fund support recipient is deploying service in its funded areas, it may also find that it has a business case to deploy service in surrounding areas, thereby increasing competition and providing more options for consumers.

176. We further note that forbearance from the conformance requirement and redefinition process for these limited purposes should not affect rural carriers' abilities to serve their entire rural service territories. Moreover, the Act contains safeguards to address any such potential concerns. The Act already requires designating commissions to affirmatively determine that designating a carrier as an ETC within a rural service area is in the public interest, and this is not affected by this grant of forbearance.

## 2. Spectrum Access

177. We will require that an applicant seeking to participate in a 5G Fund auction have exclusive access to licensed spectrum with sufficient bandwidth in an area that enables it to satisfy the applicable performance requirements in order to receive 5G Fund support for that area. As more fully explained in the application process requirements we adopt herein, we will require an applicant to have exclusive access to licensed spectrum with sufficient bandwidth (*i.e.*, spectrum for which the applicant holds a license or lease) and to describe its access to such spectrum. We also will require an applicant to certify that the description is accurate, that it has access to such spectrum in the area(s) in which it intends to bid for support, that it has such access to spectrum at the time it applies to participate in competitive

bidding and at the time it applies for support if it is a winning bidder, and that it will retain its access to such spectrum for at least 10 years after the date on which it is authorized to receive support.

## 3. Financial and Technical Capability

178. Consistent with what the Commission has required in other universal service proceedings, we adopt our proposal to require an entity to certify that it is financially and technically qualified to meet the 5G Fund public interest obligations and performance requirements within the 10-year support term in the geographic areas for which it seeks support. We implemented such a requirement for Mobility Fund Phase I, Tribal Mobility Fund Phase I, CAF Phase II, and the Rural Digital Opportunity Fund, and we conclude it is an equally appropriate requirement for the 5G Fund. As we have previously stated, "it would not be administratively efficient to conduct a competitive bidding process with participation from entities that are not prepared to make such commitments." Accordingly, requiring this certification is a reasonable protection for the auction process and to safeguard the award of universal service funds. As more fully explained in the application process requirements we adopt herein, we will require an applicant to certify as to its financial and technical qualifications in both its pre-auction short-form application and its post-auction long-form application.

## 4. Encouraging Participation

179. To encourage participation by the widest possible range of entities, we adopt our proposal to permit all qualified applicants to participate in a 5G Fund auction. Our commitment to fiscal responsibility requires that we distribute our finite budget cost effectively in light of our goals for the 5G Fund and consistent with the bidding procedures we adopt for the auction. The Commission did not prohibit any particular class of parties from participating in Mobility Fund Phase I based on size or other concerns or from seeking Mobility Fund Phase I support based solely on a party's past decision to relinquish universal service support provided on another basis. In order to avoid potentially limiting our ability to close the 5G coverage gap, we follow the same approach here. We expect that our general auction rules and procedures will provide the basis for an auction process that promotes our objectives for the 5G Fund and provide a fair opportunity for all serious, interested parties to participate.

180. AST&Science asks the Commission to allow mobile-satellite companies capable of providing 5G–NR broadband service to standard smartphones and off-the-shelf user devices to participate meaningfully in closing the digital divide by partnering with terrestrial broadband providers in the 5G Fund auction. It states that providers should be invited to demonstrate, on a case-by-case basis at the short-form application stage, the capability of these transformational, mobile-satellite-based technologies to meet the technical and performance standards for the 5G Fund, consistent with the Commission's longstanding policy of implementing regulatory policies in a technologically-neutral fashion and in a manner that avoids picking winners and losers. AST&Science submits that this approach would enable it to more quickly implement its business plan of formulating cooperative arrangements with wireless carriers to extend high-quality 5G services to areas that are extremely unlikely to be covered by traditional terrestrial technologies. SES Americom and O3B Limited similarly state the Commission "should not stifle 5G deployment by barring mobile service providers from using satellite technologies that can support latency-sensitive mobile services, such as SES's Medium Earth Orbit ("MEO") satellite network."

181. RWA asserts that satellite providers should be eligible to participate in a 5G Fund auction "if they can (1) meet the proposed speed and latency performance requirements; and (2) provide for continuity of mobile service by being capable of holding voice and data sessions while moving across the country at speeds of 75 miles per hour without regularly dropping the session, and being able to provide roaming services at reasonable rates to other carriers pursuant to the Commission's roaming rules." We decline to adopt RWA's continuity of mobile service threshold for being capable of holding voice and data sessions without regularly dropping a session because we find it adds a qualifier to the definition of what we consider to be a component of 5G mobile service. We are unconvinced that this qualifier is how reasonably comparable 5G services in urban environment are defined. We therefore conclude that the requirements we adopt for median data speed, latency, and technology standards are sufficient to capture the range of services that customers reasonably expect 5G services to provide.



182. Consistent with our decision to permit all qualified applicants to participate in a 5G Fund auction, we will not categorically preclude a satellite provider from applying for, bidding in, and winning 5G Fund support in a 5G Fund auction, provided that it is otherwise eligible. We note that pursuant to the rules we adopt herein, entities seeking 5G Fund support must satisfy certain eligibility requirements, and 5G Fund support recipients must be capable of providing mobile, terrestrial voice and broadband services that meet public interest obligations and performance requirements we adopt for the 5G Fund as a condition of receiving support—which include among other things offering voice and 5G broadband service that conforms to the 5G–NR standard using permitted spectrum bands directly to an off-the-shelf handset (e.g., an iPhone), and otherwise meets our adopted median data speed and end-to-end round-trip latency requirements of at least 35/3 Mbps and 100 milliseconds or less, respectively. Accordingly, while a carrier could potentially use non-terrestrial services, such as satellite service, to augment its provision of mobile, terrestrial voice and data services in the areas for which it is awarded 5G Fund support, it cannot rely solely on any such non-terrestrial services to meet its 5G Fund public interest obligations and performance requirements.

#### 5. Enforceable Commitments To Deploy 5G

183. In the *5G Fund NPRM*, we tentatively concluded that T-Mobile should not be allowed to use any eligible areas for which it might win 5G Fund support to fulfill its transaction-specific rural commitments to deploy 5G. As a threshold matter, today we adopt restrictions on the use of 5G Fund support to fulfill enforceable commitments to deploy 5G. We do this to ensure that our limited universal service funds are spent in the most cost-effective manner. We conclude it would be inefficient to allow any provider with enforceable 5G deployment obligations to use universal service support to fund those deployments. At the same time, we are concerned that it would be equally inefficient to use our limited universal service funding to overbuild T-Mobile's extensive rural 5G deployment commitments. We sought comment on two approaches to avoiding such an outcome: (1) Allowing T-Mobile to make pre-auction binding commitments to deploy 5G services in eligible areas within the time frames adopted as deployment milestones for the 5G Fund without receiving 5G Fund

support and otherwise prohibiting T-Mobile from participating in the auction; and (2) permitting T-Mobile to identify areas before the auction where they intend to deploy 5G service and removing these areas from the list of eligible areas.

184. AT&T, the California Public Utilities Commission, CCA, RWA, and Verizon agree with our tentative conclusion that T-Mobile should not be allowed to use 5G Fund support to fulfill its transaction commitments to deploy 5G. T-Mobile does not object to prohibiting it from using 5G Fund support to meet its transaction commitments, but argues that such a prohibition should not apply only to it, asserting that it would be unfair to single out T-Mobile in this way and that such a prohibition applied only to T-Mobile would be an inefficient use of funds. T-Mobile has encouraged the Commission to rely on objective criteria such as rurality and population density or coverage data to determine the areas that are eligible for 5G Fund support, and to keep T-Mobile's transaction commitments separate from the 5G Fund. We believe that establishing 5G Fund auction eligibility based upon a new mobile data coverage collection, combined with the procedures we adopt herein regarding enforceable commitments to deploy 5G, appropriately address this concern while balancing our priorities in distributing universal service fund support.

185. CRWC asserts that T-Mobile could game any pre-auction commitment process by strategically selecting areas thereby excluding them from the 5G Fund auction for anti-competitive reasons, cross-subsidize its merger commitments, and then face no consequences if it ultimately does not decide to deploy in those areas. Accordingly, CRWC argues that T-Mobile should be barred from participating in a 5G Fund auction. CRWC attempts to show that it would be optimal to exclude T-Mobile from the auction through a stylized numerical simulation of subsidy auctions in Missouri. CRWC quantifies the benefits of excluding T-Mobile by comparing its simulations to two baseline scenarios making the following assumptions about T-Mobile's conduct: (1) T-Mobile might not deploy 5G in an eligible area if another provider could cover that area for a lower cost, or (2) T-Mobile would not deploy at all in any eligible area. However, it is likely T-Mobile will deploy in many eligible areas regardless of where other providers deploy or what happens in an auction, especially in light of its transaction commitments; in

those cases, the area would not require a subsidy to be served. These baseline scenarios are therefore inappropriate. Further, the analysis ignores the auction budget constraint, and therefore cannot capture the benefits of increased competition by including T-Mobile. The analysis also attempts to demonstrate that T-Mobile could use the pre-selection process to strategically disadvantage rival service providers, but it is based on a single simplified theoretical scenario with no evidence of its practical relevance. RWA also argues that T-Mobile should not be able to make pre-auction binding commitments to deploy 5G that would remove areas from the auction.

186. In advocating for Commission approval of its transaction with Sprint, T-Mobile made several commitments to deploy 5G, which were adopted as conditions of approval. T-Mobile is subject to significant financial penalties if it does not meet its 5G deployment commitments. We expect T-Mobile to be able to fulfill these commitments without 5G Fund support based upon their claimed merger synergies. Accordingly, we agree that T-Mobile should not be allowed to use 5G Fund support to fulfill its transaction commitments to deploy 5G. We are mindful that other entities could be similarly situated to T-Mobile, with enforceable commitments to deploy 5G, and any such entities will likewise not be allowed to use 5G Fund support to fulfill their commitments. We note that on July 26, 2019, DISH filed applications seeking more time to satisfy the construction requirements for its AWS–4, Lower 700 MHz E Block, and AWS H block licenses, and that DISH has enforceable commitments to deploy 5G and is subject to significant penalties if it fails to meet its commitments. Accordingly, DISH cannot use 5G Fund support to meet its enforceable 5G deployment commitments. We will nevertheless evaluate enforceable commitments other than T-Mobile's on a case-by-case basis considering the specific commitments and our goals in the 5G Fund.

187. We are mindful that prohibiting carriers with enforceable commitments from participating in a 5G Fund auction would accomplish the goal of preventing universal service funds from being used to fulfill those commitments. Such a prohibition, however, would not address our interest in avoiding the use of universal funds to overbuild areas that will already see 5G deployment. As we noted in the *5G Fund NPRM*, “failing to adequately account for T-Mobile's enforceable 5G deployment commitments would risk using our

limited universal service support to overbuild areas that would see timely, unsubsidized 5G deployment [as defined by the Commission] by T-Mobile.” Moreover, prohibiting participation by otherwise qualified carriers would undermine our interest in maximizing auction participation so as to achieve the most efficient auction result and covering the most area at the least cost. All recipients of high-cost funds are subject to a statutory requirement to only use those funds for the universal service purposes for which they were granted. Recipients of 5G Fund support will be subject to reporting requirements, as well as auditing, to ensure that funding awards are spent as intended.

188. We conclude that our approach to enforceable commitments to deploy 5G must promote our goals of: Prohibiting the use of 5G Fund support to fulfill enforceable 5G deployment commitments; avoiding the use of 5G Fund support to overbuild areas that will see unsubsidized 5G deployment; and establishing procedures that will ensure a fair and competitive auction. Accordingly, we will allow T-Mobile to make pre-auction, binding commitments to deploy 5G in certain areas, thus removing those areas from the auction inventory of areas eligible for support. We note that if T-Mobile does remove areas from the auction inventory of areas eligible for support, then those areas would be subject to the drive-testing requirements negotiated in the transaction and not to the 5G Fund performance requirements. We direct the Office and Bureau to establish the specific procedures for pre-auction binding commitments, that would cover, as appropriate, qualifications and restrictions on participating in the pre-selection process. These pre-auction commitment procedures will address which entities with enforceable commitments can use these procedures. For example, these procedures will address whether DISH should receive the same or similar treatment as T-Mobile. These procedures can address, as appropriate, deterrence of any anti-competitive behavior, performance measures, noncompliance penalties, and any actions (before, during, or after the auction) that would run contrary to the goals of the 5G Fund. We are confident that the Office and Bureau can develop and implement procedures that accord with enforceable commitments, balance our priorities, ensure the most efficient use of our limited funds, and appropriately address anti-competitive concerns.

189. In addition, we will allow T-Mobile to participate—and win

support—in the 5G Fund auction, but consistent with our prohibition on using universal service support to fulfill other 5G deployment obligations, we will not allow T-Mobile to claim any population in areas won in the 5G Fund auction toward their population-based merger commitments. Similar to T-Mobile’s commitment concerning its potential participation in the Puerto Rico/U.S. Virgin Islands Stage 2 Competition, population in any areas won by T-Mobile in a 5G Fund auction will be added to its merger population commitments, such that T-Mobile’s total deployment commitment shall increase in equal measure. The same condition will apply to any similarly situated carrier with enforceable commitments for 5G deployment that participates in the 5G Fund auction, preventing the 5G Fund supported deployments from counting toward satisfying the carrier’s enforceable commitments to deploy 5G.

190. These measures balance our interests in prohibiting entities from using universal service funding to fulfill enforceable commitments, limiting overbuilding by not subsidizing areas that will already see timely 5G deployment without universal service support, and holding an efficient, open auction in which entities can compete vigorously for funding to serve areas that they would not otherwise serve without support.

#### 6. Inter-Relationship With Other Universal Service Mechanisms and Obligations

191. We adopt our proposal to allow recipients of other high-cost universal service support to participate in a 5G Fund auction. While we will not prohibit applicants from participating in a 5G Fund auction merely because they have won support through other universal service mechanisms, we note that the goals of 5G Fund are to help ensure the availability of *mobile* voice and broadband services across rural areas of the country. Accordingly, we will prohibit a 5G Fund support recipient from using 5G Fund support to satisfy any pre-existing high-cost deployment obligations to fixed locations and prohibit a recipient of other high-cost support from using that support to satisfy its 5G Fund deployment obligations.

##### *I. Application Process*

192. Consistent with prior Commission auctions and the process adopted for the Rural Digital Opportunity Fund, we adopt a two-stage application process for the 5G Fund, consisting of pre-auction and post-auction requirements. Each entity

interested in participating in a 5G Fund auction will be required to file a pre-auction short-form application that provides basic information and certifications regarding its qualifications to receive support. If determined to be qualified to bid, an applicant will be allowed to participate in the auction. After the auction concludes, a winning bidder must file a post-auction long-form application with more extensive information about its qualifications, funding, and the network it intends to use to meet its 5G Fund public interest obligations and performance requirements to demonstrate to the Commission that it is legally, technically and financially qualified to receive 5G Fund support. As we did for CAF Phase II and the Rural Digital Opportunity Fund, we stress that each potential bidder has the sole responsibility to perform its due diligence research and analysis before proceeding to participate in a 5G Fund auction. We direct the Office and Bureau and to adopt the format and deadlines for the submission of documentation for the short-form and long-form application processes.

##### 1. Short-Form Application Process

193. As more fully explained below, we adopt our proposal to apply the Commission’s existing Part 1, Subpart AA universal service competitive bidding rules to entities seeking to participate in the competitive bidding process for 5G Fund support so that such entities will be required to: (1) Provide information that would establish their identity, including disclosing parties with ownership interests and any agreements they may have relating to the support to be sought through the competitive bidding process, (2) identify their authorized bidders, (3) make various universal service support specific certifications, (4) provide any additional information that may be required by the Commission in order to evaluate their qualifications to participate in the competitive bidding process, and (5) comply with the rule prohibiting certain communications during the competitive bidding process. We also adopt our proposed amendments to various Part 1, Subpart AA rules to codify policies and procedures applicable to the auction application process that have been adopted for CAF Phase II and the Rural Digital Opportunity Fund, better align provisions in Part 1, Subpart AA with like provisions in the Commission’s Part 1, Subpart Q spectrum auction rules, and make other updates for consistency, clarification, and other purposes. We received no comments on our proposed

amendments to the Part 1, Subpart AA rules, and adopt them as proposed in the 5G Fund NPRM. The Part 1, Subpart AA universal service competitive bidding rules, as amended herein, will apply to participants in a 5G Fund auction. In addition, we adopt our proposal to require entities seeking to participate in a 5G Fund auction to also provide certain 5G Fund specific information in their short-form applications. The limited comments we received on our 5G Fund specific short-form application proposals are summarized and discussed in this section as necessary to address any issues or alternative approaches raised by commenters concerning our proposals. We conclude the pre-auction short-form requirements we adopt here provide for a fair and efficient process and will best serve the Commission's ability to determine whether an applicant is qualified to bid for 5G Fund support.

194. An entity interested in participating in the 5G Fund competitive bidding process will submit a pre-auction short-form application in which it must provide, among other things, information as to the applicant's identity, ownership, and any agreements into which it has entered, as well as a description of the applicant's access to spectrum and various applicant certifications. Commission staff then will review the submitted short-form applications to determine whether applicants have provided the necessary information required at the short-form stage and thereafter release a public notice indicating which short-form applications are deemed complete and which are deemed incomplete. Consistent with CAF Phase II and the Rural Digital Opportunity Fund, applicants whose short-form applications are deemed incomplete will be given a limited opportunity to cure defects and to resubmit correct applications, excluding major modifications. As in CAF Phase II and the Rural Digital Opportunity Fund, following the conclusion of the short-form application review process and a determination of which applicants are qualified to participate in the auction, a public notice will be released identifying those applicants that may bid in the auction.

195. *Ownership Disclosures.* Section 1.21001(b)(1) of the Commission's rules currently requires each universal service auction applicant to provide information in its short-form application to establish its identity, including information concerning its real parties in interest and information regarding parties that have an ownership or other

interest in the applicant. For past universal service support auctions, the Commission has adopted separate, program specific rules specifying that the type of ownership information to be provided by applicants is the information required by section 1.2112(a) of the Commission's rules. To simplify the ownership disclosure requirements for all universal service auction applicants going forward and eliminate the need for the Commission to continue to separately adopt the same ownership disclosure requirements in the program specific rules for each universal service auction, we adopt our proposed amendment to section 1.21001(b)(1) to specify that the type of ownership information to be provided by such applicants is the information set forth in section 1.2112(a).

196. *Authorized Bidders.* Section 1.21001(b)(2) of the Commission's rules currently requires each universal service auction applicant to identify in its short-form application up to three individuals authorized to make or withdraw a bid on behalf of the applicant. The Commission's spectrum auction rules prohibit the same individual from serving as an authorized bidder for more than one applicant in an auction in order to ensure that an individual is not in a position to be privy to the bidding strategies of more than one applicant in a spectrum auction, which could allow it to be a conduit—intentional or unintentional—for bidding information between auction applicants. The same concerns that prompted the Commission to adopt this prohibition in spectrum auctions exist in the universal service auction context. We note that a violation of the Commission's prohibited communications rule could occur if an individual acts as the authorized bidder for two or more applicants because a single individual may, even unwittingly, be influenced by the knowledge of the bids or bidding strategies of multiple applicants, in his or her actions on behalf of such applicants. Therefore, to align with our spectrum auction rules and to help guard against potential violations of the prohibited communications rule, we adopt our proposed amendment to this rule and will prohibit the same individual from serving as an authorized bidder for more than one auction applicant in a given universal service auction.

197. *Agreement Disclosures; Certification Concerning Agreement Disclosures.* Sections 1.21001(b)(3) and (b)(4) of the Commission's rules currently require each universal service auction applicant to identify in its short-form application all real parties in

interest to any agreements relating to the participation of the applicant in the competitive bidding and to certify that its application discloses all real parties in interest to any agreements involving the applicant's participation in the competitive bidding. To better align the agreement disclosure requirement and associated certification for universal service auctions with the agreement disclosure requirement in our spectrum auction rules and with the procedures adopted for the CAF Phase II auction and the Rural Digital Opportunity Fund, we adopt our proposed amendments to these rules. Accordingly, an applicant must disclose all real parties in interest to any agreements and provide a brief description of each agreement it discloses, and must certify that its application discloses all real parties in interest to any agreements and that it has provided a brief description of, and identified each party to, any partnerships, joint ventures, consortia or other agreements, arrangements, or understandings of any kind, including any joint bidding arrangements, relating to the applicant's participation in the competitive bidding and the support being sought.

198. *Certification Concerning Auction Defaults.* Section 1.21001(b)(7) of the Commission's rules currently requires each universal service auction applicant to certify that it will make any payment that may be required in the event of an auction default. To confirm an applicant's understanding that it will be deemed in default and thus liable for a payment, we adopt our proposed amendment to this rule to require an applicant to also acknowledge, as part of making this certification and as a condition of participating in the auction, that it will be deemed in default and subject to either a default payment or a forfeiture in the event of an auction default.

199. *Due Diligence Certification.* We adopt our proposal to require each universal service auction applicant to acknowledge through a certification that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of support it submits as a bid, and that if the applicant wins support, it will be able to build and operate facilities in accordance with the obligations applicable to the type of support it wins and the Commission's rules generally. This certification will help ensure that each applicant acknowledges and accepts responsibility for its bids and any forfeitures imposed in the event of an auction default, and that the applicant will not attempt to place

responsibility for the consequences of its bidding activity on either the Commission or third parties.

200. *Technical and Financial Qualifications Certification.* In connection with the eligibility requirements relating to technical and financial qualifications we adopt herein, we adopt our proposal to require each 5G Fund auction applicant to certify that it is technically and financially capable of meeting the 5G Fund public interest obligations and performance requirements in each area for which it seeks support. Based on our experience with Mobility Fund Phase I, CAF Phase II, and the Rural Digital Opportunity Fund, this approach is an appropriate screening process to ensure serious participation, without being overly burdensome to applicants and recipients.

201. *Status as an Eligible Telecommunications Carrier.* Although we will not to require an applicant to obtain an ETC designation prior to applying to participate in a 5G Fund auction, consistent with the approach taken in the CAF Phase II and Rural Digital Opportunity Fund auctions, we adopt our proposal to require each 5G Fund auction applicant to disclose in its short-form application its status as an ETC in any area for which it will seek 5G Fund support or as an entity that will become an ETC in any such area after if it is a winning bidder for 5G Fund support, and to certify that its disclosure is accurate. As for CAF Phase II and the Rural Digital Opportunity Fund, we will also require each auction applicant to disclose in the short-form application any study area codes (SACs) associated with an applicant (or its parent company) if the applicant indicates it is currently an ETC.

202. *Access to Spectrum.* In connection with the eligibility requirements relating to spectrum access we adopt herein, we adopt our proposal to require each 5G Fund auction applicant to describe in its short-form application the spectrum access it plans to use to meet its 5G Fund public interest obligations and performance requirements in the particular area(s) for which it intends to bid. Specifically, an applicant must (1) disclose whether it currently holds or leases the spectrum, (2) identify the license applicable to the spectrum to be accessed, the type of service covered by the license, the particular frequency band(s), the call sign, and any necessary renewal expectancy, and (3) indicate whether such spectrum access is contingent on obtaining support in a 5G Fund auction.

203. Because the spectrum an applicant plans to use to meet its 5G Fund public interest obligations and performance requirements must be capable of supporting 5G service as it is defined in the performance requirements adopted for 5G Fund support, we will require that entities seeking to receive support from the 5G Fund have access to spectrum and sufficient bandwidth (at a minimum, 10 megahertz x 10 megahertz using frequency division duplex (FDD) or 20 megahertz using time division duplex (TDD)) capable of supporting 5G services in the particular area(s) for which it intends to bid. An applicant will be required to disclose the total amount of bandwidth (in megahertz) to which the applicant has access under the license applicable to the spectrum to be accessed.

204. In addition, we will permit an applicant to rely only on licensed spectrum to which the applicant has exclusive use (*i.e.*, spectrum licensed by the Commission for which the applicant holds a license or lease and that it is not required to share use of with others pursuant to such license or lease) to meet its 5G Fund public interest obligations and performance requirements, and will require an applicant to have secured any Commission approvals necessary for the required spectrum access prior to submitting an auction application for the described spectrum access to be considered sufficient. A pending request for such an approval would not be considered sufficient to satisfy this requirement. Each applicant will be required to certify in its short-form application that it has access to spectrum in each area in which it intends to bid for 5G Fund support within each state and/or Tribal land area selected in this application, that it will retain such access for at least ten (10) years after the date on which it is authorized to receive support, and that the description of spectrum access in the area(s) for which it intends to bid for support provided in its application is accurate.

205. AST&Science supports requiring applicants to demonstrate that they have access to spectrum in an area sufficient to satisfy the 5G Fund performance requirements, but asks the Commission to clarify that an applicant with a binding contract to gain access to the requisite spectrum at the time of the auction meets this eligibility requirement. AST&Science submits that a contractual right to access spectrum should be sufficient even if Commission approval is necessary to consummate the contract, as long as there is no

apparent regulatory disability that would prevent the applicant from securing the requisite consent, and advocates allowing a winning bidder to file the requisite request for Commission approval promptly (*e.g.*, within 30 days) after the auction concludes, rather than having to demonstrate the receipt of all necessary Commission spectrum access approvals in advance of the auction, as is the case with post-auction securing of ETC designations.

206. We decline to allow a winning bidder to obtain any necessary spectrum access approvals after the auction because we find that doing so in an auction where spectrum is the sole technology that will be relied upon by a winning bidder to meet the public interest obligations and performance requirements associated with receiving support could increase the risk of defaults if it is ultimately unable to secure the necessary approvals. Unlike the post-auction ETC designation process with state entities or the Commission, pre-auction agreements between private parties for exclusive use of licensed spectrum that are contingent upon a party winning in the auction could raise auction integrity concerns involving, for example, prohibited communications between potential bidders and joint bidding. In addition, such agreements present more risk of default for multiple reasons, including the statutory requirements for Commission approval of such agreements. In addition, it would not be appropriate for the short-form application review process to effectively grant an advisory opinion on whether an applicant is likely to receive Commission approval for spectrum access after due consideration of the spectrum screen and any potential competitive implications. Accordingly, we conclude that requiring an applicant to have secured any Commission approvals necessary for the required spectrum access prior to submitting its short-form application to participate in a 5G Fund auction, as we did for Mobility Fund Phase I, CAF Phase II, and the Rural Digital Opportunity Fund, will serve to avoid these issues.

207. RWA supports our proposal to require 5G Fund auction applicants to demonstrate that they have access to sufficient bandwidth to meet their 5G Fund public interest obligations and performance requirements, and submits that a minimum of 15 megahertz of spectrum should be available in a given census tract that can be devoted to 5G use because 15 megahertz is a sufficient amount of spectrum to support 35/3 Mbps speed when used in coordination with Multiple Input Multiple Output

(MIMO). We find that RWA's proposed minimum amount of dedicated 15 megahertz TDD spectrum for 5G is sufficient to meet the 35/3 Mbps speeds requirement when the downlink to uplink ratio is 2:1. However, we conclude that 15 megahertz FDD paired spectrum (or 7.5 megahertz x 7.5 megahertz) is insufficient to satisfy the 35/3 Mbps speeds requirement even for mid-band spectrum which generally has higher spectral efficiency than low-band spectrum. The minimum bandwidth requirement of 10 megahertz x 10 megahertz FDD (or 20 megahertz TDD in ratio of 1:1) we adopt is based on the need for 10 megahertz of downlink spectrum to achieve the required download speed of 35 Mbps that we adopt for 5G Fund support recipients. For this reason, we would consider 15 megahertz TDD of dedicated bandwidth to be sufficient if it has a downlink to uplink ratio of 2:1 and thus provides 10 megahertz of bandwidth for downlink, but would not consider 15 megahertz FDD (*i.e.*, 7.5 megahertz x 7.5 megahertz) of dedicated bandwidth to be sufficient because it does not provide the minimum amount of spectrum (*i.e.*, at least 10 megahertz of downlink spectrum) necessary to achieve a download speed of 35 Mbps.

208. RWA opposes allowing unlicensed spectrum to be used to satisfy the spectrum access eligibility criterion because its availability cannot be relied upon, but submits that General Authorized Access (GAA) spectrum in the Citizens Broadband Radio Service should be considered qualifying spectrum if enough is available in the rural area due to the presence of Spectrum Access System (SAS) administrators in the 3550–3700 MHz band (3.5 GHz band). The Commission adopted a three-tiered access and authorization framework to coordinate shared federal and non-federal use of the 3.5 GHz band, with incumbents comprising the first tier (Incumbent Access) and receiving protection from all other users, followed by Priority Access Licenses (PALs) in the second tier, and GAA in the third tier. GAA spectrum is available on a shared/non-exclusive basis throughout the 3550–3700 MHz band (3.5 GHz band), and GAA users are also permitted to use frequencies in the 3550–3650 MHz band when higher-tier Incumbent Access tier users and Priority Access Licensees are not using the spectrum, as determined by the SAS, and consistent with the rules governing PAL protection areas. GAA users must avoid causing harmful interference to higher-tier users and must accept interference from all other

users, including other GAA users. We decline to allow 5G Fund support recipients to rely only on GAA spectrum to satisfy the spectrum access requirements we adopt for the 5G Fund. We find that the criteria for gaining and retaining access to GAA spectrum and the interference provisions associated with its use are inconsistent with the spectrum access requirements we adopt for an applicant seeking to participate in the 5G Fund, which require an applicant to demonstrate that it has secured access to spectrum and sufficient bandwidth to meet the 5G Fund public interest obligations and performance requirements in the areas for which it seeks support prior to submitting its short-form application and to certify that it will retain such access over the ten year support term if it is authorized to receive 5G Fund support. We therefore conclude that, similar to unlicensed spectrum, the availability of GAA spectrum cannot be relied upon by a 5G Fund support recipient to meet its public interest obligations and performance requirements because the recipient may not be able to predictably and/or consistently gain and/or retain access to GAA spectrum throughout the support term, which could significantly increase its risk of default. Thus, while we will permit a 5G Fund support recipient to use GAA spectrum to augment its spectrum access in its provision of 5G service in areas for which it is awarded support, it must have exclusive access to a sufficient amount of spectrum that enables it to meet the 5G Fund public interest obligations and performance requirements independently of any GAA spectrum use. Consistent with our decision not to allow 5G Fund support recipients to rely on GAA spectrum alone to satisfy the spectrum access requirements we adopt for the 5G Fund, we will similarly not allow 5G Fund support recipients to rely on GAA spectrum alone to meet the associated minimum bandwidth requirement we adopt. Thus, while a 5G Fund support recipient may use GAA spectrum to augment the amount of bandwidth it has available to meet the 5G Fund public interest obligations and performance requirements, it must have access to sufficient bandwidth that enables it to meet the minimum bandwidth requirement independently of any GAA spectrum use.

209. *Technical and Financial Qualifications.* Similar to the approach adopted for CAF Phase II and the Rural Digital Opportunity Fund, we establish two pathways for a 5G Fund auction applicant to demonstrate its technical

and financial qualifications to participate in a 5G Fund auction. To determine which pathway an applicant needs to take, we will first require the applicant to indicate in its application whether it has been providing mobile wireless voice and/or mobile wireless broadband service for at least three years prior to the short-form application deadline (or that it is a wholly-owned subsidiary of an entity that has been providing such service for at least three years). As for applicants in the CAF Phase II auction, an applicant for a 5G Fund auction will be deemed to have started providing mobile wireless broadband service on the date it began commercially offering service to end users. If the applicant is applying as a consortium or joint venture, we will allow the applicant to rely on the length of time a member of the consortium or joint venture has been providing mobile service prior to the short-form application deadline in responding to this question.

210. *Applicants That Have Been Providing Mobile Wireless Service for at Least Three Years.* We adopt our proposal to require an applicant that indicates it has been providing mobile wireless voice and/or mobile wireless broadband service to end user subscribers for at least three years prior to the short-form application deadline (or is a wholly owned subsidiary of an entity that has been providing such service for at least three years) to certify to that effect, and to: (1) Specify the number of years it (or its parent company, if it is a wholly owned subsidiary) has been providing such service, (2) certify that it (or its parent company, if it is a wholly owned subsidiary) has submitted mobile wireless voice and/or mobile wireless broadband data on FCC Form 477 as required during that time period, and (3) provide any FCC Registration Numbers (FRNs) that the applicant or its parent company (and in the case of a holding company applicant, its operating companies) have used to submit mobile wireless voice and/or mobile wireless broadband data with FCC Form 477 data for the past three years. We conclude that data regarding where a service provider offers mobile wireless voice and/or mobile wireless broadband service, the number of mobile wireless voice and/or mobile wireless broadband subscribers it has, and the mobile wireless broadband speeds it offers will provide insight into an applicant's experience in providing such service that will help Commission staff in determining whether an applicant can reasonably be expected to be capable of

meeting the 5G Fund public interest obligations and performance requirements. We also expect that it will generally be sufficient to review FCC Form 477 data (and/or Digital Opportunity Data Collection filings, as applicable) from only the past three years because those data would reflect the services that the applicant is currently offering or recently offered and will illustrate the extent to which an applicant was able to scale its network in the recent past.

211. *Applicants That Have Been Providing Mobile Wireless Service for Fewer Than Three Years, or Not at All.* If an applicant indicates that it has not been providing mobile wireless voice and/or mobile wireless broadband service for at least three years prior to the short-form application deadline (or is not a wholly owned subsidiary of an entity that has been providing such service for at least three years), we will require the applicant to submit certain high-level operational history, technical, and financial information to enable Commission staff to determine whether the applicant can reasonably be expected to be capable of meeting the 5G Fund public interest obligations and performance requirements. Specifically, we will require such an applicant to submit (1) information concerning its operational history and a preliminary project description, (2) a letter of interest from a qualified bank stating that the bank would provide a letter of credit to the applicant if the applicant becomes a winning bidder for bids of a certain dollar magnitude, as well as the maximum dollar amount for which the bank would be willing to issue a letter of credit to the applicant, and (3) a statement that the bank would be willing to issue a letter of credit that is substantially in the same form as set forth in the model letter of credit in Appendix C to this *Report and Order*. Consistent with the procedures adopted for CAF Phase II and the Rural Digital Opportunity Fund, we will treat the information submitted by an applicant concerning its operational history and its preliminary project description, along with any associated supporting information, as confidential, and will withhold such information from routine public inspection both during and after a 5G Fund auction.

212. As in any Commission auction for universal service fund support, we seek to balance the burdens on 5G Fund auction applicants of completing a short-form application with the Commission's statutory obligation to protect universal service funds, the integrity of the auction, and rural consumers. We conclude that requiring

a potential bidder to submit evidence in its short-form application that it can meet the 5G Fund public interest obligations and performance requirements in the area(s) for which it seeks 5G Fund support strikes the correct balance of helping to safeguard consumers from situations where bidders unable to meet such obligations divert support from bidders that can meet them while not being unduly burdensome for auction applicants.

213. *Limit on Filing Applications.* To simplify the application process for applicants, reduce the administrative burden on Commission staff, and align with the Commission's spectrum auction rules and the approach adopted in recent universal service auctions, we will prohibit the filing of more than one application by the same entity or by commonly controlled entities in a single universal service auction under any circumstances. To be clear, we will not restrict smaller carriers that do not individually submit short-form applications from entering into joint ventures and bidding consortia in order to combine resources and achieve other efficiencies. We adopt the definitions for the terms "controlling interest," "consortium," and "joint venture" proposed in the *5G Fund NPRM*, which we will use to identify commonly controlled entities for purposes of this prohibition and for purposes of an applicant making any required auction application certifications. As in our spectrum auctions, in the case of a consortium, each member of the consortium would be considered to have a controlling interest in the consortium filing an application for an auction and thus a consortium member would not be able to separately file its own application to participate in that auction (or be a member of another consortium applicant in that auction). In addition, we adopt our proposal that in the event that applications for a universal service auction are filed by applicants with overlapping controlling interests, both applications will be deemed incomplete and at most only one such applicant may be deemed qualified to bid. In our experience in the spectrum auction context, this has helped to minimize unnecessary burdens on the Commission's resources by eliminating the need to process duplicative, repetitious, or conflicting applications.

214. *Certification Concerning Non-Controlling Interests.* Although we prohibit the filing of more than one application by commonly controlled entities in a single universal service auction, we recognize that in some circumstances, entities may have non-

controlling interests in other entities and both entities may wish to bid in an auction. To the extent that there is no overlap between the employees in both entities that leads to the sharing of bidding information, such an arrangement may not implicate our concerns over joint bidding among separate applicants in an auction. However, such an arrangement could allow for the non-controlling interest or shared employees to act as a conduit for communication of bidding information unless the applicants establish internal controls to ensure that bidding information would not flow between them. To address this possibility and ensure that such arrangements do not serve or appear to be conduits for information, and align with the Commission's spectrum auction rules, we will require an applicant that has a non-controlling interest with respect to more than one application in a single universal service auction to certify that it is not, and will not be, privy to, or involved in, in any way, the bids or bidding strategy of more than one auction applicant and that it has established internal control procedures to preclude any person acting on behalf of the applicant from possessing information about the bids or bidding strategies of more than one applicant or communicating such information with respect to either applicant to another person acting on behalf of and possessing such information regarding another applicant. We caution, however, that submission of such certification by an applicant will not outweigh specific evidence that a communication violating the Commission's rules has occurred, nor will it preclude the initiation of an investigation when warranted.

215. *Application Processing.* Consistent with the limits on filing applications we adopt, we adopt our proposed amendment to the application processing rules to specify that if an entity submits multiple applications in a single universal service auction, or if entities that are commonly controlled by the same individual or same set of individuals submit more than one application in a single auction, only one of such applications may be found to be complete when reviewed for completeness and compliance with the Commission's rules. In our experience in the spectrum auction context, this has helped to minimize unnecessary burdens on the Commission's resources by eliminating the need to process duplicative, repetitious, or conflicting applications. We also adopt our clarifying amendments to the

application processing rules in order to simplify the application process for applicants, reduce the administrative burden on Commission staff, and align with the Commission's spectrum auction rules and the approach adopted in recent universal service auctions.

216. *Prohibition on Joint Bidding Arrangements; Prohibited Communications Rule.* In view of our decision to prohibit commonly controlled entities from filing more than one application in a single universal service auction, and to align with the Commission's practice in spectrum auctions and with the approach adopted for the Rural Digital Opportunity Fund Phase I auction, we adopt our proposal to prohibit applicants from entering into joint bidding arrangements relating to their participation in a universal service auction. We also adopt our proposals to amend the definition of "applicant" and add a definition of "bids or bidding strategies" in section 1.21002(a), and add a requirement that each universal service auction applicant certify in its short-form application that it has not entered into any explicit or implicit agreements, arrangements, or understandings of any kind related to the support to be sought through the auction, other than those disclosed in the short-form application.

217. Further, we adopt our other proposed amendments to section 1.21002 to better align with our spectrum auction rules and the decisions adopted herein. We will require an applicant that has a non-controlling interest with respect to more than one application to implement internal controls that preclude any person acting on behalf of the applicant from possessing information about the bids or bidding strategies of more than one applicant or communicating such information with respect to either applicant to another person acting on behalf of and possessing such information regarding another applicant. We will also require an applicant to modify its application for an auction to reflect any changes in ownership or in membership of a consortium or a joint venture or agreements or understandings related to the support being sought. In addition, we adopt our proposed clarification and accuracy amendments to section 1.21002 concerning the procedure for reporting a prohibited communication.

## 2. Red Light Rule for Universal Service Auctions

218. The Commission adopted rules, including a provision referred to as the "red light rule," that implement the Commission's obligation under the Debt

Collection Improvement Act of 1996, which governs the collection of debts owed to the United States, including debts owed to the Commission. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. Applicants seeking to participate in a universal service auction are subject to the Commission's red light rule. Pursuant to the red light rule, unless otherwise expressly provided for, the Commission will withhold action on an application by any entity found to be delinquent in its debt to the Commission.

219. Concluding that robust participation would be critical to the success of the CAF Phase II auction, the Commission provided a limited waiver of the red light rule for any CAF Phase II auction applicant seeking to participate in the auction that was red lighted for debt owed to the Commission at the time it timely filed its short-form application. Because we consider robust participation to be critical to the success of any universal service auction, including a 5G Fund auction, we adopt our proposed amendments to the Commission's rules to codify the relief granted by the CAF Phase II auction limited waiver, to provide an applicant seeking to participate in any universal service auction the opportunity to resolve its red light issue(s) by the close of the application resubmission filing window. Under this approach, a red lighted applicant seeking to participate in a universal service auction will have until the close of the application resubmission filing window for that auction to resolve with its red light issue(s). If the applicant has not resolved its red light issue(s) by the close of the initial application filing window for a given auction, its application would be deemed incomplete, and if the applicant has not resolved its red light issue(s) by the close of the application resubmission window for the auction, Commission staff will immediately cease all processing of the applicant's short-form application, and the applicant will be deemed not qualified to bid in the auction.

220. We provide no further opportunity for an applicant to cure any red light issue beyond what we describe here. Moreover, we emphasize that the amendments we adopt here do not waive or otherwise affect the Commission's right or obligation to collect any debt owed to the Commission by a universal service auction applicant by any means

available to the Commission, including set off, referral of debt to the United States Treasury for collection, and/or by red lighting other applications or requests filed by the affected auction applicant.

## 3. Long-Form Application Requirements

221. After the close of the auction, a public notice will be released declaring the auction closed, identifying the winning bidders, and establishing details and deadlines for next steps. A winning bidder will then be required to submit a post-auction long-form application with more extensive information about its qualifications, funding, and the network it intends to use to meet its 5G Fund public interest obligations and performance requirements, allowing for a further in-depth review of its qualifications prior to authorization of support.

222. We adopt our proposal to apply the Commission's existing Part 1, Subpart AA universal service competitive bidding rules (including the amendments to those rules adopted herein) to 5G Fund auction winning bidders applying for 5G Fund support, as well as our proposed amendments to such rules. We also adopt our proposal to require 5G Fund auction winning bidders to provide the information described below in their post-auction long-form applications to demonstrate their qualifications for support. We conclude the long-form application requirements we adopt here provide for a fair and efficient review process and will best serve the Commission's ability to determine whether the applicants are ultimately eligible for 5G Fund support authorization funding.

223. *Ownership Disclosures.* We will require a winning bidder to disclose in its long-form application ownership information as set forth in section 1.2112(a) of the Commission's rules. Ownership reported by a winning bidder during the short-form application process must be updated in the long-form application if any ownership disclosed in its short-form application has changed.

224. *Agreement Disclosures.* We will require a winning bidder to provide in its long-form application any updated information regarding the agreements, arrangements, or understandings related to its 5G Fund support disclosed in its short-form application. A winning bidder may also be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement into which it has entered and the agreement itself.

225. *ETC Designation.* Consistent with our decision to permit a winning bidder



to obtain its ETC designation after the close of the auction, we will require a winning bidder to submit appropriate documentation of its ETC designation in all the areas for which it will receive support in its long-form application, or certify that it will do so within 180 days of the public notice identifying winning bidders. We will also require a winning bidder to demonstrate that it has been designated an ETC covering each of the geographic areas for which it seeks to be authorized for support and that its ETC designation allows it to fully comply with the 5G Fund coverage requirements within the time provided to meet this requirement before 5G Fund support is authorized.

226. *Financial and Technical Capability Certification.* As for the short-form application, we will require a winning bidder to certify in its long-form application that it is financially and technically capable of providing the required coverage and performance levels within the specified timeframe in the geographic areas in which it won support.

227. *Project Description.* We will require a winning bidder to submit for its winning bids a detailed project description that describes the network to be built; identifies the proposed technology; demonstrates that the project is technically feasible; discloses the complete project budget; discusses each specific phase of the project (e.g., network design, construction, deployment, and maintenance); and includes a complete project schedule with timelines, milestones, and costs. As we did for the Rural Digital Opportunity Fund, additional details and guidance concerning the project description will be provided during the pre-auction process.

228. *Spectrum Access.* As for the short-form application, we will require a winning bidder to provide in its long-form application a description of the spectrum access that will be used to meet its obligations in areas for which it is the winning bidder, including whether it currently holds or leases the spectrum, the license applicable to the spectrum to be accessed, the type of service covered by the license, the particular frequency band(s), and the call sign, the total amount of bandwidth (in megahertz) to which the applicant has access under the license applicable to the spectrum to be accessed, and any necessary renewal expectancy. We will also require a winning bidder to certify that the description is accurate, that it has access to spectrum in the area(s) for which it is applying for support, and that it will retain such access for the entire 10-year support term. Consistent

with the requirements adopt for 5G Fund auction applicants, we will permit winning bidders to rely only on licensed spectrum to which they have exclusive use (i.e., spectrum licensed by the Commission for which a winning bidder holds a license or lease and that it is not required to share use of with others pursuant to such license or lease).

229. *Certifications as to Program Requirements.* We will require a winning bidder to make various certifications in its long-form application as to program requirements. Specifically, a winning bidder must certify that it has the funds available for all project costs that exceed the amount of support to be received and that it will comply with all program requirements, including the public interest obligations and performance requirements adopted for the 5G Fund. A winning bidder must also certify that it will meet the applicable deadlines and requirements for demonstrating interim and final construction milestones adopted for the 5G Fund, and will comply with the data speed, data latency, data allowance, collocation, voice and data roaming, and reasonably comparable rate performance requirements and public interest obligations adopted for the 5G Fund.

230. *Additional Information.* Similar to what the Commission is afforded under its Part 1, Subpart AA rules for competitive bidding for universal service support with respect to short-form applications, we adopt our proposal to permit the Commission to request in connection with its review of long-form applications such additional information as the Commission may require to determine whether a long-form applicant should be authorized to receive 5G Fund support.

#### 4. Letters of Credit and Bankruptcy Opinion Letters

231. *Letters of Credit.* Consistent with the requirements adopted for Mobility Fund Phase I, CAF Phase II, and for the Rural Digital Opportunity Fund, we adopt our proposal to require a long-form applicant to submit an irrevocable standby letter of credit prior to being authorized for support. As the Commission has previously explained, requiring all long-form applicants to obtain a letter of credit is “an effective means for accomplishing [the Commission’s] role as stewards of the public’s funds” because they “permit the Commission to immediately reclaim support” from support recipients that are not meeting their auction obligations. The value of the letter of credit must escalate as more funds are disbursed, until such time as the recipient has met the Interim

Milestones, which would permit reductions. A support recipient must maintain an open letter of credit until its certifications and data reporting regarding the final service milestone have been verified by USAC. The letter of credit requirements we adopt for the 5G Fund will establish a mechanism to recover disbursed funding efficiently in the event of non-compliance and fulfill our responsibility to protect program funds, while also reducing the costs for applicants to participate in the 5G Fund. The Commission will draw on the letter of credit in the event that the support recipient does not meet its service milestones or take advantage of the opportunities to cure or pay back the relevant support.

232. We adopt the same letter of credit rules for the 5G Fund as adopted for the Rural Digital Opportunity Fund, inclusive of subsequent guidance concerning the issuance of letters of credit by non-United States banks. Letters of credit must be issued by a bank that is acceptable to the Commission in substantially the same form as set forth in the model letter of credit in Appendix C to this *Report and Order* and that is otherwise acceptable in all respects to the Commission. Letters of credit must be obtained from a domestic or foreign bank meeting the requirements adopted herein. For United States banks, the bank must be insured by the Federal Deposit Insurance Corporation (FDIC) and have a Weiss bank safety rating of B – or higher. Similarly, for non-United States banks, the bank must be among the 100 largest non-United States banks in the world (determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit, determined on a U.S. dollar equivalent basis as of such date) and must meet the Commission’s other non-United States bank eligibility requirements. Winning bidders also have the option of obtaining a letter of credit from CoBank or the National Rural Utilities Cooperative Finance Corporation so long as they continue to meet the Commission’s requirements.

233. In addition, to ensure uniformity and transparency across our high-cost universal service rules, we adopt our proposed amendments to the Commission’s letter of credit rules for other universal service programs to codify the expansion of the definition of branch offices of non-United States banks that are considered eligible to issue letters of credit concerning such programs.

234. Prior to being authorized for support, a 5G Fund long-form applicant must obtain a letter of credit valued at

an amount equal to one year of the total support it will receive. For Year Two of its support term, a 5G Fund support recipient must obtain a letter of credit valued at an amount equal to eighteen months of its total support, and for Year Three, must obtain a letter of credit valued at an amount equal to two years of its total support. For Year Four of its support term, a support recipient must obtain a letter of credit valued at an amount equal to three years of its total support, which it must maintain at that level until the support recipient meets the requirements we adopt herein for reducing the value of letters of credit.

235. Consistent with the rules adopted for the Rural Digital Opportunity Fund, we will allow a 5G Fund support recipient to reduce the value of its letter of credit after it meets—and USAC verifies that a support recipient has completed—a relevant service milestone deadline. Specifically, we require support recipients to submit their service milestone reports to USAC by March 1 of the calendar year following each applicable December 31 milestone deadline. Upon verification by USAC that the support recipient has timely met a service milestone, we will then allow the recipient to reduce the value of its letter of credit to an amount equal to only one year of total support. Once a support recipient reduces the value of its letter of credit to an amount equal to one year of total support, we will allow the recipient to maintain its letter of credit at that level for the remainder of the service milestones, as long as USAC verifies that the support recipient has successfully and timely met each of its remaining service milestone obligations and deadlines.

236. Additionally, consistent with the rules adopted for the Rural Digital Opportunity Fund, we adopt our proposal to create an Optional Year Two Interim Service Milestone to provide an accelerated approach for a 5G Fund support recipient to reduce its letter of credit. Under this approach, a support recipient may reduce the value of its letter of credit to an amount equal to one year of total support if it is providing—and USAC has verified that it is providing—service that meets the performance requirements adopted for the 5G Fund to at least 20% of the total square kilometers associated with the eligible areas for which it is authorized to receive support in a state by December 31 of the second full calendar year following support authorization. This approach allows a support recipient to demonstrate concrete progress in service deployment earlier than its required milestones (*i.e.*, 40% in

Year Three), thereby enabling it to reduce its letter of credit earlier than it could otherwise. We reiterate that this 20% service deployment benchmark is optional; if a support recipient does not meet this optional milestone, it will not be able to reduce the value of its letter of credit, but it also will not face any reductions in support.

237. Consistent with the approach adopted for the Rural Digital Opportunity Fund, a 5G Fund support recipient does not need to wait for a specific support year to end to meet a deployment milestone. For example, if a support recipient is able to deploy to 20% of the total square kilometers associated with the eligible areas for which it is authorized to receive support in a state by the end of Year One, it may report its deployment progress and request that USAC complete the verification process in order to allow it to reduce the value of its letter of credit to an amount equal to one year of support. In those instances, we require that a support recipient be able to promptly produce the necessary documentation to minimize the time required for USAC to verify its milestone.

238. As we determined for the Rural Digital Opportunity Fund, we find it necessary to maintain larger letters of credit for support recipients that fail to meet their service deployment milestones by the applicable deadlines. Specifically, if a support recipient misses a required interim service milestone, it will be required to obtain a new letter of credit (or renew its existing letter of credit) that it is valued at an amount equal to its existing letter of credit, plus an additional year of support, up to a maximum of three years of its total support. Likewise, any support recipient that fails to meet two or more service milestones (that is, fails to catch up after missing a service deployment milestone and remains behind on service deployed to the required percentage of square kilometers at the next service milestone deployment deadline) will be required to maintain a letter of credit in the amount of three years of support and will be subject to the additional non-compliance measures we adopt herein. We find that these increased letter of credit requirements will both protect federal funds from potential non-compliance and serve as an incentive to timely deployment. Under the non-compliance measures we adopt herein, a support recipient that fails to meet any required service milestone must file a letter informing the Commission of the missed milestone within 10 business days of the conclusion of the relevant

support year for which that milestone was applicable, which will allow the Wireline Competition Bureau to determine whether it is necessary to direct USAC to suspend disbursements to the recipient or engage other mechanisms, including requiring a greater value letter of credit going forward.

239. We will require a 5G Fund support recipient to maintain a letter of credit until it has certified, and USAC has verified, that it is providing service that meets the 5G Fund performance requirements to at least 85% of the total square kilometers associated with the eligible areas for which it is authorized to receive support in a state, and at least 75% of the total square kilometers in each eligible census tract in a state, by the Year Six Final Service Milestone deadline. Consistent with the approach adopted for CAF Phase II and the Rural Digital Opportunity Fund, a 5G Fund support recipient may be subject to other action if it does not comply with the public interest obligations or any other terms and conditions associated with receiving 5G Fund support, including but not limited to the Commission's existing enforcement procedures and penalties, reductions in support amounts, revocation of ETC designations, and suspension or debarment.

240. We find that the letter of credit schedule we adopt for 5G Fund support recipients balances the need to safeguard federal funds with the costs a support recipient many incur to maintain a letter of credit.

241. Consistent with CAF Phase II and the Rural Digital Opportunity Fund, we will only authorize USAC to draw on the letter of credit for the entire amount of the letter of credit if the entity does not repay the Commission for the support associated with its compliance gap. Additionally, as stated in CAF Phase II, “[i]f the entity fails to pay this support amount, we conclude that the risk that the entity will be unable to continue to serve its customers or may go into bankruptcy is more likely, and thus it is necessary to ensure that the Commission can recover the entire amount of support that it has disbursed.”

242. In instances where the amount of the letter of credit fails to satisfy the amount owed, such deficiency will be a debt due to the Commission and, if not paid, will be collected pursuant to the Commission's rules. Where the draw on the letter of credit results in a greater recovery than is required to satisfy the default, we direct the Wireline Competition Bureau to take appropriate

measures to promptly return any excess funds.

243. As we have previously recognized, we will again allow greater flexibility regarding letter of credit for Tribally owned and controlled winning bidders. Consistent with our approach for CAF Phase II and the Rural Digital Opportunity Fund, if any Tribally owned and controlled 5G Fund winning bidder is unable to obtain a letter of credit, it may file a petition for a waiver of the letter of credit requirement. Consistent with our precedent, a petitioner must show, with evidence acceptable to the Commission, that the Tribally owned and controlled winning bidder is unable to obtain a letter of credit.

244. As for the Rural Digital Opportunity Fund, we provide a letter of credit trajectory for 5G Fund support recipients that recognizes that once a recipient has demonstrated significant and verifiable progress toward meeting its service deployment obligations, it should have the opportunity to avoid some of the more costly letter of credit requirements. For support recipients that elect to deploy service quickly and meet the Optional Year Two Service Milestone early in their support term, and continue to meet all of their service milestones, their letters of credit may never exceed 18 months' support at any time during their support term. At the same time, the more gradual increase in the letter of credit requirements we adopt for support recipients that do not choose to take advantage of the Optional Year Two Service Milestone will nonetheless reduce potential financial strain on support recipients, and still allow those support recipients to maintain a smaller letter of credit after they timely meet their Year Three Interim Service Milestone.

245. Only two parties commented on our letter of credit proposals. RWA supports our proposal to adopt an early service milestone that would allow a support recipient to reduce the value of its letter of credit if it offers service that meets the established 5G performance requirements in at least 20% of the total square kilometers in its winning bid areas in a state by the end of Year Two. RWA submits that the letter of credit should be further reduced by another 20% at the end of Year Four, provided the recipient has met its Year Four 40% benchmark coverage, and by another 20% at the end of Year Six, provided the recipient has met its 60% coverage benchmark.

246. We decline to adopt the additional letter of credit reductions at the end of Year Four and Year Six advanced by RWA. We note that RWA's

proposal is similar to proposals we received in the Rural Digital Opportunity Fund proceeding which we declined to adopt after determining that such proposals fail to sufficiently account for the Commission's interests in ensuring that universal service dollars are being used efficiently and for their intended purposes, as well as protecting against the potential for those carriers that may fail to fulfill their broadband deployment obligations. We conclude that the rules we adopt permitting 5G Fund support recipients to reduce their letters of credit after meeting the Optional Year Two Interim Milestone or the Year Three Interim Milestone—which are modeled on those adopted for the Rural Digital Opportunity Fund, and which took into account lessons learned from CAF Phase II and comments received in the Rural Digital Opportunity Fund proceeding—provide sufficient flexibility and will help reduce the costs of participating in the 5G Fund.

247. The National Association of Surety Bond Producers (NASBP) supports broadening the range of options for performance security to include a surety bond because it asserts that doing so would help rural internet service providers (ISPs) who are having difficulty securing sufficient collateral to obtain a letter of credit, and creates greater competition and participation, which may reduce costs while still protecting the government's financial interest. NASBP submits that a performance bond assures that carrier awarded support is qualified to perform its obligations under the award, and serves as a "deep pocket" in the event the carrier fails. It states that by comparison, a letter of credit is secured by a specific liquid asset(s), has a specific expiration date, and does not provide the same financial guarantee to the government. RWA supports NASBP's request to allow surety bonds as an option for performance security, stating that they are more economical than letters of credit, and that allowing their use would enable support recipients to make greater investment in their networks rather than tying up money on securing letters of credit.

248. We decline to allow the use of a surety bond as security for a 5G Fund participant's failure to meet its public interest obligations and/or and performance requirements. We note that these commenters' requests are similar to those we received in the Rural Digital Opportunity Fund proceeding, where we noted that letters of credit, unlike performance bonds, allow for an immediate reclamation of support in the event the recipient is not properly using

those funds, and that performance bonds would not provide the same level of protection and would require the involvement of a third party to adjudicate any disputes that arise, which would complicate our process and unnecessarily limit the Commission's authority to allocate funds. A letter of credit, unlike a performance bond, has the benefit of the "independence principle" in that the letter of credit is independent of the underlying transaction. The bank's obligation to pay under the letter of credit does not depend on the auction winner's default but on the presentation of documents evidencing the default. As in the Rural Digital Opportunity Fund, we conclude that being independent in this way assures that USAC can collect monies due to it promptly without engaging in disputes with the winning bidder, the performance bond guarantor or the winning bidder's trustee in bankruptcy over whether the funds should be paid or even whether the funds are available to the 5G Fund due to competing claims of creditors.

249. As we noted in the *Rural Digital Opportunity Fund Report and Order*, while we appreciate that there are costs associated with the letter of credit, we find that the letter of credit requirement will best protect the 5G Fund and continue to believe that bidders can incorporate these costs when determining their bidding strategies prior to an auction. And as we have previously stated, letters of credit have "the added advantage of minimizing the possibility that the support becomes property of a recipient's bankruptcy estate for an extended period of time, thereby preventing the funds from being used promptly to accomplish our goals." We therefore conclude that the letter of credit requirements we adopt here, which establish a mechanism to easily recover disbursed funding in the event of non-compliance, fulfill our responsibility to protect program funds while also reducing the costs of participating in the 5G Fund.

250. *Opinion Letter*. Consistent with our requirements for past universal service fund auctions, we will require a winning bidder to also submit with its letter(s) of credit a bankruptcy opinion letter from outside legal counsel. The opinion letter must clearly state, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate, or the bankruptcy estate of any other winning bidder-related entity requesting

issuance of the letter of credit under section 541 of the Bankruptcy Code.

#### 5. Defaults

251. *Forfeiture in the Event of an Auction Default.* In the 5G Fund NPRM, we made proposals for establishing the framework pursuant to which a 5G Fund winning bidder would be subject to a forfeiture under section 503 of the Act if it defaults on its winning bid(s) before it is authorized to begin receiving support. We received no comments on any aspect of our 5G Fund auction default proposals and adopt them as proposed, with one modification described below.

252. A winning bidder will be considered in default and will be subject to forfeiture if it is not authorized to receive 5G Fund support (e.g., it fails to timely file or prosecute a long-form application, fails to meet any document submission deadline, has its long-form application dismissed or denied, is found ineligible or unqualified to receive support, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of 5G Fund support). Consistent with the approach taken in CAF Phase II and the Rural Digital Opportunity Fund, a winning bidder will be subject to a \$3,000 base forfeiture for each separate violation of the Commission's rules. We define a violation as any form of default with respect to each geographic unit subject to a bid, in order to ensure that each violation has a relationship to the area affected by the auction default. In other words, there shall be separate violations for each geographic unit assigned in a bid. Similar to the approach taken in CAF Phase II and the Rural Digital Opportunity Fund, we will limit the total base forfeiture in order to ensure that the amount of the base forfeiture is not disproportionate or unduly punitive. Notwithstanding the limitation on the total base forfeiture, in instances where the facts of an auction default in a 5G Fund auction indicate that a winning bidder engaged in anticompetitive behavior, the total forfeiture that could be owed by winning bidder in such circumstances may be adjusted up to the amount associated with preservation of service in the applicable area.

253. We conclude that it is reasonable to subject all bidders to the same \$3,000 base forfeiture per violation subject to adjustment based on the criteria set forth in our forfeiture guidelines. To determine the final forfeiture amount, the Commission's Enforcement Bureau will consider the "nature, circumstances, extent and gravity of the

violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."

254. As the Commission has previously stated, auction defaults undermine the stability and predictability of the auction process and impose costs on the Commission and higher support costs for the Universal Service Fund. They also hinder the disbursement of funds that could have gone to another carrier, and thereby further delay the deployment of broadband service offerings in unserved areas. The 5G Fund represents our biggest undertaking for any mobile universal service program thus far, and will award the largest amount of support for mobile service deployments to date. The areas eligible for 5G Fund support will be those that have been determined to lack unsubsidized 4G LTE and 5G broadband service by at least one carrier. Therefore, in keeping with our goal of facilitating the deployment of 5G mobile services to as many of these areas as possible with the limited funds that are available, and as responsible stewards of 5G Fund support, it is imperative that we ensure that there are appropriate safeguards in place to deter auction defaults by 5G Fund winning bidders to the greatest extent possible.

255. In adopting procedures for competitive bidding in advance of an auction, the Commission makes a determination through notice and comment regarding how it will calculate payments or forfeitures for an auction default, taking into account the nature of the auction, lessons learned from past auctions, and other relevant factors. We note that in our typical spectrum auctions, where the *highest bid* is the winning bid, basing the amount owed for an auction default on a percentage of the defaulted winning bid, which will increase with each round of bidding as bids increase, serves as a sufficient deterrent to auction defaults. However, in an auction where the *lowest bid* is the winning bid, basing the amount owed for an auction default on a percentage of the winning bid, which will decrease with each round of bidding as bids decrease, could increase the risk that an auction default will not sufficiently deter insincere bidding or anti-competitive behavior. We find this risk to be especially concerning in the context of a 5G Fund auction, where the stakes for closing the mobile digital divide have never been higher.

256. In view of this, we modify our proposal to limit the total base forfeiture to a percentage of a winning bidder's

total winning bid amount for the support term, and will instead limit the total base forfeiture to 15% of the support at the opening price for an area for the entire 10-year support term for each separate violation. The opening price multiplied by the number of adjusted square kilometers in an area represents the highest support amount that a winning bidder could receive for that area in the auction for the 10-year support term. Given the nature of 5G Fund auctions, we find that basing the limit of the forfeiture on the support at the opening price for an area, rather than the winning bid price for an area, will better balance our interest in ensuring that the amount of any forfeiture assessed for a 5G Fund auction default is sufficient to deter insincere bidding while at the same time having a relationship to the area affected by the auction default, and is thus a better approach for achieving our desired effect. We recognize this is a departure from the approach taken in our recent universal service auctions but find it appropriate under these circumstances after taking into account the nature of auctions for 5G Fund support and what is at stake to meet our goals for the 5G Fund.

257. As we did for CAF Phase II and the Rural Digital Opportunity Fund, we conclude that the rules we adopt governing forfeitures for auction defaults and requiring auction applicants to acknowledge in their short-form applications that they will be subject to a forfeiture in the event of an auction default will impress upon entities that apply to participate in a 5G Fund auction the importance of being prepared to meet the requirements adopted for the post-auction support authorization process, and highlight the need to conduct a due diligence review to ensure that they are qualified to both participate in the 5G Fund competitive bidding process and to meet the terms and conditions for being authorized to receive support if they become winning bidders.

258. *Dismissal of Long-Form Application for Failure to Prosecute.* Section 1.21004(a) of the Commission's rules requires a winning bidder in any universal service auction to submit a timely and sufficient application for universal service support associated with its winning bids and provides that a winning bidder that fails to file an application for support or that for any other reason is not authorized to receive support has defaulted on its winning bids. However, this rule does not discuss the timing within which a winning bidder with a pending support application must respond to

Commission staff requests for additional information regarding its application and become authorized for support before that winning bidder will be considered to have failed to prosecute its application. The rule also does not specify the timing or circumstances pursuant to which the Commission can take action to dismiss an application for the winning bidder's failure to prosecute and deem the winning bidder to be in default.

259. To allow the Commission to more efficiently and effectively process pending applications for universal service support, and taking into account lessons learned from the Mobility Fund Phase I and CAF Phase II post-auction application processes such as significant delays or failures by applicants in prosecuting their applications, we adopt our proposal to amend section 1.21004 to add a new rule that permits the Commission to dismiss any universal service auction winning bidder's long-form application with prejudice and deem the winning bidder to be in default if the winning bidder fails to prosecute its long-form application, fails to respond substantially within a specified time period to official correspondence or requests for additional information, or otherwise fails to comply with requirements for becoming authorized to receive universal service support. We received no comments on our proposal and adopt the rule as proposed in the *5G Fund NPRM*. The new rule will apply to winning bidders in any 5G Fund auction and all future universal service auctions. We conclude that this approach will encourage winning bidders to timely and diligently prosecute their long-form applications and take the steps necessary to become authorized to receive support, and will allow the Commission to efficiently dispose of applications for a winning bidder's failure to prosecute its application or otherwise comply with the requirements for becoming authorized to receive support and in turn deem the winning bidder to be in default.

#### IV. Procedural Matters

##### A. Paperwork Reduction Act Analysis

260. The *5G Fund Report and Order* contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA) Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or

modified information collection requirements adopted in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

##### B. Congressional Review Act

261. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

##### C. Final Regulatory Flexibility Analysis

262. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *5G Fund NPRM*. The Commission sought written public comment on the proposals in the 5G Fund Notice of Proposed Rulemaking, including comment on the IRFA. The Commission did not receive any comments in response to this IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

263. *Need for, and Objectives of, the Report and Order.* Our nation is at the dawn of the 5G era of wireless connectivity. Recently, nationwide mobile wireless providers have deployed 5G networks covering more than 200 million Americans. And today the Commission ensures that all Americans benefit from the country's 5G future, no matter where they live. The Commission acts on its proposal to replace the Mobility Fund Phase II with the 5G Fund for Rural America and make certain that the Commission's limited Universal Service Fund dollars are directed to support the deployment of state-of-the-art wireless networks that are more responsive, more secure, and faster than today's 4G LTE networks. Moreover, by establishing the 5G Fund, the Commission further secures the nation's leadership in 5G, which will promote technological innovation in the United States, enhance economic prosperity and protect national security. Closing the digital divide in rural areas of the country will provide all Americans with the opportunity to enjoy the benefits of the most modern, advanced communications technologies offered in the wireless

telecommunications marketplace no matter where they live, work, or travel.

264. Many urban and suburban areas of the nation are already benefiting from the evolution to 5G networks. Nationwide providers have begun deploying 5G service in populated parts of the country, with even more widely-available 5G service expected in the near future. For example, T-Mobile has made enforceable commitments to the Commission as part of its acquisition of Sprint to deploy 5G service covering 85% of the population in rural areas and 97% of all Americans within three years, with coverage rising to 90% of the population in rural areas and 99% nationwide within six years. Moreover, it committed to deploy 5G service meeting minimum download speed performance benchmarks of at least 50 Mbps available to 90% of the rural population, with two-thirds of rural Americans able to receive download speeds of at least 100 Mbps. Late last year, T-Mobile announced that it switched on its 5G network across the nation using low-band spectrum.

265. 5G networks will improve the lives of Americans living and working in rural areas by providing much needed access to telehealth, telework, remote learning opportunities, precision agriculture, and other services and applications. The Commission anticipates that the deployment of 5G-capable networks in rural areas will drive job creation and have a powerful impact on the nation's economy. The framework for the 5G Fund that the Commission adopts today will bring technological innovation and economic benefits to the parts of the country that need them the most. The Commission embarks on this new 5G era recognizing that the next decade and beyond hold significant promise for rural America, and envisions that the 5G Fund will be an important catalyst to propel the nationwide deployment of networks capable of closing the digital divide, once and for all.

266. The 5G Fund for Rural America will use multi-round reverse auctions to distribute up to \$9 billion, in two phases, bringing voice and 5G broadband service to those rural areas of the country that, absent subsidies, would be unlikely to see the deployment of 5G-capable networks. Based on lessons learned from the Mobility Fund, and overwhelming record support, the Commission adopts its proposal to determine which areas will be eligible for 5G Fund support through improved mobile broadband coverage data that will be gathered through the Commission's Digital Opportunity Data Collection

proceeding. Although this approach will not be the fastest possible path to the Phase I auction, it will allow us to identify with greater precision those areas of the country where support is most needed and will be spent most efficiently.

267. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically addressed the rules and policies proposed in the 5G Fund Notice of Proposed Rulemaking.

268. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

269. *Description and Estimate of the Number of Small Entities to which the Rules Would Apply.* The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted in the 5G Fund Report and Order. 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.

270. The Commission’s actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

271. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise

which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

272. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

273. Small entities potentially affected by the rules adopted herein include Wireless Telecommunications Carriers (except Satellite), internet Service Providers (Broadband), and Satellite Telecommunications.

274. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* In the 5G Fund Report and Order, the Commission adopts public interest obligations, performance requirements, and reporting requirements that competitive ETCs receiving legacy high-cost support for mobile wireless service must meet in order to continue receiving legacy high-cost support, to ensure that the most advanced mobile services are available in all areas where a carrier is currently supported by legacy high-cost support. The Commission also establishes the framework for the 5G Fund by adopting rules that will apply in a 5G Fund auction and to recipients of 5G Fund support.

275. The Commission adopts a public interest obligation for both competitive ETCs receiving legacy high-cost support for mobile wireless service and 5G Fund support recipients to provide mobile

voice and 5G broadband service in their subsidized areas, and to satisfy distinct, measured performance requirements as a condition of receiving support. Recipients of both legacy high-cost support and 5G Fund support will have minimum baseline performance requirements for data speed, data latency, and data allowance. Like all high-cost ETCs, both legacy high-cost support recipients and 5G Fund support recipients will be required to offer voice and broadband services meeting the relevant performance requirements at rates that are reasonably comparable to what they offer in urban areas. These performance requirements, along with public interest obligations the Commission adopts for data allowances, reasonably comparable rates, collocation, and voice and data roaming, will ensure that rural areas receive service comparable to high-speed, mobile broadband available in urban areas.

276. The Commission adopts a 10-year support term for 5G Fund support recipients, along with three interim service deployment milestones and a final service deployment milestone at which a support recipient must demonstrate that it provides 5G service that meets the performance requirements the Commission adopts in the 5G Fund Report and Order. The Commission adopts a requirement that legacy high-cost support recipients use an increasing percentage of their support toward deploying 5G service in their subsidized service areas. Because the Commission recognizes that the amount received by each competitive ETC receiving legacy high-cost support for mobile wireless service varies considerably and bears no direct relation to the size of its subsidized service area or to the expected cost of deploying 5G broadband service, the Commission does not adopt its proposal to require legacy high-cost support recipients to meet the uniform 5G service deployment milestone coverage requirements proposed in the 5G Fund NPRM that would require deployment to a specified percentage of each legacy support recipient’s subsidized service area. Instead, the Commission adopts a general requirement for legacy high-cost support recipients to meet deployment coverage requirements, and direct the Office of Economics and Analytics and the Wireline Competition Bureau to develop and adopt, after notice and comment, specific 5G broadband service deployment coverage requirements and service deployment milestone deadlines for a legacy support recipient that take

into consideration the amount of legacy support the carrier receives.

277. The Commission adopts certain eligibility requirements for entities that are interested in participating in a 5G Fund auction, as well as a two-step application process. The Commission will require applicants to submit a pre-auction short-form application that includes information about their ownership, any agreements relating to the support to be sought through the auction, technical and financial qualifications, current status as an ETC, access to spectrum, and an acknowledgement of their responsibility to conduct due diligence. Commission staff will review the applications to determine if applicants are qualified to bid in the auction.

278. After the auction ends, winning bidders will be required to submit a post-bidding long-form application in which they will submit ownership, agreement, and spectrum access information, as well as information about their qualifications, funding, and the networks they intend to use to meet their obligations. During the long-form application review process, the Commission will also require winning bidders to obtain and submit documentation of an ETC designation from the state or the Commission, as appropriate, that covers each of the geographic areas in which they won support within 180 days after the release of the public notice announcing winning bidders. Prior to being authorized to receive support, winning bidders must submit an irrevocable stand-by letter of credit that meets the Commission's requirements from an eligible bank along with a bankruptcy opinion letter from outside legal counsel. The letter of credit must be valued at an amount equal to one year of the total support it will receive. Commission staff will review the applications and submitted documentation to determine whether long-form applicants are qualified to be authorized to receive support. The Commission will subject winning bidders or long-form applicants that default during the long-form application process to forfeiture.

279. A 5G Fund support recipient will be required to submit a modified, renewed, or new letter of credit annually in order to receive its next year's support. The value of the letter of credit must cover the support that has been disbursed and that will be disbursed in the coming year, subject to modest adjustments as support recipients meet—and the Universal Service Administrative Company (USAC) has verified they have timely

completed—their required service deployment milestones.

280. The Commission also adopts specific reporting requirements to monitor the progress of both competitive ETCs receiving legacy high-cost support for mobile wireless service and 5G Fund support recipients in meeting the public interest obligations and distinct performance requirements the Commission adopts. The Commission will require each legacy high-cost support recipient to file an initial report of its current service offerings that includes accounting information on the support a carrier has received and how legacy support is being used, along with certifications related to its current service offerings and use of legacy high-cost support. The Commission will also require each legacy high-cost support recipient to file annual reports that include updated information about the carrier's service offerings for the previous calendar year in its subsidized service areas, and how legacy support is being used, along with certifications that the support recipient is in compliance with its public interest obligations and performance requirements. The Commission will require a 5G Fund support recipient to file service milestone reports demonstrating that it has met its interim and final milestones for deployment of 5G service that meets the 5G Fund performance requirements the Commission adopts. The Commission will also require a 5G Fund support recipient to file annual reports covering the preceding calendar year along with certifications that the support recipient is in compliance with each of the 5G Fund public interest obligations, performance requirements, and any other terms and conditions associated with receipt of 5G Fund support. As for other high-cost support recipients, both legacy high-cost support recipients and 5G Fund support recipients will be subject to record retention and audit requirements, and to support reductions and/or full recovery for untimely filings.

281. The Commission will subject a 5G Fund support recipient that fails to meet its public interest obligations and/or performance requirements or other terms and conditions of receiving 5G Fund support to a reduction, or loss, in support, in accordance with the framework for support reductions that is applicable to all high-cost ETCs that are required to meet adopted service deployment milestones and to the process the Commission adopts in the *5G Fund Report and Order* for drawing on letters of credit. Additionally, if a 5G Fund support recipient fails to meet any interim or the final service deployment

milestone, it must notify the Wireline Competition Bureau and USAC within 10 business days and provide information explaining its non-compliance. Upon receipt of the notification, the Commission will find the recipient to be default and the recipient will be subject to the non-compliance measures adopted in the *5G Fund Report and Order* until it is able to come into full compliance. If a support recipient has not deployed service to at least 20% of the total square kilometers associated with the eligible areas for which it is authorized to receive support in a state by the Year Three Interim Service Milestone it must notify the Wireline Competition Bureau and USAC of its non-compliance, and upon receipt of this notification, the recipient will be deemed in default and subject to full support recovery, rather than being given additional time to come into compliance.

282. The Commission will require a competitive ETC receiving legacy high-cost support for mobile wireless service that fails to comply with its public interest obligations or performance requirements to notify the Wireline Competition Bureau and USAC within 10 business days of its non-compliance. Upon receipt of the notification, the Commission will find the recipient to be in default, and the recipient will no longer be eligible to receive such support, will receive no further support disbursements, and may be subject to up to full recovery of all such support disbursed since effective date of the public interest obligations and performance requirement rules adopted in the *5G Fund Report and Order*. In addition to basing a finding of default on a legacy high-cost support recipient's notification of its non-compliance, the Wireline Competition Bureau or USAC may in the absence of any such notification deem the support recipient in to be in default and the same consequences if they become aware of a recipient's non-compliance.

283. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its 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.” The Commission has considered the economic impact on small entities in reaching its final conclusions and taking action in this proceeding. The rules that the Commission adopts in the *5G Fund Report and Order* will provide greater certainty and flexibility for all carriers, including small entities.

284. The Commission concludes that the minimum geographic area for bidding in a 5G Fund auction will be no larger than a census tract and no smaller than a census block group, as identified by the U.S. Census Bureau. Consistent with its approach in recent universal service auctions, the Commission will determine the exact geographic area for grouping eligible areas when it finalizes the auction design during the pre-auction process and have better data for determining eligible areas. The Commission finds that this approach is preferable because it ensures that a wide variety of interested bidders, including small entities, have the flexibility to design a network that matches their business model and that allows service providers to achieve their performance benchmarks and public interest obligations efficiently. We decline to adopt census blocks as the minimum geographic unit in a 5G Fund auction, as some commenters suggest, because doing so would significantly increase the complexity of the bidding process both for bidders and the bidding system and minimize the potential for broad coverage by winning bidders, and using census blocks as the minimum geographic area could create more challenges for providers in putting together a bidding strategy that aligns with their intended network construction or expansion. No commenter suggests that the Commission should adopt a geographic area larger than a census tract.

285. We are reserving up to \$680 million of the \$8 billion 5G Fund Phase I budget to support networks serving eligible areas in Tribal lands—which is double the amount that the Commission had estimated it would reserve to support Tribal lands from the Mobility Fund Phase II budget—to provide an incentive for service providers, including small entities, to bid on and serve Tribal lands.

286. Consistent with the approach taken in recent universal service auctions, the Commission adopts a two-step application process for participating in the 5G Fund consisting of a pre-auction short-form application and a post-auction long-form application. Entities interested in

bidding to submit a short-form application in order to be deemed qualified to bid in the auction, which the Commission has found to be an appropriate but not burdensome screen to ensure participation by qualified carriers, including small entities. Only if an applicant becomes a winning bidder will it be required to submit a long-form application, which requires a more detailed information about, and a more thorough review of, an applicant’s qualifications to be authorized to receive 5G Fund support.

287. We provide two pathways for an applicant to demonstrate its technical and financial qualifications to participate in a 5G Fund auction based on its experience providing mobile wireless voice and/or broadband service. Entities, including small entities, that have been providing mobile wireless voice and/or broadband service for at least three years will be required to submit information concerning the number of years they have been providing service and their FCC Form 477 filings and/or Digital Opportunity Data Collection filings, as applicable, for the past three years, but will not be required to submit any other technical or financial information, while entities that have been providing such service(s) for fewer than three years (or not at all) will need to submit information concerning their operational history, a preliminary project description, and an acceptable letter of interest from an eligible bank. We expect that by allowing experienced entities to submit less information at the short-form application stage to demonstrate their technical and financial qualifications, more entities, including small entities, will be able to participate in the auction.

288. We will also permit all long-form applicants, including small entities, to obtain their ETC designations after becoming winning bidders so that they do not have to go through the ETC designation process prior to finding out if they won support through the auction. We decline to adopt the alternatives to letters of credit that were suggested by commenters because letters of credit better achieve the Commission’s objective of protecting the public’s funds. But recognizing that some participants in the Commission’s past universal auctions, including small entities, have expressed concerns about the costs of obtaining and maintaining a letter of credit, the Commission adopts rules allowing support recipients to cover less support with their letters of credit and further reduce the value of their letters of credit once it has been verified that they have met certain

service deployment milestones. Additionally, consistent with the approach taken in recent universal service auctions, the Commission will allow greater flexibility regarding letters of credit for Tribally owned and controlled winning bidders by permitting any Tribally owned and controlled 5G Fund winning bidder that is unable to obtain a letter of credit to petition for a waiver of the letter of credit requirement.

289. To streamline the filing of annual reports by both mobile legacy high-cost support recipients and 5G Fund support recipients regarding their efforts to provide 5G services throughout their subsidized service areas that meet the public interest obligations and distinct performance requirements adopted in the *5G Fund Report and Order*, the Commission will require these reports to be filed with USAC via a web portal. Moreover, to reduce the burden on mobile legacy high-cost support recipients, these annual report filings will replace a mobile legacy high-cost support recipient’s existing obligation to annually file FCC Form 481 with USAC.

290. The Commission also provides a competitive ETC receiving legacy high-cost support for a particular subsidized service area with the flexibility to use such support for the provision, maintenance, and upgrading of facilities and services within any of the designated service areas for which it receives legacy high-cost support for mobile services, which the Commission concludes could allow for more efficient decisions about use of legacy support while “still satisfying the statutory obligation to use such support for its intended purposes.”

291. The additional public interest obligations, performance requirements, and reporting requirements adopted for current mobile legacy high-cost support recipients in order to continue receiving high-cost support, as well as the public interest obligations and performance requirements, interim and final construction milestones, reporting obligations, and non-compliance measures adopted for the 5G Fund, balance the Commission’s responsibility to monitor the use of universal service funds with minimizing administrative and compliance costs and burdens on mobile legacy high-cost support recipients and 5G Fund support recipients, including small entities. The reporting requirements the Commission adopts for all mobile legacy high-cost support and for all 5G Fund support recipients are tailored to ensuring that support is used for its intended purpose and so that the Commission can monitor the progress of recipients in meeting

their public interest obligations and distinct performance requirements. The Commission finds that the importance of monitoring the use of the public's funds outweighs the burden of filing the required information on all entities, including small entities, particularly because much of the information that the Commission requires they report is information it expects they will already be collecting to ensure they comply with the terms and conditions of receiving support.

## V. Ordering Clauses

292. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 254, 303(r), and 403, this Report and Order *is adopted*.

293. *It is further ordered* that the rules and requirements adopted herein *will become effective* thirty (30) days after publication in the **Federal Register**, with the exception of §§ 1.21001(b)(1), 1.21001(b)(2), 1.21001(b)(3), 1.21001(b)(4), 1.21001(b)(5), 1.21001(b)(6), 1.21001(b)(7), 1.21001(b)(8), 1.21001(b)(9), 1.21001(b)(10), 1.21001(b)(11), 1.21001(b)(12), 1.21001(b)(13), 1.21001(e), 1.21002(e), 1.21002(f), 54.313(n), 54.322(b), 54.322(c)(4), 54.322(g), 54.322(h), 54.322(i), 54.322(j), 54.1014(a), 54.1014(b)(2), 54.1016(b), 54.1018(a), 54.1018(b), 54.1018(c), 54.1019(a)(1), 54.1019(a)(2), 54.1019(a)(3), 54.1019(a)(4), 54.1020(a), 54.1020(b), 54.1020(c)(1), and 54.1020(c)(2), which contain new or modified information collection requirements that require review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Commission will announce the effective date of those information collections in a document published in the **Federal Register** after the Commission receives OMB approval, and will cause §§ 1.21001(b)(1), 1.21001(b)(2), 1.21001(b)(3), 1.21001(b)(4), 1.21001(b)(5), 1.21001(b)(6), 1.21001(b)(7), 1.21001(b)(8), 1.21001(b)(9), 1.21001(b)(10), 1.21001(b)(11), 1.21001(b)(12), 1.21001(b)(13), 1.21001(e), 1.21002(e), 1.21002(f), 54.313(n), 54.322(b), 54.322(c)(4), 54.322(g), 54.322(h), 54.322(i), 54.322(j), 54.1014(a), 54.1014(b)(2), 54.1016(b), 54.1018(a), 54.1018(b), 54.1018(c), 54.1019(a)(1), 54.1019(a)(2), 54.1019(a)(3), 54.1019(a)(4), 54.1020(a), 54.1020(b), 54.1020(c)(1), and 54.1020(c)(2) to be revised accordingly.

294. *It is further ordered* that the Petition to Correct Mobility Fund Phase II Map of Presumptively Eligible and Ineligible Areas and to Extend Challenge Process Filing Window filed by Missouri RSA 5 Partnership d/b/a Chariton Valley Wireless Services in WC Docket No. 10–90 and WT Docket No. 10–208 on November 26, 2018, *is dismissed as moot* as indicated herein.

295. *It is further ordered* that the Petition for Waiver to Accept Certain Mobility Fund Challenge Records filed by Jeanne Dietsch in WC Docket No. 10–90 and WT Docket No. 10–208 on November 27, 2018, *is dismissed as moot* as indicated herein.

296. *It is further ordered* that the Request for Limited Waiver of Mobility Fund Phase II Designated Handset Requirements filed by the Vermont Department of Public Service in WC Docket No. 10–90 and WT Docket No. 10–208 on June 28, 2019, *is dismissed as moot* as indicated herein.

## List of Subjects

### 47 CFR Part 1

Administrative practice and procedures, Reporting and recordkeeping requirements, Telecommunications.

### 47 CFR Part 54

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

Federal Communications Commission.

**Marlene Dortch**,  
Secretary.

## Final Rules

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

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461, unless otherwise noted.

- 2. Amend § 1.1902 by revising paragraph (f) to read as follows:

### § 1.1902 Exceptions.

\* \* \* \* \*

(f) Nothing in this subpart shall supersede or invalidate other Commission rules, such as the part 1 general competitive bidding rules (47 CFR part 1, subparts Q and AA) or the service specific competitive bidding rules, as may be amended, regarding the Commission's rights, including but not limited to the Commission's right to

cancel a license or authorization, obtain judgment, or collect interest, penalties, and administrative costs.

- 3. Amend § 1.21001 by:
  - a. Revising paragraph (b);
  - b. Redesignating paragraphs (c) and (d) as paragraphs (e) and (f), respectively;
  - c. Adding new paragraphs (c) and (d); and
  - d. Revising newly redesignated paragraph (f).

The revisions and additions read as follows:

### § 1.21001 Participation in competitive bidding for support.

\* \* \* \* \*

(b) *Application contents.* Unless otherwise established by public notice, an applicant to participate in competitive bidding pursuant to this subpart shall provide the following information in an acceptable form:

(1) The identity of the applicant, *i.e.*, the party that seeks support, and the ownership information as set forth in § 1.2112(a);

(2) The identities of up to three individuals authorized to make or withdraw a bid on behalf of the applicant. No person may serve as an authorized bidder for more than one auction applicant;

(3) The identities of all real parties in interest to, and a brief description of, any agreements relating to the participation of the applicant in the competitive bidding;

(4) Certification that the applicant has provided in its application a brief description of, and identified each party to, any partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the applicant's participation in the competitive bidding and the support being sought, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific areas on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls as defined in paragraph (d)(1) of this section or is controlled by the applicant, is a party;

(5) Certification that the applicant (or any party that controls as defined in paragraph (d)(1) of this section or is controlled by the applicant) has not entered and will not enter into any partnerships, joint ventures, consortia or other agreements, arrangements, or understandings of any kind relating to the support to be sought that address or communicate, directly or indirectly, bidding at auction (including specific

prices to be bid) or bidding strategies (including the specific areas on which to bid or not to bid for support), or post-auction market structure with any other applicant (or any party that controls or is controlled by another applicant);

(6) Certification that if the applicant has ownership or other interest disclosed pursuant to paragraph (b)(1) of this section with respect to more than one application in a given auction, it will implement internal controls that preclude any individual acting on behalf of the applicant as defined in § 1.21002(a) from possessing information about the bids or bidding strategies (including post-auction market structure), of more than one party submitting an application for the auction or communicating such information with respect to a party submitting an application for the auction to anyone possessing such information regarding another party submitting an application for the auction;

(7) Certification that the applicant has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of support it submits as a bid, and that if the applicant wins support, it will be able to build and operate facilities in accordance with the obligations applicable to the type of support it wins and the Commission's rules generally;

(8) Certification that the applicant and all applicable parties have complied with and will continue to comply with § 1.21002;

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

(10) Certification that the applicant will be subject to a default payment or a forfeiture in the event of an auction default and that the applicant will make any payment that may be required pursuant to § 1.21004;

(11) Certification that the applicant is not delinquent on any debt owed to the Commission and that it is not delinquent on any non-tax debt owed to any Federal agency as of the deadline for submitting applications to participate in competitive bidding pursuant to this subpart, or that it will cure any such delinquency prior to the end of the application resubmission period established by public notice.

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

(13) Such additional information as may be required.

(c) *Limit on filing applications.* In any auction, no individual or entity may file more than one application to participate in competitive bidding or have a controlling interest (as defined in paragraph (d)(1) of this section) in more than one application to participate in competitive bidding. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium. In the event that applications for an auction are filed by applicants with overlapping controlling interests, pursuant to paragraph (f)(3) of this section, both applications will be deemed incomplete and only one such applicant may be deemed qualified to bid.

(d) *Definitions.* For purposes of the certifications required under paragraph (b) of this section and the limit on filing applications in paragraph (c) of this section:

(1) The term *controlling interest* includes individuals or entities with positive or negative *de jure* or *de facto* control of the applicant. *De jure* control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership. Ownership interests that are held indirectly by any party through one or more intervening corporations may be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain meets or exceeds 50 percent or represents actual control, it may be treated as if it were a 100 percent interest. *De facto* control is determined on a case-by-case basis. Examples of *de facto* control include constituting or appointing 50 percent or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the support recipient; or playing an integral role in management decisions. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium.

(2) The term *consortium* means an entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities.

(3) The term *joint venture* means a legally cognizable entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities.

(e) *Financial Requirements for Participation.* As a prerequisite to participating in competitive bidding, an applicant may be required to post a bond or place funds on deposit with the Commission in an amount based on the default payment or forfeiture that may be required pursuant to § 1.21004. The details of and deadline for posting such a bond or making such a deposit will be announced by public notice. No interest will be paid on any funds placed on deposit.

(f) *Application Processing.* (1) Any timely submitted application will be reviewed by Commission staff for completeness and compliance with the Commission's rules. No untimely applications will be reviewed or considered.

(2) Any application to participate in competitive bidding that does not identify the applicant or does not include all of the certifications required pursuant to this section is unacceptable for filing and cannot be corrected subsequent to the applicable deadline for submitting applications. The application will be deemed incomplete and the applicant will not be found qualified to bid.

(3) If an individual or entity submits multiple applications in a single auction, or if entities that are commonly controlled by the same individual or same set of individuals submit more than one application in a single auction, then at most only one of such applications may be deemed complete, and the other such application(s) will be deemed incomplete, and such applicants will not be found qualified to bid.

(4) An applicant will not be permitted to participate in competitive bidding if the applicant has not provided any bond or deposit of funds required pursuant to paragraph (e) of this section, as of the applicable deadline.

(5) The Commission will provide applicants a limited opportunity to cure defects (except for failure to sign the application and to make all required certifications) during a resubmission period established by public notice and to resubmit a corrected application. During the resubmission period for curing defects, an application may be amended or modified to cure defects identified by the Commission or to make minor amendments or modifications. After the resubmission period has ended, an application may be

amended or modified to make minor changes or correct minor errors in the application. An applicant may not make major modifications to its application after the initial filing deadline. An applicant will not be permitted to participate in competitive bidding if Commission staff determines that the application requires major modifications to be made after that deadline. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or transfer of control, or any changes in the identity of the applicant, or any changes in the required certifications. Minor amendments include, but are not limited to, the correction of typographical errors and other minor defects not identified as major. Minor modifications may be subject to a deadline established by public notice. An application will be considered to be newly filed if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

(6) An applicant that fails to cure the defects in their applications in a timely manner during the resubmission period as specified by public notice will have its application dismissed with no further opportunity for resubmission.

(7) An applicant that is found qualified to participate in competitive bidding shall be identified in a public notice.

(8) Applicants shall have a continuing obligation to make any amendments or modifications that are necessary to maintain the accuracy and completeness of information furnished in pending applications. Such amendments or modifications shall be made as promptly as possible, and in no case more than five business days after applicants become aware of the need to make any amendment or modification, or five business days after the reportable event occurs, whichever is later. An applicant's obligation to make such amendments or modifications to a pending application continues until they are made.

■ 4. Revise § 1.21002 to read as follows:

**§ 1.21002 Prohibition of certain communications during the competitive bidding process.**

(a) *Definitions.* For purposes of this section:

(1) The term "applicant" shall include all controlling interests in the entity submitting an application to participate in a given auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or

outstanding voting stock of the entity submitting the application, and all officers and directors of that entity. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium; and

(2) The term *bids* or *bidding strategies* shall include capital calls or requests for additional funds in support of bids or bidding strategies.

(b) *Certain communications prohibited.* After the deadline for submitting applications to participate, an applicant is prohibited from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and is prohibited from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support.

(1) *Example 1.* Company A is an applicant in area 1. Company B and Company C each own 10 percent of Company A. Company D is an applicant in area 1, area 2, and area 3. Company C is an applicant in area 3. Without violating the Commission's Rules, Company B can enter into a consortium arrangement with Company D or acquire an ownership interest in Company D if Company B certifies either:

(i) That it has communicated with and will communicate neither with Company A or anyone else concerning Company A's bids or bidding strategy, nor with Company C or anyone else concerning Company C's bids or bidding strategy, or

(ii) That it has not communicated with and will not communicate with Company D or anyone else concerning Company D's bids or bidding strategy.

(2) [Reserved]

(c) *Internal controls required.* Any party submitting an application for a given auction that has an ownership or other interest disclosed with respect to more than one application for an auction must implement internal controls that preclude any individual acting on behalf of the applicant as defined in paragraph (a)(1) of this section from possessing information about the bids or bidding strategies as defined in paragraph (a)(2) of this section of more than one party submitting an application for the auction or communicating such information with respect to a party submitting an application for the auction to anyone possessing such information regarding another party

submitting an application for the auction. Implementation of such internal controls will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.

(d) *Modification of application required.* An applicant must modify its application for an auction to reflect any changes in ownership or in membership of a consortium or a joint venture or agreements or understandings related to the support being sought.

(e) *Duty to report potentially prohibited communications.* An applicant that makes or receives communications that may be prohibited pursuant to paragraph (b) of this section shall report such communications to the Commission staff immediately, and in any case no later than 5 business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made.

(f) *Procedures for reporting potentially prohibited communications.* Any report required to be filed pursuant to this section shall be filed as directed in public notices detailing procedures for the bidding that was the subject of the reported communication. If no such public notice provides direction, the party making the report shall do so in writing to the Chief of the Auctions Division, Office of Economics and Analytics, by the most expeditious means available, including electronic transmission such as email.

■ 5. Amend § 1.21004 by:

■ a. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;

■ b. Adding new paragraph (b); and

■ c. Revising newly redesignated paragraphs (c) and (d).

The addition and revisions read as follows:

**§ 1.21004 Winning bidder's obligation to apply for support.**

\* \* \* \* \*

(b) *Dismissal for failure to prosecute.* The Commission may dismiss a winning bidder's application with prejudice for failure of the winning bidder to prosecute, failure of the winning bidder to respond substantially within the time period specified in official correspondence or requests for additional information, or failure of the winning bidder to comply with requirements for becoming authorized to receive support. A winning bidder whose application is dismissed for failure to prosecute pursuant to this paragraph has defaulted on its bid(s).

(c) *Liability for default payment or forfeiture in the event of auction default.* A winning bidder that defaults on its bid(s) is liable for either a default payment or a forfeiture, which will be calculated by a method that will be established as provided in an order or public notice prior to competitive bidding. If the default payment is determined as a percentage of the defaulted bid amount, the default payment will not exceed twenty percent of the amount of the defaulted bid amount.

(d) *Additional liabilities.* In addition to being liable for a default payment or a forfeiture pursuant to paragraph (c) of this section, a winning bidder that defaults on its winning bid(s) shall be subject to such measures as the Commission may provide, including but not limited to disqualification from future competitive bidding pursuant to this subpart.

**PART 54—UNIVERSAL SERVICE**

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

**Authority:** 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, and 1302, unless otherwise noted.

■ 7. Amend § 54.5 by:

■ a. Revising the definition of “Administrator”;

■ b. Revising the definition of “High-cost support”;

■ c. Adding, in alphabetical order, a definition for “Mobile competitive eligible telecommunications carrier”;

■ d. Revising the definition of “Tribal lands”.

The revisions and addition read as follows:

**§ 54.5 Terms and definitions.**

\* \* \* \* \*

*Administrator.* The term “Administrator” or “USAC” shall refer to the Universal Service Administrative Company that is an independent subsidiary of the National Exchange Carrier Association, Inc., and that has been appointed the permanent Administrator of the federal universal service support mechanisms.

\* \* \* \* \*

*High-cost support.* “High-cost support” refers to those support mechanisms in existence as of October 1, 2011, specifically, high-cost loop support, safety net additive and safety valve provided pursuant to subpart F of part 36, local switching support pursuant to § 54.301, forward-looking support pursuant to § 54.309, interstate access support pursuant to §§ 54.800 through 54.809, and interstate common

line support pursuant to §§ 54.901 through 54.904, support provided pursuant to §§ 51.915, 51.917, and 54.304, support provided to competitive eligible telecommunications carriers as set forth in § 54.307(e), Connect America Fund support provided pursuant to § 54.312, and Mobility Fund and 5G Fund support provided pursuant to subpart L of this part.

\* \* \* \* \*

*Mobile competitive eligible telecommunications carrier.* A “mobile competitive eligible telecommunications carrier” is a carrier that meets the definition of a “competitive eligible telecommunications carrier” in this section and that provides a terrestrial-based service meeting the definition of “commercial mobile radio service” in § 51.5 of this chapter.

\* \* \* \* \*

*Tribal lands.* For the purposes of high-cost support, “Tribal lands” include any federally recognized Indian tribe’s reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) and Indian Allotments, see § 54.400(e), as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, *et seq.*, as amended, and any land designated as such by the Commission.

\* \* \* \* \*

■ 8. Amend § 54.207 by adding new paragraph (f):

**§ 54.207 Service areas.**

\* \* \* \* \*

(f) *Geographic flexibility provided for mobile competitive eligible telecommunications carriers receiving legacy high-cost support.* A mobile competitive eligible telecommunications carrier receiving legacy high-cost support pursuant to § 54.307(e)(5), (6), or (7) for a particular subsidized service area may use the support for the provision, maintenance, and upgrading of facilities and services within any of the designated service areas for which it or an affiliated mobile competitive eligible telecommunications carrier (*e.g.*, where several mobile competitive eligible telecommunications carriers share a common holding company) receives legacy high-cost support regardless of whether the service areas span more than one state or territory. This paragraph does not affect a mobile

competitive eligible telecommunications carrier’s obligations and requirements pursuant to §§ 54.7 and 54.322.

■ 9. Amend § 54.307 by:

■ a. Revising paragraph (e)(2);

■ b. Revising paragraph (e)(5);

■ c. Adding paragraph (e)(6);

■ d. Redesignating paragraphs (e)(7) and (e)(8) as paragraphs (e)(8) and (e)(9), respectively; and

■ e. Adding new paragraph (e)(7).

The revisions and addition read as follows:

**§ 54.307 Support to a competitive eligible telecommunications carrier.**

\* \* \* \* \*

(e) \* \* \*

(2) *Monthly support amounts.*

Competitive eligible telecommunications carriers shall receive the following support amounts, except as provided in paragraphs (e)(3) through (7) of this section.

(i) From January 1, 2012, to June 30, 2012, each competitive eligible telecommunications carrier shall receive its monthly baseline support amount each month.

(ii) From July 1, 2012 to June 30, 2013, each competitive eligible telecommunications carrier shall receive 80 percent of its monthly baseline support amount each month.

(iii) Beginning July 1, 2013, each competitive eligible telecommunications carrier shall receive 60 percent of its monthly baseline support amount each month.

\* \* \* \* \*

(5) *Eligibility for interim support before 5G Fund Phase I auction.*

Beginning the first day of the month following the effective date of the Report and Order, FCC 20–150, a competitive eligible telecommunications carrier that receives support pursuant to paragraph (a) or (e)(2) of this section shall no longer receive such support and shall instead receive support as described in this paragraph.

(i) A competitive eligible telecommunications carrier that is not a mobile competitive eligible telecommunications carrier, as that term is defined in § 54.5, shall no longer receive monthly baseline support.

(ii) Until the first day of the month following the release of a public notice by the Office of Economics and Analytics and Wireline Competition Bureau announcing the final areas eligible for support in the 5G Fund Phase I auction:

(A) A mobile competitive eligible telecommunications carrier that receives support pursuant to paragraph (a) of this

section shall receive “monthly baseline support” in an amount equal to one-twelfth ( $\frac{1}{12}$ ) of its total support received for the preceding 12-month period.

(B) A mobile competitive eligible telecommunications carrier that receives support pursuant to paragraph (e)(2) of this section shall receive support at the same level described in paragraph (e)(2)(iii) of this section.

(iii) Beginning the first day of the month following the release of a public notice by the Office of Economics and Analytics and Wireline Competition Bureau announcing the final areas eligible for support in the 5G Fund Phase I auction and until the first day of the month following release of a public notice announcing the close of the 5G Fund Phase I auction, a mobile competitive eligible

telecommunications carrier that receives support pursuant to paragraph (e)(5)(ii) of this section for any such eligible area shall receive an adjusted, disaggregated amount of monthly support for that area, which shall be calculated by multiplying the monthly support level described in paragraph (e)(5)(ii) of this section by the areal percentage of the eligible portion of the competitive eligible telecommunications carrier’s service area, weighted by applying the 5G Fund adjustment factor methodology and values adopted by the Office of Economics and Analytics and Wireline Competition Bureau and announced in a public notice.

(iv) Beginning the first day of the month following the release of a public notice by the Office of Economics and Analytics and Wireline Competition Bureau announcing the final areas eligible for support in the 5G Fund Phase I auction, a mobile competitive eligible telecommunications carrier that receives support pursuant to paragraph (e)(5)(ii) of this section for any ineligible area shall receive an adjusted, disaggregated amount of monthly support for that area, which shall be calculated by multiplying the monthly support level described in paragraph (e)(5)(ii) of this section by the areal percentage of the ineligible portion of the competitive eligible telecommunications carrier’s service area, weighted by applying the 5G Fund adjustment factor methodology and values adopted by the Office of Economics and Analytics and Wireline Competition Bureau and announced in a public notice, and reduced as follows:

(A) For the first 12 months, each mobile competitive eligible telecommunications carrier shall receive monthly support that is two-thirds ( $\frac{2}{3}$ ) of the level described in paragraph

(e)(5)(iv) of this section for the ineligible area.

(B) For 12 months starting the first day of the month following the period described in paragraph (e)(5)(iv)(A) of this section, each mobile competitive eligible telecommunications carrier shall receive monthly support that is one-third ( $\frac{1}{3}$ ) of the level described in paragraphs (e)(5)(iv) of this section for the ineligible area.

(C) Following the period described in paragraph (e)(5)(iv)(B) of this section, no mobile competitive eligible telecommunications carrier shall receive monthly support for any ineligible area pursuant to this section.

(6) *Eligibility for support after 5G Fund Phase I auction.* (i)

Notwithstanding the schedule described in paragraph (e)(5)(iii) of this section, a mobile competitive eligible telecommunications carrier that receives monthly support pursuant to paragraph (e)(5)(iii) of this section and is a winning bidder in the 5G Fund Phase I auction shall continue to receive support at the same level it was receiving support for such area at the time of the release of a public notice announcing the close of the 5G Fund Phase I auction until such time as the Office of Economics and Analytics and Wireline Competition Bureau determine whether or not to authorize the carrier to receive 5G Fund Phase I support.

(A) Upon the Office of Economics and Analytics and Wireline Competition Bureau’s release of a public notice approving a mobile competitive eligible telecommunications carrier’s application for support submitted pursuant to § 54.1014(b) and authorizing the carrier to receive 5G Fund Phase I support, the carrier shall no longer receive support at the level of monthly support described in paragraph (e)(5)(iii) of this section for such area. Thereafter, the carrier shall receive monthly support in the amount of its 5G Fund Phase I winning bid pursuant to § 54.1017, provided that the Administrator shall decrease the amount of the carrier’s support to the extent necessary to account for any support the carrier received during the period between the close of the 5G Fund Phase I auction and the release of the public notice authorizing the carrier to receive 5G Fund Phase I support.

(B) A mobile competitive eligible telecommunications carrier that is a winning bidder in the 5G Fund Phase I auction but is not subsequently authorized to receive 5G Fund Phase I support shall no longer receive support at the level of monthly support described in paragraph (e)(5)(iii) of this section for such area following the

determination not to authorize the carrier for 5G Fund Phase I support. Thereafter, the carrier shall receive monthly support as set forth in paragraph (e)(6)(iv) of this section for such area, provided that the Administrator shall decrease the amount of the carrier’s support to the extent necessary to account for any support the carrier received during the period between the close of the 5G Fund Phase I auction and the Office of Economics and Analytics and Wireline Competition Bureau’s authorization determination.

(ii) A mobile competitive eligible telecommunications carrier that does not receive monthly support pursuant to this section and is a winning bidder in the 5G Fund Phase I auction shall receive monthly support pursuant to § 54.1017.

(iii) A mobile eligible telecommunications carrier that receives monthly support pursuant to paragraph (e)(5)(iii) of this section for an area for which support is not won in the 5G Fund Phase I auction shall continue to receive support at the level of monthly support described in paragraph (e)(5)(iii) of this section provided that it is the carrier receiving the minimum level of sustainable support for the area, but for no more than 60 months from the first day of the month following the release of a public notice by the Office of Economics and Analytics and Wireline Competition Bureau announcing the close of the 5G Fund Phase I auction. The “minimum level of sustainable support” is the lowest monthly support received by a mobile competitive eligible telecommunications carrier for the area that has deployed the highest level of technology (e.g., 5G) within the state encompassing the area.

(iv) All other mobile competitive eligible telecommunications carriers that receive monthly support pursuant to paragraph (e)(5)(iii) of this section for eligible areas shall instead receive the following monthly support amounts for such areas:

(A) For 12 months starting the first day of the month following release of a public notice announcing the close of the 5G Fund Phase I auction, each mobile competitive eligible telecommunications carrier shall receive monthly support that is two-thirds ( $\frac{2}{3}$ ) of the level described in paragraph (e)(5)(iii) of this section for the area.

(B) For 12 months starting the month following the period described in paragraph (e)(6)(iv)(A) of this section, each mobile competitive eligible telecommunications carrier shall receive monthly support that is one-third ( $\frac{1}{3}$ ) of

the level described in paragraph (e)(5)(iii) of this section for the area.

(C) Following the period described in paragraph (e)(6)(iv)(B) of this section, no mobile competitive eligible telecommunications carrier shall receive monthly support for the area pursuant to this section.

*(7) Eligibility for support after 5G Fund Phase II auction.* (i)

Notwithstanding the schedule described in paragraphs (e)(6)(iii) or (iv) of this section, a mobile competitive eligible telecommunications carrier that receives monthly support pursuant to paragraphs (e)(6)(iii) or (iv) of this section, as applicable, and is a winning bidder in the 5G Fund Phase II auction shall receive support at the same level it was receiving support for such area at the time of the release of a public notice announcing the close of the 5G Fund Phase II auction until such time as the Office of Economics and Analytics and Wireline Competition Bureau determine whether or not to authorize the carrier to receive 5G Fund Phase II support.

(A) Upon the Office of Economics and Analytics and Wireline Competition Bureau's release of a public notice approving a mobile competitive eligible telecommunications carrier's application for support submitted pursuant to § 54.1014(b) and authorizing the carrier to receive 5G Fund Phase II support, the carrier shall no longer receive support at the level of monthly support pursuant to this section for such area. Thereafter, the carrier shall receive monthly support in the amount of its 5G Fund Phase II winning bid pursuant to § 54.1017, provided that the Administrator shall decrease the amount of the carrier's support to the extent necessary to account for any support the carrier received during the period between the close of the 5G Fund Phase II auction and the release of the public notice authorizing the carrier to receive 5G Fund Phase II support.

(B) A mobile competitive eligible telecommunications carrier that is a winning bidder in the 5G Fund Phase II auction but is not subsequently authorized to receive 5G Fund Phase II support shall no longer receive support at the level of monthly support pursuant to paragraph (e)(6)(iii) or (iv) of this section for such area, as applicable, following the determination not to authorize the carrier for 5G Fund Phase II support. Thereafter, the carrier shall receive monthly support as set forth in paragraphs (e)(7)(iv) or (v) of this section for such area, as applicable, provided that the Administrator shall decrease the amount of the carrier's support to the extent necessary to account for any support received during

the period between the close of the 5G Fund Phase II auction and the Office of Economics and Analytics and Wireline Competition Bureau's authorization determination.

(ii) A mobile competitive eligible telecommunications carrier that does not receive monthly support pursuant to this section and is a winning bidder in the 5G Fund Phase II auction shall receive monthly support pursuant to § 54.1017.

(iii) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to paragraph (e)(6)(iii) of this section for an area for which support is not won in the 5G Fund Phase II auction shall continue to receive support for that area as described in paragraph (e)(6)(iii) of this section.

(iv) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to paragraph (e)(6)(iii) of this section for an area for which support is won in the 5G Fund Phase II auction and for which the carrier is not the winning bidder shall receive the following monthly support amounts for such areas:

(A) For 12 months starting the first day of the month following release of a public notice announcing the close of the 5G Fund Phase II auction, the mobile competitive eligible telecommunications carrier shall receive monthly support that is two-thirds (2/3) of the level described in paragraph (e)(6)(iii) of this section for the area.

(B) For 12 months starting the month following the period described in paragraph (e)(7)(iv)(A) of this section, the mobile competitive eligible telecommunications carrier shall receive monthly support that is one-third (1/3) of the level described in paragraph (e)(6)(iii) of this section for the area.

(C) Following the period described in paragraph (e)(7)(iv)(B) of this section, the mobile competitive eligible telecommunications carrier shall not receive monthly support for the area pursuant to this section.

(v) All other mobile competitive eligible telecommunications carriers that receive monthly support pursuant to paragraph (e)(6)(iv) of this section for an area shall continue to receive support for the area pursuant to that paragraph.

- 10. Amend § 54.313 by:
  - a. Revising paragraph (k); and
  - b. Adding new paragraph (n).

The revisions and addition read as follows:

**§ 54.313 Annual reporting requirements for high-cost recipients.**

\* \* \* \* \*

(k) This section does not apply to recipients that solely receive support from Phase I of the Mobility Fund.

\* \* \* \* \*

(n) In addition to the information and certifications in paragraph (a) of this section, a mobile competitive eligible telecommunications carrier receiving legacy high-cost support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall certify whether it used any support pursuant to § 54.207(f), and if so, whether it used such support in compliance with § 54.7.

- 11. Amend § 54.315 by revising paragraph (c)(2)(iv)(B) to read as follows:

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

\* \* \* \* \*

- (c) \* \* \*
- (2) \* \* \*
- (iv) \* \* \*

(B) Has a branch office:

(1) Located in the District of Columbia; or

(2) Located in New York City, New York, or such other branch office agreed to by the Commission, that will accept a letter of credit presentation from the Administrator via overnight courier, in addition to in-person presentations;

\* \* \* \* \*

- 12. Add § 54.322 to read as follows:

**§ 54.322 Public interest obligations and performance requirements, reporting requirements, and non-compliance mechanisms for mobile legacy high-cost support recipients.**

(a) *General.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) shall deploy voice and broadband data services that meet at least the 5G-NR (New Radio) technology standards developed by the 3rd Generation Partnership Project with Release 15, or any successor release that may be adopted by the Office of Economics and Analytics and the Wireline Competition Bureau after notice and comment.

(b) *Service milestones and deadlines.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) shall deploy 5G service that meets the performance requirements specified in paragraph (d) of this section to a percentage of the service areas for which the carrier receives monthly support and on a schedule as specified and adopted by the Office of Economics



and Analytics and Wireline Competition Bureau after notice and comment.

(c) *Support usage.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii) or (e)(7)(iii) shall use an increasing percentage of such support for the deployment, maintenance, and operation of mobile networks that provide 5G service as specified in paragraph (a) of this section and that meet the performance requirements specified in paragraph (d) of this section as follows:

(1) *Year one support usage.* The carrier shall use at least one-third ( $\frac{1}{3}$ ) of the total monthly support received pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) in calendar year 2021 as specified in paragraph (c) of this section by December 31, 2021.

(2) *Year two support usage.* The carrier shall use at least two-thirds ( $\frac{2}{3}$ ) of the total monthly support received pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) in calendar year 2022 as specified in paragraph (c) of this section by December 31, 2022.

(3) *Year three and subsequent year support usage.* The carrier shall use all monthly support received pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) as specified in paragraph (c) of this section in 2023 and thereafter.

(4) *Year one support usage flexibility.* If the carrier is unable to meet the support usage requirement in paragraph (c)(1) of this section, the carrier shall have the flexibility to instead proportionally increase the support usage requirement in paragraph (c)(2) of this section such that its combined usage of monthly support received pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) in calendar years 2021 and 2022 is equal to the total amount of such support that the carrier receives annually, provided that the carrier certifies to the Wireline Competition Bureau this amount and that it will make up for any shortfall in a filing due by March 31, 2021 or 30 days after Paperwork Reduction Act approval, whichever is later.

(d) *Performance requirements.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) shall meet the following minimum baseline performance requirements for data speeds, data latency, and data allowances in areas that it has deployed 5G service as specified in paragraph (a) of this section and for which it receives support for at least one plan that it offers:

(1) Median data transmission rates of 35 Mbps download and 3 Mbps upload, and with at least 90 percent of measurements recording data transmission rates of not less than 7 Mbps download and 1 Mbps upload;

(2) Transmission latency of 100 milliseconds or less round trip for successfully transmitted measurements (*i.e.*, ignoring lost or timed-out packets); with at least 90 percent of measurements recording latency of 100 milliseconds or less round trip, and

(3) At least one service plan offered must include a data allowance that is equivalent to the average United States subscriber data usage as specified and adopted by the Office of Economics and Analytics and Wireline Competition Bureau after notice and comment.

(e) *Collocation obligations.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall allow for reasonable collocation by other carriers of services that would meet the technological requirements specified in paragraph (a) of this section on all cell-site infrastructure constructed with universal service funds that it owns or manages in the area for which it receives such monthly support. In addition, during the time that the mobile competitive eligible telecommunications carrier receives such support, the carrier may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the cell-site infrastructure.

(f) *Voice and data roaming obligations.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall comply with the Commission's voice and data roaming requirements that are currently in effect on networks that are built with universal service funds.

(g) *Reasonably comparable rates.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall offer its services in the areas for which it receives such monthly support at rates that are reasonably comparable to those rates offered in urban areas and must advertise the voice and broadband services it offers in its subsidized service areas. A mobile competitive eligible telecommunications carrier's rates shall be considered reasonably comparable to urban rates, based upon the most recently-available decennial U.S. Census Bureau data identifying areas as urban, if rates for services in rural areas fall within a reasonable range

of urban rates for reasonably comparable voice and broadband services.

(1) If the carrier offers service in urban areas, it may demonstrate that it offers reasonably comparable rates if it offers the same rates, terms, and conditions (including usage allowances, if any, for a specific rate) in both urban and rural areas or if one of the carrier's stand-alone voice service plans and one service plan offering data are substantially similar to plans it offers in urban areas.

(2) If the carrier does not offer service in urban areas, it may demonstrate that it offers reasonably comparable rates by identifying a carrier that does offer service in urban areas and the specific rate plans to which its plans are reasonably comparable, along with submission of corroborating evidence that its rates are reasonably comparable, such as marketing materials from the identified carrier.

(h) *Initial report of current service offerings.* (1) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall submit an initial report describing its current service offerings in its subsidized service areas and how the monthly support it is receiving is being used in such areas no later than three months after the effective date of the Report and Order, FCC 20–150, and Paperwork Reduction Act approval. This report shall include the following information:

(i) Information regarding the carrier's current service offerings in its subsidized service areas, including the highest level of technology deployed, a target date for when 5G broadband service meeting the performance requirements specified in paragraph (d) of this section will be deployed within the subsidized service area, and an estimate of the percentage of area covered by 5G deployment meeting the performance requirements specified in paragraph (d) of this section within the subsidized service area;

(ii) A brief narrative describing its current service offerings and providing an accounting of how monthly support has been used to provide mobile wireless services for the 12-month period prior to the deadline of this report;

(iii) Detailed cell-site and sector infrastructure information for infrastructure that the carrier uses to provide service in its subsidized service areas;

(iv) Certification that the carrier has filed relevant deployment data (either via FCC Form 477 or the Digital Opportunity Data Collection, as

appropriate) that reflect its current deployment covering its subsidized service areas;

(v) Certification that the carrier is in compliance with the public interest obligations as set forth in this section and all of the terms and conditions associated with the continued receipt of such monthly support disbursements; and

(vi) Additional information as required by the Office of Economics and Analytics and Wireline Competition Bureau after release of a public notice detailing the procedures to file this report.

(2) The party submitting the report must certify that it has been authorized to do so by the mobile competitive eligible telecommunications carrier that receives support.

(3) Each initial report of current service offerings shall be submitted solely via the Administrator's online portal.

(i) The Commission and the Administrator shall treat infrastructure data submitted as part of such reports as presumptively confidential.

(ii) The Administrator shall make such reports available to the Commission and to the relevant state, territory, and Tribal governmental entities, as applicable.

(4) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall have a continuing obligation to maintain the accuracy and completeness of the information provided in its initial report. Any substantial change in the accuracy or completeness of such a report must be reported as an update to its submitted report within ten (10) business days after the reportable event occurs.

(5) The Commission shall retain the authority to look behind a mobile competitive eligible telecommunications carrier's initial report and to take action to address any violations.

(i) *Annual reports.* (1) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall submit an annual report no later than July 1 in each year following the year in which its initial report of current service offerings as specified in paragraph (h) of this section is submitted. Each such report shall include the following information:

(i) Except for areas for which the carriers receives monthly support pursuant to § 54.307(e)(5)(iv), (e)(6)(iv) or (e)(7)(iv), updated information

regarding the carrier's current service offerings in its subsidized service areas for the previous calendar year, including the highest level of technology deployed, a target date for when 5G broadband service meeting the performance requirements specified in paragraph (d) of this section will be deployed within the subsidized service area, and an estimate of the percentage of area covered by 5G deployment meeting the performance requirements specified in paragraph (d) of this section within the subsidized service area;

(ii) A brief narrative providing an accounting of the support the carrier has received and how monthly support has been used to provide mobile wireless services for the previous calendar year, with an indication of which of these expenditures were used to meet the requirements specified in paragraph (c) of this section within the subsidized service area;

(iii) Detailed cell-site and sector infrastructure information for infrastructure that the carrier uses to provide service in its subsidized service areas;

(iv) Certification that the carrier has filed relevant deployment data (either via FCC Form 477 or the Digital Opportunity Data Collection, as appropriate) that reflect its current deployment covering its subsidized service areas;

(v) Certification that the carrier is in compliance with the public interest obligations as set forth in this section and all of the terms and conditions associated with the continued receipt of monthly support; and

(vi) Additional information as required by the Office of Economics and Analytics and Wireline Competition Bureau after release of a public notice detailing the procedures to file these reports.

(2) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall supplement the information provided to the Administrator in any annual report within ten (10) business days from the onset of any reduction in the percentage of areas for which the recipient receives support being served after the filing of an initial or annual certification report or in the event of any failure to comply with any of the requirements for continued receipt of such support.

(3) The party submitting the annual report must certify that it has been authorized to do so by mobile competitive eligible telecommunications carrier that receives support.

(4) Each annual report shall be submitted solely via the Administrator's online portal.

(i) The Commission and the Administrator shall treat infrastructure data submitted as part of such a report as presumptively confidential.

(ii) The Administrator shall make such reports available to the Commission and to the relevant state, territory, and Tribal governmental entities, as applicable.

(5) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall have a continuing obligation to maintain the accuracy and completeness of the information provided in its annual reports. Any substantial change in the accuracy or completeness of any such report must be reported as an update to the submitted annual report within ten (10) business days after the reportable event occurs.

(6) The Commission shall retain the authority to look behind a mobile competitive eligible telecommunications carrier's annual reports and to take action to address any violations.

(j) *Service milestone reports.* (1) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) shall submit a report after each of the service milestones described in paragraph (b) of this section by the deadlines established by the Office of Economics and Analytics and Wireline Competition Bureau demonstrating that it has deployed 5G service that meets the performance requirements specified in paragraph (d) of this section, which shall include information as required by the Office of Economics and Analytics and Wireline Competition Bureau in a public notice.

(2) All data submitted in or certified to in any service milestone report shall be subject to verification by the Administrator for compliance with the performance requirements specified in paragraph (d) of this section.

(k) *Non-compliance measures for failure to comply with performance requirements or public interest obligations.* (1) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) that fails to comply with the public interest obligations set forth in paragraphs (e) through (j) of this section, fails to comply with the performance requirements set forth in paragraph (d) of this section at the prescribed level by the applicable service milestone

deadline established in paragraph (b) of this section, or that fails to use monthly support as set forth in paragraph (c) of this section must notify the Wireline Competition Bureau and the Administrator within 10 business days of its non-compliance.

(2) Upon notification by a carrier of its non-compliance pursuant to paragraph (k) of this section, or a determination by the Administrator or Wireline Competition Bureau of a carrier's non-compliance with any of the public interest obligations set forth in paragraphs (e) through (j) of this section or the performance requirements set forth in paragraph (d) of this section, the carrier will be deemed to be in default, and for monthly support received pursuant to § 54.307(e)(5), (e)(6), or (e)(7), will no longer be eligible to receive such support, will receive no further support disbursements, and may be subject to recovery of up to the amount of support received since the effective date of the Report and Order, FCC 20–150, that was not used for the deployment, maintenance, and operation of mobile networks that provide 5G service as specified in paragraph (a) of this section and that meet the performance requirements specified in paragraph (d) of this section. The carrier may also be subject to further action, including the Commission's existing enforcement procedures and penalties, potential revocation of ETC designation, and suspension or debarment pursuant to § 54.8.

(3) A mobile competitive eligible telecommunications carrier that voluntarily relinquishes receipt of monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) will no longer be required to comply with the public interest obligations specified in this section, except that the carrier may be deemed to be in default and subject to recovery of support as set forth in paragraph (k)(2) of this section.

■ 13. Amend § 54.804 by revising paragraph (c)(2)(iv)(B) to read as follows:

**§ 54.804 Rural Digital Opportunity Fund application process.**

\* \* \* \* \*

- (c) \* \* \*
- (2) \* \* \*
- (iv) \* \* \*

(B) Has a branch office:

(1) Located in the District of Columbia; or

(2) Located in New York City, New York, or such other branch office agreed to by the Commission, that will accept a letter of credit presentation from the

Administrator via overnight courier, in addition to in-person presentations;

\* \* \* \* \*

■ 14. Amend subpart L by revising the heading and §§ 54.1011 through 54.1021 to read as follows:

**Subpart L—Mobility Fund and 5G Fund**

Sec.

\* \* \* \* \*

- 54.1011 5G Fund.
- 54.1012 Geographic areas eligible for support.
- 54.1013 Applicant eligibility.
- 54.1014 Application process.
- 54.1015 Public interest obligations and performance requirements for 5G Fund support recipients.
- 54.1016 Letter of credit.
- 54.1017 5G Fund support disbursements.
- 54.1018 Annual reports.
- 54.1019 Interim service and final service milestone reports.
- 54.1020 Non-compliance measures for 5G Fund support recipients.
- 54.1021 Record retention for the 5G Fund.

**§ 54.1011 5G Fund.**

(a) The Commission will use competitive bidding, as provided in part 1, subpart AA, of this chapter, to determine the recipients of support available through the 5G Fund and the amount(s) of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

(b) 5G Fund support will be awarded in two phases using multi-round, descending clock auctions.

(c) Areas eligible for 5G Fund Phase I support will be those areas identified by the Office of Economics and Analytics and Wireline Competition Bureau in a public notice as showing a lack of 4G Long Term Evolution (LTE) and 5G coverage on an unsubsidized basis based on the mobile broadband coverage maps created by the Commission using coverage data submitted in the Digital Opportunity Data Collection pursuant to § 1.7004(c)(3).

(d) The Commission will incorporate an adjustment factor into the 5G Fund auction design that will assign a weight to each geographic area eligible in the 5G Fund Phase I auction using the adjustment factor values adopted by the Office of Economics and Analytics and Wireline Competition Bureau and announced in a public notice.

(e) The Commission will incorporate an adjustment factor into the methodology for disaggregation of high-cost legacy support pursuant to § 54.307(e)(5)(iii) and (e)(5)(iv) that will assign a weight to each geographic area using the adjustment factor values

adopted by the Office of Economics and Analytics and Wireline Competition Bureau and announced in a public notice.

**§ 54.1012 Geographic areas eligible for support.**

(a) 5G Fund support will be made available for geographic areas identified as eligible by public notice.

(b) Coverage units for purposes of conducting competitive bidding and disbursing support based on square kilometers will be identified by public notice for each area eligible for support.

**§ 54.1013 Applicant eligibility.**

(a) An applicant for 5G Fund support shall be an eligible telecommunications carrier in an area in order to receive 5G Fund support for that area. The applicant may obtain its designation as an eligible telecommunications carrier after the close of a 5G Fund auction, provided that the applicant submits proof of its designation within 180 days after the release of the public notice identifying the applicant as a winning bidder. The eligible telecommunications carrier service area of a 5G Fund support recipient will not be required to conform to the service area of the rural telephone company serving the same area. An applicant for 5G Fund support shall not receive such support prior to the submission of proof of its designation as an eligible telecommunications carrier. After such submission, the eligible telecommunications carrier shall receive a balloon payment that will consist of the carrier's monthly 5G Fund support amount multiplied by the number of whole months between the first day of the month after the close of the auction and the issuance of the public notice authorizing the carrier to receive 5G Fund support.

(b) An applicant must have exclusive access to Commission licensed spectrum and sufficient bandwidth in an area that enables it to satisfy the performance requirements specified in § 54.1015 in order to receive 5G Fund support for that area. The applicant shall describe its access to spectrum as specified in § 54.1014(a)(3) and certify, in a form acceptable to the Commission, that it has such access and sufficient bandwidth (at a minimum, 10 megahertz x 10 megahertz using frequency division duplex (FDD) or 20 megahertz using time division duplex (TDD)) in each area in which it intends to bid for support at the time it applies to participate in competitive bidding, and that it will retain such access for at least ten (10) years after the date on which it is authorized to receive

support. A winning bidder that applies for 5G Fund support applicant shall describe its access to spectrum as specified in § 54.1014(b)(2)(v) at the time it applies for support and certify, in a form acceptable to the Commission, that it has such access and sufficient bandwidth (at a minimum, 10 megahertz x 10 megahertz using frequency division duplex (FDD) or 20 megahertz using time division duplex (TDD)) in each area in which it is applying for support, and that it will retain such access for at least ten (10) years after the date on which it is authorized to receive support.

(c) An applicant shall certify that it is financially and technically qualified to provide the services supported by the 5G Fund within the ten (10) year support term in each geographic area for which it seeks and is authorized to receive support.

#### § 54.1014 Application process.

(a) *Application to participate in competitive bidding for 5G Fund support.* In addition to providing the information specified in § 1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for 5G Fund support shall:

(1) Certify that the applicant is financially and technically capable of meeting the public interest obligations and performance requirements in § 54.1015 in each area for which it seeks support;

(2) Disclose its status as an eligible telecommunications carrier in any area for which it will seek support and associated study area code(s) or as an entity that will file an application to become an eligible telecommunications carrier in any such area after being identified as a winning bidder for such area in a 5G Fund auction, and certify that the disclosure is accurate;

(3) Describe the Commission licensed spectrum to which the applicant has exclusive access that the applicant plans to use to meet its public interest obligations and performance requirements in areas for which it will bid for support, including whether the applicant currently holds a license for or leases the spectrum, including any necessary renewal expectancy, and whether such spectrum access is contingent upon receiving support in a 5G Fund auction, the license applicable to the spectrum to be accessed, the type of service covered by the license, the particular frequency band(s), the call sign, and the total amount of bandwidth (in megahertz) to which the applicant has access under the license applicable to the spectrum to be accessed, and

certify that the description is accurate, that the applicant has access to spectrum in each area for which it intends to bid for support, and that the applicant will retain such access for at least ten (10) years after the date on which it is authorized to receive 5G Fund support;

(4) Submit specified operational and financial information;

(i) Indicate whether the applicant has been providing mobile wireless voice and/or mobile wireless broadband service for at least three years prior to the short-form application deadline (or is a wholly-owned subsidiary of an entity that has been providing such service for at least three years). An applicant for a 5G Fund auction will be deemed to have started providing mobile wireless broadband service on the date it began commercially offering service to end users. If the applicant is applying as a consortium or joint venture, the applicant will be permitted to rely on the length of time a member of the consortium or joint venture has been providing mobile service prior to the short-form application deadline in responding to this question;

(ii) If the applicant has been providing mobile wireless voice and/or mobile wireless broadband service for at least three years prior to the short-form application deadline (or is a wholly-owned subsidiary of an entity that has been providing such service for at least three years), it must:

(A) Certify that the applicant has been providing mobile wireless voice and/or mobile wireless broadband service for at least three years prior to the short-form application deadline (or is a wholly-owned subsidiary of an entity that has been providing such service for at least three years),

(B) Specify the number of years it (or its parent company, if it is a wholly-owned subsidiary) has been providing such service,

(C) Certify that it (or its parent company, if it is a wholly-owned subsidiary) has submitted mobile wireless voice and/or mobile wireless broadband data as required on FCC Form 477 and/or in the Digital Opportunity Data Collection, as applicable, during that time period,

(D) Provide each of the FCC Registration Numbers (FRNs) that the applicant or its parent company (and in the case of a holding company applicant, its operating companies) has used to submit mobile wireless voice and/or mobile wireless broadband data on FCC Form 477 and/or in the Digital Opportunity Data Collection, as applicable, during that time period.

(iii) If the applicant has been providing mobile wireless voice and/or mobile wireless broadband service for fewer than three years prior to the application deadline (or is not a wholly-owned subsidiary of an entity that has been providing such service for at least three years), it must:

(A) submit information concerning its operational history and a preliminary project description as prescribed by the Commission or the Office of Economics and Analytics and the Wireline Competition Bureau in a public notice;

(B) submit a letter of interest from a qualified bank that meets the qualifications set forth in § 54.1016 stating that the bank would provide a letter of credit as described in section to the applicant if the applicant becomes a winning bidder for bids of a certain dollar magnitude, as well as the maximum dollar amount for which the bank would be willing to issue a letter of credit to the applicant; and

(C) submit a statement that the bank would be willing to issue a letter of credit that is substantially in the same form as the Commission's model letter of credit.

(5) Certify that it will be subject to a forfeiture pursuant to § 1.21004 in the event of an auction default; and

(6) Certify that the party submitting the application is authorized to do so on behalf of the applicant.

(b) *Application by winning bidders for 5G Fund support—(1) Deadline.* Unless otherwise provided by public notice, winning bidders for 5G Fund support shall file an application for 5G Fund support no later than ten (10) business days after the public notice identifying them as winning bidders.

(2) *Application contents.* An application for 5G Fund support must contain:

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

(ii) Updated information regarding the agreements, arrangements, or understandings related to 5G Fund support disclosed in the application to participate in competitive bidding for 5G Fund support. A winning bidder may also be required to disclose in its application for 5G Fund support the specific terms, conditions, and parties involved in any agreement into which it has entered and the agreement itself;

(iii) Certification that the applicant is financially and technically capable of providing the required coverage and performance levels within the specified timeframe in the geographic areas in which it won support;

(iv) Proof of the applicant's status as an eligible telecommunications carrier, or a statement that the applicant will become an eligible telecommunications carrier in any area for which it seeks support within 180 days of the public notice identifying them as winning bidders, and certification that the proof is accurate;

(v) A description of the Commission licensed spectrum to which the applicant has exclusive access that the applicant plans to use to meet its public interest obligations and performance requirements in areas for which it is winning bidder for support, including whether the applicant currently holds a license for or leases the spectrum, along with any necessary renewal expectancy, the license applicable to the spectrum to be accessed, the type of service covered by the license, the particular frequency band(s), the call sign, and the total amount of bandwidth (in megahertz) to which the applicant has access under the license applicable to the spectrum to be accessed, and certification that the description is accurate, that the winning bidder has access to spectrum in each area for which it is applying for support, and that the applicant will retain such access for the entire ten (10) year 5G Fund support term;

(vi) A detailed project description that describes the network to be built, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the complete project budget, and discusses each specific phase of the project (*e.g.*, network design, construction, deployment, and maintenance), as well as a complete project schedule, including timelines, milestones, and costs;

(vii) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from 5G Fund and that the applicant will comply with all program requirements, including the public interest obligations and performance requirements set forth in § 54.1015;

(viii) Any guarantee of performance that the Commission may require by public notice or other proceedings, including but not limited to the letters of credit and opinion letter required in § 54.1016, or a written commitment from an acceptable bank, as defined in § 54.1016, to issue such a letter of credit;

(ix) Certification that the applicant will offer services in supported areas at rates that are reasonably comparable to the rates the applicant charges in urban areas;

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

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

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

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

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

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

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive 5G Fund support, after the winning bidder submits a Letter of Credit and an accompanying opinion letter from its outside legal counsel as required by § 54.1016, in a form acceptable to the Commission, and any final designation as an eligible telecommunications carrier that any applicant may still require. Each such winning bidder shall submit a Letter of Credit and an accompanying opinion letter from its outside legal counsel as required by § 54.1016, in a form acceptable to the Commission, and any required final designation as an eligible telecommunications carrier no later than ten (10) business days following the release of the public notice.

(vi) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive 5G Fund support.

#### **§ 54.1015 Public interest obligations and performance requirements for 5G Fund support recipients.**

(a) *General.* A 5G Fund support recipient shall deploy voice and data services that meet at least the 5G-NR (New Radio) technology standards developed by the 3rd Generation Partnership Project with Release 15, or any successor release that may be adopted by the Office of Economics and Analytics and the Wireline Competition Bureau after notice and comment.

(b) *Interim and final service milestones and deadlines.* A 5G Fund support recipient shall deploy 5G service as specified in paragraph (a) of this section as follows:

(1) *Year three interim service milestone deadline.* A support recipient shall deploy service that meets the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 40 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state no later than December 31 of the third full calendar year following authorization of support.

(2) *Year four interim service milestone deadline.* A support recipient shall deploy service that meets the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 60 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state no later than December 31 of the fourth full calendar year following authorization of support.

(3) *Year five interim service milestone deadline.* A recipient shall deploy service that meets the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 80 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state no later than December 31 of the fifth full calendar year following authorization of support.

(4) *Year six final service milestone deadline.* A support recipient shall deploy service that meets the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 85 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state no later than December 31 of the sixth full calendar year following funding authorization. In addition, a recipient shall deploy service meeting the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 75 percent of the total square kilometers associated with every census tract or

census block group for which it was authorized to receive 5G Fund support no later than December 31 of the sixth full calendar year following authorization of support.

(5) *Optional year two interim service milestone deadline.* A support recipient may, at its option, deploy service that meets the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 20 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state no later than December 31 of the second full calendar year following funding authorization. Meeting this optional interim service milestone would permit the support recipient, after confirmation of the service deployment by the Administrator, to reduce its letter of credit so that it is valued at an amount equal to one year of support as described in § 54.1016(a)(1)(v).

(c) *Performance requirements.* A recipient authorized to receive 5G Fund support shall meet the following minimum baseline performance requirements for data speeds, data latency, and data allowances in areas where it receives support:

(1) Median of 35 Mbps download and 3 Mbps upload, and with at least 90 percent of measurements recording data transmission rates of not less than 7 Mbps download and 1 Mbps upload; and

(2) Transmission latency of 100 milliseconds or less round trip for successfully transmitted measurements (*i.e.*, ignoring lost or timed-out packets), with at least 90 percent of measurements recording latency of 100 milliseconds or less round trip.

(3) At least one service plan offered must include a data allowance that is equivalent to the average United States subscriber data usage as specified by public notice.

(d) *Collocation obligations.* During the 5G Fund support term, a recipient authorized to receive 5G Fund support shall allow for reasonable collocation by other carriers of services that would meet the technological requirements of the 5G Fund on all newly constructed cell-site infrastructure constructed with universal service funds that it owns or manages in the area(s) for which it receives 5G Fund support. In addition, during the 5G Fund support term, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the newly constructed cell-site infrastructure.

(e) *Voice and data roaming obligations.* A recipient authorized to

receive 5G Fund support shall comply with the Commission's voice and data roaming requirements that are currently in effect on networks that are built with 5G Fund support.

(f) *Reasonably comparable rates.* A recipient authorized to receive 5G Fund support shall offer its services in the areas for which it is authorized to receive support at rates that are reasonably comparable to those rates offered in urban areas and must advertise the voice and broadband services it offers in its subsidized service areas. A 5G Fund support recipient's rates shall be considered reasonably comparable to urban rates, based upon the most recently available decennial U.S. Census Bureau data identifying areas as urban, if rates for services in rural areas fall within a reasonable range of urban rates for reasonably comparable voice and broadband services.

(1) If the recipient offers service in urban areas, it may demonstrate that it offers reasonably comparable rates if it offers the same rates, terms, and conditions (including usage allowances, if any, for a specific rate) in both urban and rural areas or if one of the carrier's rural stand-alone voice service plans and one rural service plan offering data are substantially similar to plans it offers in urban areas.

(2) If the recipient does not offer service in urban areas, it may demonstrate that it offers reasonably comparable rates by identifying a carrier that does offer service in urban areas and the specific rate plans to which its rural plans are reasonably comparable, along with submission of corroborating evidence that its rates are reasonably comparable, such as marketing materials from the identified carrier.

(g) *Liability for failure to comply with performance requirements and public interest obligations.* A support recipient that fails to comply with the performance requirements set forth in paragraph (c) of this section is subject to the non-compliance measures set forth in § 54.1020. A support recipient that fails to comply with the public interest obligations or any other terms and conditions associated with receiving 5G Fund support may be subject to action, including the Commission's existing enforcement procedures and penalties, reductions in support amounts, revocation of eligible telecommunications carrier designation, and suspension or debarment pursuant to § 54.8.

#### **§ 54.1016 Letter of credit.**

(a) Before being authorized to receive 5G Fund support, a winning bidder

shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission.

(1) Each winning bidder that becomes authorized to receive 5G Fund support shall maintain the standby letter of credit in an amount equal to, at a minimum, one year of support, until the Administrator has verified that the support recipient serves at least 85 percent of the eligible square kilometers for which it is authorized to receive support in a state, and at least 75 percent of the eligible square kilometers in each eligible census tract, by the Year Six Final Service Milestone..

(i) For Year One of a support recipient's support term, it must obtain a letter of credit valued at an amount equal to one year of support.

(ii) For Year Two of a support recipient's support term, it must obtain a letter of credit valued at an amount equal to eighteen months of support.

(iii) For Year Three of a support recipient's support term, it must obtain a letter of credit valued at an amount equal to two years of support.

(iv) For Year Four of a support recipient's support term, and for each year thereafter unless the support recipient is allowed to reduce it pursuant to § 54.1015(b), it must obtain a letter of credit valued at an amount equal to three years of support.

(v) A support recipient may obtain a new letter of credit or renew its existing letter of credit so that it is valued at an amount equal to one year of support once it meets its optional or required service milestones as specified in § 54.1015(b). The recipient may obtain or renew this letter of credit upon verification by the Administrator that it has deployed service that meets the 5G Fund deadlines as specified in § 54.1015(b) and performance requirements as specified in § 54.1015(c). The recipient may maintain its letter of credit at this level for the remainder of its deployment term, so long as the Administrator verifies that the recipient successfully and timely meets its remaining required interim and final service milestones.

(vi) A support recipient that fails to meet its required interim service milestones must obtain a new letter of credit or renew its existing letter of credit valued at an amount equal to its existing letter of credit, plus an additional year of support, up to a maximum of three years of support.

(vii) A support recipient that fails to meet two or more required interim service milestones must maintain a letter of credit valued at an amount equal to three years of support and may

be subject to additional noncompliance penalties as set forth in § 54.1020.

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

(i) Any United States bank:

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

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

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

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

(iv) Any non-United States bank:

(A) That is among the 100 largest non-U.S. banks in the world, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit (determined on a U.S. dollar equivalent basis as of such date);

(B) Has a branch office

(i) Located in the District of Columbia; or

(ii) Located in New York City, New York, or such other branch office agreed to by the Commission, that will accept a letter of credit presentation from the Administrator via overnight courier, in addition to in-person presentations; and

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

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

(b) Before being authorized to receive 5G Fund support, a winning bidder shall obtain an opinion letter from its outside legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 *et seq.* (the "Bankruptcy Code"), that the bankruptcy court would not treat the

letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate, or the bankruptcy estate of any other winning bidder-related entity requesting issuance of the letter of credit, under section 541 of the Bankruptcy Code.

(c) Authorization to receive 5G Fund support is conditioned upon full and timely performance of all of the performance requirements set forth in § 54.1015(c), and any additional terms and conditions upon which the support was granted.

(1) Failure by a 5G Fund support recipient to meet any of the service milestones set forth in § 54.1015(b) will trigger reporting obligations and the withholding of support as described in § 54.1020. Failure to come into full compliance during the relevant cure period as described in § 54.1020(b)(4)(ii) or § 54.1020(c) will trigger a recovery action by the Administrator set forth in § 54.1020(b)(4)(ii) or § 54.1020(c), as applicable. If the recipient authorized to receive 5G Fund support does not repay the requisite amount of support within six months, the Administrator will be entitled to draw upon the entire amount of the letter of credit and may disqualify the 5G Fund support recipient from the receipt of 5G Fund support or additional universal service support.

(2) The default will be evidenced by a letter issued by the Chief of the Wireline Competition Bureau, or its respective designees, which letter, describing the performance default and attached to a standby letter of credit draw certificate, shall be sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

#### **§ 54.1017 5G Fund support disbursements.**

(a) A winning bidder of 5G Fund support will be advised by public notice whether it has been authorized to receive support.

(b) 5G Fund support will be disbursed on a monthly basis to a recipient for ten (10) years following the date on which it is authorized to receive support.

(c) If a 5G Fund support recipient fails to comply with the performance requirements of the 5G Fund, the Administrator shall reduce, pause, or freeze, the monthly payments to the recipient until the recipient cures the non-compliance, as provided in § 54.1020. As set forth in § 54.1015(g), if a support recipient fails to comply with the public interest obligations or any other terms and conditions associated with receiving 5G Fund support, it may be subject reductions or suspension of support amounts.

(d) A winning bidder of 5G Fund support may not use such support to fulfill any enforceable commitments with the Commission to deploy 5G service.

#### **§ 54.1018 Annual reports.**

(a) A 5G Fund support recipient authorized to receive 5G Fund support shall submit an annual report to the Administrator no later than July 1 of each year after the year in which it was authorized to receive support. Each support recipient shall certify in its annual report that it is in compliance with the public interest obligations, performance requirements, and all of the terms and conditions associated with the receipt of 5G Fund support in order to continue receiving 5G Fund support disbursements.

(b) All 5G Fund support recipients shall supplement the information provided in an annual report to the Administrator within 10 business days from the onset of any reduction in the percentage of the total eligible square kilometers being served in a state after the filing of an annual certification report or in the event of any failure to comply with any of the 5G Fund requirements.

(c) The party submitting the annual report must certify that it has been authorized to do so by the 5G Fund support recipient.

(d) Each annual report shall be submitted solely via the Administrator's online portal.

(1) The Commission and the Administrator shall treat infrastructure data submitted as part of such a report as presumptively confidential.

(2) The Administrator shall make such reports available to the Commission and to the relevant state, territory, and Tribal governmental entities, as applicable.

(e) A 5G Fund support recipient shall have a continuing obligation to maintain the accuracy and completeness of the information provided in its annual reports. Any substantial change in the accuracy or completeness of any annual report must be reported as an update to the submitted annual report within ten (10) business days after the reportable event occurs.

(f) The Commission shall retain the authority to look behind 5G Fund support recipients' annual reports and to take action to address any violations.

#### **§ 54.1019 Interim service and final service milestone reports.**

(a) A recipient authorized to receive 5G Fund support shall submit a report to the Administrator on or before March 1 after the third, fourth, fifth, and sixth



service milestone deadlines established in § 54.1015(b) demonstrating that it has deployed service meeting the 5G Fund performance requirements specified in § 54.1015(c), which shall include the following:

(1) Certifications to representative data submitted in the Digital Opportunity Data Collection or as part of FCC Form 477, as applicable, demonstrating mobile transmissions to and from the network that establish compliance with the 5G Fund coverage, speed, and latency requirements;

(2) On-the-ground measurement tests to substantiate 5G broadband coverage data:

(i) With at least three tests conducted per square kilometer, measured by overlaying a uniform grid of one square kilometer (1 km by 1 km) on the recipient's submitted in-vehicle 5G coverage maps within the area for which 5G Fund support was awarded;

(ii) For a subset of drive-testable grid cells, such that the minimum percentage of drive-testable grid cells tested equals the minimum percentage of coverage required for each service buildout milestone (*i.e.*, interim milestones of 40 percent, 60 percent, and 80 percent, and the final milestone of 85 percent), with previously reported testing being cumulative; and

(iii) Where a drive-testable grid cell is any grid cell that has more than the *de minimis* amount of total roads specified in a public notice, based upon the most recent roadway data from the U.S. Census Bureau available for this purpose, considering roads classified in the primary road (S1100), secondary road (S1200), local road (S1400), and service drive (S1640) categories.

(3) Detailed cell-site and sector infrastructure information; and

(4) Additional information as required by the Commission in a public notice.

(b) All data submitted and certified to in compliance with a recipient's public interest obligations in the milestone report shall be in compliance with standards set forth in the applicable public notice and shall be certified by a professional engineer.

(c) Each service milestone report shall be submitted solely via the Administrator's online portal.

(d) All data submitted in and certified to in any service milestone report shall be subject to verification by the Administrator for compliance with the 5G Fund performance requirements specified in § 54.1015(c).

**§ 54.1020 Non-compliance measures for 5G Fund support recipients.**

(a) *General.* A 5G Fund support recipient that has not deployed service

that meets the 5G Fund performance requirements specified in § 54.1015(c) to at least 20 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive support in a state by the Year Three Interim Service Milestone deadline must notify the Commission and the Administrator within ten (10) business days after the Year Three Interim Service Milestone deadline that it failed to meet this milestone. Upon such notification, the support recipient will be deemed to be in default. The Wireline Competition Bureau will issue a letter evidencing the default and the support recipient will be subject to full support recovery. The provisions of paragraph (b) of this section will not be applicable to such a support recipient.

(b) *Interim service milestones.* A 5G Fund support recipient must notify the Commission, the Administrator, and the relevant state, U.S. Territory, or Tribal government, if applicable, within ten (10) business days after the applicable interim service milestone deadline if it has failed to meet an interim milestone. Upon notification that a support recipient has defaulted on an interim service milestone, the Wireline Competition Bureau will issue a letter evidencing the default. For purposes of determining whether a default has occurred, the support recipient must be offering service meeting the requisite performance requirements specified in § 54.1015(c). The issuance of this letter shall initiate reporting obligations and withholding of a percentage of the 5G Fund support recipient's total monthly 5G Fund support, if applicable, starting the month after issuance of the letter:

(1) *Tier 1.* If a support recipient has a compliance gap of at least five percent but less than 15 percent of the total square kilometers associated with the eligible areas in a state for which it is to have deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) by the interim service milestone, the Wireline Competition Bureau will issue a letter to that effect. Starting three months after the issuance of this letter, a support recipient will be required to file a report with the Administrator every three months that identifies the eligible square kilometers to which the support recipient has newly deployed facilities capable of delivering service that meets the requisite 5G Fund performance requirements in the previous quarter. The support recipient must continue to file quarterly reports until it has reported, and the Administrator has verified, that it has reduced the compliance gap to less than five percent of the total square kilometers associated

with the eligible areas for which it is authorized to receive support in a state by that interim service milestone and the Wireline Competition Bureau issues a letter to that effect. A support recipient that files a quarterly report late, but within seven days after the due date established by the letter issued by the Wireline Competition Bureau for filing the report, will have its 5G Fund support reduced by an amount equivalent to seven days of support. If a support recipient does not file a report within seven days after the report's due date, it will have its 5G Fund support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction, until such time as the quarterly report is filed.

(2) *Tier 2.* If a support recipient has a compliance gap of at least 15 percent but less than 25 percent of the total square kilometers associated with the eligible areas in a state for which it is to have deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) by the interim service milestone, the Administrator will withhold 15 percent of the support recipient's monthly support for that state and the support recipient will be required to file quarterly reports with the Administrator. Once the support recipient has reported, and the Administrator has verified, that it has reduced the compliance gap to less than 15 percent of the required eligible square kilometers for that interim service milestone for that state, the Wireline Competition Bureau will issue a letter to that effect, the Administrator will stop withholding support, and the support recipient will receive all of the support that had been withheld. The support recipient will then move to Tier 1 status.

(3) *Tier 3.* If a support recipient has a compliance gap of at least 25 percent but less than 50 percent of the total square kilometers associated with the eligible areas in a state for which it is to have deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) by the interim service milestone, the Administrator will withhold 25 percent of the support recipient's monthly support for that state and the support recipient will be required to file quarterly reports with the Administrator. Once the support recipient has reported, and the Administrator has verified, that it has reduced the compliance gap to less than 25 percent of the required eligible square kilometers for that interim service milestone for that state, the Wireline Competition Bureau will issue a letter to that effect, and the support

recipient will move to Tier 2 or Tier 1 status, as applicable.

(4) *Tier 4.* If a support recipient has a compliance gap of 50 percent or more of the total square kilometers associated with the eligible areas in a state for which it is to have deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) by the interim service milestone:

(i) The Administrator will withhold 50 percent of the support recipient's monthly support for that state and the support recipient will then be required to file quarterly reports with the Administrator. As with the other tiers, as the support recipient reports, and the Administrator verifies, that it has lessened the extent of its non-compliance, and the Wireline Competition Bureau issues a letter to that effect, it will move through the tiers until it reaches Tier 1 (or no longer is out of compliance with the applicable interim service milestone).

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

(5) If at any point prior to the Year Six Final Service Milestone the support recipient reports, and the Administrator verifies, that it is eligible for Tier 1 status or that it is no longer out of compliance with the 5G Fund performance requirements specified in § 54.1015(c), it will have its support fully restored and the Administrator will repay any funds that were recovered or withheld.

(c) *Year six final service milestone.* A 5G Fund support recipient must notify the Commission, the Administrator, and the relevant state, U.S. Territory, or Tribal government, if applicable, within 10 business days if it has failed to meet the Year Six Final Milestone. Upon notification that the support recipient has not met the Year Six Final Service Milestone, the support recipient will have twelve months from the date of the Year Six Final Milestone deadline to come into full compliance with this milestone. If the support recipient does not report that it has come into full compliance with the Year Six Final Milestone within twelve months, as

verified by the Administrator, the Wireline Competition Bureau will issue a letter to this effect. Recipients of 5G Fund support shall be subject to the following non-compliance measures related to the recovery of support after this grace period:

(1) If a support recipient has deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) to at least 80 percent of the total eligible square kilometers in a state, but less than the required 85 percent of the total eligible square kilometers in that state, the Administrator will recover an amount of support that is equal to 1.25 times the average amount of support per square kilometer that the support recipient has received in the state times the number of square kilometers unserved up to the 85 percent requirement;

(2) If a support recipient has deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) to at least 75 percent, but less than 80 percent, of the total eligible square kilometers in that state, the Administrator will recover an amount of support that is equal to 1.5 times the average amount of support per square kilometer that the support recipient has received in the state times the number of square kilometers unserved up to the 85 percent requirement, plus 5 percent of the support recipient's total 5G Fund support for the 10 year support term for that state;

(3) If a support recipient has deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) to less than 75 percent of the total eligible square kilometers in a state, the Administrator will recover an amount of support that is equal to 1.75 times the average amount of support per square kilometer that the support recipient has received in the state times the number of square kilometers unserved up to the 85 percent requirement, plus 10 percent of the support recipient's total 5G Fund support for the 10 year support term for that state.

(d) *Additional evidence required at year six final service milestone deadline.* At the Year Six Final Service Milestone deadline, a 5G Fund support recipient is also required to provide evidence, which is subject to verification by the Administrator, that it has provided service that meets the 5G Fund performance requirements specified in § 54.1015(c) to at least 75 percent of the total square kilometers for each census tract or census tract group in which it was authorized to receive

support. If after the grace period permitted in paragraph (c) of this section the Administrator has not verified based on the evidence provided that the support recipient has provided service that meets the 5G Fund performance requirements specified in § 54.1015(c) to at least 75 percent of the total square kilometers for each census tract or census tract group in which it was authorized to receive support, the Administrator will recover an amount of support that is equal to 1.5 times the average amount of support per square kilometer that the support recipient had received in the eligible area times the number of square kilometers unserved within that eligible area, up to the 75 percent requirement.

(e) *Compliance reviews.* If the Administrator determines subsequent to the Year Six Final Service Milestone that a support recipient does not have sufficient evidence to demonstrate that it continues to offer service that meets the 5G Fund performance requirements specified in § 54.1015(c) to all of the eligible square kilometers in the state as required by the Year Six Final Service Milestone, the Administrator shall immediately recover a percentage of support from the support recipient as specified in paragraphs (c)(1) through(c)(3) and (d) of this section.

**§ 54.1021 Record retention for the 5G Fund.**

A recipient authorized to receive 5G Fund support and its agents are required to retain any documentation prepared for, or in connection with, the award of the 5G Fund support for a period of not less than ten (10) years after the date on which the recipient receives its final disbursement of 5G Fund support.

■ 15. Amend § 54.1508 by revising paragraph (c)(4)(ii) to read as follows:

**§ 54.1508 Letter of credit for stage 2 fixed support recipients.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(ii) Has a branch office:

(A) Located in the District of Columbia, or

(B) Located in New York City, New York, or such other branch office agreed to by the Commission, that will accept a letter of credit presentation from the Administrator via overnight courier, in addition to in-person presentations;

\* \* \* \* \*