

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Genachowski and Commissioners Copps and Clyburn issuing separate statements; Commissioner McDowell approving in part, concurring in part and issuing a statement.

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I. INTRODUCTION

1. Today the Commission comprehensively reforms and modernizes the universal service and intercarrier compensation systems to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation. We adopt fiscally responsible, accountable, incentive-based policies to transition these outdated systems to the Connect America Fund, ensuring fairness for consumers and addressing the communications infrastructure challenges of today and tomorrow. We use measured but firm glide paths to provide industry with certainty and sufficient time to adapt to a changed regulatory landscape, and establish a framework to distribute universal service funding in the most efficient and technologically neutral manner possible, through market-based mechanisms such as competitive bidding.

2. One of the Commission’s central missions is to make “available ... to all the people of the United States ... a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”¹ For decades, the Commission and the states have administered a complex system of explicit and implicit subsidies to support voice connectivity to our most expensive to serve, most rural, and insular communities. Networks that provide only voice service, however, are no longer adequate for the country’s communication needs.

3. Fixed and mobile broadband have become crucial to our nation’s economic growth, global competitiveness, and civic life.² Businesses need broadband to attract customers and employees, job-seekers need broadband to find jobs and training, and children need broadband to get a world-class education. Broadband also helps lower the costs and improve the quality of health care, and enables people with disabilities and Americans of all income levels to participate more fully in society. Community anchor institutions, including schools and libraries, cannot achieve their critical purposes without access to robust broadband. Broadband-enabled jobs are critical to our nation’s economic

¹ 47 U.S.C. § 151.

² See generally Federal Communications Commission, *Connecting America: The National Broadband Plan* (rel. Mar. 16, 2010), at xi (National Broadband Plan).

recovery and long-term economic health, particularly in small towns, rural and insular areas, and Tribal lands.

4. But too many Americans today do not have access to modern networks that support broadband. Approximately 18 million Americans live in areas where there is no access to robust fixed broadband networks.³ And millions of Americans live, work, or travel in areas without access to advanced mobile services. There are unserved areas in every state of the nation and its territories, and in many of these areas there is little reason to believe that Congress's desire "to ensure that all people of the United States have access to broadband capability"⁴ will be met any time soon with current policies.

5. The universal service challenge of our time is to ensure that all Americans are served by networks that support high-speed Internet access—in addition to basic voice service—where they live, work, and travel. Consistent with that challenge, extending and accelerating fixed and mobile broadband deployment has been one of the Commission's top priorities over the past few years. We have taken a series of significant steps to better enable the private sector to deploy broadband facilities to all Americans. The Commission has provided the tools to promote both wired and wireless solutions by offering new opportunities to access and use spectrum,⁵ removing barriers to infrastructure investment,⁶ and developing better and more complete broadband and spectrum data.⁷ Today's Order focuses on costly-to-serve communities where even with our actions to lower barriers to investment nationwide, private sector economics still do not add up, and therefore the immediate prospect for stand-alone private sector action is limited. We build on the Rural Utilities Service's (RUS's) Broadband Initiatives Program (BIP) and the National Telecommunications and Information Administration's (NTIA's) Broadband Technology Opportunities Program (BTOP),⁸ through which Congress appropriated over \$7 billion in

³ See National Broadband Map, available at <http://www.broadbandmap.gov>. Based on data as of December 2010, there are an estimated 18.8 million Americans that lacked access to terrestrial fixed broadband services with a maximum advertised download speed of at least 3 Mbps and a maximum advertised upload speed of at least 768 kbps. For these purposes, terrestrial fixed broadband technologies include xDSL, other copper, cable modem, fiber to the end user, fixed wireless, whether licensed or unlicensed, and electric power line.

⁴ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, 516, § 6001(k)(2)(D), (Recovery Act).

⁵ See, e.g., *Unlicensed Operation in the TV Broadcast Bands*, ET Docket Nos. 04-186, 02-380, Second Memorandum Opinion and Order, 25 FCC Rcd 18661 (2010); *Amendment of Part 27 of the Commission's Rules To Govern the Operation of Wireless Communications Services in the 2.3 GHz Band*, WT Docket No. 07-293, IB Docket No. 95-91, GN Docket No. 90-357, RM-8610, Report and Order, 25 FCC Rcd 11710 (2010) (removing technical impediments to mobile broadband for Wireless Communications Service at 2.3 GHz, freeing up 25 MHz of spectrum).

⁶ See *Implementation of Section 224 of the Act, A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (rel. Apr. 7, 2011); *The FCC's Broadband Acceleration Initiative; Reducing Regulatory Barriers To Spur Broadband Buildout*, Public Notice, 2011 WL 466770 (Feb. 9, 2011) (available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/DOC-304571A2.pdf).

⁷ See *Measuring Broadband America, A Report on Consumer Wireline Broadband Performance in the U.S.*, FCC's Office of Engineering and Technology and Consumer and Governmental Affairs Bureau, 2011 WL 3343075 (Aug. 2, 2011) (*Measuring Broadband America Report*); *Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 11-10, 07-38, 08-190, 10-132, Notice of Proposed Rulemaking, 26 FCC Rcd 1508 (2011) (*Modernizing Form 477 NPRM*); Press Release, Commission Announces "Beta" Launch of Spectrum Dashboard (Mar. 17, 2010) (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296942A1.doc).

grants and loans to expand broadband deployment and adoption in unserved and underserved areas. We also build on federal and state universal service programs that have supported networks in rural America for many years.

6. Our existing universal service and intercarrier compensation systems are based on decades-old assumptions that fail to reflect today's networks, the evolving nature of communications services, or the current competitive landscape. As a result, these systems are ill equipped to address the universal service challenges raised by broadband, mobility, and the transition to Internet Protocol (IP) networks.

7. With respect to broadband, the component of the Universal Service Fund (USF) that supports telecommunications service in high-cost areas has grown from \$2.6 billion in 2001 to a projected \$4.5 billion in 2011, but recipients lack any obligations or accountability for advancing broadband-capable infrastructure. We also lack sufficient mechanisms to ensure all Commission-funded broadband investments are prudent and efficient, including the means to target investment only to areas that require public support to build broadband. Due in part to these problems, a "rural-rural" divide persists in broadband access—some parts of rural America are connected to state-of-the-art broadband, while other parts of rural America have no broadband access, because the existing program fails to direct money to all parts of rural America where it is needed.

8. Similarly, the Fund supports some mobile providers, but only based on cost characteristics and locations of wireline providers. As a result, the universal service high-cost program provides approximately \$1 billion in annual support to wireless carriers, yet there remain areas of the country where people live, work, and travel that lack even basic mobile voice coverage, and many more areas that lack mobile broadband coverage. We need dedicated mechanisms to support mobility and close these gaps in mobile coverage, and we must rationalize the way that funding is provided to ensure that it is cost-effective and targeted to areas of need.

9. The intercarrier compensation (ICC) system is similarly outdated, designed for an era of separate long-distance companies and high per-minute charges, and established long before competition emerged among telephone companies, cable companies, and wireless providers for bundles of local and long distance phone service and other services. Over time, ICC has become riddled with inefficiencies and opportunities for wasteful arbitrage. And the system is eroding rapidly as consumers increasingly shift from traditional telephone service to substitutes including Voice over Internet Protocol (VoIP), wireless, texting, and email. As a result, companies' ICC revenues have become dangerously unstable, impeding investment, while costly disputes and arbitrage schemes have proliferated. The existing system, based on minutes rather than megabytes, is also fundamentally in tension with and a deterrent to deployment of IP networks. The system creates competitive distortions because traditional phone companies receive implicit subsidies from competitors for voice service, while wireless and other companies largely compete without the benefit of such subsidies. Most concerning, the current ICC system is unfair for consumers, with hundreds of millions of Americans paying more on their wireless and long distance bills than they should in the form of hidden, inefficient charges. We need a more incentive-based, market-driven approach that can reduce arbitrage and competitive distortions by phasing down byzantine per-minute and geography-based charges. And we need to provide more certainty and predictability regarding revenues to enable carriers to invest in modern, IP networks.

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⁸ See USDA Rural Development—UTP Broadband Initiatives Program Main, http://www.rurdev.usda.gov/utp_bip.html; NTIA, BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM, EXPANDING BROADBAND ACCESS AND ADOPTION IN COMMUNITIES ACROSS AMERICA, OVERVIEW OF GRANT AWARDS (2010) (available at http://www.ntia.doc.gov/reports/2010/NTIA_Report_on_BT0P_12142010.pdf).

10. Under these circumstances, modernizing USF and ICC from supporting just voice service to supporting voice and broadband, both fixed and mobile, through IP networks is required by statute. The Communications Act directs the Commission to preserve and advance universal service: “Access to advanced telecommunications and information services should be provided in all regions of the Nation.”⁹ It is the Commission’s statutory obligation to maintain the USF consistent with that mandate and to continue to support the nation’s telecommunications infrastructure in rural, insular, and high-cost areas. The statute also requires the Commission to update our mechanisms to reflect changes in the telecommunications market. Indeed, Congress explicitly defined universal service as “an evolving level of telecommunications services . . . taking into account advances in telecommunications and information technologies and services.”¹⁰ More recently, Congress required the Commission to report annually on the state of broadband availability, and to develop the National Broadband Plan, “to ensure that all people of the United States have access to broadband capability.”¹¹

11. Upon the release of the National Broadband Plan last year, the Commission said in its Joint Statement on Broadband, “[USF] and [ICC] should be comprehensively reformed to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs.”¹² Consistent with the Joint Statement and the Broadband Plan, we proposed in the *USF/ICC Transformation NPRM* to be guided in the USF-ICC reform process by the following four principles, rooted in the Communications Act:¹³

- *Modernize USF and ICC for Broadband.* Modernize and refocus USF and ICC to make affordable broadband available to all Americans and accelerate the transition from circuit-switched to IP networks, with voice ultimately one of many applications running over fixed and mobile broadband networks. Unserved communities across the nation cannot continue to be left behind.
- *Fiscal Responsibility.* Control the size of USF as it transitions to support broadband, including by reducing waste and inefficiency. We recognize that American consumers and businesses ultimately pay for USF, and that if it grows too large this contribution burden may undermine the benefits of the program by discouraging adoption of communications services.
- *Accountability.* Require accountability from companies receiving support to ensure that public investments are used wisely to deliver intended results. Government must also be accountable for the administration of USF, including through clear goals and performance metrics for the program.
- *Incentive-Based Policies.* Transition to incentive-based policies that encourage technologies and services that maximize the value of scarce program resources and the benefits to all consumers.

⁹ 47 U.S.C. § 254(b)(2).

¹⁰ *Id.* § 254(c)(1).

¹¹ Recovery Act, 123 Stat. at 516.

¹² *Joint Statement on Broadband*, GN Docket No. 10-66, Joint Statement on Broadband, 25 FCC Rcd 3420, 3421 (2010).

¹³ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4560-61 (2011) (*USF/ICC Transformation NPRM*).

We have also sought to phase in reform with measured but certain transitions, so companies affected by reform have time to adapt to changing circumstances.

12. There has been enormous interest in and public participation in our data-driven reform process.¹⁴ We have received over 2,700 comments, reply comments, and ex parte filings totaling over 26,000 pages, including hundreds of financial filings from telephone companies of all sizes, including numerous small carriers that operate in the most rural parts of the nation. We have held over 400 meetings with a broad cross-section of industry and consumer advocates. We held three open, public workshops, and engaged with other federal, state, Tribal, and local officials throughout the process. We are appreciative of the efforts of many parties, including the State Members of the Federal-State Universal Service Joint Board, to propose comprehensive solutions to the challenging problems of our current system.

13. The reforms we adopt today build on the input of all stakeholders, including Tribal leaders, states, territories, consumer advocates, incumbent and competitive telecommunications providers, cable companies, wireless providers (including wireless Internet service providers – WISPs), satellite providers, community anchor institutions, and other technology companies. We have taken a holistic view of the entire record, and have adopted—though often with modifications designed to better serve the public interest—a number of elements from various stakeholder proposals.

14. Our actions today will benefit consumers. In rural communities throughout the country our reforms will expand broadband and mobility significantly, providing access to critical employment, public safety, educational, and health care opportunities to millions of Americans for the first time. It has been more than a decade since the Commission has comprehensively updated its USF and ICC rules. Those prior efforts helped usher in significant reductions in long distance rates and the proliferation of innovative new offerings, such as all-distance and flat-priced wireless calling plans, with substantial consumer benefits. We expect that today's ICC actions will have similar pro-consumer, pro-innovation results, providing over \$1.5 billion annually in benefits for wireless and all long-distance customers. These benefits may take many forms, including cost savings, more robust wireless service, and more innovative IP-based communications offerings. Given these effects, we project that the average consumer benefits of our reforms outweigh any costs by at least 3 to 1 -- and of course, by much more for the million of consumers that will get broadband for the first time. Eliminating implicit subsidies also helps level the competitive playing field by allowing consumers to more accurately compare service offerings from telephone companies, cable companies, and wireless providers. In addition, we adopt a number of safeguards to protect consumers during the reform process, placing clear limits on end-user charges and putting USF on a firm budget to help stabilize the contribution burden on consumers.

15. We recognize that USF and ICC are both hybrid state-federal systems, and it is critical to our reforms' success that states remain key partners even as these programs evolve and traditional roles shift. Over the years, we have engaged in ongoing dialogue with state commissions on a host of issues, including universal service. We recognize the statutory role that Congress created for state commissions with respect to eligible telecommunications carrier designations, and we do not disturb that framework. We know that states share our interest in extending voice and broadband service, both fixed and mobile,

¹⁴ The comment cycle for the *USF/ICC Transformation NPRM* was at least 30 days for each section, and the NPRM was available for ex parte comment from its release on February 9, 2011 until the Sunshine period began on October 21, 2011. See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4554; FCC To Hold Open Commission Meeting Thursday, October 27, 2011, Public Notice (rel. Oct. 20, 2011). Stakeholders thus had ample time to participate in this proceeding, notwithstanding the claims of some parties. See, e.g., Letter from Jerry Petrowski, Wisconsin State Representative, to Hon. Julius Genachowski, Chairman, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-32, 96-45; GN Docket No. 09-51 (filed Oct. 18, 2011).

where it is lacking, to better meet the needs of their consumers.¹⁵ Therefore, we do not seek to modify the existing authority of states to establish and monitor carrier of last resort (COLR) obligations. We will continue to rely upon states to help us determine whether universal service support is being used for its intended purposes, including by monitoring compliance with the new public interest obligations described in this Order. We also recognize that federal and state regulators must reconsider how legacy regulatory obligations should evolve as service providers accelerate their transition from the Public Switched Telephone Network (PSTN) to an all IP world.

16. We believe that the framework adopted today provides all stakeholders with a clear path forward as the Commission transitions its voice support mechanisms to expressly include broadband and mobility, from the PSTN to IP, and toward market-based policies, such as competitive bidding. We will closely monitor the progress made and stand ready to adjust the framework as necessary to protect consumers, expand broadband access and opportunities, eliminate new arbitrage or inefficient behavior, ensure USF stays within our budget, and continue our transition to IP communications in a competitive and technologically neutral manner.

II. EXECUTIVE SUMMARY

A. Universal Service Reform

17. *Principles and Goals.* We begin by adopting support for broadband-capable networks as an express universal service principle under section 254(b) of the Communications Act, and, for the first time, we set specific performance goals for the high-cost component of the USF that we are reforming today, to ensure these reforms are achieving their intended purposes. The goals are: (1) preserve and advance universal availability of voice service; (2) ensure universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions; (3) ensure universal availability of modern networks capable of providing advanced mobile voice and broadband service; (4) ensure that rates for broadband services and rates for voice services are reasonably comparable in all regions of the nation; and (5) minimize the universal service contribution burden on consumers and businesses.

18. *Budget.* We establish, also for the first time, a firm and comprehensive budget for the high-cost programs within USF.¹⁶ The annual funding target is set at no more than \$4.5 billion over the next six years, the same level as the high-cost program for Fiscal Year 2011, with an automatic review trigger if the budget is threatened to be exceeded. This will provide for more predictable funding for carriers and will protect consumers and businesses that ultimately pay for the fund through fees on their communications bills. We are today taking important steps to control costs and improve accountability in USF, and our estimates of the funding necessary for components of the Connect America Fund (CAF) and legacy high-cost mechanisms represent our predictive judgment as to how best to allocate limited resources at this time. We anticipate that we may revisit and adjust accordingly the appropriate size of each of these programs by the end of the six-year period, based on market developments, efficiencies realized, and further evaluation of the effect of these programs in achieving our goals.

¹⁵ See *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision 22 FCC Rcd 20477 (Fed.-State Jt. Bd., rel. Nov. 20, 2007).

¹⁶ While we recognize that over time several of our existing support mechanisms will be phased down and eliminated, for purposes of this budget, the term “high-cost” includes all support mechanisms in place as of the date of this Order, specifically, high-cost loop support, safety net support, safety valve support, local switching support, interstate common line support, high cost model support, and interstate access support, as well as the new Connect America Fund, which includes funding to support and advance networks that provide voice and broadband services, both fixed and mobile, and funding provided in conjunction with the recovery mechanism adopted as part of intercarrier compensation reform.

19. *Public Interest Obligations.* While continuing to require that all eligible telecommunications carriers (ETCs) offer voice services, we now require that they also offer broadband services. We update the definition of voice services for universal service purposes, and decline to disrupt any state carrier of last resort obligations that may exist. We also establish specific and robust broadband performance requirements for funding recipients.

20. *Connect America Fund.* We create the Connect America Fund, which will ultimately replace all existing high-cost support mechanisms. The CAF will help make broadband available to homes, businesses, and community anchor institutions in areas that do not, or would not otherwise, have broadband, including mobile voice and broadband networks in areas that do not, or would not otherwise, have mobile service, and broadband in the most remote areas of the nation. The CAF will also help facilitate our ICC reforms. The CAF will rely on incentive-based, market-driven policies, including competitive bidding, to distribute universal service funds as efficiently and effectively as possible.

21. *Price Cap Territories.* More than 83 percent of the approximately 18 million Americans that lack access to residential fixed broadband at or above the Commission's broadband speed benchmark live in areas served by price cap carriers—Bell Operating Companies and other large and mid-sized carriers. In these areas, the CAF will introduce targeted, efficient support for broadband in two phases.

22. *Phase I.* To spur immediate broadband buildout, we will provide additional funding for price cap carriers to extend robust, scalable broadband to hundreds of thousands of unserved Americans beginning in early 2012. To enable this deployment, all existing legacy high-cost support to price cap carriers will be frozen, and an additional \$300 million in CAF funding will be made available. Frozen support will be immediately subject to the goal of achieving universal availability of voice and broadband, and subject to obligations to build and operate broadband-capable networks in areas unserved by an unsubsidized competitor over time. Any carrier electing to receive the additional support will be required to deploy broadband and offer service that satisfies our new public interest obligations to an unserved location for every \$775 in incremental support. Specifically, carriers that elect to receive this additional support must provide broadband with actual speeds of at least 4 Mbps downstream and 1 Mbps upstream,¹⁷ with latency suitable for real-time applications and services such as VoIP, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas. In addition, to ensure fairness for consumers across the country who pay into USF, we reduce existing support levels in any areas where a price cap company charges artificially low end-user voice rates.

23. *Phase II.* The next phase of the CAF will use a combination of a forward-looking broadband cost model and competitive bidding to efficiently support deployment of networks providing both voice and broadband service for five years. We expect that the CAF will expand broadband availability to millions more unserved Americans.

24. We direct the Wireline Competition Bureau to undertake a public process to determine the specific design and operation of the cost model to be used for this purpose, with stakeholders encouraged to participate in that process. The model will be used to establish the efficient amount of support required to extend and sustain robust, scalable broadband in high-cost areas. In each state, each incumbent price cap carrier will be asked to undertake a "state-level commitment" to provide affordable broadband to all high-cost locations in its service territory in that state, excluding extremely high cost areas as determined by the model. Importantly, the CAF will only provide support in those areas where a federal subsidy is necessary to ensure the build-out and operation of broadband networks. The CAF will not provide support in areas where unsubsidized competitors are providing broadband that meets our

¹⁷ Upon a showing that the specified support amount is inadequate to enable build out of broadband with actual upstream speeds of at least 1 Mbps to the required number of locations, a carrier may request a waiver.

definition. Carriers accepting the state-level commitment will be obligated to meet rigorous broadband service requirements—with interim build-out requirements in three years and final requirements in five years—and will receive CAF funding, in an amount calculated by the model, over a five-year period, with significant financial consequences in the event of non- or under-performance. We anticipate that CAF obligations will keep pace as services in urban areas evolve, and we will ensure that CAF-funded services remain reasonably comparable to urban broadband services over time. After the five-year period, the Commission will use competitive bidding to distribute any universal service support needed in those areas.

25. In areas where the incumbent declines the state-level commitment, we will use competitive bidding to distribute support in a way that maximizes the extent of robust, scalable broadband service subject to an overall budget. In the Further Notice of Proposed Rulemaking (FNPRM) that accompanies today's Order, we propose a structure and operational details for the competitive bidding mechanism, in which any broadband provider that has been designated as an ETC for the relevant area may participate. The second phase of the CAF will distribute a total of up to \$1.8 billion annually in support for areas with no unsubsidized broadband competitor. We expect that the model and competitive bidding mechanism will be adopted by December 2012, and disbursements will ramp up in 2013 and continue through 2017.

26. *Rate-of-Return Reforms.* Although they serve less than five percent of access lines in the U.S., smaller rate-of-return carriers operate in many of the country's most difficult and expensive areas to serve. Rate-of-return carriers' total support from the high-cost fund is approaching \$2 billion annually. We reform our rules for rate-of-return companies in order to support continued broadband investment while increasing accountability and incentives for efficient use of public resources. Rate-of-return carriers receiving legacy universal service support, or CAF support to offset lost ICC revenues, must offer broadband service meeting initial CAF requirements, with actual speeds of at least 4 Mbps downstream and 1 Mbps upstream, upon their customers' reasonable request. Recognizing the economic challenges of extending service in the high-cost areas of the country served by rate-of-return carriers, this flexible approach does not require rate-of-return companies to extend service to customers absent such a request.

27. Alongside these broadband service rules, we adopt reforms to: (1) establish a framework to limit reimbursements for excessive capital and operating expenses, which will be implemented no later than July 1, 2012, after an additional opportunity for public comment; (2) encourage efficiencies by extending existing corporate operations expense limits to the existing high-cost loop support and interstate common line support mechanisms, effective January 1, 2012; (3) ensure fairness by reducing high-cost loop support for carriers that maintain artificially low end-user voice rates, with a three-step phase-in beginning July 1, 2012; (4) phase out the Safety Net Additive component of high-cost loop support over time; (5) address Local Switching Support as part of comprehensive ICC reform; (6) phase out over three years support in study areas that overlap completely with an unsubsidized facilities-based terrestrial competitor that provides voice and fixed broadband service, beginning July 1, 2012; and (7) cap per-line support at \$250 per month, with a gradual phasedown to that cap over a three-year period commencing July 1, 2012. In the FNPRM, we seek comment on establishing a long-term broadband-focused CAF mechanism for rate-of-return carriers, and relatedly seek comment on reducing the interstate rate-of-return from its current level of 11.25 percent. We expect rate-of-return carriers will receive approximately \$2 billion per year in total high-cost universal service support under our budget through 2017.

28. *CAF Mobility Fund.* Concluding that mobile voice and broadband services provide unique consumer benefits, and that promoting the universal availability of such services is a vital component of the Commission's universal service mission, we create the Mobility Fund, the first universal service mechanism dedicated to ensuring availability of mobile broadband networks in areas where a private-sector business case is lacking. Mobile broadband carriers will receive significant legacy support during the transition to the Mobility Fund, and will have opportunities for new Mobility Fund

dollars. The providers receiving support through the CAF Phase II competitive bidding process will also be eligible for the Mobility Fund, but carriers will not be allowed to receive redundant support for the same service in the same areas. Mobility Fund recipients will be subject to public interest obligations, including data roaming and collocation requirements.

- *Phase I.* We provide up to \$300 million in one-time support to immediately accelerate deployment of networks for mobile voice and broadband services in unserved areas. Mobility Fund Phase I support will be awarded through a nationwide reverse auction, which we expect to occur in third quarter 2012. Eligible areas will include census blocks unserved today by mobile broadband services, and carriers may not receive support for areas they have previously stated they plan to cover. The auction will maximize coverage of unserved road miles within the budget, and winners will be required to deploy 4G service within three years, or 3G service within two years, accelerating the migration to 4G. We also establish a separate and complementary one-time Tribal Mobility Fund Phase I to award up to \$50 million in additional universal service funding to Tribal lands to accelerate mobile voice and broadband availability in these remote and underserved areas.

- *Phase II.* To ensure universal availability of mobile broadband services, the Mobility Fund will provide up to \$500 million per year in ongoing support. The Fund will expand and sustain mobile voice and broadband services in communities in which service would be unavailable absent federal support. The Mobility Fund will include ongoing support for Tribal areas of up to \$100 million per year as part of the \$500 million total budget. In the FNPRM we propose a structure and operational details for the ongoing Mobility Fund, including the proper distribution methodology, eligible geographic areas and providers, and public interest obligations. We expect to adopt the distribution mechanism for Phase II in 2012 with implementation in 2013.

29. *Identical Support Rule.* In light of the new support mechanisms we adopt for mobile broadband service and our commitment to fiscal responsibility, we eliminate the identical support rule that determines the amount of support for mobile, as well as wireline, competitive ETCs today. We freeze identical support per study area as of year end 2011, and phase down existing support over a five-year period beginning on July 1, 2012. The gradual phase down we adopt, in conjunction with the new funding provided by Mobility Fund Phase I and II, will ensure that an average of over \$900 million is provided to mobile carriers for each of the first four years of reform (through 2015). The phase down of competitive ETC support will stop if Mobility Fund Phase II is not operational by June 30, 2014, ensuring approximately \$600 million per year in legacy support will continue to flow until the new mechanism is operational.

30. *Remote Areas Fund.* We allocate at least \$100 million per year to ensure that Americans living in the most remote areas in the nation, where the cost of deploying traditional terrestrial broadband networks is extremely high, can obtain affordable access through alternative technology platforms, including satellite and unlicensed wireless services.¹⁸ We propose in the FNPRM a structure and operational details for that mechanism, including the form of support, eligible geographic areas and providers, and public interest obligations. We expect to finalize the Remote Areas Fund in 2012 with implementation in 2013.

31. *Reporting and Enforcement.* We establish a national framework for certification and reporting requirements for all universal service recipients to ensure that their public interest obligations are satisfied, that state and federal regulators have the tools needed to conduct meaningful oversight, and that public funds are expended in an efficient and effective manner. We do not disturb the existing role of

¹⁸ We note that satellite broadband providers and wireless Internet service providers (WISPs) are not confined to participating only in this component of the CAF; they are eligible to participate in any CAF program for which they can meet the specified performance requirements.

states in designating ETCs and in monitoring that ETCs within their jurisdiction are using universal service support for its intended purpose. We seek comment on whether and how we should adjust federal obligations on ETCs in areas where legacy funding is phased down. We also adopt rules to reduce or eliminate support if public interest obligations or other requirements are not satisfied, and seek comment on the appropriateness of additional enforcement mechanisms.

32. *Waiver.* As a safeguard to protect consumers, we provide for an explicit waiver mechanism under which a carrier can seek relief from some or all of our reforms if the carrier can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice service, with no alternative terrestrial providers available to provide voice telephony.

B. Intercarrier Compensation Reform

33. *Immediate ICC Reforms.* We take immediate action to curtail wasteful arbitrage practices, which cost carriers and ultimately consumers hundreds of millions of dollars annually:

- *Access Stimulation.* We adopt rules to address the practice of access stimulation, in which carriers artificially inflate their traffic volumes to increase ICC payments. Our revised interstate access rules generally require competitive carriers and rate-of-return incumbent local exchange carriers (LECs) to refile their interstate switched access tariffs at lower rates if the following two conditions are met: (1) a LEC has a revenue sharing agreement and (2) the LEC either has (a) a three-to-one ratio of terminating-to-originating traffic in any month or (b) experiences more than a 100 percent increase in traffic volume in any month measured against the same month during the previous year. These new rules are narrowly tailored to address harmful practices while avoiding burdens on entities not engaging in access stimulation.
- *Phantom Traffic.* We adopt rules to address “phantom traffic,” *i.e.*, calls for which identifying information is missing or masked in ways that frustrate intercarrier billing. Specifically, we require telecommunications carriers and providers of interconnected VoIP service to include the calling party’s telephone number in all call signaling, and we require intermediate carriers to pass this signaling information, unaltered, to the next provider in a call path.

34. *Comprehensive ICC Reform.* We adopt a uniform national bill-and-keep framework as the ultimate end state for all telecommunications traffic exchanged with a LEC. Under bill-and-keep, carriers look first to their subscribers to cover the costs of the network, then to explicit universal service support where necessary. Bill-and-keep has worked well as a model for the wireless industry; is consistent with and promotes deployment of IP networks; will eliminate competitive distortions between wireline and wireless services; and best promotes our overall goals of modernizing our rules and facilitating the transition to IP. Moreover, we reject the notion that only the calling party benefits from a call and therefore should bear the entire cost of originating, transporting, and terminating a call. As a result, we now abandon the calling-party-network-pays model that dominated ICC regimes of the last century. Although we adopt bill-and-keep as a national framework, governing both inter- and intrastate traffic, states will have a key role in determining the scope of each carrier’s financial responsibility for purposes of bill-and-keep, and in evaluating interconnection agreements negotiated or arbitrated under the framework in sections 251 and 252 of the Communications Act. We also address concerns expressed by some commenters about potential fears of traffic “dumping” and seek comment in the FNPRM on whether any additional measures are necessary in this regard.

35. *Multi-Year Transition.* We focus initial reforms on reducing terminating switched access rates, which are the principal source of arbitrage problems today. This approach will promote migration to all-IP networks while minimizing the burden on consumers and staying within our universal service budget. For these rates, as well as certain transport rates, we adopt a gradual, measured transition that

will facilitate predictability and stability. First, we require carriers to cap most ICC rates as of the effective date of this Order. To reduce the disparity between intrastate and interstate terminating end office rates, we next require carriers to bring these rates to parity within two steps, by July 2013. Thereafter, we require carriers to reduce their termination (and for some carriers also transport) rates to bill-and-keep, within six years for price cap carriers and nine for rate-of-return carriers. The framework and transition are default rules and carriers are free to negotiate alternatives that better address their individual needs. Although the Order begins the process of reforming all ICC charges by capping all interstate rate elements and most intrastate rate elements, the FNPRM seeks comment on the appropriate transition and recovery for the remaining originating and transport rate elements. States will play a key role in overseeing modifications to rates in intrastate tariffs to ensure carriers are complying with the framework adopted in this Order and not shifting costs or otherwise seeking to gain excess recovery. The FNPRM also seeks comment on interconnection issues likely to arise in the process of implementing a bill-and-keep methodology for ICC.

36. *New Recovery Mechanism.* We adopt a transitional recovery mechanism to mitigate the effect of reduced intercarrier revenues on carriers and facilitate continued investment in broadband infrastructure, while providing greater certainty and predictability going forward than the *status quo*. Although carriers will first look to limited increases from their end users for recovery, we reject notions that all recovery should be borne by consumers. Rather, we believe, consistent with past reforms, that carriers should have the opportunity to seek partial recovery from all of their end user customers. We permit incumbent telephone companies to charge a limited monthly Access Recovery Charge (ARC) on wireline telephone service, with a maximum annual increase of \$0.50 for consumers and small businesses, and \$1.00 per line for multi-line businesses, to partially offset ICC revenue declines. To protect consumers, we adopt a strict ceiling that prevents carriers from assessing any ARC for any consumer whose total monthly rate for local telephone service, inclusive of various rate-related fees, is at or above \$30. Although the maximum ARC is \$0.50 per month, we expect the actual average increase across all wireline consumers to be no more than \$0.10-\$0.15 a month, which translates into an expected maximum of \$1.20-\$1.80 per year that the average consumer will pay.¹⁹ We anticipate that consumers will receive more than three times that amount in benefits in the form of lower calling prices, more value for their wireless or wireline bill, or both, as well as greater broadband availability. Furthermore, the ARC will phase down over time as carriers' eligible revenue decreases, and we prevent carriers from charging any ARC on Lifeline customers or further drawing on the Lifeline program, so that ICC reform will not raise rates at all for these low-income consumers. We also seek comment in the FNPRM about reassessing existing subscriber line charges (SLCs), which are not otherwise implicated by this Order, to determine whether those charges are set at appropriate levels.

37. Likewise, although we do not adopt a rate ceiling for multi-line businesses customers, we do adopt a cap on the combination of the ARC and the existing SLC to ensure that multi-line businesses do not bear a disproportionate share of recovery and that their rates remain just and reasonable. Specifically, carriers cannot charge a multi-line business customer an ARC when doing so would result in the ARC plus the existing SLC exceeding \$12.20 per line. Moreover, to further protect consumers, we adopt measures to ensure that carriers must apportion lost revenues eligible for ICC recovery between residential and business lines, appropriately weighting the business lines (*i.e.*, according to the higher maximum annual increase in the business ARC) to prevent carriers that elect not to receive ICC CAF from recovering their entire ICC revenue loss from consumers. Carriers may receive CAF support for any otherwise-eligible revenue not recovered by the ARC. In addition, carriers receiving CAF support to

¹⁹ The maximum theoretical ARC for customers of price cap carriers would be \$2.50 after 5 years and for customers of rate-of-return carriers would be \$3 after 6 years, although we expect the average actual ARC to be less than half of those totals.

offset lost ICC revenues will be required to use the money to advance our goals for universal voice and broadband.

38. In defining how much of their lost revenues carriers will have the opportunity to recover, we reject the notion that ICC reform should be revenue neutral. We limit carriers' total eligible recovery to reflect the existing downward trends on ICC revenues with declining switching costs and minutes of use. For price cap carriers, baseline recovery amounts available to each price cap carrier will decline at 10 percent annually. Price cap carriers whose interstate rates have largely been unchanged for a decade because they participated in the Commission's 2000 CALLS plan will be eligible to receive 90 percent of this baseline every year from ARCs and the CAF. In those study areas that have recently converted from rate-of-return to price cap regulation, carriers will initially be permitted to recover the full baseline amount to permit a more gradual transition, but we will decline to 90 percent recovery for these areas as well after 5 years. All price cap CAF support for ICC recovery will phase out over a three-year period beginning in the sixth year of the reform.

39. For rate-of-return carriers, recovery will be calculated initially based on rate-of-return carriers' fiscal year 2011 interstate switched access revenue requirement, intrastate access revenues that are being reformed as part of this Order, and net reciprocal compensation revenues. This baseline will decline at five percent annually to reflect combined historical trends of an annual three percent interstate cost and associated revenue decline, and ten percent intrastate revenue decline, while providing for true ups to ensure CAF recovery in the event of faster-than-expected declines in demand. Both recovery mechanisms provide carriers with significantly more revenue certainty than the *status quo*, enabling carriers to reap the benefits of efficiencies and reduced switching costs, while giving providers stable support for investment as they adjust to an IP world.

40. *Treatment of VoIP Traffic.* We make clear the prospective payment obligations for VoIP traffic exchanged in TDM between a LEC and another carrier, and adopt a transitional framework for VoIP intercarrier compensation. We establish that default charges for "toll" VoIP-PSTN traffic will be equal to interstate rates applicable to non-VoIP traffic, and default charges for other VoIP-PSTN traffic will be the applicable reciprocal compensation rates. Under this framework, all carriers originating and terminating VoIP calls will be on equal footing in their ability to obtain compensation for this traffic.

41. *CMRS-Local Exchange Carrier (LEC) Compensation.* We clarify certain aspects of CMRS-LEC compensation to reduce disputes and address existing ambiguity. We adopt bill-and-keep as the default methodology for all non-access CMRS-LEC traffic. To provide rate-of-return LECs time to adjust to bill-and-keep, we adopt an interim transport rule for rate-of-return carriers to specify LEC transport obligations under the default bill-and-keep framework for non-access traffic exchanged between these carriers. We also clarify the relationship between the compensation obligations in section 20.11 of the Commission's rules and the reciprocal compensation framework, thus addressing growing concerns about arbitrage related to rates set without federal guidance. Further, in response to disputes, we make clear that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Finally, we affirm that all traffic routed to or from a CMRS provider that, at the beginning of a call, originates and terminates within the same MTA, is subject to reciprocal compensation, without exception.

42. *IP-to-IP Interconnection.* We recognize the importance of interconnection to competition and the associated consumer benefits. We anticipate that the reforms we adopt will further promote the deployment and use of IP networks, and seek comment in the accompanying FNPRM regarding the policy framework for IP-to-IP interconnection. We also make clear that even while our FNPRM is pending, we expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic.

III. ADOPTION OF A NEW PRINCIPLE FOR UNIVERSAL SERVICE

43. Section 254(b) of the Communications Act sets forth six “universal service principles” and directs the Commission to “base policies for the preservation and advancement of universal service on” these principles.²⁰ In addition, section 254(b)(7) directs the Commission and the Federal-State Joint Board on Universal Service to adopt “other principles” that we “determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with” the Act.²¹

44. In November 2010, the Federal-State Joint Board on Universal Service recommended that the Commission “specifically find that universal service support should be directed where possible to networks that provide advanced services, as well as voice services,” and adopt such a principle pursuant to its 254(b)(7) authority.²² The Joint Board believes that this principle is consistent with section 254(b)(3) and would serve the public interest.²³ We agree.²⁴ Section 254(b)(3) provides that consumers in rural, insular and high-cost areas should have access to “advanced telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas.”²⁵ Section 254(b)(2) likewise provides that “Access to advanced telecommunications and information services should be provided in all regions of the Nation.”²⁶ Providing support for broadband networks will further all of these goals.

45. Accordingly, we adopt “support for advanced services” as an additional principle upon which we will base policies for the preservation and advancement of universal service. For the reasons discussed above, we find, per section 254(b)(7), that this new principle is “necessary and appropriate.” Consistent with the Joint Board’s recommendation, we define this principle as: “Support for Advanced Services – Universal service support should be directed where possible to networks that provide advanced services, as well as voice services.”

IV. GOALS

46. *Background.* Consistent with the Government Performance and Results Act of 1993 (GPRA), clear performance goals and measures for the Connect America Fund, including the Mobility Fund, and existing high-cost support mechanisms will enable the Commission to determine not just whether federal funding is used for the intended purposes, but whether that funding is accomplishing the intended results—including our objectives of preserving and advancing voice, broadband, and advanced

²⁰ 47 U.S.C. § 254(b).

²¹ 47 U.S.C. § 254(b)(7).

²² *Federal-State Joint Board on Universal Service, Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, Recommended Decision, 25 FCC Rcd 15598, 15625, para. 75 (2010). Numerous commenters supported that recommendation. See, e.g., Massachusetts Department of Telecommunications & Cable *USF/ICC Transformation Comments* at 2-6; Nebraska Public Service Commission *USF/ICC Transformation Comments* at 7-8; Ohio Public Utilities Commission *USF/ICC Transformation Comments* at 3; Telecommunications Industry Association *USF/ICC Transformation Comments* at 5.

²³ *Id.*

²⁴ We hereby act on a recommendation from the *Joint Board 2010 Recommended Decision*. We are considering the other recommendations and expect to address other issues raised in the *Joint Board 2010 Recommended Decision* in the near future.

²⁵ 47 U.S.C. § 254(b)(3).

²⁶ 47 U.S.C. § 254(b)(2).

mobility for all Americans.²⁷ Moreover, performance goals and measures may assist in identifying areas where additional action by state regulators, Tribal governments, or other entities is necessary to achieve universal service. Performance goals and measures should also improve participant accountability.

47. In the *USF-ICC Transformation NPRM*, the Commission proposed several performance goals and measures to improve program accountability.²⁸ While commenters generally supported the concept of reorienting the universal service program to support broadband, we received limited comment on the specific goals and measures we proposed in the *NPRM*. No commenter objected to the proposed goals, and the Mercatus Center describes them as “excellent intermediate outcomes to measure.”²⁹

48. *Discussion.* We adopt the following performance goals for our efforts to preserve and advance service in high cost, rural, and insular areas through the Connect America Fund and existing support mechanisms: (1) preserve and advance universal availability of voice service; (2) ensure universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions; (3) ensure universal availability of modern networks capable of providing mobile voice and broadband service where Americans live, work, and travel; (4) ensure that rates are reasonably comparable in all regions of the nation, for voice as well as broadband services; and (5) minimize the universal service contribution burden on consumers and businesses.³⁰ We also adopt performance measures for the first, second, and fifth of these goals, and direct the Wireline Competition Bureau and the Wireless Telecommunications Bureau (Bureaus) to further develop other measures. We delegate authority to the Bureaus to finalize performance measures as appropriate consistent with the goals we adopt today.

49. *Preserve and Advance Voice Service.* The first performance goal we adopt is to preserve and advance universal availability of voice service. In doing so, we reaffirm our commitment to ensuring that all Americans have access to voice service while recognizing that, over time, we expect that voice service will increasingly be provided over broadband networks.³¹

50. As a performance measure for this goal, we will use the telephone penetration rate, which measures subscription to telephone service.³² The telephone penetration rate has historically been

²⁷ The Government Performance and Results Act of 1993 established statutory requirements for federal agencies to engage in strategic planning and performance measurement. Government Performance and Results Act of 1993, Pub. L. No. 103-62, 107 Stat. 285 (1993). Federal agencies must develop strategic plans with long-term, outcome-related goals and objectives, develop annual goals linked to the long-term goals, and measure progress toward the achievement of those goals in annual performance plans and report annually on their progress in program performance reports. See also GPRA Modernization Act of 2010, Pub. L. 111-352, 124 Stat. 3866 (2011). The Office of Management and Budget (OMB) has built upon GPRA through its Program Assessment Rating Tool (PART), which sets forth three types of performance measures: (1) outcome measures; (2) output measures; and (3) efficiency measures. See Memorandum from Clay Johnson III, Deputy Director for Management, Office of Management and Budget, to Program Associate Directors, Budget Data Request No. 04-31 (Mar. 22, 2003) (*OMB PART Guidance Memorandum*).

²⁸ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4697-701, paras. 479-89.

²⁹ Mercatus *USF/ICC Transformation NPRM* Comments at 17; see also Kansas Commission *USF/ICC Transformation NPRM* Comments at 22 (“the KCC supports these priorities”).

³⁰ See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4584, 4697-701, paras. 80, 479-89.

³¹ See 47 U.S.C. § 254(b); *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4584, para. 80.

³² See Industry Analysis and Technology Division, Wireline Competition Bureau, *Telephone Subscribership in the United States* at 1 (Aug. 2010) (Aug. 2010 Subscribership Report).

used by the Commission as a proxy for network deployment³³ and, as a result, will be a consistent measure of the universal service program's effects. We will also continue to use the Census Bureau's Current Population Survey (CPS) to collect data regarding telephone penetration.³⁴ Although CPS data does not specifically break out wireless, VoIP, or over-the-top voice options available to consumers,³⁵ a better data set is not currently available. In recognition of the limitations of existing data, the Commission is considering revising the types of data it collects,³⁶ and we anticipate further Commission action in this proceeding, which may provide more complete information that we can use to evaluate this performance goal.

51. *Ensure Universal Availability of Voice and Broadband to Homes, Businesses, and Community Anchor Institutions.* The second performance goal we adopt is to ensure the universal availability of modern networks capable of delivering broadband and voice service to homes, businesses, and community anchor institutions.³⁷ All Americans in all parts of the nation, including those in rural, insular, and high-cost areas, should have access to affordable modern communications networks capable of supporting the necessary applications that empower them to learn, work, create, and innovate.³⁸

52. As an outcome measure for this goal, we will use the number of residential, business, and community anchor institution locations that newly gain access to broadband service.³⁹ As an efficiency measure, we will use the change in the number of homes, businesses, and community anchor institutions passed or covered per million USF dollars spent.⁴⁰ To collect data, we will use the National Broadband Map and/or Form 477. We will also require CAF recipients to report on the number of community anchor institutions that newly gain access to fixed broadband service as a result of CAF support.⁴¹ Although these measures are imperfect, we believe that they are the best available to us.⁴² Other options, such as the Mercatus Centers' suggestion of using an assessment of what might have occurred without the programs, are not administratively feasible at this time.⁴³ But we direct the Bureaus to revisit these measures at a later point, and to consider refinements and alternatives.

³³ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4605, para. 146; *see also* Aug. 2010 Subscribership Report at 1-2.

³⁴ *See* Aug. 2010 Subscribership Report at 1.

³⁵ *See USF/ICC Transformation NPRM*, 26 FCC Rcd at 4699, para. 483.

³⁶ *See Broadband Data NPRM*, 26 FCC Rcd at 1527-33, paras. 49-65.

³⁷ We use the term "modern networks" because we expect that supported equipment and services will change over time to keep up with technological advancements. We note that "[c]ommunity anchor institutions" as defined in the Recovery Act include schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations and entities. *See* 47 U.S.C. § 1305(b)(3)(A). We adopt that definition for purposes of these rules.

³⁸ *See USF/ICC Transformation NPRM*, 26 FCC Rcd at 4699-700, para. 485; *see also* 47 U.S.C. § 254(b).

³⁹ *See USF/ICC Transformation NPRM*, 26 FCC Rcd at 4699-700, para. 485.

⁴⁰ *See id.*

⁴¹ *See infra* Section VII.A.2.

⁴² As the Mercatus Center points out, both measures fail to take into account the change in deployment that would have occurred without the high-cost program and CAF. Mercatus *USF/ICC Transformation NPRM* Comments at 12-14. And as previously noted, the efficiency measure could be biased towards lower-cost areas. *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4699-700, para. 485.

⁴³ Mercatus *USF/ICC Transformation NPRM* Comments at 12-14.

53. *Ensure Universal Availability of Mobile Voice and Broadband Where Americans Live, Work, or Travel.* The third performance goal we adopt is to ensure the universal availability of modern networks capable of delivering mobile broadband and voice service in areas where Americans live, work, or travel. Like the preceding parallel goal, our third performance goal is designed to help ensure that all Americans in all parts of the nation, including those in rural, insular, and high-cost areas, have access to affordable technologies that will empower them to learn, work, create, and innovate. But we believe that ensuring universal advanced mobile coverage is an important goal on its own, and that we will be better able track program performance if we measure it separately.

54. We decline to adopt performance measures for this goal at this time but direct the Wireless Telecommunications Bureau to develop one or more appropriate measures for this goal.

55. *Ensure Reasonably Comparable Rates for Broadband and Voice Services.* The fourth performance goal we adopt is to ensure that rates are reasonably comparable for voice as well as broadband service, between urban and rural, insular, and high cost areas. Rates must be reasonably comparable so that consumers in rural, insular, and high cost areas have meaningful access to these services.⁴⁴

56. We also decline to adopt measures for this goal at this time. Although the Commission proposed one outcome measure and asked about others in the *USF/ICC Transformation NPRM*,⁴⁵ we received only limited input on that proposal. The Mercatus Center agrees that “[t]he ratio of prices to income is an intuitively sensible way of defining ‘reasonably comparable’” but cautions that, again, the real challenge is crafting measures that distinguish how the programs affect rates apart from other factors.⁴⁶ The Bureaus may seek to further develop the record on the performance and efficiency measures suggested by the Mercatus Center,⁴⁷ the Commission’s original proposals, and any other measures commenters think would be appropriate. In undertaking this analysis, we direct the Bureau to develop separate measures for (1) broadband services for homes, businesses, and community anchor institutions; and (2) mobile services.

57. *Minimize Universal Service Contribution Burden on Consumers and Businesses.* The fifth performance goal we adopt is to minimize the overall burden of universal service contributions on American consumers and businesses. With this performance goal, we seek to balance the various objectives of section 254(b) of the Act, including the objective of providing support that is sufficient but not excessive so as to not impose an excessive burden on consumers and businesses who ultimately pay to support the Fund.⁴⁸ As we have previously recognized, “if the universal service fund grows too large, it

⁴⁴ See 47 U.S.C. § 254(b)(3); *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4584, para. 80.

⁴⁵ We proposed that the ratio of the rural price to rural household disposable income should be similar to the ratio in urban areas, both for voices services and for broadband services. We also asked whether we should measure instead the percentage of total household income devoted to these services, or the relative actual prices of these services in rural and urban areas. *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4700, para. 486.

⁴⁶ Mercatus *USF/ICC Transformation NPRM* Comments at 14-15.

⁴⁷ *Id.* at 15.

⁴⁸ Contributions are assessed on the basis of a contributor’s projected collected interstate and international end-user telecommunications revenues, based on a percentage or “contribution factor” that is calculated every quarter. See 47 C.F.R. § 54.709. A contributor may recover the costs of universal service contributions by passing an explicit charge through to its customers. 47 CFR § 54.712(a). See *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4088, para. 29 (2010) (*Qwest II Remand Order*) (explaining that the Commission could not be a prudent guardian of the public’s resources without taking into account the costs of universal service, alongside the benefit); *Rural Cellular Ass’n*, 588 F.3d at 1102; see also, e.g., *Alenco*, 201 F.3d (continued...)

will jeopardize other statutory mandates, such as ensuring affordable rates in all parts of the country, and ensuring that contributions from carriers are fair and equitable.”⁴⁹

58. As a performance measure for this goal, we will divide the total inflation-adjusted expenditures of the existing high-cost program and CAF (including the Mobility Fund) each year by the number of American households and express the measure as a monthly dollar figure.⁵⁰ This calculation will be relatively straightforward and rely on publicly available data.⁵¹ As such, the measure will be transparent and easily verifiable.⁵² By adjusting for inflation and looking at the universal service burden, we will be able to determine whether the overall burden of universal service contribution costs is increasing or decreasing for the typical American household.⁵³ As an efficiency measure, the Mercatus Center suggests comparing the estimate of economic deadweight loss associated with the contribution mechanism to the deadweight loss associated with taxation.⁵⁴ We anticipate that the Bureaus may seek further input on this option and any others commenters believe would be appropriate.

59. *Program Review.* Using the adopted goals and measures, the Commission will, as required by GPRA, monitor the performance of our universal service program as we modernize the current high-cost program and transition to the CAF.⁵⁵ If the programs are not meeting these performance goals, we will consider corrective actions. Likewise, to the extent that the adopted measures do not help us assess program performance, we will revisit them as well.

V. LEGAL AUTHORITY

60. In this section, we address our statutory authority to implement Congress’s goal of promoting ubiquitous deployment of, and consumer access to, both traditional voice calling capabilities and modern broadband services over fixed and mobile networks. As explained below, Congress has authorized the Commission to support universal service in the broadband age. Section 254 grants the Commission clear authority to support telecommunications services and to condition the receipt of universal service support on the deployment of broadband networks, both fixed and mobile, to consumers. Section 706 provides the Commission with independent authority to support broadband networks in order to “accelerate the deployment of broadband capabilities” to all Americans. Recently, moreover, Congress

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at 620–21 (concluding that the Commission properly considered the costs of universal service in reforming one part of the high-cost support mechanism).

⁴⁹ *Qwest II Remand Order*, 25 FCC Rcd at 4087, para. 28.

⁵⁰ See *USF/ICC Transformation NPRM*, 263 FCC Rcd at 4700-01, para. 487. Adjustments for inflation will be calculated using the Bureau of Labor Statistics’ Consumer Price Index Inflation Calendar. See http://www.bls.gov/data/inflation_calculator.htm (last visited Sept. 9, 2011).

⁵¹ *USF/ICC Transformation NPRM*, 263 FCC Rcd at 4700-01, para. 487; see also Mercatus Center *USF/ICC Transformation NPRM* Comments at 16 (“This is a sensible and straightforward measure of the contribution.”).

⁵² *USF/ICC Transformation NPRM*, 263 FCC Rcd at 4700-01, para. 487.

⁵³ As a starting point, we will use the overall per-household burden of the high-cost program. In 2010, this was \$3.03 per month. See *USF/ICC Transformation NPRM*, 263 FCC Rcd at 4700-01, para. 487.

⁵⁴ Mercatus Center *USF/ICC Transformation NPRM* Comments at 16.

⁵⁵ If the Commission identifies an outcome as a “priority goal,” then it must review progress quarterly. Otherwise performance must only be reviewed annually. See GPRA Modernization Act of 2010, §§ 1116, 1120-1121. Most priority goals will be published in February 2012. Office of Management and Budget, Memorandum for Heads of Executive Departments and Agencies, at 13 (Aug. 17, 2011), available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-31.pdf> (last visited Oct. 31, 2011).

has reaffirmed its strong interest in ubiquitous deployment of high speed broadband communications networks: the 2008 Farm Bill directing the Chairman to submit to Congress “a comprehensive rural broadband strategy,” including recommendations for the rapid buildout of broadband in rural areas and for how federal resources can “best . . . overcome obstacles that impede broadband deployment”;⁵⁶ the Broadband Data Improvement Act, to improve data collection and “promote the deployment of affordable broadband services to all parts of the Nation”;⁵⁷ and the Recovery Act, which required the Commission to develop the National Broadband Plan to ensure that every American has “access to broadband capability and . . . establish benchmarks for meeting that goal.”⁵⁸ By exercising our statutory authority consistent with the thrust of these provisions, we ensure that the national policy of promoting broadband deployment and ubiquitous access to voice telephony services is fully realized.

61. *Section 254.* The principle that all Americans should have access to communications services has been at the core of the Commission’s mandate since its founding. Congress created this Commission in 1934 for the purpose of making “available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”⁵⁹ In the 1996 Act, Congress built upon that longstanding principle by enacting section 254. Section 254 sets forth six principles upon which we must “base policies for the preservation and advancement of universal service.”⁶⁰ Among these principles are that “[q]uality services should be available at just, reasonable, and affordable rates,” that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation,” and that “[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services, including . . . advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas” and at reasonably comparable rates.⁶¹

62. Under section 254, we have express statutory authority to support telecommunications services that we have designated as eligible for universal service support.⁶² Section 254(c)(1) of the Act defines “[u]niversal service” as “an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services.” As discussed more fully below, in this Order, we adopt our proposal to simplify how we describe the various supported services that the Commission historically has defined in functional terms (*e.g.*, voice grade access to the PSTN, access to emergency services) into a single supported service designated as “voice telephony service.”⁶³ To the extent carriers offer traditional voice telephony services as telecommunications services over traditional circuit-switched networks, our authority to provide support for such services is well established.

⁵⁶ Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 6112, 122 Stat. 923, 1966 (2008) (2008 Farm Bill). Acting Chairman Copps transmitted the report to Congress on May 22, 2009. *See Rural Broadband Report Published in the FCC Record*, GN Docket No. 09-29, Public Notice, 24 FCC Rcd 12791 (2009).

⁵⁷ Broadband Data Improvement Act, Pub. L. No. 110-385, 122 Stat. 4096 (2008) (codified at 47 U.S.C. § 1301 *et seq.*).

⁵⁸ *See* American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009); 47 U.S.C. § 1305(k)(2).

⁵⁹ 47 U.S.C. § 151.

⁶⁰ 47 U.S.C. § 254(b).

⁶¹ 47 U.S.C. § 254(b)(1)-(3).

⁶² 47 U.S.C. § 254(c).

⁶³ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4590, para. 95; *see infra* Section VI.A.

63. Increasingly, however, consumers are obtaining voice services not through traditional means but instead through interconnected VoIP providers offering service over broadband networks. As AT&T notes, “[c]ircuit-switched networks deployed primarily for voice service are rapidly yielding to packet-switched networks,” which offer voice as well as other types of services.⁶⁴ The data bear this out. As we observed in the *Notice*, “[f]rom 2008 to 2009, interconnected VoIP subscriptions increased by 22 percent, while switched access lines decreased by 10 percent.”⁶⁵ Interconnected VoIP services, among other things, allow customers to make real-time voice calls to, and receive calls from, the PSTN, and increasingly appear to be viewed by consumers as substitutes for traditional voice telephone services.⁶⁶ Our authority to promote universal service in this context does not depend on whether interconnected VoIP services are telecommunications services or information services under the Communications Act.⁶⁷

64. Section 254 grants the Commission the authority to support not only voice telephony service but also the facilities over which it is offered. Section 254(e) makes clear that “[a] carrier that receives such [universal service] support shall use that support only for the provision, maintenance, and upgrading of *facilities and services* for which the support is intended.”⁶⁸ By referring to “facilities” and “services” as distinct items for which federal universal service funds may be used, we believe Congress granted the Commission the flexibility not only to designate the types of telecommunications services for which support would be provided, but also to encourage the deployment of the types of facilities that will best achieve the principles set forth in section 254(b) and any other universal service principle that the Commission may adopt under section 254(b)(7).⁶⁹ For instance, under our longstanding “no barriers” policy, we allow carriers receiving high-cost support “to invest in infrastructure capable of providing access to advanced services” as well as supported voice services.⁷⁰ That policy, we explained, furthers

⁶⁴ AT&T Apr. 11, 2011 Comments at 10.

⁶⁵ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4560, para. 8 (citing Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition Report: Status as of December 2009*, at 6 (Jan. 2011) (Jan. 2011 Local Competition Report)). From 2009 to 2010, interconnected VoIP subscriptions increased by 22 percent (from 26 million to 32 million) and retail switched access lines decreased by 8 percent (from 127 million to 117 million). Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition Report: Status as of December 31, 2010*, at 2 (Oct. 2011) (Oct. 2011 Local Competition Report).

⁶⁶ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4747, para. 612; *see also IP-Enabled Services*, 20 FCC Rcd 10245, 10256, para. 23 (2005) (“consumers expect that VoIP services that are interconnected with the PSTN will function in some ways like a ‘regular telephone’ service.”), *pet. for review denied*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

⁶⁷ If interconnected VoIP services are telecommunications services, our authority under section 254 to define universal service after “taking into account advances in telecommunications and information technologies and services” enables us to include interconnected VoIP services as a type of voice telephony service entitled to federal universal service support. And, as explained below, if interconnected VoIP services are information services, we have authority to support the deployment of broadband networks used to provide such services.

⁶⁸ 47 U.S.C. § 254(e) (emphasis added).

⁶⁹ In establishing the rules governing the designation and responsibilities of ETCs pursuant to section 214(e), we have long defined the term “facilities” to mean “any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support.” 47 C.F.R. § 54.201(e); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8813, para. 67 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

⁷⁰ *See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 96-45, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, (continued...)

the policy Congress set forth in section 254(b) of “ensuring access to advanced telecommunications and information services throughout the nation.”⁷¹ While this policy was enunciated in an Order adopting rule changes for rural incumbent carriers, by its terms it is not limited to such carriers. The “no-barriers” policy has applied, and will continue to apply, to all ETCs, and we codify it in our rules today. Section 254(e) thus contemplates that carriers may receive federal support to enable the deployment of broadband facilities used to provide supported telecommunications services as well as other services.⁷²

65. We further conclude that our authority under section 254 allows us to go beyond the “no barriers” policy and require carriers receiving federal universal service support to invest in modern broadband-capable networks.⁷³ We see nothing in section 254 that requires us simply to provide federal funds to carriers and hope that they will use such support to deploy broadband facilities. To the contrary, we have a “mandatory duty” to adopt universal service policies that advance the principles outlined in section 254(b), and we have the authority to “create some inducement” to ensure that those principles are achieved.⁷⁴ Congress made clear in section 254 that the deployment of, and access to, information services – including “advanced” information services – are important components of a robust and successful federal universal service program.⁷⁵ Furthermore, we are adopting today the recommendation of the Federal-State Joint Board on Universal Service to establish a new universal service principle pursuant to section 254(b)(7) that universal service support should be directed where possible to networks that provide advanced services, as well as voice services.⁷⁶ In today’s communications environment, achievement of these principles requires, at a minimum, that carriers receiving universal service support invest in and deploy networks capable of providing consumers with access to modern broadband capabilities, as well as voice telephony services. Accordingly, as explained in greater detail below, we will exercise our authority under section 254 to require that carriers receiving support – both CAF support, including Mobility Fund support,⁷⁷ and support under our existing high-cost support mechanisms (Continued from previous page) _____

16 FCC Rcd 11244, 11322, para. 200 (2001) (*Rural Task Force Order*) (“[U]se of support to invest in infrastructure capable of providing access to advanced services does not violate section 254(e), which mandates that support be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” The public switched telephone network is not a single-use network. Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services.”) (footnote reference omitted)

⁷¹ *2003 Definition of Universal Service Order*, 18 FCC Rcd at 15095-96, para. 13.

⁷² We also note that the Commission has historically concluded that “the proper measure of cost for determining the level of universal service support is the forward-looking economic cost of constructing and operating the network facilities and functions used to provide the supported services,” First Report and Order, 12 FCC Rcd at 8899, para. 224, and that the record contains evidence that the forward-looking cost of deploying voice- and broadband-capable networks today is generally not significantly higher than deploying voice-only networks, *see, e.g.*, Letter from Donna Epps, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51 at 2-3 (filed Feb. 12, 2010) (“Fiber networks are . . . more efficient, and more reliable than the legacy copper network. . . . [T]hey are cheaper to maintain and have fewer potential points of failure than copper lines.”). Indeed, although we are updating the high-cost fund to support modern voice and broadband networks, we are not increasing the overall size of the fund to do so.

⁷³ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4581, para. 71.

⁷⁴ *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200, 1204 (10th Cir. 2001) (*Qwest I*).

⁷⁵ 47 U.S.C. §§ 254(b)(2), (b)(3).

⁷⁶ *See infra* Section III.

⁷⁷ Recipients of Mobility Fund Phase One support, however, are not required to provide broadband as discussed below. *See infra* Section VII.E.1.b.vi.

– offer broadband capabilities to consumers.⁷⁸ We conclude that this approach is sufficient to ensure access to voice and broadband services and, therefore, we do not, at this time, add broadband to the list of supported services, as some have urged.⁷⁹

66. *Section 706.*⁸⁰ We also have independent authority under section 706 of the Telecommunications Act of 1996 to fund the deployment of broadband networks. In section 706, Congress recognized the importance of ubiquitous broadband deployment to Americans’ civic, cultural, and economic lives and, thus, instructed the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”⁸¹ Of particular importance, Congress adopted a definition of “advanced telecommunications capability” that is not confined to a particular technology or regulatory classification. Rather, “‘advanced telecommunications capability’ is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology.”⁸² Section 706 further requires the Commission to “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion” and, if the Commission concludes that it is not, to “*take immediate action* to accelerate deployment of such capability by removing barriers to infrastructure

⁷⁸ Section 254(e) states that “support should be explicit and sufficient to achieve the purposes” of section 254. As discussed below, our CAF rules satisfy this requirement. *See generally infra*, Section VII.

⁷⁹ *See, e.g.*, Communications Workers of America *USF/ICC Transformation NPRM* Comments at 5-6; National Association of Telecommunications Officers and Advisors *USF/ICC Transformation NPRM* Comments at 3; State Members *USF/ICC Transformation NPRM* Comments at 2; Vonage *USF/ICC Transformation NPRM* Comments at 6-8.

⁸⁰ Commissioner McDowell does not support the view that section 706 provides the Commission with authority to support broadband through universal service funds. Instead, Commissioner McDowell’s view is that section 706 is very narrow in scope and is therefore unnecessary in reaching this conclusion.

⁸¹ 47 U.S.C. § 1302(a). This direct mandate is consistent with numerous other statutory provisions governing the Commission. *See, e.g.*, 47 U.S.C. §§ 151 (instituting FCC for, among other objectives, “the purpose of regulating interstate and foreign communication by wire and radio so as to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges”), 157 (“It shall be the policy of the United States to encourage the provision of new technologies and services to the public.”), 230(b)(1) (“It is the policy of the United States . . . to promote the continued development of the Internet and other interactive computer services and other interactive media”), 257 (mandating ongoing review to identify and eliminate “market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services,” with the goal of promoting “the policies and purposes of this [Communications] Act favoring a diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity”); *see also* Recovery Act § 6001(k)(1) (requiring the Commission to develop a National Broadband Plan with the goal of promoting, among other things, “private sector investment, entrepreneurial activity, job creation and economic growth”).

⁸² 47 U.S.C. § 1302(d)(1); *see also National Broadband Plan for our Future*, Notice of Inquiry, 24 FCC Rcd 4342, 4309, App., para. 13 (2009) (“advanced telecommunications capability” includes broadband Internet access); *Inquiry Concerning the Deployment of Advanced Telecomms. Capability to All Americans in a Reasonable and Timely Fashion*, CC Docket No. 98-146, Report, 14 FCC Rcd 2398, 2400, para. 1 (1999) (section 706 addresses “the deployment of broadband capability”), 2406, para. 20 (same). The Commission has observed that the phrase “advanced telecommunications capability” in section 706 is similar to the term “advanced telecommunications and information services” in section 254. *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111, 11113 n.9 (2006).

investment and by promoting competition in the telecommunications market.”⁸³ The Commission has found that broadband deployment to all Americans has not been reasonable and timely⁸⁴ and observed in its most recent broadband deployment report that “too many Americans remain unable to fully participate in our economy and society because they lack broadband.”⁸⁵ This finding triggers our duty under section 706(b) to “remov[e] barriers to infrastructure investment” and “promot[e] competition in the telecommunications market” in order to accelerate broadband deployment throughout the Nation.

67. Providing support for broadband networks helps achieve section 706(b)’s objectives. First, the Commission has recognized that one of the most significant barriers to investment in broadband infrastructure is the lack of a “business case for operating a broadband network” in high-cost areas “[i]n the absence of programs that provide additional support.”⁸⁶ Extending federal support to carriers deploying broadband networks in high-cost areas will thus eliminate a significant barrier to infrastructure investment and accelerate broadband deployment to unserved and underserved areas of the Nation. The deployment of broadband infrastructure to all Americans will in turn make services such as interconnected VoIP service accessible to more Americans.

68. Second, supporting broadband networks helps “promot[e] competition in the telecommunications market,” particularly with respect to voice services.⁸⁷ As we have long recognized, “interconnected VoIP service ‘is increasingly used to replace analog voice service.’”⁸⁸ Thus, we previously explained that requiring interconnected VoIP providers to *contribute* to federal universal service support mechanisms promoted competitive neutrality because it “reduces the possibility that carriers with universal service obligations will compete directly with providers without such obligations.”⁸⁹ Just as “we do not want contribution obligations to shape decisions regarding the technology that interconnected VoIP providers use to offer voice services to customers or to create opportunities for regulatory arbitrage,”⁹⁰ we do not want to create regulatory distinctions that serve no universal service purpose or that unduly influence the decisions providers will make with respect to how best to offer voice services to consumers. The “telecommunications market” – which includes interconnected VoIP and by statutory definition is broader than just telecommunications services⁹¹ – will

⁸³ 47 U.S.C. § 1302(b) (emphasis added).

⁸⁴ *Sixth Broadband Deployment Report*, 25 FCC Rcd at 9558, paras. 2-3; *Seventh Broadband Deployment Report*, 26 FCC Rcd at 8009, para. 1.

⁸⁵ *Seventh Broadband Deployment Report*, 26 FCC Rcd at 8011, para. 4.

⁸⁶ *Id.* at 8040, para. 66.

⁸⁷ 47 U.S.C. § 1302(b).

⁸⁸ *Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, Telecommunications Services for Individuals with Hearing and Speech Disabilities, Number Resource Optimization, Telephone Number Portability, Truth-In-Billing and Billing Format, IP-Enabled Services*, WC Docket Nos. 06-122 and 04-36, CC Docket Nos. 96-45, 98-171, 92-237, 99-200, 90-571, 95-116 98-170, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7541 (2006) (*VoIP USF Order*) (quoting *CALEA First Report and Order*, 20 FCC Rcd at 15009-10, para. 42), 21 FCC Rcd at 7541, para. 44 (quoting *CALEA First Report and Order*, 20 FCC Rcd at 15009-10, para. 42).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Compare 47 U.S.C. § 153(50) (defining “telecommunications”) with 47 U.S.C. § 153(53) (defining “telecommunications service”).

be more competitive, and thus will provide greater benefits to consumers, as a result of our decision to support broadband networks, regardless of regulatory classification.

69. By exercising our authority under section 706 in this manner, we further Congress's objective of "accelerat[ing] deployment" of advanced telecommunications capability "to all Americans."⁹² Under our approach, federal support will not turn on whether interconnected VoIP services or the underlying broadband service falls within traditional regulatory classifications under the Communications Act. Rather, our approach focuses on accelerating broadband deployment to unserved and underserved areas, and allows providers to make their own judgments as to how best to structure their service offerings in order to make such deployment a reality.

70. We disagree with commenters who assert that we lack authority under section 706(b) to support broadband networks.⁹³ While 706(a) imposes a general duty on the Commission to encourage broadband deployment through the use of "price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment," section 706(b) is triggered by a specific finding that broadband capability is not being "deployed to all Americans in a reasonable and timely fashion." Upon making that finding (which the Commission has done⁹⁴), section 706(b) requires the Commission to "take immediate action to accelerate" broadband deployment. Given the statutory structure, we read section 706(b) as conferring on the Commission the additional authority, beyond what the Commission possesses under section 706(a) or elsewhere in the Act, to take steps necessary to fulfill Congress's broadband deployment objectives. Indeed, it is hard to see what additional work section 706(b) does if it is not an independent source of statutory authority.⁹⁵

71. We also reject the view that providing support for broadband networks under section 706(b) conflicts with section 254, which defines universal service in terms of telecommunications services.⁹⁶ Information services are not excluded from section 254 because of any policy judgment made by Congress. To the contrary, Congress contemplated that the federal universal service program would promote consumer access to both advanced telecommunications and advanced information services "in all

⁹² 47 U.S.C. § 1302(b).

⁹³ See, e.g., Cellular South Comments at 9; RTCC Comments at 12.

⁹⁴ See *supra* para. 64.

⁹⁵ The legislative history supports our conclusion that sections 706(a) and (b) are independent sources of authority. The relevant Senate Report explained that the provisions of section 304 (the Senate analogue to section 706) are "intended to ensure that one of the primary objectives of the [1996 Act]—to accelerate deployment of advanced telecommunications capability—is achieved," and stressed that these provisions are "a necessary fail-safe" to guarantee that Congress's objective is reached. S. Rep. No. 104-23, at 50–51 (1995). As we previously explained, "[i]t would be odd indeed to characterize Section 706(a) as a 'fail-safe' that 'ensures' the Commission's ability to promote advanced services if it conferred no actual authority." *Preserving the Open Internet*, 25 FCC Rcd 17905, 17970 (2010). Moreover, section 304(a) of the Senate bill would have required the Commission, upon a finding that broadband deployment is not reasonable and timely, to "take immediate action *under this section*," S. 652, § 304(b) (1995) (emphasis added), which necessarily related back to the Commission's authority conferred by section 304(a) of the bill to promote broadband deployment through "price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." Ultimately, however, Congress did not define the authority conferred by section 706(b) by reference to section 706(a). Instead, Congress instructed the Commission to go beyond section 706(a) if it found that broadband was not being deployed in the United States on a reasonable and timely basis and to "take immediate action" to correct that failure.

⁹⁶ See Cellular South *USF/ICC Transformation NPRM* Comments at 16-20; RTCC Apr. 18, 2011 Comments at 5.

regions of the Nation.”⁹⁷ When Congress enacted the 1996 Act, most consumers accessed the Internet through dial-up connections over the PSTN,⁹⁸ and broadband capabilities were provided over tariffed common carrier facilities.⁹⁹ Interconnected VoIP services had only a nominal presence in the marketplace in 1996. It was not until 2002 that the Commission first determined that one form of broadband – cable modem service – was a single offering of an information service rather than separate offerings of telecommunications and information services,¹⁰⁰ and only in 2005 did the Commission conclude that wireline broadband service should be governed by the same regulatory classification.¹⁰¹ Thus, marketplace and technological developments and the Commission’s determinations that broadband services may be offered as information services have had the effect of removing such services from the scope of the explicit reference to “universal service” in section 254(c). Likewise, Congress did not exclude interconnected VoIP services from the federal universal service program; indeed, there is no reason to believe it specifically anticipated the development and growth of such services in the years following the enactment of the 1996 Act.

72. The principles upon which the Commission “shall base policies for the preservation and advancement of universal service” make clear that supporting networks used to offer services that are or may be information services for purposes of regulatory classification is consistent with Congress’s overarching policy objectives.¹⁰² For example, section 254(b)(2)’s principle that “[a]ccess to advanced telecommunications and *information services* should be provided in all regions of the Nation” dovetails comfortably with section 706(b)’s policy that “advanced telecommunications capability [be] deployed to all Americans in a reasonable and timely fashion.”¹⁰³ Our decision to exercise authority under Section 706 does not undermine section 254’s universal service principles, but rather ensures their fulfillment. By contrast, limiting federal support based on the regulatory classification of the services offered over broadband networks as telecommunications services would exclude from the universal service program providers who would otherwise be able to deploy broadband infrastructure to consumers. We see no basis in the statute, the legislative history of the 1996 Act, or the record of this proceeding for concluding that such a constricted outcome would promote the Congressional policy objectives underlying sections 254 and 706.

73. Finally, we note the limited extent to which we are relying on section 706(b) in this proceeding. Consistent with our longstanding policy of minimizing regulatory distinctions that serve no universal service purpose, we are not adopting a separate universal service framework under section 706(b). Instead, we are relying on section 706(b) as an alternative basis to section 254 to the extent necessary to ensure that the federal universal service program covers services and networks that could be used to offer information services as well as telecommunications services. Carriers seeking federal support must still comply with the same universal service rules and obligations set forth in sections 254

⁹⁷ 47 U.S.C. § 254(b)(2).

⁹⁸ *1997 Universal Service Order*, 12 FCC Rcd at 8622-23, para. 83.

⁹⁹ See *GTE Telephone Operating Cos.*, 13 FCC Rcd 22466 (1998).

¹⁰⁰ *Inquiry Concerning High-Speed Access to the Internet Over Cable & Other Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002), *aff’d sub nom. Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 978 (2005).

¹⁰¹ *Wireline Broadband Order*, 20 FCC Rcd 14853.

¹⁰² 47 U.S.C. § 254(b)(2), (3).

¹⁰³ Section 214(e)(1) requires services supported by the universal service mechanisms to be offered throughout a carrier’s designated service area. This requirement, coupled with the rules we adopt in this Order, will further promote the Commission’s goal of bringing broadband capability to “all Americans.”

and 214, including the requirement that such providers be designated as eligible to receive support, either from state commissions or, if the provider is beyond the jurisdiction of the state commission, from this Commission.¹⁰⁴ In this way, we ensure that our exercise of section 706(b) authority will advance, rather than detract from, the universal service principles established under section 254 of the Act.

VI. PUBLIC INTEREST OBLIGATIONS

74. Universal service support is a public-private partnership to preserve and advance access to modern communications networks. ETCs that benefit from public investment in their networks must be subject to clearly defined obligations associated with the use of such funding.¹⁰⁵

75. Consistent with the Commission's longstanding practice, we continue to require all USF recipients to offer voice service. In addition, as a condition of receiving support, recipients must now also offer broadband service. In this section, we define the requirements for voice and describe in concept the broadband service obligations that apply to all fund recipients. We defer to subsequent sections discussion of the specific broadband requirements that apply to each of our new or reformed funding mechanisms according to each mechanism's particular purpose. Importantly, these reforms do not displace existing state requirements for voice service, including state COLR obligations. We will continue to work in partnership with the states on the future of such requirements as we consider the future of the PSTN.

A. Voice Service

76. *Background.* Pursuant to section 254 of the Act, the Commission must establish the definition of the services that are supported by the federal universal service mechanisms.¹⁰⁶ In accordance with this mandate, in 1997, the Commission defined the supported services in functional terms as: voice grade access to the public switched network; local usage; dual tone multi-frequency (DTMF) signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation to qualifying low-income consumers.¹⁰⁷ However, the telecommunications marketplace has changed significantly since 1997. For example, the "distinction between local and long distance calling is becoming irrelevant in light of flat rate service offerings that do not distinguish between local and toll calls."¹⁰⁸ In light of the changes in technology and in the marketplace, the Commission sought comment on simplifying the core functionalities of the supported services into the overarching concept, "voice telephony service."¹⁰⁹

77. *Discussion.* We determine that it is appropriate to describe the core functionalities of the supported services as "voice telephony service." Some commenters support redefining the voice

¹⁰⁴ See 47 U.S.C. § 214(e)(1), (2), (6).

¹⁰⁵ Throughout this Order, unless otherwise specified, the term "ETC" does not include ETCs that are designated only for the purposes of the low income program.

¹⁰⁶ 47 U.S.C. § 254(c)(1).

¹⁰⁷ 47 C.F.R. § 54.101(a)(1)-(9); see also *In the Matter of Federal State Joint Board on Universal Service Order*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8810, para. 61 (1997) (defining supported services).

¹⁰⁸ *In the Matter of Federal State Joint Board of Lifeline and Link Up Reform and Modernization*, Notice, WC Docket No. 11-42, 26 FCC Rcd 2770, 2844, para. 242 (2011) (*2011 Lifeline/Link Up NPRM*).

¹⁰⁹ *USF/ICC Transformation NPRM*, 26 FCC Rcd 4590, para. 96. The Commission also sought comment on whether it should modify the definition of voice grade access to the public switched network and whether ETCs should still be required to provide operator services and directory assistance. *Id.* at para. 77.

functionalities as voice telephony services,¹¹⁰ while others oppose the change, arguing that the current list of functionalities remains important today, the term “voice telephony” is too vague, and such a modification may result in a lower standard of voice service.¹¹¹ Given that consumers are increasingly obtaining voice services over broadband networks as well as over traditional circuit switched telephone networks,¹¹² we agree with commenters that urge the Commission to focus on the functionality offered, not the specific technology used to provide the supported service.¹¹³

78. The decision to classify the supported services as voice telephony should not result in a lower standard of voice service: Many of the enumerated services are universal today, and we require eligible providers to continue to offer those particular functionalities as part of voice telephony. Rather, the modified definition simply shifts to a technologically neutral approach, allowing companies to provision voice service over any platform, including the PSTN and IP networks.¹¹⁴ This modification will benefit both providers (as they may invest in new infrastructure and services) and consumers (who reap the benefits of the new technology and service offerings). Accordingly, to promote technological neutrality while ensuring that our new approach does not result in lower quality offerings, we amend section 54.101 of the Commission rules to specify that the functionalities of eligible voice telephony services include voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users;¹¹⁵ toll limitation to qualifying low-income consumers; and access to the emergency services 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems.¹¹⁶

¹¹⁰ See T-Mobile/USF/ICC Transformation NPRM Comments at 7; New America Foundation, et al. USF/ICC Transformation NPRM Comments at 10, Frontier USF/ICC Transformation NPRM Comments at 19, State Members USF/ICC Transformation NPRM Comments at 130–31; see also Cricket 2011 Lifeline/Link Up NPRM Comments at 15-16; FPSC 2011 Lifeline/Link Up NPRM Comments at 29.

¹¹¹ Frontier USF/ICC Transformation NPRM Comments at 55-6 (“maintaining that the requirement that USF recipients provide voice grade access to the public switched network...is essential to ensure that robust voice services continue to be available to the American public”); Alaska 2011 Lifeline/Link Up NPRM Comments at 8-9 (arguing that the redefining or eliminating the current supported services would lead to lower standards of voice service); Indiana 2011 Lifeline/Link Up NPRM Comments at 12 (stating that local usage and single-party service are important functionalities); NASUCA 2011 Lifeline/Link Up NPRM Comments at 26-7 (stating that the term “voice telephony” is unnecessarily vague); New Jersey Rate Counsel 2011 Lifeline/Link Up NPRM Comments at 24.

¹¹² See *supra* at para. 63. The nine enumerated voice functionalities historically have been delivered over Time Division Multiplexing (TDM), a method of transmitting and receiving voice signals over the PSTN.

¹¹³ Windstream USF/ICC Transformation NPRM Comments at 20.

¹¹⁴ In particular, we find that changes in technology and the marketplace allow for elimination of the requirements to provide single-party service. In its comments, CWA stated that the Commission should continue to require recipients of USF or CAF support to provide operator services and directory assistance to customers. See CWA Comments at 2. However, while we encourage carriers to continue to offer operator services and directory assistance, we do not mandate that ETCs provide operator services or directory assistance; we find the importance of these services to telecommunications consumers has declined with changes in the marketplace.

¹¹⁵ We have never prescribed a minimum number of local access minutes, and we see no reason to do so now. We do, however, make a non-substantive revision to clarify the intent of the rule (section 54.101). Specifically, we replace “provided free of charge to end users” with “provided at no additional charge to end users.” When the Commission adopted this rule, it sought to ensure that consumers would not pay additional charges for message units on top of the rate charged for basic local service. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8813, para. 67 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

¹¹⁶ The Commission recently sought comment on ways to modernize the current voice-based 911 system to a Next Generation 911 (NG911) system that will enable the public to send texts, photos, videos, and other data to 911 call (continued...)

79. Today, all ETCs, whether designated by a state commission or this Commission, are required to offer the supported service -- voice telephony service -- throughout their designated service area. ETCs also must provide Lifeline service throughout their designated service area. In the FNPRM, we seek comment on modifying incumbent ETCs' obligations to provide voice service in situations where the incumbent's high-cost universal service funding is eliminated, for example as a result of a competitive bidding process in which another ETC wins universal support for an area and is subject to accompanying voice and broadband service obligations.

80. As a condition of receiving support, we require ETCs to offer voice telephony as a standalone service throughout their designated service area.¹¹⁷ As indicated above, ETCs may use any technology in the provision of voice telephony service.

81. Additionally, consistent with the section 254(b) principle that "[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas,"¹¹⁸ ETCs must offer voice telephony service, including voice telephony service offered on a standalone basis, at rates that are reasonably comparable to urban rates.¹¹⁹ We find that these requirements are appropriate to help ensure that consumers have access to voice telephony service that best fits their particular needs.¹²⁰

82. We decline to preempt state obligations regarding voice service, including COLR obligations, at this time.¹²¹ Proponents of such preemption have failed to support their assertion that state service obligations are inconsistent with federal rules and burden the federal universal service mechanisms, nor have they identified any specific legacy service obligations that represent an unfunded mandate that make it infeasible for carriers to deploy broadband in high-cost areas.¹²² Carriers must therefore continue to satisfy state voice service requirements.

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centers; ETCs will be required to comply with NG911 rules upon implementation by state and local governments. *See Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, Framework for Next Generation 911 Deployment*, Notice of Proposed Rulemaking; PS Docket Nos. 11-153, 10-255, Notice of Proposed Rulemaking, FCC 11-134 (rel. Sep. 22, 2011).

¹¹⁷ With respect to "standalone service," we mean that consumers must not be required to purchase any other services (e.g., broadband) in order to purchase voice service. *See California Commission USF/ICC Transformation NPRM Comments at 10; Greenlining USF/ICC Transformation NPRM Comments at 8; Missouri Commission USF/ICC Transformation NPRM Comments at 7; NASUCA USF/ICC Transformation NPRM Comments at 38.*

¹¹⁸ 47 U.S.C. § 254(b)(3).

¹¹⁹ *See Qwest I*, 258 F.3d at 1199-1200.

¹²⁰ *See AT&T USF/ICC Transformation NPRM Comments at 103* (indicating that competition will ensure that customers have multiple options for voice service). *But see Frontier USF/ICC Transformation NPRM Comments at 17-9* (stating that many Americans will have access to broadband but will not use it, so fund recipients must continue to provide standalone voice service).

¹²¹ ABC Plan Proponents Attach. 1 at 13.

¹²² ABC Plan Proponents Attach. 5 at 8. *See, e.g., AT&T USF/ICC Transformation NPRM Comments at 61-69, T-Mobile USF/ICC Transformation NPRM Comments at 8, Verizon USF/ICC Transformation NPRM Reply at 44* (each opposing COLR obligations). *But see Alaska Commission USF/ICC Transformation NPRM Comments at 24-5, NARUC USF/ICC Transformation NPRM Comments at 17, South Dakota Commission USF/ICC Transformation NPRM Reply at 11, State Members USF/ICC Transformation NPRM Comments at 136, Texas Telephone USF/ICC Transformation NPRM Comments at 11-3.*

83. That said, we encourage states to review their respective regulations and policies in light of the changes we adopt here today and revisit the appropriateness of maintaining those obligations for entities that no longer receive federal high-cost universal service funding, just as we intend to explore the necessity of maintaining ETC obligations when ETCs no longer are receiving funding. For example, states could consider providing state support directly to the incumbent LEC to continue providing voice service in areas where the incumbent is no longer receiving federal high-cost universal service support or, alternatively, could shift COLR obligations from the existing incumbent to another provider who is receiving federal or state universal service support in the future.

84. *Voice Rates.* We will consider rural rates for voice service to be “reasonably comparable” to urban voice rates under section 254(b)(3) if rural rates fall within a reasonable range of urban rates for reasonably comparable voice service. Consistent with our existing precedent, we will presume that a voice rate is within a reasonable range if it falls within two standard deviations above the national average.¹²³

85. Because the data used to calculate the national average price for voice service is out of date, we direct the Wireline Competition Bureau and the Wireless Telecommunications Bureau to develop and conduct an annual survey of voice rates in order to compare urban voice rates to the rural voice rates that ETCs will be reporting to us.¹²⁴ The results of this survey will be published annually. For purposes of conducting the survey, the Bureaus should develop a methodology to survey a representative sample of facilities-based fixed voice service providers taking into account the relative categories of fixed voice providers as determined in the most recent FCC Form 477 data collection. In the FNPRM, we seek comment on whether to collect separate data on fixed and mobile voice rates and whether fixed and mobile voice services should have different benchmarks for purposes of determining reasonable comparability.¹²⁵

B. Broadband Service

86. As a condition of receiving federal high-cost universal service support, all ETCs, whether designated by a state commission or the Commission,¹²⁶ will be required to offer broadband service in their supported area that meets certain basic performance requirements and to report regularly on associated performance measures.¹²⁷ ETCs must make this broadband service available at rates that are reasonably comparable to offerings of comparable broadband services in urban areas.

87. In developing these performance requirements, we seek to ensure that the performance of broadband available in rural and high cost areas is “reasonably comparable” to that available in urban

¹²³ The standard deviation is a measure of dispersion. The sample standard deviation is the square root of the sample variance. The sample variance is calculated as the sum of the squared deviations of the individual observations in the sample of data from the sample average divided by the total number of observations in the sample minus one. In a normal distribution, about 68 percent of the observations lie within one standard deviation above and below the average and about 95 percent of the observations lie within two standard deviations above and below the average.

¹²⁴ See *infra* Sections VII.D.5, VIII.A.2.

¹²⁵ See *infra* para. 1018.

¹²⁶ As used throughout this order, the term “high-cost support” refers to all existing high-cost USF mechanisms as well as the Connect America Fund, including the Mobility Fund Phase I, unless otherwise expressly noted.

¹²⁷ Although we do not at this time require it, we expect that ETCs that offer standalone broadband service in any portion of their service territory will also offer such service in all areas that receive CAF support. By “standalone service,” we mean that consumers are not required to purchase any other service (*e.g.*, voice or video service) in order to purchase broadband service.

areas.¹²⁸ All Americans should have access to broadband that is capable of enabling the kinds of key applications that drive our efforts to achieve universal broadband, including education (*e.g.*, distance/online learning),¹²⁹ health care (*e.g.*, remote health monitoring),¹³⁰ and person-to-person communications (*e.g.*, VoIP or online video chat with loved ones serving overseas).¹³¹

88. To help ensure reasonable comparability of the capabilities offered to end users, we provide guidance in this section on benchmarks for evaluating whether particular broadband offerings adequately afford these capabilities, in order to provide clear performance targets and ensure accountability. Specifically, we discuss the technical characteristics of broadband offerings – speed, latency, and capacity – that influence the capabilities afforded to users, and therefore their ability to use broadband connections for the key purposes articulated above. We also discuss characteristics common to the broadband buildout obligations imposed on all recipients of the CAF.

89. In subsequent sections of the Order we provide more detailed guidance on the requirements for technical characteristics and broadband buildout associated with specific funding mechanisms under which particular ETCs will receive support, *i.e.*, rate-of-return support mechanisms, the CAF mechanisms in price cap territories, CAF ICC support, and Mobility Fund Phase I.¹³² In the FNPRM, we seek comment on how the requirements we adopt here should be adjusted for the Remote Areas Fund and Mobility Fund Phase II.

1. Broadband Performance Metrics

90. Broadband services in the market today vary along several important dimensions. As discussed more fully below, we focus on speed, latency, and capacity as three core characteristics that affect what consumers can do with their broadband service, and we therefore include requirements related to these three characteristics in defining ETCs' broadband service obligations.¹³³

91. For each of these characteristics, we require that funding recipients offer service that is reasonably comparable to comparable services offered in urban areas.¹³⁴ That is, the actual download and

¹²⁸ 47 U.S.C. § 254(b)(3) (“Consumers in all regions of the Nation . . . should have access to . . . advanced telecommunications and information services[] that are reasonably comparable to those services provided in urban areas . . .”).

¹²⁹ See National Broadband Plan at 223-244.

¹³⁰ See, *e.g.*, Omnibus Broadband Initiative, *Health Care Broadband in America, Early Analysis and a Path Forward*, at 5 (Aug. 2010); Center for Technology and Aging, *Technologies for Remote Patient Monitoring for Older Adults*, Position Paper, at 13 (April 2010), available at <http://www.techandaging.org/RPMPositionPaper.pdf> (discussing data transmission methods used for various continuous cardiac remote patient monitoring technologies).

¹³¹ See National Broadband Plan at 59.

¹³² See *infra* sections VII.C (Providing Support in Areas Served by Price Cap Carriers), VII.D (Universal Support for Rate-of-Return Carriers), and VII.E (Rationalizing Support for Mobility).

¹³³ See *Measuring Broadband America Report* at 12; see also TIA *USF/ICC Transformation NPRM* Comments at 9 (define broadband service by functionality rather than merely speed).

¹³⁴ As discussed in the Goals section above, see *supra* section IV (Goals), universal advanced mobile coverage is an important goal in its own right. By limiting reasonable comparability to “comparable services,” we are intending to ensure that fixed broadband services in rural areas are compared with fixed broadband services in urban areas, and similarly that mobile broadband services in rural areas are compared with mobile broadband services in urban areas. Because fixed and mobile broadband technologies may differ in some of their capabilities, we find it appropriate to adopt different performance benchmarks for the CAF funding mechanisms that are specifically oriented towards the goal of universal mobility, namely, Mobility Fund Phase I and Tribal Mobility Fund Phase I. In the FNPRM, we seek comment on how to compare mobile broadband to fixed broadband as product offerings evolve over time. See *infra* paras. 1021-1024.

upload speeds, latency, and usage limits (if any) for providers' broadband must be reasonably comparable to the typical speeds, latency, and usage limits (if any) of comparable broadband services in urban areas. Funding recipients may use any wireline, wireless, terrestrial, or satellite technology, or combination of technologies, to deliver service that satisfies this requirement.¹³⁵

92. *Speed.* Users and providers commonly refer to the bandwidth of a broadband connection as its "speed." The bandwidth (speed) of a connection indicates the rate at which information can be transmitted by that connection, typically measured in bits, kilobits (kbps), or megabits per second (Mbps). The speed of consumers' broadband connections affects their ability to access and utilize Internet applications and content. To ensure that consumers are getting the full benefit of broadband, we require funding recipients to provide broadband that meets performance metrics for actual speeds,¹³⁶ measured as described below, rather than "advertised" or "up to" metrics.

93. In the past two Broadband Progress Reports,¹³⁷ the Commission found that the availability of residential broadband connections that actually enable an end user to download content from the Internet at 4 Mbps and to upload such content at 1 Mbps over the broadband provider's network was a reasonable benchmark for the availability of "advanced telecommunications capability," defined by the statute as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology."¹³⁸ This conclusion was based on the Commission's examination of overall Internet traffic patterns, which revealed that consumers increasingly are using their broadband connections to view high-quality video, and want to be able to do so while still using basic functions such as email and web browsing.¹³⁹ The evidence shows that streaming standard definition video in near real-time consumes anywhere from 1-5 Mbps, depending on a variety of factors.¹⁴⁰ This conclusion also was drawn from the National Broadband Plan, which, based on an analysis of user behavior, demands this usage places on the network, and recent experience in network evolution, recommended as a national broadband availability target that every household in America have access to affordable broadband service offering actual download speeds of at least 4 Mbps and actual upload speeds of at least 1 Mbps.

¹³⁵ See, e.g., T-Mobile *USF/ICC Transformation NPRM* Comments at 8 (define broadband in technology neutral way).

¹³⁶ See ADTRAN *USF/ICC Transformation NPRM* Comments at 31 (four characteristics required for measuring actual speed); Missouri Commission *USF/ICC Transformation NPRM* Comments at 7 (broadband provided should be at actual speeds not advertised speeds).

¹³⁷ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act; A National Broadband Plan for Our Future*, GN Docket Nos. 09-137, 09-51, Report, 25 FCC Rcd 9556, 9559, para. 5 (2010) (*2010 Sixth Broadband Progress Report*); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, Seventh Broadband Progress Report And Order On Reconsideration, 26 FCC Rcd 8008, 8018-19, paras. 14-15 (2011) (*2011 Seventh Broadband Progress Report*).

¹³⁸ 47 U.S.C. § 1302(d)(1). Voice, data, graphics, and video telecommunications are the fundamental building blocks for the key education, health care, and person-to-person communication applications discussed above.

¹³⁹ *2010 Sixth Broadband Progress Report*, 25 FCC Rcd at 9563-64, para. 11. We continue to expect that it is not uncommon for more than one person to make use of a single Internet connection simultaneously, particularly in multi-member households that subscribe to a single Internet access service.

¹⁴⁰ See Omnibus Broadband Initiative, *Broadband Performance: OBI Technical Paper No. 4*, at 8 (OBI, Broadband Performance).

94. Given the foregoing, other than for the Phase I Mobility Fund,¹⁴¹ we adopt an initial minimum broadband speed benchmark for CAF recipients of 4 Mbps downstream and 1 Mbps upstream.¹⁴² Broadband connections that meet this speed threshold will provide subscribers in rural and high cost areas with the ability to use critical broadband applications in a manner reasonably comparable to broadband subscribers in urban areas.¹⁴³

95. Some commenters, including DSL and mobile wireless broadband providers, observe that the 1 Mbps upload speed requirement in particular could impose costs well in excess of the benefits of 1 Mbps versus 768 kilobits per second (kbps) upstream.¹⁴⁴ In general, we expect new installations to provide speeds of at least 1 Mbps upstream. However, to the extent a CAF recipient can demonstrate that support is insufficient to enable 1 Mbps upstream for all locations, temporary waivers of the upstream requirement for some locations will be available. We delegate authority to the Wireline Competition Bureau and Wireless Telecommunications Bureau to address such waiver requests. We note, however, that we expect that those facilities that are not currently capable of providing the minimum upstream speed will eventually be upgraded, consistent with our build-out requirements adopted below, with scalable technology capable of meeting future speed increases.

96. *Latency.* Latency is a measure of the time it takes for a packet of data to travel from one point to another in a network. Because many communication protocols depend on an acknowledgement that packets were received successfully, or otherwise involve transmission of data packets back and forth along a path in the network, latency is often measured by round-trip time in milliseconds. Latency affects a consumer's ability to use real-time applications, including interactive voice or video communication, over the network. We require ETCs to offer sufficiently low latency to enable use of real-time applications, such as VoIP.¹⁴⁵ The Commission's broadband measurement test results showed that most terrestrial wireline technologies could reliably provide latency of less than 100 milliseconds.¹⁴⁶

¹⁴¹ See *supra* note 134.

¹⁴² Many commenters supported a 4 Mbps download speed. See, e.g., CWA *USF/ICC Transformation NPRM* Comments at 14, 16-17; Cox *USF/ICC Transformation NPRM* Comments at 4-5; Frontier *USF/ICC Transformation NPRM* Comments at 23; Greenlining *USF/ICC Transformation NPRM* Comments at 5-6; Cellular One *USF/ICC Transformation NPRM* Comments at 26-27; U.S. Cellular *USF/ICC Transformation NPRM* Reply at 86-90 (summarizing support of TDS, RBA, CTIA, ACA, Sprint, T-Mobile, and USA Coalition for a 4 Mbps/1 Mbps speed threshold).

¹⁴³ Requiring 4 Mbps/1 Mbps to be provided to all locations, including the more distant locations on a landline network and regardless of the served location's position in a wireless network, implies that customers located closer to the wireline switch or wireless tower will be capable of receiving service in excess of this minimum standard. See, e.g., Letter from Jonathan Banks, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed Oct. 17, 2011) (discussing how shorter loop lengths could lead to some locations receiving broadband service at 6 Mbps downstream speed and others receiving 12 Mbps downstream speed).

¹⁴⁴ See, e.g., ADTRAN *USF/ICC Transformation NPRM* Comments at 28-29; AT&T *USF/ICC Transformation NPRM* Comments at 94 (stating that 4 Mbps/1 Mbps would require 50 percent more support than 4 Mbps/768 kbps); Florida Commission *USF/ICC Transformation NPRM* Comments at 5-6 (supporting 3 Mbps/768 kbps); T-Mobile *USF/ICC Transformation NPRM* Reply at 22 (stating that 768 kbps is less costly than 1 Mbps).

¹⁴⁵ See, e.g., ADTRAN *USF/ICC Transformation NPRM* Comments at 18 (describing latency's effect on voice communications); ITU-T, "International telephone connections and circuits – General Recommendations on the transmission quality for an entire international telephone connection," Recommendation G.114, May 2003.

¹⁴⁶ *Measuring Broadband America Report* at 22, Chart 9 (illustrating latencies of wireline technologies tested). Fiber-to-the-home had a latency averaging 17 milliseconds, and DSL ranged as high as approximately 75 milliseconds. We note that satellite companies contend that their services are adequate for some real-time applications like VoIP, even with round-trip latencies of more than 100 milliseconds. Satellite Providers *USF/ICC* (continued...)

97. *Capacity.* Capacity is the total volume of data sent and/or received by the end user over a period of time. It is often measured in gigabytes (GB) per month. Several broadband providers have imposed monthly data usage limits, restricting users to a predetermined quantity of data, and these limits typically vary between fixed and mobile services.¹⁴⁷ The terms of service may include an overage fee if a consumer exceeds the monthly limit. Some commenters recommended we specify a minimum usage limit.¹⁴⁸

98. Although at this time we decline to adopt specific minimum capacity requirements for CAF recipients, we emphasize that any usage limits imposed by an ETC on its USF-supported broadband offering must be reasonably comparable to usage limits for comparable broadband offerings in urban areas.¹⁴⁹ In particular, ETCs whose support is predicated on offering of a fixed broadband service – namely, all ETCs other than recipients of the Phase I Mobility Funds – must allow usage at levels comparable to residential terrestrial fixed broadband service in urban areas.¹⁵⁰ We define terrestrial fixed broadband service as one that serves end users primarily at fixed endpoints using stationary equipment, such as the modem that connects an end user’s home router, computer or other Internet access device to the network. This term includes fixed wireless broadband services (including those offered over unlicensed spectrum).

99. In 2009, residential broadband users who subscribed to fixed broadband service with speeds between 3 Mbps and 5 Mbps used, on average, 10 GB of capacity per month,¹⁵¹ and annual per-user growth was between 30 and 35 percent.¹⁵² We note that AT&T’s DSL usage limit is 150 GB and its U-Verse offering has a 250 GB limit.¹⁵³ Since 2008, Comcast has had a 250 GB monthly data usage threshold on residential accounts.¹⁵⁴ Without endorsing or approving of these or other usage limits, we
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Transformation NPRM Joint Reply at 8. *But see* Letter from John Kuykendall, on behalf of BEK Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., Attach. at 15 (filed Oct. 6, 2011) (criticizing satellite latency that cannot be improved by increased data speeds).

¹⁴⁷ For example, as of May 2011, AT&T’s DSL offering had a 150 GB limit, and its U-verse offering had a 250 GB limit. *See* “To Cap, or Not,” N.Y. Times, July 21, 2011. Since 2008, Comcast has had a 250 GB monthly data usage threshold on residential accounts. *See* Comcast Announcement Regarding An Amendment to Our Acceptable Use Policy, <http://xfinity.comcast.net/terms/network/amendment/>. In contrast, Verizon Wireless offers data plans with usage limits of 2GB, 5GB, and 10GB. *See, e.g.,* Verizon Wireless, Nationwide Single-Line Plans, <http://www.verizonwireless.com/b2c/plans/?page=single>.

¹⁴⁸ ADTRAN *USF/ICC Transformation NPRM* Comments at 19 (limitations on usage should be appropriate for the service being funded, whether fixed or mobile, given the disparity in traffic volumes for each service); Public Knowledge and Benton *USF/ICC Transformation NPRM* Comments at 13 (arguing capacity should match average in urban areas).

¹⁴⁹ We note that such service could include, for instance, use of a wireless data card if it can provide the performance characteristics described in this section.

¹⁵⁰ *See supra* para. 87 (“In developing these performance requirements, we seek to ensure that the performance of broadband available in rural and high cost areas is “reasonably comparable” to that available in urban areas”).

¹⁵¹ Omnibus Broadband Initiative, *The Broadband Availability Gap: OBI Technical Paper No. 1*, at 112, Ex. 4-BQ (April 2010) (OBI, Broadband Availability Gap), available at <http://www.broadband.gov/plan/broadband-working-reports-technical-papers.html>.

¹⁵² OBI, Broadband Performance at 7.

¹⁵³ *See* “To Cap, or Not,” N.Y. Times, July 21, 2011.

¹⁵⁴ Comcast Announcement Regarding An Amendment to Our Acceptable Use Policy, <http://xfinity.comcast.net/terms/network/amendment/>.

provide guidance by noting that a usage limit significantly below these current offerings (e.g., a 10 GB monthly data limit) would not be reasonably comparable to residential terrestrial fixed broadband in urban areas.¹⁵⁵ A 250 GB monthly data limit for CAF-funded fixed broadband offerings would likely be adequate at this time because 250 GB appears to be reasonably comparable to major current urban broadband offerings. We recognize, however, that both pricing and usage limitations change over time. We delegate authority to the Wireline Competition Bureau and Wireless Telecommunications Bureau to monitor urban broadband offerings, including by conducting an annual survey, in order to specify an appropriate minimum for usage allowances, and to adjust such a minimum over time.¹⁵⁶

100. Similarly, for Mobility Fund Phase I, we decline to adopt a specific minimum capacity requirement that supported providers must offer mobile broadband users.¹⁵⁷ However, we emphasize that any usage limits imposed by a provider on its mobile broadband offerings supported by the Mobility Fund must be reasonably comparable to any usage limits for mobile comparable broadband offerings in urban areas.

101. *Areas with No Terrestrial Backhaul.* Recognizing that satellite backhaul may limit the performance of broadband networks as compared to terrestrial backhaul, we relax the broadband public interest obligation for carriers providing fixed broadband that are compelled to use satellite backhaul facilities.¹⁵⁸ The Regulatory Commission of Alaska reports that “for many areas of Alaska, satellite links may be the only viable option to deploy broadband.”¹⁵⁹ Carriers seeking relaxed public interest obligations because they lack the ability to obtain terrestrial backhaul—either fiber, microwave, or other technology—and are therefore compelled to rely exclusively on satellite backhaul in their study area, must certify annually that no terrestrial backhaul options exist, and that they are unable to satisfy the broadband public interest obligations adopted above due to the limited functionality of the available satellite backhaul facilities.¹⁶⁰ Any such funding recipients must offer broadband service speeds of at least 1 Mbps downstream and 256 kbps upstream within the supported area served by satellite middle-mile facilities.¹⁶¹ Latency and capacity requirements discussed above will not apply to this subset of providers. Buildout obligations – which are dependent on the mechanism by which a carrier receives

¹⁵⁵ We note that this should not be interpreted to mean that the Commission intends to regulate usage limits.

¹⁵⁶ We expect that the Bureaus will conduct this survey in conjunction with the pricing survey we direct the Bureaus to conduct below. See *supra* para. 114 (delegating to the Bureaus the authority to conduct an annual survey of urban broadband rates).

¹⁵⁷ See *supra* para. 87 (“In developing these performance requirements, we seek to ensure that the performance of broadband available in rural and high cost areas is “reasonably comparable” to that available in urban areas”).

¹⁵⁸ ACS *USF/ICC Transformation NPRM* Comments at 11 (“Even if the modest speeds of 4 Mbps down/1 Mbps up are adopted by the FCC as target throughput speeds, substantial construction of terrestrial facilities and expansion of satellite capacity will be needed to create the backhaul capability that will be necessary to deliver broadband at those speeds in Alaska.” (footnote omitted)); ACS *USF/ICC Transformation NPRM* Reply at 8 (same); Alaska Commission *USF/ICC Transformation NPRM* Comments at 24; GCI *USF/ICC Transformation NPRM* Comments at 2. As discussed elsewhere, we decline to relax the technical performance requirements due to satellite backhaul limitations for purposes of Mobility Fund Phase I, although we clarify that funds may be used to upgrade middle mile facilities. We seek additional comment on how to address satellite backhaul issues for Mobility Fund Phase II in the FNPRM. See *infra* section XVII.I (Mobility Fund Phase II).

¹⁵⁹ Alaska Commission *USF/ICC Transformation NPRM* Comments at 22; GCI *August 3 PN* Comments at 10 (estimating that “[t]wenty-seven percent of the state’s population lives in villages that are not on Alaska’s road/rail/pipeline network, and thus are today reached only by satellite middle-mile.”).

¹⁶⁰ See *supra* paras. 92-96 (adopting speed and latency requirements).

¹⁶¹ GCI *August 3 PN* Comments at 27.

funding—remain the same for this class of carriers. We will monitor and review the public interest obligations for satellite backhaul areas. To the extent that new terrestrial backhaul facilities are constructed, or existing facilities improve sufficiently to meet the public interest obligations, we require funding recipients to satisfy the relevant broadband public interest obligations in full within twelve months of the new backhaul facilities becoming commercially available.¹⁶²

102. *Community Anchor Institutions.*¹⁶³ We expect that ETCs will likely offer broadband at greater speeds to community anchor institutions in rural and high cost areas, although we do not set requirements at this time, as the 4 Mbps/1 Mbps standard will be met in the more rural areas of an ETC's service territory, and community anchor institutions are typically located in or near small towns and more inhabited areas of rural America.¹⁶⁴ We also expect ETCs to engage with community anchor institutions in the network planning stages with respect to the deployment of CAF-supported networks.¹⁶⁵ We require ETCs to identify and report on the community anchor institutions that newly gain access to fixed broadband service as a result of CAF support.¹⁶⁶ In addition, the Wireline Competition Bureau will invite further input on the unique needs of community anchor institutions as it develops a forward-looking cost model to estimate the cost of serving locations, including community anchor locations, in price cap territories.¹⁶⁷

103. *Broadband Buildout Obligations.* All CAF funding comes with obligations to build out broadband within an ETC's service area, subject to certain limitations. The timing and extent of these obligations varies across the different CAF mechanisms, and details are discussed in the specific sections explaining the separate mechanisms. However, all broadband buildout obligations for fixed broadband are conditioned on not spending the funds to serve customers in areas already served by an "unsubsidized competitor."¹⁶⁸ We define an unsubsidized competitor as a facilities-based provider of residential terrestrial fixed voice and broadband service.¹⁶⁹

¹⁶² This limited exemption is only available to providers that have no access in their study area to any terrestrial backhaul facilities, and does not apply to any providers that object to the cost of backhaul facilities. Similarly, providers relying on terrestrial backhaul facilities today will not be allowed this exemption if they elect to transition to satellite backhaul facilities.

¹⁶³ For purposes of this order, we define "community anchor institutions" to mean schools, libraries, medical and healthcare providers, public safety entities, community colleges and other institutions of higher education, and other community support organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by vulnerable populations, including low-income, the unemployed, and the aged. We draw upon the definition used in implementing American Recovery and Reinvestment Act of 2009. See 75 Fed. Reg. 3792, 3797 (Jan. 22, 2010).

¹⁶⁴ There is nothing in this order that requires a carrier to provide broadband service to a community anchor institution at a certain rate, but we acknowledge that community anchor institutions generally require more bandwidth than a residential customer, and expect that ETCs would provide higher bandwidth offerings to community anchor institutions in high-cost areas at rates that are reasonably comparable to comparable offerings to community anchor institutions in urban areas.

¹⁶⁵ See *infra* sections VII.C.2.b (Price Cap Public Interest Obligations) and VII.D.2 (Public Interest Obligations of Rate-of-Return Carriers).

¹⁶⁶ See *infra* para. 587.

¹⁶⁷ See Alliance for Community Media Reply at 2; CWA Comments at 17; Internet2 Comments at 2; SHLB Coalition Comments at 4; Letter from John Windhausen, Jr., SHLB Coalition, to Chairman Genachowski and Commissioners (dated Sept. 28, 2011).

¹⁶⁸ We recognize that the best data available at this time to determine whether broadband is available from an unsubsidized competitor at speeds at or above the 4 Mbps/1 Mbps speed threshold will likely be data on broadband (continued...)

104. We limit this definition to fixed, terrestrial providers because we think these limitations will disqualify few, if any, broadband providers that meet CAF speed, capacity, or latency minimums for all locations within relevant areas of comparison, while significantly easing administration of the definition. For example, the record suggests that satellite providers are generally unable to provide affordable voice and broadband service that meets our minimum capacity requirements without the aid of a subsidy: Consumer satellite services have limited capacity allowances today, and future satellite services appear unlikely to offer capacity reasonably comparable to urban offerings in the absence of universal service support.¹⁷⁰ Likewise, while 4G mobile broadband services may meet our speed requirements in many locations, meeting minimum speed and capacity guarantees is likely to prove challenging over larger areas, particularly indoors.¹⁷¹ And because the performance offered by mobile services varies by location, it would be very difficult and costly for a CAF recipient or the Commission to evaluate whether such a service met our performance requirements at all homes and businesses within a study area, census block, or other required area. A wireless provider that currently offers mobile service can become an “unsubsidized competitor,” however, by offering a fixed wireless service that guarantees speed, capacity, and latency minimums will be met at all locations with the relevant area. Taken together, these considerations persuade us that the advantages of limiting our definition of unsubsidized providers outweigh any potential concerns that we may unduly disqualify service providers that otherwise meet our performance requirements. As mobile and satellite services develop over time, we will revisit the definition of “unsubsidized competitor” as warranted. Recognizing the benefits of certainty, however, we do not anticipate changing the definition for the next few years.

105. *Summary and Evolution of Technical Characteristics.* As set forth in further detail in section VII, this Order establishes several funding mechanisms within the CAF, each customized to particular user needs (e.g., fixed vs. mobile voice and broadband) and time horizons (phases I vs. II). The technical characteristics and broadband buildout obligation under each of these new CAF components can be summarized as follows:

(Continued from previous page) _____

availability at 3 Mbps downstream and 768 kbps upstream, which is collected for the National Broadband Map and through the Commission’s Form 477. Such data may therefore be used as a proxy for the availability of 4 Mbps/1 Mbps broadband. Depending on our anticipated reform to the Form 477 data collection, we may have additional data in the future upon which the Commission may rely. See *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans*, *Improvement of Wireless Broadband Subscribership Data*, and *Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190, *Review of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132, Notice of Proposed Rulemaking, 26 FCC Rcd 1508 (2011) (*Broadband Data NPRM*) (seeking comment on reforms to FCC Form 477 data collection).

¹⁶⁹ We define a fixed voice and broadband service as one that serves end users primarily at fixed endpoints using stationary equipment, such as the modem that connects an end user’s home router, computer, or other Internet access device to the network. This term encompasses fixed wireless broadband services (including services using unlicensed spectrum). The term does not include a broadband service that serves end users primarily using mobile stations. See 47 U.S.C. § 153(34) (“The term ‘mobile station’ means a radio-communication station capable of being moved and which ordinarily does move.”).

¹⁷⁰ OBI, Broadband Performance at 89; Letter from Lisa Scalpone, ViaSat, Inc., Jeffrey H. Blum, Dish Network L.L.C., and Dean Manson, Echostar Technologies L.L.C., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 8 (filed Oct. 18, 2011).

¹⁷¹ OBI, Broadband Performance at 66.

Federal Communications Commission

FCC 11-161

Component of CAF	Broadband Performance Characteristics	Obligation
Price Cap CAF (Phase I) (Incremental support)	<ul style="list-style-type: none"> • Speed of at least 4 Mbps/1 Mbps to a specified number of locations, depending on level of incremental support • Latency sufficient for real-time applications, including VoIP • Usage at levels comparable to terrestrial residential fixed broadband service in urban areas 	Extend broadband to areas lacking 768 kbps according to National Broadband Map and carrier’s best knowledge; can’t use for areas already in capital improvements plan or to fulfill merger commitments or Recovery Act projects.
CAF in Price Cap Areas (Phase II)	<ul style="list-style-type: none"> • Speed of at least 4 Mbps/1 Mbps to all supported locations, with at least 6 Mbps/1.5 Mbps to a number of supported locations to be specified by model • Latency sufficient for real-time applications, including VoIP • Usage at levels comparable to terrestrial residential fixed broadband service in urban areas 	Extend broadband to supported locations; supported locations do not include areas where there is an unsubsidized competitor offering 4 Mbps/1 Mbps.
Areas with no terrestrial backhaul	<ul style="list-style-type: none"> • Speed of at least 1 Mbps/256 kbps in locations where otherwise would be obligated to provide 4 Mbps/1 Mbps 	
Mobility Fund, Phase I	<ul style="list-style-type: none"> • 3G (200 kbps/50 kbps minimum at cell edge) OR 4G (768 kbps/200 kbps minimum at cell edge) • Latency sufficient for real-time applications • Usage at levels comparable to mobile 3G/4G offerings in urban areas 	Provide coverage of between 75 and 100 percent of road miles in unserved census blocks. OR For Tribal Mobility Fund: Provide coverage of between 75 and 100 percent of pops in unserved census blocks within Tribal lands.

Figure 1

106. Because most of these funding mechanisms are aimed at immediately narrowing broadband deployment gaps, both fixed and mobile, their performance benchmarks reflect technical

capabilities and user needs that are expected at this time to be suitable for today and the next few years.¹⁷² However, we must also lay the groundwork for longer-term evolution of CAF broadband obligations, as we expect technical capabilities and user needs will continue to evolve. We therefore commit to monitoring trends in the performance of urban broadband offerings through the survey data we will collect and rural broadband offerings through the reporting data we will collect,¹⁷³ and to initiating a proceeding no later than the end of 2014 to review our performance requirements and ensure that CAF continues to support broadband service that is reasonably comparable to broadband service in urban areas.¹⁷⁴

107. In advance of that future proceeding, we rely on our predictive judgment to provide guidance to CAF recipients on metrics that will satisfy our expectation that they invest the public's funds in robust, scalable broadband networks. As shown in the chart below, the National Broadband Plan estimated that by 2017, average advertised speeds for residential broadband would be approximately 5.76 Mbps downstream.¹⁷⁵ Applying growth rates measured by Akamai, one finds a projected average actual downstream speed by 2017 of 5.2 Mbps, and a projected average actual peak downstream speed of 6.86 Mbps.

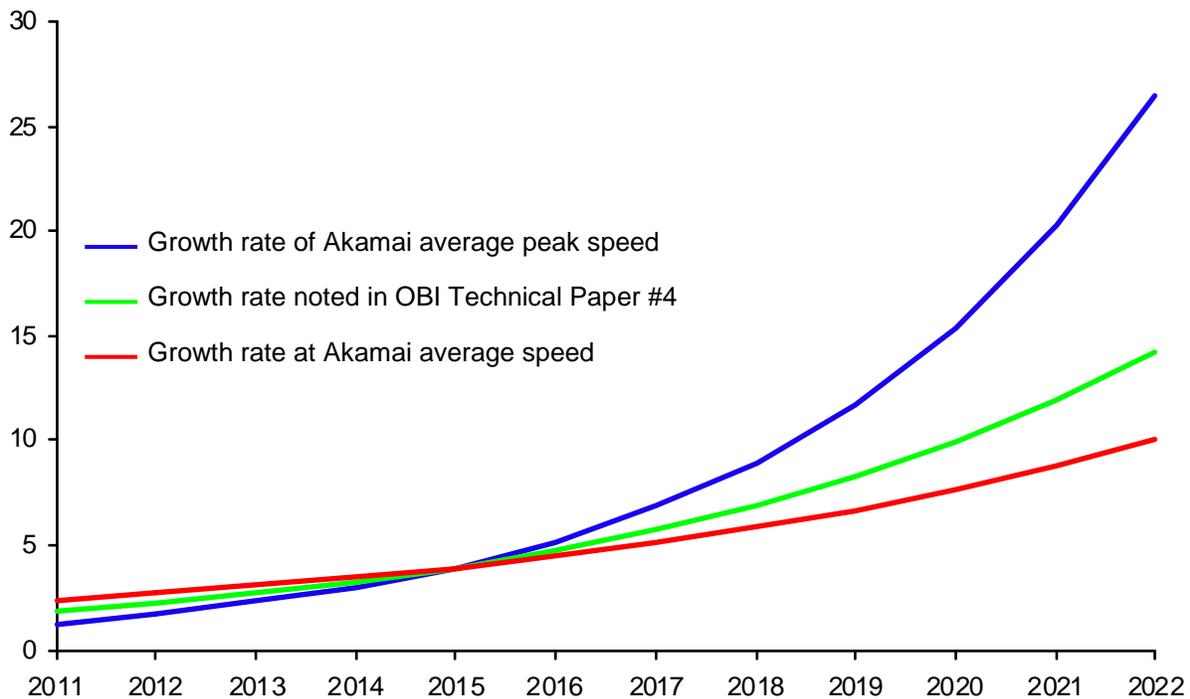
¹⁷² Phased down competitive ETC support is not aimed at these objectives. Therefore, it is not subject to these broadband requirements. Obligations of competitive ETCs are addressed below. *See infra* section VII.E.5 (Transition of Competitive ETC Support to CAF).

¹⁷³ *See supra* para. 99 (delegating authority to the Bureaus conduct an annual survey to monitor urban broadband offerings) and *infra* section VIII.A.2 (Reporting Requirements).

¹⁷⁴ 47 U.S.C. § 254(b). Commenters recommended reviewing the public interest obligations periodically, with suggested periods ranging from every year to every five years. *See, e.g.*, Frontier *USF/ICC Transformation NPRM* Comments at 24 (review every 5 years); Google *USF/ICC Transformation NPRM* Comments at 16 (review every 3 years); Greenlining *USF/ICC Transformation NPRM* Comments at 7 (review annually); Nebraska Commission *USF/ICC Transformation NPRM* Comments at 16 (review every 4 years). We select three years in light of the timing of the funding mechanisms we adopt in this Order.

¹⁷⁵ *See* OBI, Broadband Performance at 16 (historical 20 percent annual growth of advertised speeds); Cisco, Cable and Telco Service Provider Abstract Network Model, http://www.cisco.com/web/siteassets/legal/terms_condition.html (forecasting increase in file sharing and video); Akamai State of the Internet Q1 2011 Report, p. 12, fig. 7, www.akamai.com/stateoftheinternet (showing growth across the last year in average speed of 14 percent in the U.S.).

Forecast for typical downstream speed

Figure 2¹⁷⁶

108. Based on these projections, we establish a benchmark of 6 Mbps downstream and 1.5 Mbps upstream for broadband deployments in later years of CAF Phase II.

2. Measuring and Reporting Broadband

109. We will require recipients of funding to test their broadband networks for compliance with speed and latency metrics and certify to and report the results to the Universal Service Administrative Company (USAC)¹⁷⁷ on an annual basis.¹⁷⁸ These results will be subject to audit. In

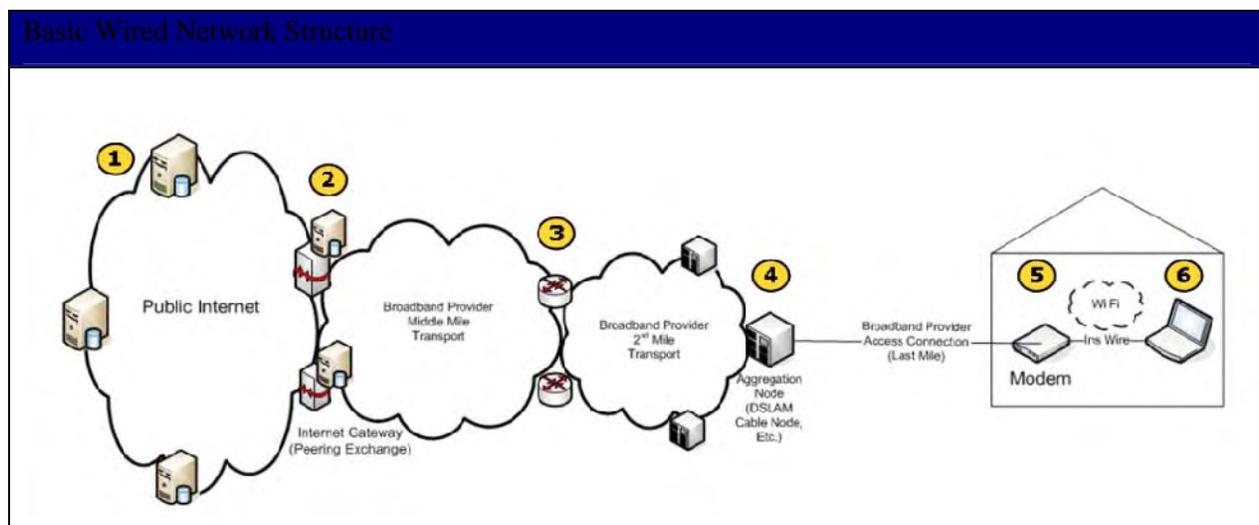
¹⁷⁶ Speed forecasts based on growth rates, assuming 4 Mbps speed in 2015.

¹⁷⁷ The Universal Service Administrative Company (USAC), a subsidiary of the National Exchange Carrier Association (NECA), is the private not-for-profit corporation created to serve as the Administrator of the Fund under the Commission's direction. See *Changes to the Board of Directors of the National Exchange Carrier Association*, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25,058, 25,063-66, paras. 10-14 (1998); 47 C.F.R. § 54.701(a). The Commission appointed USAC the permanent Administrator of all of the federal universal service support mechanisms. See 47 C.F.R. §§ 54.702(b)-(m), 54.711, 54.715. USAC administers the Fund in accordance with the Commission's rules and orders. The Commission provides USAC with oral and written guidance, as well as regulation through its rulemaking process. USAC plays a critical role as day-to-day Administrator in collecting necessary information that enables the Commission to oversee the entire universal service fund. See, e.g., Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company (Sept. 9, 2008) (*2008 FCC-USAC MOU*), available at <http://www.fcc.gov/omd/usac-mou.pdf>. As set forth throughout this Order, we expect USAC to administer the new fund we create today, the Connect America Fund, including the Mobility Fund.

addition, as part of the federal-state partnership for universal service, we expect and encourage states to assist us in monitoring and compliance and therefore require funding recipients to send a copy of their annual broadband performance report to the relevant state or Tribal government.¹⁷⁹

110. Commenters generally supported testing and reporting of broadband performance.¹⁸⁰ While some preferred only certifications without periodic testing,¹⁸¹ we find that requiring ETCs to submit verifiable test results to USAC and the relevant state commissions will strengthen the ability of this Commission and the states to ensure that ETCs that receive universal service funding are providing at least the minimum broadband speeds, and thereby using support for its intended purpose as required by section 254(e).

111. We adopt the proposal in the *USF-ICC Transformation NPRM* that actual speed and latency be measured on each ETC's access network from the end-user interface to the nearest Internet access point. In Figures 3 and 4 below, we illustrate basic network structure for terrestrial broadband networks (wired and wireless, respectively). In these diagrams, the end-user interface end-point would be (5) the modem, the customer premise equipment typically managed by a broadband provider as the last connection point to the managed network, while the nearest Internet access point end-point would be (2) the Internet gateway, the closest peering point between the broadband provider and the public Internet for a given consumer connection. The results of Commission testing of wired networks suggest that "broadband performance that falls short of expectations is caused primarily by the segment of an ISP's network from [5] the consumer gateway to [2] the ISP's core network."¹⁸²



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¹⁷⁸ See *infra* para. 585.

¹⁷⁹ See *infra* para. 582.

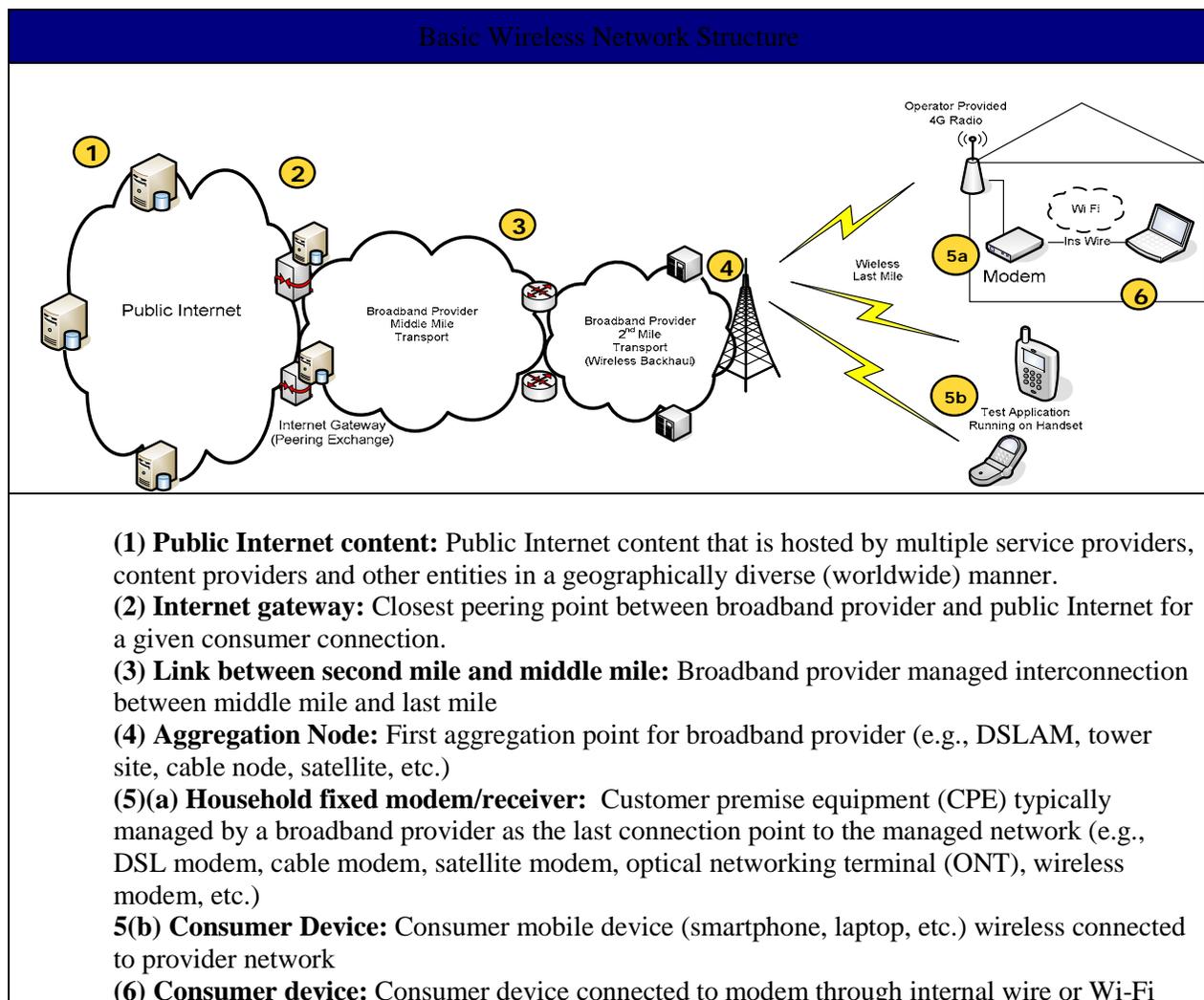
¹⁸⁰ ADTRAN *USF/ICC Transformation NPRM* Comments at 32; GVNW *USF/ICC Transformation NPRM* Reply at 26 (must be a process for verifying performance); ICORE *USF/ICC Transformation NPRM* Comments at 12-13 (quality of service obligations and extensive reporting requirements are safeguards that prevent waste and inefficiency).

¹⁸¹ U.S. Cellular *USF/ICC Transformation NPRM* Comments at 46-47.

¹⁸² *Measuring Broadband America Report* at 11; see ADTRAN *USF/ICC Transformation NPRM* Comments at 33-35 (supporting use of Points 2 and 5 as the end-points for measuring broadband performance).

- (1) **Public Internet content:** Public Internet content that is hosted by multiple service providers, content providers and other entities in a geographically diverse (worldwide) manner.
- (2) **Internet gateway:** Closest peering point between broadband provider and public Internet for a given consumer connection.
- (3) **Link between second mile and middle mile:** Broadband provider managed interconnection between middle mile and last mile
- (4) **Aggregation Node:** First aggregation point for broadband provider (e.g., Digital Subscriber Line Access Multiplexer (DSLAM), cable node, satellite, etc.)
- (5) **Modem:** Customer premise equipment (CPE) typically managed by a broadband provider as the last connection point to the managed network (e.g., DSL modem, cable modem, satellite modem, optical networking terminal (ONT), etc.)
- (6) **Consumer device:** Consumer device connected to modem through internal wire or Wi-Fi (home networking), including hardware and software used to access the Internet and process content (customer managed)

Figure 3



(home networking), including hardware and software used to access the Internet and process content (customer managed)

Figure 4

112. In the FNPRM, we seek further comment on the specific methodology ETCs should use to measure the performance of their broadband services subject to these general guidelines, and the format in which funding recipients should report their results.¹⁸³ We direct the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and the Office of Engineering and Technology to work together to refine the methodology for such testing, which we anticipate will be implemented in 2013.

3. Reasonably Comparable Rates for Broadband Service

113. Section 254(b) of the Act requires the Commission to base its universal service policies on certain principles, including that “[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”¹⁸⁴ As with voice services, for broadband services we will consider 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 broadband service. However, we have never compared broadband rates for purposes of section 254(b)(3), and therefore we direct the Bureaus to develop a specific methodology for defining that reasonable range, taking into account that retail broadband service is not rate regulated and that retail offerings may be defined by price, speed, usage limits, if any, and other elements.¹⁸⁵ In the FNPRM, we seek comment on how specifically to define a reasonable range.¹⁸⁶

114. We also delegate to the Wireline Competition Bureau and Wireless Telecommunications Bureau the authority to conduct an annual survey of urban broadband rates, if necessary, in order to derive a national range of rates for broadband service.¹⁸⁷ We do not currently have sufficient data to establish such a range for broadband pricing, and are unaware of any adequate third-party sources of data for the relevant levels of service to be compared. We therefore delegate authority to the Bureaus to determine the appropriate components of such a survey. By conducting our own survey, we believe we will be able to tailor the data specifically to our need to satisfy our statutory obligation. We require recipients of funding to provide information regarding their pricing for service offerings, as described

¹⁸³ See *infra* section XVII.A.1 (Measuring Broadband Service).

¹⁸⁴ 47 U.S.C. § 254(b)(3).

¹⁸⁵ Consistent with the fact that the Commission does not set regulated rates for broadband Internet access service, the comparison of rural and urban rates will be conducted pursuant to the principles set forth in section 254(b)(3) of the Act and is solely for the purposes of compliance with section 254’s mandates.

¹⁸⁶ See *infra* section XVII.A.2 (Reasonably Comparable Voice and Broadband Services).

¹⁸⁷ In the *Broadband Data NPRM*, the Commission proposed collecting pricing data through a revised FCC Form 477. *Broadband Data NPRM*, 26 FCC Rcd at 1533-36, paras. 66-76 (seeking comment on whether and how the Commission should collect price data). We will rely on any pricing data collected pursuant to a revised FCC Form 477 data collection to calculate a national average urban rate for broadband. However, the process of collecting and publishing industry-wide data through a revised FCC Form 477 may not be completed before the first annual certification, and therefore a survey may be necessary. See also *supra* para. 99 (delegating authority to the Wireline Competition Bureau and Wireless Telecommunications Bureau to conduct annual survey of urban broadband offerings).

more fully below.¹⁸⁸ We also encourage input from the states and other stakeholders as the Bureaus develop the survey.

VII. ESTABLISHING THE CONNECT AMERICA FUND

A. Overview

115. As described more fully below, we establish the Connect America Fund to bring broadband to unserved areas; support advanced mobile voice and broadband networks in rural, insular and high-cost areas; expand fixed broadband and facilitate reform of the intercarrier compensation system. In establishing the CAF, we also set for the first time a firm and comprehensive budget for the high-cost program.

116. For areas served by price cap companies, we institute immediate reforms (Phase I) to streamline and redirect legacy universal service payments to accelerate broadband deployment in unserved areas. We also adopt a longer-term approach (Phase II) that, starting as soon as the Wireline Competition Bureau completes work on a forward-looking broadband cost model, will direct funds for five years to those areas that are unserved through the operation of market forces, using a mechanism that combines use of this model and competitive bidding. We also adopt the necessary measures to transition carriers from existing support to CAF.

117. For areas served by rate-of-return carriers, we decline to immediately shift support to the model- and competitive bidding-based mechanism in CAF. Instead, we reform legacy support mechanisms for rate-of-return carriers to begin the transition towards a more incentive-based form of regulation with better incentives for efficient operations. In the accompanying FNPRM, we seek further comment on how best to ensure a predictable path forward for rate-of-return companies to extend broadband.

118. Within CAF, we also establish support for mobile voice and broadband services in recognition of the fact that promoting the universal availability of advanced mobile services is a vital component of the Commission's universal service mission. We establish the Mobility Fund as part of CAF to first provide one-time support (Phase I) to immediately accelerate deployment of networks for mobile broadband services in unserved areas, and then provide ongoing support (Phase II) to expand and sustain mobile voice and broadband service in communities in which service would be unavailable absent federal support. We also set forth the necessary transition for carriers receiving support today under the legacy rules.

119. Finally, to ensure that Americans living in the most costly areas in the nation can obtain affordable broadband through alternative technology platforms, including satellite and unlicensed wireless, the CAF also includes dedicated funding for extremely high cost areas, which will be disbursed through a market-based mechanism.

120. Through these coordinated mechanisms, the CAF will immediately begin making available broadband and advanced mobile services to unserved American homes, businesses, and community anchor institutions, while transitioning universal service to an efficient, technology-neutral system that uses tools, including competitive bidding, to ensure that scarce public resources support the best possible communications services for rural Americans. Given the disparate treatment of different carriers and technologies under legacy rules, it is not practicable to transition immediately all components of the program to competitive-bidding principles. But the approach we take today provides us the opportunity to see the application of these principles in practice and evaluate their effectiveness, creates a transition period for carriers to adapt to more incentive-based approaches, and allows time for new technologies, new competitors, and consumer demand to continue to evolve and mature.

¹⁸⁸ See *infra* paras. 592-594.

B. The Budget

121. *Background.* Many individual mechanisms within the high-cost program function under fixed budgets under the current system.¹⁸⁹ The high-cost program as a whole, however, has never had a budget. In the *USF-ICC Transformation NPRM*, the Commission noted its commitment to controlling the size of the universal service fund.¹⁹⁰ The Commission sought comment on setting an overall budget for the CAF such that the sum of the CAF and any existing legacy high-cost support mechanisms (however modified in the future) in a given year would remain equal to current funding levels. The Broadband Plan similarly recommended that the “FCC should aim to keep the overall size of the fund close to its current size (in 2010 dollars).”¹⁹¹

122. In response, a broad cross-section of interested stakeholders, including consumer groups, state regulators, current recipients of funding, and those that do not currently receive funding, agreed that the Commission should establish a budget for the overall high-cost program, with many urging the Commission to set that budget at \$4.5 billion per year, the estimated size of the program in fiscal year (FY) 2011.¹⁹² Some argue that we should adopt a hard cap to ensure that budget is not exceeded.¹⁹³

123. *Discussion.* For the first time, we now establish a defined budget for the high-cost component of the universal service fund.¹⁹⁴ We believe the establishment of such a budget will best ensure that we have in place “specific, predictable, and sufficient” funding mechanisms to achieve our universal service objectives.¹⁹⁵ We are today taking important steps to control costs and improve

¹⁸⁹ See *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, Order, 23 FCC Rcd 8834, 8834, para. 1 (2008) (*Interim Cap Order*) (adopting an emergency cap on high-cost support for competitive ETCs); *Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Report and Order, 9 FCC Rcd 303 (1993) (detailing cap on HCLS); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (*CALLS Order*), *rev’d and remanded, Texas Office of Public Utility Counsel v. FCC*, 265 F. 3d 313 (5th Cir. 2001); and *Access Charge Reform*, CC Docket No. 96-262, *Price Cap Performance Review for LECs*, CC Docket No. 94-1, *Low-Volume Long Distance Users*, CC Docket No. 99-249, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, 18 FCC Rcd 14976 (2003). See also *High-Cost Universal Service Support, Federal State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd. 8834 (2008) (capping IAS for ILECs as of 2008).

¹⁹⁰ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4680-82, paras. 412-414.

¹⁹¹ National Broadband Plan at 150.

¹⁹² ABC Plan Proponents *August 3 PN* Joint Comments at 17; NASUCA *USF/ICC Transformation NPRM* Comments at 10; Rural Associations *August 3 PN* Comments at 5; State Members *USF/ICC Transformation NPRM* Comments at 11.

¹⁹³ Comcast *August 3 PN* Comments at 21; Free State *USF/ICC Transformation NPRM* Comments at 10-11; NCTA *August 3 PN* Comments at 6; XO *USF/ICC Transformation NPRM* Reply at 20-22.

¹⁹⁴ As noted above, for purposes of this budget, the term “high-cost” includes all support mechanisms in place as of the date of this order, specifically, high-cost loop support, safety net support, safety valve support, local switching support, interstate common line support, high cost model support, and interstate access support, as well as the new Connect America Fund, which includes funding to support and advance networks that provide voice and broadband services, both fixed and mobile, and funding provided in conjunction with the recovery mechanism adopted as part of intercarrier compensation reform. See *supra* note 16.

¹⁹⁵ 47 U.S.C. 254(b)(5).

accountability in USF, and our estimates of the funding necessary for components of the CAF and legacy high-cost mechanisms represent our predictive judgment as to how best to allocate limited resources at this time. We anticipate that we may revisit and adjust accordingly the appropriate size of each of these programs by the end of the six-year period we budget for today, based on market developments, efficiencies realized, and further evaluation of the effect of these programs in achieving our goals.

124. Importantly, establishing a CAF budget ensures that individual consumers will not pay more in contributions due to the reforms we adopt today. Indeed, were the CAF to significantly raise the end-user cost of services, it could undermine our broader policy objectives to promote broadband and mobile deployment and adoption. As we explained with respect to the budget for the Schools and Libraries program, we “must balance [our] desire to ensure that schools and libraries have access to valuable communications opportunities with the need to ensure that consumer rates for communications services remain affordable. End users ultimately bear the cost of supporting universal service, through carrier charges.”¹⁹⁶

125. We therefore establish an annual funding target, set at the same level as our current estimate for the size of the high-cost program for FY 2011, of no more than \$4.5 billion. This budgetary target will remain in place until changed by a vote of the Commission. We believe that setting the budget at this year’s support levels will minimize disruption and provide the greatest certainty and predictability to all stakeholders. We do not find that amount to be excessive given the reforms we adopt today, which expand the high-cost program in important ways to promote broadband and mobility; facilitate intercarrier compensation reform; and preserve universal voice connectivity. At the same time, we do not believe a higher budget is warranted, given the substantial reforms we concurrently adopt to modernize our legacy funding mechanisms to address long-standing inefficiencies and wasteful spending. We conclude that it is appropriate, in the first instance, to evaluate the effect of these reforms before adjusting our budget.

126. The total \$4.5 billion budget will include CAF support resulting from intercarrier compensation reform, as well as new CAF funding for broadband and support for legacy programs during a transitional period.¹⁹⁷ As part of this budget, we will provide \$500 million per year in support through the Mobility Fund, of which up to \$100 million in funding will be reserved for Tribal lands. We will also provide at least \$100 million to subsidize service in the highest cost areas. The remaining amount – approximately \$4 billion – will be divided between areas served by price cap carriers and areas served by rate-of-return carriers, with no more than \$1.8 billion available annually for price cap territories after a transition period and up to \$2 billion available annually for rate-of-return territories, including, in both instances, intercarrier compensation recovery. We also institute a number of safeguards in this new

¹⁹⁶ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18762, 18781, par. 36 (2010).

¹⁹⁷ Throughout this document, “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 Settlements Act (85 Stat. 688), and Indian Allotments, *see* 47 C.F.R. § 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, Act July 9, 1921, 42 Stat. 108, *et seq.*, as amended. We adopt a definition of “Tribal lands” that includes Hawaiian Home Lands, as the term was used in the Notice. *USF/ICC Transformation NPRM*, 26 FCC at 4558, para. 3 n.4. We note that Hawaiian Home Lands were not included within the Tribal definition in the 2007 order that adopted an interim cap on support for competitive eligible telecommunications carriers, with an exemption of Tribal lands from that cap. *See Interim Cap Order*, 23 FCC Rcd at 8848-49, paras. 31-33. We agree with the State of Hawaii that Hawaiian Home Lands should be included in the definition of Tribal lands in the context of the comprehensive reforms we adopt today for the universal service program. Letter from Bruce A. Olcott, Counsel to the State of Hawaii, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Oct. 15, 2011).

framework to ensure that carriers that warrant additional funding have the opportunity to petition for such relief. Although we expect that in some years CAF may distribute less than the total budget, and in other years slightly more, we adopt mechanisms later in this Order to keep the contribution burden at no more than \$4.5 billion per year, plus administrative expenses, notwithstanding variations on the distribution side.¹⁹⁸ Meanwhile, we will closely monitor the CAF mechanisms for longer-term consistency with the overall budget goal, while ensuring the budget remains at appropriate levels to satisfy our statutory mandates.

C. Providing Support in Areas Served by Price Cap Carriers

127. More than 83 percent of the approximately 18 million Americans who lack access to fixed broadband live in price cap study areas.¹⁹⁹ As a first step to delivering robust, scalable broadband to these unserved areas, the first phase of the CAF will provide the opportunity for price cap carriers to begin extending broadband service to hundreds of thousands of unserved locations in their territories. In the second phase of the CAF, we will use a combination of a forward-looking broadband cost model and competitive bidding to efficiently support deployment of networks providing both voice and broadband service for a five-year period. Before 2018, we will determine how best to further expand the use of market-based mechanisms, such as competitive bidding, to fulfill our universal service mandate in the most efficient and fiscally responsible manner.

1. Immediate Steps To Begin Rationalizing Support Levels For Price Cap Carriers

128. In this section, we begin the process of transitioning high cost support for price cap carriers to the CAF by establishing CAF Phase I. In CAF Phase I, we freeze support under our existing high-cost support mechanisms—HCLS, SNA, safety valve, HCMS, LSS, IAS, and ICLS—for price cap carriers and their rate-of-return affiliates.²⁰⁰ We will now call this support “frozen high-cost support.” In addition, to spur the deployment of broadband in unserved areas, we allocate up to \$300 million in

¹⁹⁸ See *infra* section VII.H (Enforcing the Budget for Universal Service). The \$4.5 billion budget includes only disbursements of support and does not include administrative expenses, which will continue to be collected consistent with past practices. Typically, administrative expenses attributed to the high-cost program (including other overhead expenses from USAC) range from 1 to 2 percent of total program expenses. See USAC Quarterly Administrative Filings, available at <http://www.usac.org/about/governance/fcc-filings/fcc-filings-archive.aspx> (for 1998-First Quarter 2012). Similarly, the \$4.5 billion budget does not include prior period adjustments associated with support attributable to years prior to 2012. For example, USAC will be performing true-ups associated with 2010 ICLS in 2012. See 47 C.F.R. 54.903(b)(3). To the extent that those true-ups result in increased support for 2010, those disbursements would not apply to the budget discussed here.

¹⁹⁹ See National Broadband Map, available at <http://www.broadbandmap.gov>. Based on data as of December 2010, there were an estimated 18.8 million Americans who lacked access to terrestrial fixed broadband services with a maximum advertised download speed of at least 3 Mbps and a maximum advertised upload speed of at least 768 kbps. *Id.* For these purposes, terrestrial fixed broadband technologies include xDSL, other copper, cable modem, fiber to the end user, fixed wireless, whether licensed or unlicensed, and electric power line. To obtain the numbers of unserved people in price cap regions, staff used data from TeleAtlas North America representing boundaries of wire centers. These wire centers contain study area codes, which staff associated with USAC codes classifying those areas as either price cap or rate of return. Staff linked this set of data to the data underlying the National Broadband Map, which can be used to report broadband availability by study area. See <http://www.broadbandmap.gov/nbm/summarize>. The resulting link shows that, of the 18.8 million people without service, 83 percent are in price cap areas and 17 percent are in rate of return areas, as defined by USAC.

²⁰⁰ In doing so, we eliminate altogether the current HCMS and IAS mechanisms for price cap companies. For further discussion of changes to HCLS, SNA, LSS and ICLS, applicable to rate-of-return carriers, see *infra* Section VII.D.

additional support to such carriers, distributed through the mechanism described below;²⁰¹ we call this component of CAF Phase I support “incremental support.”

129. In establishing CAF Phase I, we set the stage for a full transition to a system where support in price cap territories is determined based on competitive bidding or the forward-looking costs of a modern multi-purpose network. The reforms we adopt today represent an important step away from distinctions based on whether a company is classified as a rural carrier or a non-rural carrier—distinctions that, for the purposes of calculating universal service support, are artifacts of our rules rather than required by the Act. Instead, we establish two pathways for how support is determined—one for companies whose interstate rates are regulated under price caps, and the other for those whose interstate rates are regulated under rate-of-return. We make conforming changes to our Part 54 rules as necessary to reflect that framework.²⁰² Consistent with our goal of providing support to price cap companies on a forward-looking cost basis, rather than based on embedded costs, we will, for the purposes of CAF Phase I, treat as price cap carriers the rate-of-return operating companies that are affiliated with holding companies for which the majority of access lines are regulated under price caps. That is, we will freeze their universal service support and consider them as price cap areas for the purposes of our new CAF Phase I distribution mechanism.²⁰³

130. *Background.* Historically, the Commission’s intrastate universal service programs have distinguished between companies classified as “rural” and “non-rural” carriers, with the former eligible for high-cost loop support (HCLS) and the latter eligible for high-cost model support (HCMS).²⁰⁴ The term “rural telephone company,” however, as defined by the Act, does not simply mean a carrier that serves rural areas.²⁰⁵ Rather, a rural telephone company, generally speaking, is a relatively small telephone company that *only* serves rural areas. Many “non-rural” carriers serve both urban and rural areas. In fact, price cap companies, which largely are classified as non-rural companies, today serve more than 83 percent of the people that lack broadband, many of whom live in areas that are just as low-density and remote as areas served by rural companies.²⁰⁶ Today, some price cap carriers meet the Act’s

²⁰¹ As detailed more fully above, we set the total CAF budget for areas served by price cap carriers at \$1.8 billion out of the total \$4.5 billion annual budget. *See supra* para. 126. The \$300 million in additional support we allocate to price cap carriers today begins the process of closing the rural-rural divide by directing additional funds to areas served by price cap carriers in a manner consistent with our overall budget goals and the more limited purpose of Phase I.

²⁰² We recognize that the statute also makes a distinction in how it directs the states and this Commission to evaluate requests for designation by additional carriers in areas served by rural companies. In particular, section 214(e)(6) specifies that the Commission “may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph Before designating an additional telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.” Nothing in this Order is intended to undermine those statutory directives.

²⁰³ This action does not require mandatory price cap conversion for those operating companies, but rather establishes the principle that such companies in the future will receive support based on a forward looking cost model rather than their embedded costs.

²⁰⁴ *See* 47 U.S.C. § 153(37) (definition of rural telephone company); 47 C.F.R. § 51.5 (adopting the Act’s definition of “rural telephone company” for universal service purposes).

²⁰⁵ *See* 47 U.S.C. § 153(37).

²⁰⁶ *See supra* note 199. The distinction in how universal service support is calculated for rural and non-rural carriers is a vestige of how the Commission initially implemented section 254 in the wake of the 1996 Act. At that time, the Commission concluded that it would use a forward-looking cost model to calculate the cost of providing universal service in high-cost areas, but it chose to implement such a mechanism initially only for companies classified as (continued...)

definition of a rural telephone company and are eligible for HCLS, while others do not and are eligible for HCMS. In addition, at least some price cap carriers currently receive support from each of the other high-cost support mechanisms: LSS, IAS, and ICLS.²⁰⁷

131. In response to the *USF/ICC Transformation NPRM*, several price cap carriers proposed, as a transitional measure, to provide support to price cap carriers based on a simplified forward-looking estimate of the costs of serving each wire center, without averaging such costs on a statewide basis as the current non-rural support mechanism does.²⁰⁸ We sought further comment on this proposal in the *August 3 Public Notice*.²⁰⁹ We also specifically requested comment on the amount of support that should be distributed under such a mechanism and the public interest obligations that should attach to recipients of such support.²¹⁰

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“non-rural” under the 1996 Act, which were the Bell operating companies and other large incumbent telephone companies. It allowed the more than 1,000 small carriers operating in rural areas to continue to receive support temporarily based on their embedded costs under mechanisms that pre-dated the 1996 Act, with some modifications. Then, in 2001, the Commission adopted a plan to maintain the existing high-cost loop support program, with some modifications, for those rural carriers. See *Rural Task Force Order*, 16 FCC Rcd 11244; see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, WC Docket No. 05-337, Order, 21 FCC Rcd 5514, 5515, para. 2 (2006) (extending rules, which originally had been designed to last for five years, rules until such time that the Commission “adopts new high-cost support rules for rural carriers”). Because some price cap carriers meet the definition of a rural carrier under the 1996 Act, however, those companies still receive support today based on their embedded costs in some study areas.

²⁰⁷ LSS is intended to support the cost of switching equipment; it provides support for study areas with 50,000 or fewer access lines. See 47 C.F.R. §§ 54.301, 36.125(f)(j); see also *infra* para. 253. IAS was created as part of the May 2000 *CALLS Order*; it was designed to offset certain reductions in price cap carriers’ interstate access charges made in the same order. See *CALLS Order*, 15 FCC Rcd at 12974-75, para. 30; see also *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4633-34, paras. 229-31. Only those carriers that were price cap carriers at the time of the *CALLS Order* receive IAS, however, so the Commission has permitted those carriers that have transitioned from rate-of-return regulation to price cap regulation subsequent to that order to continue to receive ICLS (which is ordinarily available only to rate-of-return carriers) on a frozen basis—such support is known as frozen ICLS. See, e.g., *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, 23 FCC Rcd 5294, 5302-04, paras. 19-22 (2008).

²⁰⁸ See *Windstream USF/ICC Transformation NPRM Comments* at 9; Letter from Jennie B. Chandra, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed June 30, 2011); Letter from Michael D. Saperstein, Jr., Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed July 26, 2011).

²⁰⁹ See *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Public Notice, DA 11-1348, at 10 (Wireline Comp. Bur. rel. Aug. 3, 2011) (*August 3 Public Notice*). NASUCA generally supported the proposal to combine disparate support mechanisms, while noting that it cannot evaluate the proposed targeting of support without knowing which carriers will receive more and which less. See NASUCA *August 3 PN Comments* at 97-98. We do not think, however, that our decision on whether this interim measure appropriately advances our goals depends on a specific analysis of how much money flows to particular price cap carriers. The Rural Broadband Alliance objects to any use of the existing cost model to determine support levels, arguing that the only currently appropriate means to provide support is on a rate-of-return basis. Rural Broadband Alliance *August 3 PN Comments*, Attach. at 23-24. We find the Rural Broadband Alliance’s undeveloped and unsupported objections to be without merit.

²¹⁰ *August 3 Public Notice* at 10. No commenter offered a proposal regarding the specific amount of support that should be provided through such a mechanism nor did any specify the public interest obligations that should be associated with such support.

132. *Discussion.* Below, we adopt a framework for the Connect America Fund that will provide support in price cap territories based on a combination of competitive bidding and a forward-looking cost model. Developing and implementing such a cost model with appropriate opportunities for public inspection and comment and finalizing the rules for competitive bidding are expected to take a year or more. In order to immediately start to accelerate broadband deployment to unserved areas across America, we modify our rules to provide support to price cap carriers under a transitional distribution mechanism, CAF Phase I.

133. Specifically, effective January 1, 2012, we freeze all support under our existing high-cost support mechanisms, HCLS,²¹¹ forward-looking model support (HCMS), safety valve support, LSS, IAS, and ICLS, on a study area basis for price cap carriers and their rate-of-return affiliates. On an interim basis, we will provide frozen high-cost support to such carriers equal to the amount of support each carrier received in 2011 in a given study area.²¹² Frozen high-cost support will be reduced to the extent that a carrier's rates for local voice service fall below an urban local rate floor that we adopt below to limit universal service support where there are artificially low rates.²¹³ In addition to frozen high-cost support, we will distribute up to \$300 million in incremental support to price cap carriers and their rate of return affiliates using a simplified forward-looking cost estimate, based on our existing cost model.

134. This simplified, interim approach is based on a proposal in the record from several carriers.²¹⁴ Support will be determined as follows: First, a forward-looking cost estimate will be generated for each wire center served by a price cap carrier. Our existing forward-looking cost model, designed to estimate the costs of providing voice service, generates estimates only for wire centers served by non-rural carriers; it cannot be applied to areas served by rural carriers without obtaining additional data from those carriers. The simplest, quickest, and most efficient means to provide support solely based on forward-looking costs for both rural and non-rural price cap carriers is to extend the existing cost model by using an equation designed to reasonably predict the output of the existing model for wire centers it already applies to, and apply it to data that are readily available for wire centers in all areas served by price cap carriers and their affiliates, including areas the current model does not apply to.²¹⁵ Three price cap carriers submitted an estimated cost equation that was derived through a regression analysis of support provided under the existing high-cost model, and they submitted, under protective order, the data necessary to replicate their analysis.²¹⁶ No commenter objected to the proponents' cost-

²¹¹ HCLS includes SNA.

²¹² Frozen high-cost support amounts will be calculated by USAC, and will be equal to the amount of support disbursed in 2011, without regard to prior period adjustments related to years other than 2011 and as determined by USAC on January 31, 2012. USAC shall publish each carrier's frozen high-cost support amount 2011 support, as calculated, on its website, no later than February 15, 2012. As a consequence of this action, rate-of-return operating companies that will be treated as price cap areas will no longer be required to perform cost studies for purposes of calculating HCLS or LSS, as their support will be frozen on a study area basis as of year-end 2011.

²¹³ See *infra* Section VII.D.5. We note that price cap carriers' rates in some areas are currently well below the urban local rate average. See *infra* note 380.

²¹⁴ See Letter from Cathy Carpino, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed Oct. 21, 2011); see also *infra* note 216.

²¹⁵ We note that the State Members of the Joint Board recommended as part of their comprehensive plan that the Commission continue to use its existing cost model, with some modifications. State Members *USF/ICC Transformation NPRM* Comments at 37. They also suggested that "statistical cost models are a potentially promising substitute for the engineering-based cost models currently in use." *Id.* at 38.

²¹⁶ See Letter from Jennie B. Chandra, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed June 30, 2011) (detailing the regression analysis and the proposed cost-estimation equation); Letter from Jennie B. Chandra, Windstream Communications, Inc., to Marlene H. Dortch, (continued...)

estimation function.²¹⁷ Following our own assessment of the regression analysis and the proposed cost-estimation function, we conclude that the proposed function will serve our purpose well to estimate costs on an interim basis in wire centers now served by rural price cap carriers, and we adopt it. That cost-estimation function is defined as:

$$\begin{aligned} \ln(\text{Total cost}) &= 7.08 + 0.02 * \ln(\text{distance to nearest central office in feet} + 1) \\ &- 0.15 * \ln(\text{number of households} + \text{businesses in the wire center} + 1) \\ &\quad + 0.22 * \ln(\text{total road feed in wire center} + 1) \\ &\quad + 0.06 * (\ln(\text{number of households} + \text{businesses in wire center} + 1))^2 \\ &\quad - 0.01 * (\ln(\text{number of businesses in wire center} + 1))^2 \\ &\quad - 0.07 * \ln((\text{number of households} + \text{businesses})/\text{square miles} + 1) \end{aligned}$$

135. The output of the cost-estimation function will be converted into dollars and then further converted into a per-location cost in the wire center. The resulting per-location cost for each wire center will be compared to a funding threshold, which, as explained below, will be determined by our budget constraint. Support will be calculated based on the wire centers where the cost for the wire center exceeds the funding threshold. Specifically, the amount by which the per-location cost exceeds the funding threshold will be multiplied by the total number of household and business locations in the wire center.

136. The funding threshold will be set so that, using the distribution process described above, all \$300 million of incremental support potentially available under the mechanism would be allocated. We delegate to the Wireline Competition Bureau the task of performing the calculations necessary to

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Secretary, FCC, CC Docket No. 96-45 (filed July 20, 2011) (providing data necessary to evaluate the regression analysis). The r^2 value for the regression was 0.91. *See* Letter from Jennie B. Chandra, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al., Attach. at 8 (filed June 30, 2011).

²¹⁷ One commenter expressed some general concerns with the regression equation, but did not argue that using it would be inappropriate. *See* Letter from Peter Bluhm to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed Oct. 18, 2011). In particular, the commenter noted that two variables in the regression equation, total locations (business locations plus households) and the separate business locations variable, operate in ways that seem unintuitive, because as locations increase, predicted costs decrease. While we acknowledge this concern, we note that this is not a model that attempts to predict costs by focusing on variables that cause those costs; instead the model seeks only to predict costs. Variables capturing locations explicitly might also capture density implicitly; to the extent they do, as locations increase costs would tend to decrease. While cost equations could be created that separated these effects, the goal of the cost prediction equation is to predict the output of the current cost model with as simple a model as possible.

We find that the relevant question for our purposes is whether the equation reliably produces accurate results, which, as discussed above, it does. In the absence of criticism of its results, or a proposal for an equation that is superior (*e.g.*, one that produces more accurate results without unduly increasing complexity), we see no reason to fault it on this basis. This commenter also expressed concern that a log-linear equation regression creates a risk of inaccuracy for very low values and from synergistic interactions among terms. Such risks, however, appear to be more theoretical than actual in this case. That is, the commenter does not argue that using a log-linear equation has actually caused these effects, and we have not seen evidence to suggest that any such effects have rendered the regression unreliable as a general matter. Finally, this commenter argues that the Commission should give the public access to the underlying data for it to evaluate the regression to see if it can be improved. As noted above, *see supra* note 216, carriers submitted the necessary data under protective order, and the data were made available for review in accordance with the terms of that order.

determine the support amounts and selecting any necessary data sources for that task.²¹⁸ The Bureau will announce incremental support amounts via Public Notice; we anticipate the Bureau will complete its work and announce such support amounts on or before March 31, 2012. USAC will disburse CAF Phase I funds on its customary schedule.²¹⁹

137. CAF Phase I incremental support is designed to provide an immediate boost to broadband deployment in areas that are unserved by any broadband provider. Carriers have been steadily expanding their broadband footprints, funded through a combination of support provided under current mechanisms and other sources, and we expect such deployment will continue. We intend for CAF Phase I to enable additional deployment beyond what carriers would otherwise undertake, absent this reform. Thus, consistent with our other reforms, we will require carriers that accept incremental support under CAF Phase I to meet concrete broadband deployment obligations.²²⁰

138. Specifically, the Bureau will calculate, on a holding company basis, how much CAF Phase I incremental support price cap carriers are eligible for. Carriers may elect to receive all, none, or a portion of the incremental support for which they are eligible. A carrier accepting incremental support will be required to deploy broadband to a number of locations equal to the amount it accepts divided by \$775. For example, a carrier projected to receive \$7,750,000 will be permitted to accept up to that amount of incremental support. If it accepts the full amount, it will be required to deploy broadband to at least 10,000 unserved locations; if it accepts \$3,875,000, it will be required to deploy broadband to at least 5,000 unserved locations. To the extent incremental support is declined, it may be used in other ways to advance our broadband objectives pursuant to our statutory authority.²²¹

²¹⁸ In the event the Wireline Competition Bureau concludes that appropriate data are not readily available for these purposes for certain areas, such as some or all U.S. territories served by price cap carriers, the Bureau may exclude such areas from the analysis for this interim mechanism, which would result in the carriers in such areas continuing to receive frozen support.

²¹⁹ In 2012, USAC will disburse frozen high-cost support over the course of the entire year. Because incremental support will not be distributed until carriers accept such funding, in 2012, USAC will be required to disburse 2012 incremental support over the course of less than a full calendar year.

²²⁰ We acknowledge that our existing cost model, on which our distribution mechanism for CAF Phase I incremental funding is based, calculates the cost of providing voice service rather than broadband service, although we are requiring carriers to meet broadband deployment obligations if they accept CAF Phase I incremental funding. We find that using estimates of the cost of deploying voice service, even though we impose broadband deployment obligations, is reasonable in the context of this interim support mechanism. First, this interim mechanism is designed to identify the most expensive wire centers, and the same characteristics that make it expensive to provide voice service to a wire center (e.g., lack of density) make it expensive to provide broadband service to that wire center as well. Using a cost estimation function based on our existing model will help to identify *which* wire centers are likely to be the most expensive to provide broadband service to, even if it does not reliably identify precisely *how expensive* those wire centers will be to serve. Second, and related, our funding threshold is determined by our budget limit of \$300 million for CAF Phase I incremental support rather than by a calculation of what amount we expect a carrier to need to serve that area. That is, this interim mechanism is not designed to “fully” fund any particular wire center—it is not designed to fund the difference between (i) the deployment cost associated with the most expensive wire center in which we could reasonably expect a carrier to deploy broadband without any support at all and (ii) the actual estimated deployment cost for a wire center. Instead, the interim mechanism is designed to provide support to carriers that serve areas where we expect that providing broadband service will require universal service support.

²²¹ For instance, the funds could be held as part of accumulated reserve funds that would help minimize budget fluctuations in the event the Commission grants some petitions for waiver. Also, a number of parties have urged us to use high-cost funding to advance adoption programs. We note that the Commission has an open proceeding to reform the low income assistance programs, which specifically contemplates broadband pilots in the Lifeline and (continued...)

139. Our objective is to articulate a measurable, enforceable obligation to extend service to unserved locations during CAF Phase I. For this interim program, we are not attempting to identify the precise cost of deploying broadband to any particular location. Instead, we are trying to identify an appropriate standard to spur immediate broadband deployment to as many unserved locations as possible, given our budget constraint. In this context, we find that a one-time support payment of \$775 per unserved location for the purpose of calculating broadband deployment obligations for companies that elect to receive additional support is appropriate.

140. To develop that performance obligation, we considered broadband deployment projects undertaken by a mid-sized price cap carrier under the BIP program.²²² The average per-location cost of deployment for those projects—including both the public contribution and the company's own capital contribution—was \$557,²²³ significantly lower than the \$775 per-location amount—which does not include any company contribution—we adopt today. We note that our analysis indicated that the per-location cost for deployments funded through the BIP program varied considerably. In addition, we observe that the BIP program's requirements differ from the requirements we adopt here. Specifically, carriers could obtain BIP funding for improving service to underserved locations as well as deploying to unserved locations, while carriers can meet their CAF Phase I deployment obligations only by deploying broadband to unserved locations.²²⁴ For these reasons, while we find this average per-location cost to be relevant, we decline to set our requirement at a per-location cost of \$557.

141. In addition, we considered data from the analysis done as part of the National Broadband Plan. The cost model used in developing the National Broadband Plan estimated that the median cost of upgrading existing unserved homes is approximately \$650 to \$750, with approximately 3.5 million locations whose upgrade cost is below that figure.²²⁵

142. Commission staff also conducted an analysis using the ABC plan cost model, which

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LinkUp programs. To the extent that savings were available from CAF programs, the Commission could reallocate that funding for broadband adoption programs, consistent with our statutory authority, while still remaining within our budget target. *Cf.* Letter from Blair Levin to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed Oct. 19, 2011) (urging the Commission to focus on promoting adoption); Letter from Parul P. Desai, Consumers Union, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed Oct. 14, 2011) (same). Alternatively, savings could be used to reduce the contribution burden.

²²² Only one price cap carrier received BIP grant funding for last-mile broadband deployment; we considered all of that carrier's projects. Information about BIP projects is *available at* http://www.rurdev.usda.gov/supportdocuments/RBBreport_V5ForWeb.pdf.

²²³ The per-location cost for those carrier's projects ranged from a low of \$286 to a high of \$3,000. Assuming all locations in a project had a per-location cost equal to the average per-location cost in the project, the median location's cost was \$377, while the 25th percentile cost was \$286 and the 75th percentile cost was \$813.

²²⁴ We also recognize that the cost of future deployment for a carrier may be higher than the average cost of deployments that the carrier already completed because the carrier may have prioritized deployment to areas that were least costly to reach.

²²⁵ *See* OBI, Broadband Availability Gap. The OBI model estimated that the initial capex to serve all but the most expensive 250,000 homes terrestrially is \$9.2 billion (*see id.*, Exhibit 4-AP); this investment serves approximately 7 million locations, making the average cost per location approximately \$1,300. The average cost is much higher than the median cost, however, even excluding the most expensive 1 percent of locations (*see, e.g., id.*, Exhibit 1-C). According to the OBI model, the calculated median cost is roughly 60-70 percent of the average, or approximately \$650 to \$750.

calculates the cost of deploying broadband to unserved locations on a census block basis.²²⁶ Commission staff estimated that the median cost of a brownfield deployment of broadband to low-cost unserved census blocks is \$765 per location (*i.e.*, there are 1.75 million unserved, low-cost locations in areas served by price cap carriers with costs below \$765); the cost of deploying broadband to the census block at the 25th percentile of the cost distribution is approximately \$530 per location (under this analysis, there are 875,000 such locations whose cost is below \$530).²²⁷ Although, as discussed below, we do not adopt the proposed cost model to calculate support amounts for CAF Phase II,²²⁸ these estimates provide additional data points to consider.

143. In addition, we note that several carriers placed estimates of the per-location cost of extending broadband to unserved locations in their respective territories into the record.²²⁹ While several carriers claim that the cost to serve unserved locations is higher than the figure we adopt today, those estimates did not provide supporting data sufficient to fully evaluate them.

144. Taking into account all of these factors, including the cost estimates developed in the course of BIP applications as well as the flexibility we provide to carriers accepting such funding to determine where to deploy and our expectation that carriers will supplement incremental support with their own investment, we conclude that the \$775 per unserved location figure represents a reasonable

²²⁶ See Letter from Mike Lieberman, AT&T, Michael D. Saperstein, Jr., Frontier, Jeffrey S. Lanning, CenturyLink, Maggie McCready, Verizon, Michael T. Skrivan, Fairpoint Communications, Frank Schueneman, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, et al. (filed Sept. 28, 2011).

²²⁷ Because CAF Phase I is structured to provide one-time support, rather than ongoing support, Commission staff focused on the modeled costs in the ABC plan cost model for areas where the cost to provide service is lower: areas unserved by both cable and telco broadband, with total costs less than \$80 per month. As proposed by the proponents of the ABC plan, in order to meet their proposed budget target, these areas would not be eligible for ongoing support.

The ABC model calculates the total cost to serve, including initial capex as well as ongoing capex and opex.

Because of the focus on lower-cost areas, staff assumed that end-user revenue would meet or exceed ongoing costs, and therefore focused only on a subsidy for the initial investment. The ABC model calculates costs for a greenfield 12,000-foot-loop DSL plant. Since the focus here is on upgrading existing lines to broadband, staff had to estimate the cost associated only with that upgrade. To do so, staff excluded the capital costs associated with the last 12,000 feet of copper, which staff assumed already exist; these costs are captured in the ABC filing, in the file named CBG_Detail, as Node3Inv_Res, Node4Inv_Res, Node3Inv_Bus, and Node4Inv_Bus. The cost of upgrading is the total investment (TotalInv_Res plus TotalInv_Bus) less the capital costs for the last 12,000 feet of copper. That total cost is then divided by the total number of locations (TotalActiveSubscribers_Res plus TotalActiveSubscribers_Bus, divided by 0.9 to get locations instead of subscribers, given that the CQBAT model assumed that 90 percent of locations would subscribe) to get the initial investment per location in each census block group.

Staff then focused only on those parts of low-cost census block groups that are unserved by cable and by telco broadband in price cap areas. Census block groups were arranged from lowest to highest cost (for the cost of the brownfield costs described above), and the 25th, 50th (median), and 75th percentile by locations were determined to be \$529, \$764, and \$1,057 respectively.

²²⁸ See *infra* paras. 184-185.

²²⁹ See Letter from Michael D. Saperstein, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, et al. (filed Oct. 20, 2011); Letter from Jeffrey S. Lanning, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed Oct. 20, 2011); see also Letter from Russell M. Blau, counsel for Consolidated Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al., Attach. at 2 (filed Oct. 19, 2011) (providing an estimate of the per-line cost to provide 6 Mbps downstream and 1.5 Mbps upstream service to all 7,500 customers in its service area to whom Consolidated does not currently offer broadband service).

estimate of an interim performance obligation for this one-time support. We also emphasize that CAF Phase I incremental support is optional—carriers that cannot meet our broadband deployment requirement may decline to accept incremental support or may choose to accept only a portion of the amount for which they are eligible.

145. We find that, in this interim support mechanism, setting our broadband deployment obligations based on the costs of deploying to lower-cost wire centers that would not otherwise be served, even though we base support on the predicted costs of the highest-cost wire centers, is reasonable because we are trying to expand voice and broadband availability as much and as quickly as possible. We distribute support based on the costs of the highest-cost wire centers because the ultimate goal of our reforms is to ensure that *all* areas get broadband-capable networks, whether through the operation of the market or through support from USF. In this interim mechanism, we distribute funding to those carriers that provide service in the highest-cost areas because these are the areas where we can be most confident, based on available information, that USF support will be necessary in order to realize timely deployment. Thus, we can be confident we are allocating support to carriers that will need it to deploy broadband in some portion of their service territory. At the same time, to promote the most rapid expansion of broadband to as many households as possible, we wish to encourage carriers to use the support in lower-cost areas where there is no private sector business case for deployment of broadband, to the extent carriers also serve such areas. Although at this time we lack data sufficient to identify these areas, we can encourage this use of funding by setting the deployment requirement based on our overall estimate of upgrade costs in lower cost unserved areas, while providing carriers flexibility to allocate funding to these areas, rather than the highest cost wire centers identified by the cost-estimation equation. Accordingly, while we allocate CAF Phase I support on the basis of carriers' service to the highest-cost areas, we allow carriers to use that support in lower-cost areas, and we size their deployment obligations accordingly. We note that, historically, carriers have always been able to use support in wire centers other than the ones for which support is paid, and nothing in the Act constrains that flexibility such that it applies only within state boundaries. Accordingly, in the context of this interim mechanism, we will permit carriers to continue to have such flexibility.

146. Within 90 days of being informed of the amount of incremental support it is eligible to receive, each carrier must provide notice to the Commission, the Administrator, the relevant state or territorial commission, and any affected Tribal government, identifying the amount of support it wishes to accept and the areas by wire center and census block in which the carrier intends to deploy broadband to meet its obligation, or stating that the carrier declines to accept incremental support for that year.²³⁰ Carriers accepting incremental support must make the following certifications. First, the carrier must certify that deployment funded through CAF Phase I incremental support will occur in areas shown on the most current version of the National Broadband Map as unserved by fixed broadband with a minimum speed of 768 kbps downstream and 200 kbps upstream, and that, to the best of the carrier's knowledge, are, in fact, unserved by fixed broadband at those speeds.²³¹ Second, the carrier must certify that the

²³⁰ Because carriers will accept or decline incremental support on a holding company basis, carriers should notify USAC regarding which ETC operating company or companies USAC should disburse funds to.

²³¹ The National Broadband Map divides broadband transmission technologies into 12 types: asymmetric xDSL, symmetric xDSL, other copper wireline, cable modem - DOCSIS 3.0, cable modem - other, satellite, terrestrial fixed wireless - unlicensed, terrestrial fixed wireless - licensed, terrestrial mobile wireless - licensed, electric power line, and all other. The term "unserved by fixed broadband" for the purpose of CAF Phase I includes areas not identified by the National Broadband Map as served by at least one of the following technologies: asymmetric xDSL, symmetric xDSL; other copper wireline; cable modem - DOCSIS 3.0; cable modem - other; electric power line; terrestrial fixed wireless - unlicensed; and terrestrial fixed wireless - license. For the purposes of CAF Phase I we find it appropriate to distinguish fixed from mobile broadband service. *See supra note* 134. We acknowledge that some have claimed that the National Broadband Map is not completely accurate. Nevertheless, we find that using it (continued...)

carrier's current capital improvement plan did not already include plans to complete broadband deployment to that area within the next three years,²³² and that CAF Phase I incremental support will not be used to satisfy any merger commitment or similar regulatory obligation.²³³

147. Carriers must complete deployment to no fewer than two-thirds of the required number of locations within two years, and all required locations within three years, after filing their notices of acceptance. Carriers must provide a certification to that effect to the Commission, the Administrator, the relevant state or territorial commission, and any affected Tribal government, as part of their annual certifications pursuant to new section 54.313 of our rules, following both the two-thirds and completion milestones. To fulfill their deployment obligation, carriers must offer broadband service of at least 4 Mbps downstream and 1 Mbps upstream,²³⁴ with latency sufficiently low to enable the use of real-time communications, including VoIP, and with usage limits, if any, that are reasonably comparable to those for comparable services in urban areas.²³⁵ Carriers failing to meet a deployment milestone will be required to return the incremental support distributed in connection with that deployment obligation and will be potentially subject to other penalties, including additional forfeitures, as the Commission deems appropriate. If a carrier fails to meet the two-thirds deployment milestone within two years and returns
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in this way, along with our requirement that carriers certify that the areas to which they intend to deploy are unserved to the best of each carrier's knowledge, is a reasonable and efficient means to identify areas that are, in fact, unserved, even if there might be other areas that are also unserved.

²³² If a carrier's pre-existing capital improvement plan provided for build out to an area within three years on the assumption that the carrier would get support under our existing high-cost mechanisms, the carrier could not make this certification for that area. We anticipate that carriers will adjust their capital improvement plans in light of our reforms, which will provide additional incremental funding to many carriers to reach areas where they otherwise did not intend to deploy broadband. A carrier that intends to use incremental CAF Phase I funding to deploy broadband to such an area could make the required certification for that area.

²³³ Other similar obligations include, but are not limited to, BIP deployment obligations or state-funded broadband deployment obligations.

We note that Frontier Communications has already committed, pursuant to the transfer of Verizon properties to Frontier, to the following: Within areas transferred from Verizon to Frontier, Frontier will offer broadband service delivering at least 4 Mbps downstream to at least 70 percent of housing units by the end of 2012, to at least 75 percent of housing units by the end of 2013, to at least 80 percent of housing units by the end of 2014, and to at least 85 percent of housing units by the end of 2015. Frontier will offer at least 1 Mbps upstream to those housing units built after the transaction closed. Frontier will offer these services to both residential and small business users. *In the Matter of Applications Filed by Frontier Communications Corp. & Verizon Communications Inc. for Assignment or Transfer of Control*, 25 FCC Rcd 5972, 6001 (2010).

Similarly, CenturyLink, pursuant to its merger with Qwest, committed to, among other things, the following: Within areas transferred from Qwest to CenturyLink, CenturyLink will offer broadband service delivering at least 5 Mbps downstream to at least 62 percent of living units within three years of the merger closing date, to at least 68 percent of living units within five years of the merger closing date, and to at least 78.8 percent of living units within seven years of the merger closing date. *In the Matter of Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, WC Docket No. 10-110, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4219 (2011).

These obligations are independent of obligations Frontier or CenturyLink would incur in return for receiving CAF Phase I support, and that such support cannot be used to satisfy Frontier's or CenturyLink's pre-existing obligations.

²³⁴ Upon a showing that the specified support amount is inadequate to enable build out of broadband with actual upstream speeds of at least 1 Mbps to the required number of locations, a carrier may request a waiver.

²³⁵ See *supra* Section VI.B.1.

the incremental support provided, and then meets its full deployment obligation associated with that support by the third year, it will be eligible to have support it returned restored to it.

148. Our expectation is that CAF Phase II will begin on January 1, 2013. However, absent further Commission action, if CAF Phase II has not been implemented to go into effect by that date, CAF Phase I will continue to provide support as follows. Annually, no later than December 15, the Bureau will announce via Public Notice CAF Phase I incremental support amounts for the next term of incremental support, indicating whether support will be allocated for the full year or for a shorter term. We delegate to the Wireline Competition Bureau the authority to adjust the term length of incremental support amounts, and to pro-rate obligations as appropriate, to the extent Phase II CAF is anticipated to be implemented on a date after the beginning of the calendar year. The amount of incremental support to be distributed during a term will be calculated in the manner described above, based on allocating \$300 million through the incremental support mechanism, but that amount will be reduced by a factor equal to the portion of a year that the term will last.²³⁶ Within 90 days of the beginning of each term of support, carriers must provide notice to the Commission, the relevant state commission, and any affected Tribal government, identifying the amount of support it wishes to accept and the areas by wire center and census block in which the carrier intends to deploy broadband or stating that the carrier declines to accept incremental support for that term, with the same certification requirements described above.²³⁷

149. CAF Phase I will also begin the process of transitioning all federal high-cost support to price cap carriers to supporting modern communications networks capable of supporting voice and broadband in areas without an unsubsidized competitor. Effective January 1, 2012, we require carriers to use their frozen high-cost support in a manner consistent with achieving universal availability of voice and broadband. If CAF Phase II has not been implemented to go into effect on or before January 1, 2013, we will phase in a requirement that carriers use such support for building and operating broadband-capable networks used to offer their own retail service in areas substantially unserved by an unsubsidized competitor.²³⁸

²³⁶ For example, if the Bureau sets a term as six months, only \$150 million will be allocated. Support amounts would be calculated by first calculating the amount of support each carrier would be entitled to if the full \$300 million were to be allocated, and then reducing the amount for which each carrier is eligible proportionately. While this approach should ensure that total funding to price cap territories in the year in which CAF Phase II is implemented remains below the overall annual budget for price cap territories of \$1.8 billion, we direct the Bureau to ensure the overall annual budget of \$1.8 billion for price cap territories is not exceeded.

²³⁷ For purposes of this Order, a carrier accepting incremental support in terms after 2012 will be required to deploy broadband to a number of locations equal to the amount of incremental support it accepts divided by \$775, similar to the obligation for accepting support in 2012.

²³⁸ Support should be used to further the goal of universal voice and broadband, and not to subsidize competition in areas where an unsubsidized competitor is providing service. However, we recognize that certain expenditures, such as investments in a digital subscriber line access multiplexer (DSLAM) and/or middle mile infrastructure, that benefit a geographic area unserved by an unsubsidized competitor may also benefit some locations where an unsubsidized competitor provides service. We do not intend to preclude such investments. While we expect CAF recipients to use support in areas without an unsubsidized competitor, to the extent support is used to serve any geographic area that is partially served by an unsubsidized competitor, the recipient must certify that, with respect to the frozen high-cost support dollars subject to this obligation, at least 50 percent of the locations served are in census blocks shown as unserved by an unsubsidized competitor, as shown on the National Broadband Map. For example, if a given middle mile feeder for which frozen high-cost support dollars are used serves 100 locations, and only 40 of those locations are in census blocks shown as unserved by an unsubsidized competitor on the National Broadband Map, the recipient would not be in compliance with this requirement. For purposes of determining whether this requirement is met, carriers must be prepared to provide asset records demonstrating the existence of facilities, such (continued...)

150. Specifically, in 2013, all carriers receiving frozen high-cost support must use at least one-third of that support to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor.²³⁹ For 2014, at least two-thirds of the frozen high-cost support must be used in such fashion, and for 2015 and subsequent years, all of the frozen high-cost support must be spent in such fashion. Carriers will be required to certify that they have spent frozen high-cost support consistent with these requirements in their annual filings pursuant to new section 54.313 of our rules.

151. These interim reforms to our support mechanisms for price cap carriers are an important step in the transition to full implementation of the Connect America Fund. While we intend to complete implementation of the CAF rapidly, we find that these interim reforms offer immediate improvements over our existing support mechanisms. First, existing support for price cap carriers will be frozen and no longer calculated based on embedded costs. Rather, we begin the process of transitioning all high-cost support to forward-looking costs and market-based mechanisms, which will improve incentives for carriers to invest efficiently. Second, these reforms begin the process of eliminating the distinction, for the purposes of calculating high-cost support, between price cap carriers that are classified as rural and those that are classified as non-rural, a classification that has no direct or necessary relation to the cost of providing voice and broadband services. In this way, our support mechanisms will be better aligned with the text of section 254, which directs us to focus on the needs of consumers in "rural, insular, and high cost areas"²⁴⁰ but makes no reference to the classification of the *company* receiving support.²⁴¹ In addition, we note that the reforms we adopt today, which include providing immediate support to spur broadband deployment, can be implemented quickly, without the need to overhaul an admittedly dated cost model that does not reflect modern broadband network architecture.²⁴² Thus, although the simplified interim mechanism is imperfect in some respects, it will allow us to begin providing additional support to price cap carriers on a more efficient basis, while spurring immediate and material broadband deployment pending implementation of CAF competitive bidding- and model-based support for price cap areas.²⁴³

152. *No Effect on Interstate Rates.* Historically, IAS was intended to replace allowable common line revenues that otherwise are not recovered through SLCs, while some carriers received frozen ICLS because, due to the timing of their conversion to price cap regulation, they could not receive IAS.²⁴⁴ We note that many price cap carriers did not object to the elimination of the IAS mechanism, as long as it did not occur before the implementation of CAF.²⁴⁵ We have no indication that these price cap

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as a DSLAM and/or middle mile plant, that serve locations in census blocks where there is no unsubsidized competitor.

²³⁹ See *supra* para. 103. We note that this obligation applies to carriers, regardless of whether or not they accept CAF Phase I incremental support.

²⁴⁰ 47 U.S.C. § 254(b)(3) (emphasis added).

²⁴¹ See 47 U.S.C. § 153(37).

²⁴² We note that the State Members of the Joint Board recommended as part of their comprehensive plan that the Commission continue to use its existing cost model, with some modifications. State Members *USF/ICC Transformation NPRM* Comments at 37.

²⁴³ See *infra* Section VII.C.2.

²⁴⁴ See *supra* note 207.

²⁴⁵ CenturyLink/Qwest *USF/ICC Transformation NPRM* Comments at 26-28; Frontier *USF/ICC Transformation NPRM* Comments at 12-14; Frontier *USF/ICC Transformation NPRM* Reply Comments at 11-12 (supporting Windstream proposal); Independent Tel. & Telecom. Alliance *USF/ICC Transformation NPRM* Comments at 9-11; (continued...)

carriers expect to raise their SLCs, presubscribed interexchange carrier charges, or other interstate rates as a result of any reform that would eliminate IAS. For clarity, however, we specifically note that while carriers receive support under CAF Phase I, the amount of their frozen high cost support equal to the amount of IAS for which each carrier was eligible in 2011 as being received under IAS, including, but not limited to, for the purposes of calculating interstate rates will be treated as IAS for purposes of our existing rules. To the extent that a carrier believes that it cannot meet its obligations with the revenues it receives under the CAF and ICC reforms, it may avail itself of the total cost and earnings review process described below.²⁴⁶

153. *Elimination of State Rate Certification Filings.* Under section 54.316 of our existing rules, states are required to certify annually whether residential rates in rural areas of their state served by non-rural carriers are reasonably comparable to urban rates nationwide.²⁴⁷ As part of the reforms we adopt today, however, we require carriers to file rate information directly with the Commission.²⁴⁸ For this reason, we conclude that continuing to impose this obligation on the states is unnecessary, and we relieve state commissions of their obligations under that provision.²⁴⁹

154. *Hawaiian Telcom Petition for Waiver.* Hawaiian Telcom, a non-rural price cap incumbent local exchange carrier, previously sought a waiver of certain rules relating to the support to which it would be entitled under the high-cost model.²⁵⁰ As Hawaiian Telcom explained, it received no high-cost model support at all because support under the model was based not on the estimated costs of individual wire centers but rather the statewide average of the costs of all individual wire centers included in the model.²⁵¹ In its petition, Hawaiian Telcom requested that its support under the model be determined on a wire center basis, without regard to the statewide average of estimated costs calculated under the high-cost model.²⁵²

155. In light of the reforms we adopt today for support to price cap carriers, we deny the Hawaiian Telcom petition. We note that our reforms are largely consistent with the thrust of Hawaiian Telcom's petition. Phase II support will not involve statewide averaging of costs determined by a model, but instead will be determined on a much more granular basis. In Phase I, we adopt, on an interim basis, a new method for distributing support to price cap carriers. While we freeze existing support, we provide incremental support to price cap carriers through a mechanism that, consistent with Hawaiian Telcom's proposal, identifies carriers serving the highest-cost wire centers but does not average wire center costs in

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Verizon and Verizon Wireless *USF/ICC Transformation NPRM* Comments at 50-51; Windstream *USF/ICC Transformation NPRM* Comments at 44.

²⁴⁶ See *infra* Section XIII.G.

²⁴⁷ See 47 C.F.R. § 54.316.

²⁴⁸ See *infra* para. 592.

²⁴⁹ We note that under our existing rules, states are also required to certify that carriers have used non-rural support (*i.e.*, high cost model support) for the provision, maintenance, and upgrading of the facilities and services for which it is intended. See 47 C.F.R. § 54.313. A similar obligation applies with regard to support to rural carriers. See 47 C.F.R. § 54.314. As described in more detail below, we simplify our rules and combine these two provisions. See *infra* para. 613.

²⁵⁰ See Hawaiian Telcom, Inc. Petition for Waiver of Sections 54.309 and 54.313(d)(vi) of the Commission's Rules, WC Docket No. 08-4 (filed Dec. 31, 2007).

²⁵¹ See *id.* at 4.

²⁵² See *id.* at 1.

a state. We therefore believe that the reforms we adopt today will achieve the relief Hawaiian Telcom seeks in its waiver petition and that, to the extent they do not, Hawaiian Telcom may seek additional targeted support through a request for waiver.

2. New Framework for Ongoing Support in Price Cap Territories

156. In this section, we adopt Phase II of the Connect America Fund: a framework for extending broadband to millions of unserved locations over a five-year period, including households, businesses, and community anchor institutions, while sustaining existing voice and broadband services. CAF Phase II will have an annual budget of no more than \$1.8 billion. To distribute this funding, we will use a combination of competitive bidding and a new forward-looking model of the cost of constructing modern multi-purpose networks. Using the model, we will estimate the support necessary to serve areas where costs are above a specified benchmark, but below a second “extremely high-cost” benchmark. The Commission will offer each price cap ETC a model-derived support amount in exchange for a commitment to serve all locations in its service territory in a state that, based on the model, fall within the high-cost range and are not served by a competing, unsubsidized provider. As part of this state-level commitment, the ETC will be required to ensure that the service it offers meets specified voice and broadband performance criteria. In areas where the price cap ETC refuses the state-level commitment, support will be determined through a competitive bidding mechanism.

157. In order to expedite adoption of the model to determine statewide support amounts in price cap areas, we delegate to the Wireline Competition Bureau the task of selecting a specific engineering cost model and associated inputs that meet the criteria specified below. We anticipate adoption of the selected model by the end of 2012 for purposes of providing support beginning January 1, 2013.

a. Budget for Price Cap Areas

158. Within the total \$4.5 billion annual budget, we set the total annual CAF budget for areas currently served by price cap carriers at no more than \$1.8 billion for a five-year period.²⁵³ In 2010, the most recent year for which complete disbursement data are available, price cap carriers and their rate-of-return affiliates received approximately \$1.076 billion in support.²⁵⁴ Collectively, more than 83 percent of the unserved locations in the nation are in price cap areas,²⁵⁵ yet such areas currently receive approximately 25 percent of high-cost support.²⁵⁶

159. We conclude that increased support to areas served by price cap carriers, coupled with rigorous, enforceable deployment obligations, is warranted in the near term to meet our universal service mandate to unserved consumers residing in these communities. At the same time, we seek to balance many competing demands for universal service funds, including the need to extend advanced mobile services and to preserve and advance universal service in areas currently served by rate-of-return companies. Budgeting up to \$1.8 billion for price cap territories, in our judgment, represents a reasonable

²⁵³ For purposes of CAF Phase II, consistent with our approach in CAF Phase I, we will treat as price cap carriers the rate-of-return operating companies that are affiliated with holding companies for which the majority of access lines are regulated under price caps. A “price cap territory” therefore includes a study area served by a rate-of-return operating company affiliated with price cap companies.

²⁵⁴ See Federal Communications Commission, Staff Analysis of 2010 High-Cost Disbursement Data, *available at* <http://www.fcc.gov/document/universal-service-high-cost-program-disbursements> (2010 Disbursement Analysis). Price cap study areas received approximately \$1.036 billion. See *id.*

²⁵⁵ See *supra* para. 127. This figure does not include unserved locations in the service areas of rate-of-return carriers affiliated with price cap carriers.

²⁵⁶ In 2010, high-cost USF disbursements totaled \$4.268 billion. See 2010 Disbursement Analysis.

balance of these considerations. We also stress that these subsidies will go to carriers serving price cap areas, not necessarily incumbent price cap carriers. Before 2018, we will re-evaluate the need for ongoing support at these levels and determine how best to drive support to efficient levels, given consumer demand and technological developments at that time.

b. Price Cap Public Interest Obligations

160. Price cap ETCs that accept a state-level commitment must provide broadband service that is reasonably comparable to terrestrial fixed broadband service in urban America. Specifically, price cap ETCs that receive model-based CAF support will be required, for the first three years they receive support, to offer broadband at actual speeds of at least 4 Mbps downstream and 1 Mbps upstream, with latency suitable for real-time applications, such as VoIP, and with usage capacity reasonably comparable to that available in comparable offerings in urban areas. By the end of the third year, ETCs must offer at least 4 Mbps/1 Mbps broadband service to at least 85 percent of their high-cost locations – including locations on Tribal lands – covered by the state-level commitment, as described below. By the end of the fifth year, price cap ETCs must offer at least 4 Mbps/1 Mbps broadband service to all supported locations, and at least 6 Mbps/1.5 Mbps to a number of supported locations to be specified.

161. We establish the 85 percent third-year milestone to ensure that recipients of funding remain on track to meet their performance obligations. While a number of parties agreed generally with the concept of setting specific, enforceable interim milestones to safeguard the use of public funds,²⁵⁷ there are few concrete suggestions in the record on what those intermediate deadlines should be. We agree with the State Members of the Joint Board that there should be intermediate milestones for the required broadband deployment obligations.²⁵⁸ We set an initial requirement of offering broadband to at least 85 percent of supported locations by the end of the third year, and to all supported locations by the end of the fifth year.²⁵⁹ As set forth more fully below,²⁶⁰ recipients of funding will be required annually to report on their progress in extending broadband throughout their areas and must meet the interim deadline established for the third year, or face loss of support.

162. Before the end of the fifth year, we expect to have reviewed our minimum broadband performance metrics in light of expected increases in speed, and other broadband characteristics, in the intervening years. Based on the information before us today, we expect that consumer usage of applications, including those for health and education, may evolve over the next five years to require speeds higher than 4 Mbps downstream/1 Mbps upstream.²⁶¹ For this reason, we expect ETCs to build robust, scalable networks that will provide speeds of at least 6 Mbps/1.5 Mbps to a number of supported locations to be determined in the model development process, as set forth more fully below.

163. After the end of the five-year term of CAF Phase II, the Commission expects to be distributing all CAF support in price cap areas pursuant to a market-based mechanism, such as

²⁵⁷ CWA *August 3 PN* Comments at 4; NASUCA *August 3 PN* Comments at 86 (supporting State Members deployment milestones proposal); TIA *August 3 PN* Comments at 5 (opposing State Members proposal of losing funding for failing to meet milestones, but supporting flexible deployment milestones).

²⁵⁸ State Members *USF/ICC Transformation NPRM* Comments at 63.

²⁵⁹ The State Members suggested that support be reduced if a carrier failed to provide 1.5 Mbps service to 95 percent of the residential locations in its study area by year three. *Id.* We recognize, however, that carriers typically would extend service on a project-by project-basis, and therefore adopt a lower percentage milestone relative to the higher 4 Mbps/1 Mbps standard.

²⁶⁰ *See infra* para. 585.

²⁶¹ *See supra* paras. 106-107.

competitive bidding.²⁶² However, if such a mechanism is not implemented by the end of the five-year term of CAF Phase II, the incumbent ETCs will be required to continue providing broadband with performance characteristics that remain reasonably comparable to the performance characteristics of terrestrial fixed broadband service in urban America, in exchange for ongoing CAF Phase II support.

c. Methodology for Allocating Support

164. *Background.* In the *USF/ICC Transformation NPRM*, the Commission sought comment on alternative approaches for determining CAF recipients and appropriate amounts of ongoing CAF support that would replace all existing high-cost funding.²⁶³ Under one option, the Commission proposed to use a competitive bidding mechanism to award funding to one provider per geographic area in all areas designated to receive CAF support.²⁶⁴ Under another option, the Commission proposed to offer the current carrier of last resort in each service area (typically an incumbent telephone company) a right of first refusal to serve the area for an ongoing amount of annual support based on a forward-looking cost model, with ongoing support awarded through a competitive bidding mechanism where the right of first refusal was refused.²⁶⁵ We also sought comment on limiting the full transition to the CAF to a subset of geographic areas, such as those served by price cap companies, while continuing to provide ongoing support to smaller, rate-of-return companies based on reasonable actual investment.²⁶⁶

165. *Discussion.* We conclude that the Connect America Fund should ultimately rely on market-based mechanisms, such as competitive bidding, to ensure the most efficient and effective use of public resources. However, the CAF is not created on a blank slate, but rather against the backdrop of a decades-old regulatory system. The continued existence of legacy obligations, including state carrier of last resort obligations for telephone service, complicate the transition to competitive bidding. In the transition, we seek to avoid consumer disruption—including the loss of traditional voice service—while getting robust, scalable broadband to substantial numbers of unserved rural Americans as quickly as possible. Accordingly, we adopt an approach that enables competitive bidding for CAF Phase II support in the near-term in some price cap areas, while in other areas holding the incumbent carrier to broadband and other public interest obligations over large geographies in return for five years of CAF support.

166. Specifically, we adopt the following methodology for providing CAF support in price cap areas. First, the Commission will model forward-looking costs to estimate the cost of deploying broadband-capable networks in high-cost areas and identify at a granular level the areas where support will be available. Second, using the cost model, the Commission will offer each price cap LEC annual support for a period of five years in exchange for a commitment to offer voice across its service territory within a state and broadband service to supported locations within that service territory, subject to robust public interest obligations and accountability standards.²⁶⁷ Third, for all territories for which price cap LECs decline to make that commitment, the Commission will award ongoing support through a

²⁶² See *infra* section XVII.J (Competitive Process in Price Cap Territories). We anticipate that the performance requirements adopted by the Commission for the auction in areas where the state-level commitment is declined may be different from the performance requirements used for the post-five-year auction, in part because of the difference in timing and likely changes in network capabilities and consumer demand.

²⁶³ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4677, para. 400, 4681-92, paras. 417-56.

²⁶⁴ *Id.* at 4677, para. 400, 4681-84, paras. 418-30.

²⁶⁵ *Id.* at 4677, para. 400, 4684-90, paras. 431-47.

²⁶⁶ *Id.* at 4677, para. 401, 4689-92, paras. 447-56.

²⁶⁷ We seek comment in the FNPRM whether and how to adjust ETC voice service obligations in areas where the ETC is no longer receiving federal support. See *infra* Section XVII.F.

competitive bidding mechanism.

167. *Determination of Eligible Areas.* We will use a forward-looking cost model to determine, on a census block or smaller basis, areas that will be eligible for CAF Phase II support.²⁶⁸ In doing so, we will allocate our budget of no more than \$1.8 billion for price cap areas to maximize the number of expensive-to-serve residences, businesses, and community anchor institutions that will have access to modern networks providing voice and robust, scalable broadband.²⁶⁹ Specifically, we will use the model to identify those census blocks where the cost of service is likely to be higher than can be supported through reasonable end-user rates alone, and, therefore, should be eligible for CAF support. We will also use the model to identify, from among these, a small number of extremely high-cost census blocks that should receive funding specifically set aside for remote and extremely high-cost areas, as described below,²⁷⁰ rather than receiving CAF Phase II support, in order to keep the total size of the CAF and legacy high-cost mechanisms within our \$4.5 billion budget.

168. This methodology balances our desire to extend robust, scalable broadband to all Americans with our recognition that the very small percentage of households that are most expensive to serve via terrestrial technology represent a disproportionate share of the cost of serving currently unserved areas.²⁷¹ In light of this fact, the State Members of the Joint Board propose that universal service support be limited to not more than \$100 per high-cost location per month, which they suggest is somewhat higher than the prevailing retail price of satellite service.²⁷² Similarly, ABC Plan proponents recommend an alternative technology benchmark of \$256 per month based on the plan proponents' cost model – the CostQuest Broadband Analysis Tool (CQBAT) – which would limit support per location to no more than \$176 per month (\$256 - \$80 cost benchmark).²⁷³ We agree that the highest cost areas are more appropriately served through alternative approaches, and in the FNPRM we seek comment on how best to utilize at least \$100 million in annual CAF funding to maximize the availability of affordable broadband in such areas. Here, we adopt a methodology for calculating support that will target support to areas that exceed a specified cost benchmark, but not provide support for areas that exceed an “extremely high cost” threshold.

²⁶⁸ Areas with particularly low population density have large census blocks, which may overlap company boundaries. For example, some blocks may have areas partially served by a rate-of-return carrier, so these areas would not be eligible for the support available to price cap carriers. The Wireline Competition Bureau will address this issue in conjunction with finalization of the cost model that will be developed with public input. *See infra* paras. 192-193. We believe this flexibility would also allow us to address the concerns raised by the state of Hawaii. *See* Letter from Bruce A. Olcott, Counsel to the State of Hawaii, to Hon. Julius Genachowski, Chairman, FCC at 2, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51 (Oct. 19, 2011).

²⁶⁹ The reference to community anchor institutions should not signal an intention that the model will skew more funds to communities that have community anchor institutions. In fact, it may be the case that the most unserved areas do not have community anchor institutions due to their low population density.

²⁷⁰ *See infra* Section VII.F.

²⁷¹ *See, e.g.*, National Broadband Plan at 138, 150.

²⁷² State Members *USF/ICC Transformation* Comments, at 59.

²⁷³ *See* Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., Attach. 2 at 2, Attach. 3 (filed July 29, 2011) (ABC Plan).

169. We delegate to the Wireline Competition Bureau the responsibility for setting the extremely high-cost threshold in conjunction with adoption of a final cost model. The threshold should be set to maintain total support in price cap areas within our up to \$1.8 billion annual budget.²⁷⁴

170. In determining the areas eligible for support, we will also exclude areas where, as of a specified future date as close as possible to the completion of the model and to be determined by the Wireline Competition Bureau, an unsubsidized competitor offers affordable broadband that meets the initial public interest obligations that we establish in this Order for CAF Phase I, i.e., speed, latency, and usage requirements.²⁷⁵ The model scenarios submitted by the ABC Plan proponents excluded areas already served by a cable company offering broadband.²⁷⁶ State Members propose, at a minimum, excluding areas with unsubsidized wireline competition, and suggested that areas with reliable 4G wireless service could also be excluded.²⁷⁷ In an “Amended ABC Plan,” NCTA proposes to exclude areas where there is an unsupported wireline or wireless broadband competitor, and areas that received American Recovery and Reinvestment Act stimulus funding from RUS or NTIA to build broadband facilities.²⁷⁸ We conclude, on balance, that it would be appropriate to exclude any area served by an unsubsidized competitor that meets our initial performance requirements, and we delegate to the Wireline Competition Bureau the task of implementing the specific requirements of this rule.

171. *State-Level Commitment.* Following adoption of the cost model, which we anticipate will be before the end of 2012, the Bureau will publish a list of all eligible census blocks associated with each incumbent price cap carrier within each state. After the list is published, there will be an opportunity for comments and data to be filed to challenge the determination of whether or not areas are unserved by an unsubsidized competitor. Each incumbent carrier will then be given an opportunity to accept, for each state it serves, the public interest obligations associated with all the eligible census blocks in its territory, in exchange for the total model-derived annual support associated with those census blocks, for a period of five years. The model-derived support amount associated with each census block will be the difference between the model-determined cost in that census block, provided that cost is below the highest-cost threshold, and the cost benchmark used to identify high-cost areas. If the incumbent accepts the state-level broadband commitment, it shall be subject to the public interest obligations described above for all locations for which it receives support in that state, and shall be the presumptive recipient of the model-derived support amount for the five-year CAF Phase II period.²⁷⁹

²⁷⁴ We anticipate that less—and possibly much less—than one percent of all U.S. residences are likely to fall above the “extremely high-cost” threshold in the final cost model.

²⁷⁵ See *supra* paras. 103-104, 147.

²⁷⁶ See ABC Plan, Attach. 2. Three scenarios used a combination of cable coverage from both the NTIA and Warren Media, and one scenario used Nielsen data.

²⁷⁷ State Members *USF/ICC Transformation* Comments at 43.

²⁷⁸ NCTA *August 3 PN* Comments, Attach. at 3. NCTA argues that the ABC Plan will spend more money than necessary because it does not account for the availability of wireless broadband services (either fixed or mobile), wireline broadband services other than cable, or reasonably anticipate deployments, such as construction pursuant to Recovery Act stimulus funding from RUS or NTIA, announced deployment schedules for 4G wireless services, and construction commitments made in context of merger proceedings. *Id.* at 14-15.

²⁷⁹ In meeting its obligation to serve a particular number of locations in a state, an incumbent that has accepted the state-level commitment may choose to serve some census blocks with costs above the highest cost threshold instead of eligible census blocks (*i.e.*, census blocks with lower costs), provided that it meets the public interest obligations in those census blocks, and provided that the total number of unserved locations and the total number of locations covered is greater than or equal to the number of locations in the eligible census blocks.

172. Carriers accepting a state-level commitment will receive funding for five years. At the end of the five-year term, in the areas where the price cap carriers have accepted the five-year state level commitment, we expect the Commission will use competitive bidding to award CAF support on a going-forward basis, and may use the competitive bidding structure adopted by the Commission for use in areas where the state-level commitment is declined.²⁸⁰

173. We conclude that the state-level commitment framework we adopt is preferable to the right of first refusal approach proposed by the Commission in the *USF/ICC Transformation NPRM*, which would have been offered at the study area level,²⁸¹ and to a right of first refusal offered at the wire center level, as proposed by some commenters.²⁸² Both of these approaches would have allowed price cap carriers to pick and choose on a granular basis the areas where they would receive model-based support within a state. This would allow the incumbent to cherry pick the most attractive areas within its service territory, leaving the least desirable areas for a competitive process. This concern was greatest with the ABC proposal, under which carriers would have been able to exercise a right of first refusal on a wire center basis, but also applies to the study area proposal in our NPRM. Although for some price cap carriers, their study areas are their entire service area within a state, other carriers still have many study areas within a state.²⁸³ These carriers may have acquired various properties over time and chosen to keep them as separate study areas for various reasons, including potentially to maximize universal service support. Rather than enshrine such past decisions in the new CAF, we conclude that it is more equitable to treat all price cap carriers the same and require them to offer service to all high-cost locations between an upper and lower threshold within their service territory in a state, consistent with the public interest obligations described above, in exchange for support. Requiring carriers to accept or decline a commitment for all eligible locations in their service territory in a state should reduce the chances that eligible locations that may be less economically attractive to serve, even with CAF support, get bypassed, and increase the chance such areas get served along with eligible locations that are more economically attractive.

174. In determining how best to award CAF support in price cap areas, we carefully weighed the risks and benefits of alternatives, including using competitive bidding everywhere, without first giving incumbent LECs an opportunity to enter a state-level service commitment. We conclude that, on balance, the approach we adopt will best ensure continued universal voice service and speed the deployment of broadband to all Americans over the next several years, while minimizing the burden on the Universal Service Fund.

175. In particular, several considerations support our determination not to immediately adopt competitive bidding everywhere for the distribution of CAF support. Because we exclude from the price cap areas eligible for support all census blocks served by an unsubsidized competitor,²⁸⁴ we will generally be offering support for areas where the incumbent LEC is likely to have the only wireline facilities, and there may be few other bidders with the financial and technological capabilities to deliver scalable

²⁸⁰ See *infra* Section XVII.J.

²⁸¹ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4684, para. 431 (proposing that a carrier accepting the right of first refusal would commit to deploying a network capable of delivering broadband and voice services “throughout its service area”).

²⁸² ABC Plan, Attach. 1.

²⁸³ CenturyLink, for example, has sixteen study areas in Wisconsin. See USAC Quarterly Administrative Filings, available at <http://www.usac.org/about/governance/fcc-filings/fcc-filings-archive.aspx> (for Fourth Quarter 2011, at HC01).

²⁸⁴ See *supra* para. 103.

broadband that will meet our requirements over time. In addition, it is our predictive judgment that the incumbent LEC is likely to have at most the same, and sometimes lower, costs compared to a new entrant in many of these areas.²⁸⁵ We also weigh the fact that incumbent LECs generally continue to have carrier of last resort obligations for voice services. While some states are beginning to re-evaluate those obligations, in many states the incumbent carrier still has the continuing obligation to provide voice service and cannot exit the marketplace absent state permission. On balance, we believe that that our approach best serves consumers in these areas in the near term, many of whom are receiving voice services today supported in part by universal service funding and some of whom also receive broadband, and will speed the delivery of broadband to areas where consumers have no access today.

176. We disagree with commenters who assert that the principle of competitive neutrality precludes the Commission from giving incumbent carriers an opportunity to commit to deploying broadband throughout their service areas in a state in exchange for five years of funding. The principle of competitive neutrality states that “[u]niversal service support mechanisms and rules should be competitively neutral,” which means that they should not “unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”²⁸⁶ The competitive neutrality principle does not require all competitors to be treated alike, but “only prohibits the Commission from treating competitors differently in ‘unfair’ ways.”²⁸⁷ Moreover, neither the competitive neutrality principle nor the other section 254(b) principles impose inflexible requirements for the Commission’s formulation of universal service rules and policies. Instead, the “promotion of any one goal or principle should be tempered by a commitment to ensuring the advancement of each of the principles” in section 254(b).²⁸⁸

177. As an initial matter, we note that our USF reforms generally advance the principle of competitive neutrality by limiting support to only those areas of the nation that lack unsubsidized providers. Thus, providers that offer service without subsidy will no longer face competitors whose service in the same area is subsidized by federal universal service funding. Especially in this light, we conclude that any departure from strict competitive neutrality occasioned by affording incumbent LECs an opportunity to commit to deploying broadband in their statewide service areas is outweighed by the advancement of other section 254(b) principles, in particular, the principles that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation,” and that consumers in rural areas should have access to advanced services comparable to those available in urban areas.²⁸⁹ Although other classes of providers may be well situated to make broadband commitments with respect to relatively small geographic areas such as discrete census blocks, the purpose of the five-year commitment is to establish a limited, one-time opportunity for the rapid deployment of broadband

²⁸⁵ See *infra* para. 191, discussing the relative costs of wireless and wireline networks for residential and business broadband.

²⁸⁶ See *Universal Service First Report and Order*, 12 FCC Rcd at 8801, para. 47).

²⁸⁷ *Rural Cellular*, 588 F.3d at 1104.

²⁸⁸ *Universal Service First Report and Order*, 12 FCC Rcd at 8803, para. 52; see also *Qwest I*, 258 F.3d at 1199 (“The FCC may balance the principles against one another, but must work to achieve each one unless there is a direct conflict between it and either another listed principle or some other obligation or limitation on the FCC’s authority.”); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000) (“We reiterate that predictability is only a principle, not a statutory command. To satisfy a countervailing statutory principle, therefore, the FCC may exercise reasoned discretion to ignore predictability.”); *Rural Cellular Ass’n*, 588 F.3d at 1103 (“The Commission enjoys broad discretion when conducting exactly this type of balancing.”) (citing *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 971 (D.C.Cir.1999)).

²⁸⁹ 47 U.S.C. § 254(b)(2), (3).

services over a large geographic area. The fact that incumbent LECs' have had a long history of providing service throughout the relevant areas – including the fact that incumbent LECs generally have already obtained the ETC designation necessary to receive USF support throughout large service areas – puts them in a unique position to deploy broadband networks rapidly and efficiently in such areas.²⁹⁰ We see nothing in the record that suggests a more competitively neutral way of achieving that objective quickly, without abandoning altogether the goal of obtaining large-area build-out commitments or substantially ballooning the cost of the program.²⁹¹

178. Moreover, it is important to emphasize the limited scope and duration of the state-level commitment procedure. Incumbent LECs are afforded only a one-time opportunity to make a commitment to build out broadband networks throughout their service areas within a state. If the incumbent declines that opportunity in a particular state, support to serve the unserved areas located within the incumbent's service area will be awarded by competitive bidding, and all providers will have an equal opportunity to seek USF support, as described below. Furthermore, even where the incumbent LEC makes a state-level commitment, its right to support will terminate after five years, and we expect that support after such five-year period will be awarded through a competitive bidding process in which all eligible providers will be given an equal opportunity to compete. Thus, we anticipate that funding will soon be allocated on a fully competitive basis. In light of all these considerations, we conclude that adhering to strict competitive neutrality at the expense of the state-level commitment process would unreasonably frustrate achievement of the universal service principles of ubiquitous and comparable broadband services and promoting broadband deployment, and unduly elevate the interests of competing providers over those of unserved and under-served consumers who live in high-cost areas of the country, as well as of all consumers and telecommunications providers who make payments to support the Universal Service Fund.

179. *Competitive Bidding.* In areas where the incumbent declines a state-level commitment, we will use a competitive bidding mechanism to distribute support. In the FNPRM, we propose to design this mechanism in a way that maximizes the extent of robust, scalable broadband service subject to the budget.²⁹² Assigning support in this way should enable us to identify those providers that will make most effective use of the budgeted funds, thereby extending services to as many consumers as possible. We propose to use census blocks as the minimum geographic unit eligible for competitive bidding and seek comment on ways to allow aggregation of such blocks. Although we propose using the same areas identified by the CAF Phase II model as eligible for support, we also seek comment on other approaches—for example, excluding areas served by any broadband provider, or using different cost

²⁹⁰ As noted above, incumbent LECs in many states are designated as the carriers of last resort and thus have a preexisting obligation to ensure service to consumers who request it. *See supra* para. 175.

²⁹¹ For example, NCTA proposes a commitment framework based upon counties rather than statewide service areas to accommodate the ability of other types of providers to make commitments. See NCTA Oct. 21, 2011 Letter Att. B, at 1. NCTA concedes, however, that “[c]ounties are smaller than . . . statewide ILEC study areas.” *Id.* at 2. For example, in Texas there are 254 counties but only five price cap companies. 2010 United States Census Data, http://www2.census.gov/census_2010/01-Redistricting_File--PL_94-171/ and documentation at <http://www.census.gov/prod/cen2010/doc/pl94-171.pdf>; 2010 Disbursement Analysis. Moreover, under NCTA's proposal, there may be greater delay in implementing any commitment because “[p]roviders that are not already designated ETCs would be required to certify that they will apply for ETC status if they are selected to receive support and must acknowledge that no support will be provided until ETC status is obtained.” *Id.* at 1. As noted, incumbent LECs typically have already obtained ETC designations and, therefore, could begin the buildout of broadband infrastructure to unserved areas more quickly.

²⁹² *See infra* Section XVII.J.

thresholds.²⁹³ We also seek targeted comment on other issues, including bidder eligibility, auction design, and auction process.

180. *Transition to New Support Levels.* Support under CAF Phase II will be phased in, in the following manner. For a carrier accepting the state-wide commitment, in the first year, the carrier will receive one-half the full amount the carrier will receive under CAF Phase II and one-half the amount the carrier received under CAF Phase I for the previous year (which would be the frozen amount if the carrier declines Phase I or the frozen amount plus the incremental amount if the carrier accepts Phase I); in the second year, each carrier accepting the state-wide commitment will receive the full CAF Phase II amount.²⁹⁴ For a carrier declining the state-wide commitment, the carrier will continue to receive support in an amount equal to its CAF Phase I support amount until the first month that the winner of any competitive process receives support under CAF Phase II; at that time, the carrier declining the state-wide commitment will cease to receive high-cost universal service support. No additional broadband obligations apply to funds received during the transition period. That is, carriers accepting the state-wide commitment are obliged to meet the Phase II broadband obligations described above, while carriers declining the state-wide commitment will be required to meet their pre-existing Phase I obligations, but will not be required to deploy additional broadband in connection with their receipt of transitional funding.

d. Forward-Looking Cost Model

181. *Background.* In the *USF Reform NOI/NPRM*, the Commission sought comment generally on whether we should develop a nationwide broadband model, and what type of model, to help determine support levels in areas where there is no private sector business case to provide broadband and voice services.²⁹⁵ In the *USF/ICC Transformation NPRM*, we proposed that the Commission use a green-field, “scorched node” approach in developing a broadband cost model, rather than a brown-field approach that assumes the existence of a last-mile copper network.²⁹⁶ We also noted that “[o]ver the lifetime of a network, the cost of a fiber-to-the-premises (FTTP) and short-loop (12,000-foot) DSL network may be basically equal, meaning that green-field costs are equivalent to those for a FTTP deployment.”²⁹⁷ In the *August 3 Public Notice*, the Bureau sought further comment on specific proposals for reform that would use a forward-looking cost model to determine support, including the State

²⁹³ See *infra* 1190.

²⁹⁴ To the extent a carrier will receive less money from CAF Phase II than it will receive under frozen high-cost support, there will be an appropriate multi-year transition to the lower amount. It is premature to specify the length of that transition now, before the cost model is adopted, but it will be addressed in conjunction with finalization of the cost model that will be developed with public input.

²⁹⁵ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *High-Cost Universal Service Support*, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657, 6665-6673, paras. 14-40 (2010) (*USF Reform NOI/NPRM*). Specifically, the Commission sought comment on whether we should develop a new model, rather than updating the Commission’s existing model; whether the model should estimate total costs or incremental costs; and whether the model should estimate revenues as well as costs. *Id.* at 6669-73, paras. 31-40.

²⁹⁶ See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4687, paras. 437-38.

²⁹⁷ *Id.* at 4684, para. 436 & n.617 (citing OBI Technical Paper No. 1). This observation was based on Commission staff analysis of the model used to create the National Broadband Plan. See *id.* at 4684, para. 436 n.617. We also sought more focused comment on developing a total cost model, rather than an incremental cost model, and on the difficulties in accurately estimating and modeling revenues. *Id.* at 4687, paras. 438-39.

Members' Plan, and the ABC Plan.²⁹⁸

182. The State Members' Plan proposes that the Commission continue to use its existing cost model – which was originally adopted in 1998 – with certain modifications. Specifically, they propose that the model: use current geocoded data for customer locations; be revised to account for current special access line counts by wire center; use a road-constrained minimum spanning tree to route plant; be adjusted to reflect the costs of actual distribution plant mix (aerial, buried, and underground); and include the costs of current calling usage and middle mile transport costs for Internet data.²⁹⁹ Under the State Members' Plan, support for all non-rural carriers would be determined by an updated version of the current model; rural carriers could receive model-determined support, but also could elect to have their support determined on an embedded cost basis.³⁰⁰

183. The ABC Plan Coalition proposes that the Commission use a different forward-looking cost model – the CQBAT – which estimates the greenfield costs of deploying a network with a maximum copper loop length of 12,000 feet.³⁰¹ The model estimates build-out investments and operating costs for each census block, and calculates support amounts based on a number of user-defined parameters.³⁰² The ABC Plan summarizes results from the CQBAT model under four different scenarios.³⁰³ Although the model itself was not filed in the record of this proceeding, the ABC Plan Coalition subsequently offered interested parties free online access to CQBAT results, subject to the terms of a protective order and licensing agreement, and more extensive access to the model for certain fees, subject to a mutual non-disclosure agreement, as well as the protective order and licensing agreement.³⁰⁴

184. *Discussion.* Although we agree with both the State Members and the ABC Plan proponents that we should use a forward-looking model to assist in setting support levels in price cap

²⁹⁸ *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Public Notice, DA 11-1348 (Wireline Comp. Bur. rel. Aug. 3, 2011); State Members' *USF/ICC Transformation NPRM Comments*; ABC Plan.

²⁹⁹ State Members *USF/ICC Transformation NPRM Comments* at 37-38.

³⁰⁰ *Id.* at 36.

³⁰¹ See ABC Plan, Attach. 3 at 11, Fig. 1.

³⁰² See ABC Plan, Attach. 3 at 9, 19.

³⁰³ See ABC Plan, Attach. 2. The ABC Plan Coalition filed additional information regarding CQBAT results and inputs. See Letter from Jonathan Banks, US Telecom, to Marlene H. Dortch, Secretary, FCC, Docket No. 10-90 et al., (filed Aug. 16, 2011) (number of residential and business locations in served and unserved areas, and in areas that would be served by satellite as modeled; state-by-state support amounts); Letter from Mike Lieberman, AT&T, Jeffrey S. Lanning, CenturyLink, Michael T. Skrivan, FairPoint, Michael D. Saperstein, Jr., Frontier, Margaret McCready, Verizon, and Frank Schueneman, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed Aug. 18, 2011) (inputs) (ABC Coalition Aug 18 Ex Parte).

³⁰⁴ See *Developing a Unified Intercarrier Compensation Regime, Establishing Just and Reasonable Rates for Local Exchange Carriers, Connect America Fund, High-Cost Universal Service Support, A National Broadband Plan for Our Future*, CC Docket No. 01-92, WC Docket Nos. 07-135, 10-90, 05, 337, GN Docket No. 09-51, Supplemental Protective Order, DA 11-1525 (rel. Sept. 9, 2011); Letter from Mike Lieberman, AT&T, Michael D. Saperstein, Jr., Frontier, Jeffrey S. Lanning, CenturyLink, Maggie McCready, Verizon, Michael T. Skrivan, Fairpoint Communications, Frank Schueneman, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed Sept. 9, 2011); Letter from Mike Lieberman, AT&T, Michael D. Saperstein, Jr., Frontier, Jeffrey S. Lanning, CenturyLink, Maggie McCready, Verizon, Michael T. Skrivan, Fairpoint Communications, Frank Schueneman, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed Sept. 28, 2011).

territories, we do not adopt the CQBAT cost model proposed by the ABC Coalition, nor do we accept the State Board's proposal that we simply update our existing cost model. Instead, we initiate a public process to develop a robust cost model for the Connect America Fund to accurately estimate the cost of a modern voice and broadband capable network, and delegate to the Wireline Competition Bureau the responsibility of completing it.

185. In light of the limited opportunity the public has received to review and modify the ABC Coalition's proposed CQBAT model, we reject the group's suggestion that we adopt that model at this time. The Commission has previously held that before any cost model may be "used to calculate the forward-looking economic costs of providing universal service in rural, insular, and high cost areas," the "model and all underlying data, formulae, computations, and software associated with the model must be available to all interested parties for review and comment. All underlying data should be verifiable, engineering assumptions reasonable, and outputs plausible."³⁰⁵ We see no reason to depart from this conclusion here, and the CQBAT model, as presented to the Commission at this time, does not meet this requirement.

186. We likewise reject the State Members' proposal to modify the Commission's existing cost model to estimate the costs of modern voice and broadband-capable network. The Commission's existing cost model does not fully reflect the costs associated with modern voice and broadband networks because the model calculates cost based on engineering assumptions and equipment appropriate to the 1990s. In addition, modeling techniques and capabilities have advanced significantly since 1998, when the Commission's existing high cost model was developed, and the new techniques could significantly improve the accuracy of modeled costs in a new model relative to an updated version of the Commission's existing model. For example, new models can estimate the costs of efficient routing along roads in a way that the older model cannot.³⁰⁶ We see the benefits of leveraging our existing model to rapidly deploy interim support, and we do just that for Phase I of the CAF. For the longer-term disbursement of support, however, we conclude that it is preferable to use a more accurate, up to date model based on modern techniques.

187. To expedite the process of finalizing the model to be used as part of the state-level commitment, we delegate to the Wireline Competition Bureau the authority to select the specific engineering cost model and associated inputs, consistent with this Order. For the reasons below, the model should be of wireline technology and at a census block or smaller level. In other respects, we direct the Wireline Competition Bureau to ensure that the model design maximizes the number of locations that will receive robust, scalable broadband within the budgeted amounts. Specifically, the model should direct funds to support 4 Mbps/1 Mbps broadband service to all supported locations, subject only to the waiver process for upstream speed described above, and should ensure that the most locations possible receive a 6 Mbps/1.5 Mbps or faster service at the end of the five year term, consistent with the CAF Phase II budget. The Wireline Competition Bureau's ultimate choice of a greenfield or brownfield model, the modeled architecture, and the costs and inputs of that model should ensure that the public interest obligations are achieved as cost-effectively as possible.

188. *Geographic Granularity.* We conclude that the CAF Phase II model should estimate costs at a granular level – the census block or smaller – in all areas of the country. Geographic

³⁰⁵ *Universal Service First Report and Order*, 12 FCC Rcd at 8913, 8915, para. 250.

³⁰⁶ The State Members advocate that we adopt a road-constrained minimum spanning tree to route plant as an "update" to the existing model, but we think this would change the model so fundamentally that the process involved would be comparable to the adoption of a new model. We anticipate that the new model will adopt the routing method the State Members suggest, although we delegate the final decision on this point to the Wireline Competition Bureau.

granularity is important in capturing the forward-looking costs associated with deploying broadband networks in rural and remote areas.³⁰⁷ Using the average cost per location of existing deployments in large areas, even when adjusted for differences in population and linear densities, presents a risk that costs may be underestimated in rural areas. Deployments in rural markets are likely to be subscale, so an analysis based on costs averaged over large areas, particularly large areas that include both low- and high-density zones, will be inaccurate. A granular approach, calculating costs based on the plant and hardware required to serve each location in a small area (i.e., census block or smaller), will provide sufficient geographic and cost-component granularity to accurately capture the true costs of subscale markets. For example, if only one home in an area with very low density is connected to a DSLAM, the entire cost of that DSLAM should be allocated to the home rather than the fraction based on DSLAM capacity. Furthermore, to the extent that a home is served by a long section of feeder or distribution cabling that serves only that home, the entire cost of such cabling should be allocated to the home as well.³⁰⁸

189. *Wireline Network Architecture.* We conclude that the CAF Phase II model should estimate the cost of a wireline network. For a number of reasons, we reject some commenters' suggestion that we should attempt to model the costs of both wireline and wireless technologies and base support on whichever technology is lower cost in each area of the country.³⁰⁹

190. For one, we have concerns about the feasibility of developing a wireless cost model with sufficient accuracy for use in the CAF Phase II framework. We recognize that all cost models involve a certain degree of imprecision. As we noted in the *USF Reform NOI/NPRM*, however, accurately modeling wireless deployment may raise challenges beyond those that exist for wireline models, particularly where highly localized cost estimates are required.³¹⁰ For example, the availability of desirable cell sites can significantly affect the cost of covering any given small geographic area and is challenging to model without detailed local siting information. Propagation characteristics may vary based on local and difficult to model features like foliage. Access to spectrum, which substantially affects overall network costs, varies dramatically among potential funding recipients and differs across geographies. Because the cost model for CAF Phase II will need to calculate costs for small areas (census-block or smaller), high local variability in the accuracy of outputs will create challenges, even if a cost model provides high quality results when averaged over a larger area. In light of the issues with modeling wireless costs, we remain concerned that a lowest-cost technology model including both wireless and wireline components could introduce greater error than a wireline-only model in identifying eligible areas.³¹¹ We do not believe that delaying implementation of CAF Phase II to resolve these issues serves the public interest.

191. Finally, the record fails to persuade us that, in general, the costs of cellular wireless networks are likely to be significantly lower than wireline networks for providing broadband service that meets the CAF Phase II speed, latency, and capacity requirements. In particular, we emphasize that, as described above, carriers receiving CAF Phase II support should expect to offer service with increasing download and upload speeds over time, and that allows monthly usage reasonably comparable to

³⁰⁷ See Omnibus Broadband Initiative, The Broadband Availability Gap: OBI Technical Paper No. 1, at 35-37 (April 2010) (OBI, Broadband Availability Gap), available at <http://www.broadband.gov/plan/broadband-working-reports-technical-papers.html>.

³⁰⁸ *Id.*

³⁰⁹ See NASUCA August 3 PN Comments at 83.

³¹⁰ See *USF Reform NOI/NPRM*, 25 FC Rcd at 6669, paras. 28-29.

³¹¹ See *infra* Section XVII.I.6.

terrestrial fixed residential broadband offerings in urban areas.³¹² The National Broadband Plan modeled the nationwide costs of a wireless broadband network dimensioned to support typical usage patterns for fixed services to homes, and found that the cost was similar to that of wireline networks.³¹³ None of the parties advocating for the use of a wireless model has submitted into the record a wireless model for fixed service and, therefore, we have no evidence that such service would be less costly.

192. *Process for Adopting the Model.* We anticipate that the Wireline Competition Bureau will adopt the specific model to be used for purposes of estimating support amounts in price cap areas by the end of 2012 for purposes of providing support beginning January 1, 2013. Before the model is adopted, we will ensure that interested parties have access to the underlying data, assumptions, and logic of all models under consideration, as well as the opportunity for further comment. When the Commission adopted its existing cost model, it did so in an open, deliberative process with ample opportunity for interested parties to participate and provide valuable assistance. We have had three rounds of comment on the use of a model for purposes of determining Connect America Fund support and remain committed to a robust public comment process. To expedite this process, we delegate to the Wireline Competition Bureau the authority to select the specific engineering cost model and associated inputs, consistent with this Order. We direct the Wireline Competition Bureau to issue a public notice within 30 days of release of this Order requesting parties to file models for consideration in this proceeding consistent with this Order, and to report to the Commission on the status of the model development process no later than June 1, 2012.

193. We note that price cap carriers serving Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands and Northern Marianas Islands argue they face operating conditions and challenges that differ from those faced by carriers in the contiguous 48 states.³¹⁴ We direct the Wireline Competition Bureau to consider the unique circumstances of these areas when adopting a cost model, and we further direct the Wireline Competition Bureau to consider whether the model ultimately adopted adequately accounts for the costs faced by carriers serving these areas. If, after reviewing the evidence, the Wireline Competition Bureau determines that the model ultimately adopted does not provide sufficient support to any of these

³¹² Today, mobile broadband providers that limit data usage often impose monthly usage limits that are an order of magnitude or more lower than limits for residential and business services in urban areas. *See supra* note 147.

³¹³ OBI, Broadband Availability Gap, at 62, Ex. 4-C (comparing costs of fixed wireless and 12,000 foot DSL networks). Modeling done for the National Broadband Plan shows that the total cost of building out a wireless network to all unserved homes in the country is approximately 1.3 times more expensive than the cost of upgrading existing facilities to offer broadband over 12,000-foot-loop DSL. *See id.* at 62-83 (describing methodology for modeling fixed wireless costs). Although the National Broadband Plan modeling focused on the difference between cost and expected revenue, the data sets published in conjunction with the Broadband Availability Gap technical paper include data showing that the total cost for wireless is significantly higher than the total cost for DSL. *See* “All Cost/All Revenue” data sets published at <http://www.broadband.gov/plan/deployment-cost-model.html>. Furthermore, the cost calculations described in the Broadband Availability Gap technical paper assumed an average bandwidth per user of 160 kbps through 2015. As demand for capacity increases, wireless providers will face much larger cost increases as they undertake costly cell splitting to accommodate increased usage. So while a wireless deployment may be lower cost for a significant fraction of locations, assuming a 160 kbps average bandwidth per user, increase in demand drives more cost in wireless and leads to wireless being more expensive in a growing majority of areas. In addition, to the extent that locations that already have access to broadband choose to subscribe to the wireless offering, providers would have to add still more capacity, driving costs even higher.

³¹⁴ *See, e.g.,* Regulatory Commission of Alaska *USF/ICC Transformation NPRM* Comments at 3-7; Alaska Communications Systems *USF/ICC Transformation NPRM* Comments at 3-5; GCI *USF/ICC Transformation NPRM* Comments at 2; Hawaiian Telcom *USF/ICC Transformation NPRM* Comments, appendix; Puerto Rico Telephone Company *USF/ICC Transformation NPRM* Comments at 7-8; Vitelco *USF/ICC Transformation NPRM* Comments at 4-5; Docomo Pacific, Inc., et al *USF/ICC Transformation NPRM* Comments of, at 4-10.

areas, the Bureau may maintain existing support levels, as modified in this Order, to any affected price cap carrier, without exceeding the overall budget of \$1.8 billion per year for price cap areas.

D. Universal Service Support for Rate-of-Return Carriers

1. Overview

194. As we transition to the CAF, many carriers will still, for some time period, receive support under our existing support mechanisms, subject to specific modifications to improve the efficiency and effectiveness of such universal service support pending full transition to the CAF. Here, we discuss the immediate steps we are taking that affect rate-of-return carriers. Some of our current rules are not meeting their intended purposes, while others simply no longer make sense in a broadband world. Reforming these rules will help further the statutory goals of ensuring (1) quality services at “just, reasonable, and affordable rates,” and (2) “equitable and non-discriminatory” contributions such that support is “sufficient” to meet the purposes of section 254 of the Act,³¹⁵ and will advance the Commission’s goals of ensuring fiscal responsibility in all USF expenditures, increasing the accountability for Fund recipients, and extending modern broadband-capable networks

195. In particular, we implement a number of reforms to eliminate waste and inefficiency and improve incentives for rational investment and operation by rate-of-return LECs. Consistent with the competitive bidding approach we adopt for the Mobility Fund Phase I and the framework we establish for support in price cap territories that combines a new forward-looking cost model and competitive bidding, we also lay the foundation for subsequent Commission action that will set rate-of-return companies on a path toward a more incentive-based form of regulation. These reforms, summarized below, will ensure that the overall size of the Fund is kept within budget by maintaining total funding for rate-of-return companies at approximately \$2 billion per year—approximately equal to current levels—while transitioning from a system that supports only telephone service to a system that will enable the deployment of modern high-speed networks capable of delivering 21st century broadband services and applications, including voice. We believe that keeping rate-of-return carriers at approximately current support levels in the aggregate during this transition appropriately balances the competing demands on universal service funding and the desire to sustain service to consumers and provide continued incentives for broadband expansion as we improve the efficiency of rate-of-return mechanisms.

196. First, we establish benchmarks that, for the first time, will establish parameters for what actual unseparated loop and common line costs carriers may seek recovery for under the federal universal service program. Specifically, we adopt a rule to limit reimbursable capital and operations expenses for purposes of determining HCLS support, which we expect will be implemented no later than July 1, 2012 after further public comment on a proposed methodology.³¹⁶ As suggested by the Rural Associations,³¹⁷

³¹⁵ 47 USC §§ 254(b)(1), (b)(4)-(5), (d), (e). The Commission’s interpretation of the term “sufficient” to mean that support should not be excessive has been upheld by the Fifth, Tenth, and District of Columbia Circuit Courts of Appeal. *See Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620-21 (5th Cir. 2000) (“The agency’s broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service.”); *Qwest Communications Int’l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) (“excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in § 254(b)(1)”) (citing *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001)); *Rural Cellular Assn. v. FCC*, 588 F.3d 1095, 1102 (D.C. Cir. 2009) (explaining that, in assessing whether universal service subsidies are excessive, the Commission “must consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the burden on customers who continue to maintain telephone service”).

³¹⁶ *See infra* Section VII.D.3.

³¹⁷ *See* Rural Associations *USF/ICC Transformation NPRM* Comments at 11.

we also extend the limit on recovery of corporate operations expenses, currently only applicable to HCLS, to ICLS effective January 1, 2012. In so doing, we update the formula formerly applicable only to HCLS, which has not been modified since 2001, and apply the updated formula to the two programs.³¹⁸

197. Second, we take immediate steps to ensure that carriers in rural areas are not unfairly burdening consumers across the nation by using excess universal service support to subsidize artificially low end-user rates. Specifically, effective July 1, 2012, we will reduce, on a dollar-for-dollar basis, high-cost loop support to the extent that a carrier's local rates are below a specified urban local rate floor. This rule will be phased in gradually before full implementation in 2014.

198. Third, we eliminate a program that is no longer meeting its intended purpose. Safety net additive support was put in place more than a decade ago to encourage new investment, but is not effectively performing that function. Two-thirds of such support today rewards companies because they are losing access lines, rather than because they are investing. In addition, the program fails to target new investment to areas of need and, in particular, may be rewarding investment in areas where there are unsubsidized competitors, contrary to our principle of fiscal responsibility. Accordingly, safety net additive support received as a result of line loss will be phased out during 2012. The remaining current recipients of safety net additive support will continue to receive such support pursuant to the existing rules; however, no new carriers will receive safety net additive support.

199. Fourth, we eliminate local switching support effective July 1, 2012; thereafter, any allowable recovery for switching investment will occur through the recovery mechanism adopted as part of ICC reform.³¹⁹

200. Fifth, we adopt a rule to eliminate support for rate-of-return companies in any study area that is completely overlapped by an unsubsidized competitor, as defined above,³²⁰ as there is no need for universal service subsidies to flow to such areas to ensure that consumers are served.

201. Sixth, we adopt a rule that support in excess of \$250 per line per month will no longer be provided to any carrier. Support reductions will be phased in over three years for carriers currently above the cap, beginning July 1, 2012.

202. We recognize that the aggregate impact of the foregoing rule changes will affect different individual companies to a greater or lesser degree. To the extent that any individual company can demonstrate that it needs temporary and/or partial relief from one or more of these reforms in order for its customers to continue receiving voice service in areas where there is no terrestrial alternative, the Commission is prepared to review a waiver request for additional support.³²¹ However, we do not expect to routinely grant requests for additional support, and any company that seeks additional funding will be subject to a thorough total company earnings review.

203. We also make certain technical corrections and improvements to our rules in light of other rule changes adopted today. We rebase the 2012 annual high cost loop cap to reflect the fact that support for price cap companies, including their rate-of-return study areas, will be distributed through a transitional method in the first phase of the CAF. Because price cap companies and their rate-of-return

³¹⁸ These two steps are consistent with the recommendations of the Rural Associations who proposed taking the immediate steps of (1) capping the recovery of corporate operations expenses by applying the current HCLS corporate operations expense cap formula to ICLS and LSS, and (2) imposing a limitation on federal USF recovery of certain RLEC capital expenditures. *See id.* at 8-11.

³¹⁹ *See infra* para. 872.

³²⁰ *See supra* para. 103.

³²¹ *See infra* Section VII.G.

affiliates will no longer receive HCLS as of January 1, 2012, we reduce downward the HCLS cap by the amount of HCLS received by those companies in 2011. We also articulate a new standard for study area waivers and streamline the process for review of such waiver requests.

204. Finally, we seek comment in the FNRPM on the specific proposal offered by the rural associations for new CAF support.³²² The reforms we adopt today are interim steps that are necessary to allow rate-of-return carriers to continue receiving support based on existing mechanisms for the time being, but also begin the equally necessary process of transitioning to a more incentive-based form of regulation.³²³

2. Public Interest Obligations of Rate-of-Return Carriers

205. We recognize that, in the absence of any federal mandate to provide broadband, rate-of-return carriers have been deploying broadband to millions of rural Americans, often with support from a combination of loans from lenders such as RUS and ongoing universal service support.³²⁴ We now require that recipients use their support in a manner consistent with achieving universal availability of voice and broadband.

206. To implement this policy, rather than establishing a mandatory requirement to deploy broadband-capable facilities to all locations within their service territory, we continue to offer a more flexible approach for these smaller carriers. Specifically, beginning July 1, 2012, we require the following of rate-of-return carriers that continue to receive HCLS or ICLS or begin receiving new CAF funding in conjunction with the implementation of intercarrier compensation reform, as a condition of receiving that support: Such carriers must provide broadband service at speeds of at least 4 Mbps downstream and 1 Mbps upstream with latency suitable for real-time applications, such as VoIP, and with usage capacity reasonably comparable to that available in residential terrestrial fixed broadband offerings in urban areas, upon reasonable request.³²⁵ We thus require rate-of-return carriers to provide their customers with at least the same initial minimum level of broadband service as those carriers who receive model-based support, but given their generally small size, we determine that rate-of-return carriers should be provided greater flexibility in edging out their broadband-capable networks in response to consumer demand. At this time we do not adopt intermediate build-out milestones or increased speed requirements

³²² See *infra* Section XVII.B. Under the Rural Association Plan, loop costs would be allocated to the interstate jurisdiction based on the current 25 percent allocator or the individual carrier's broadband adoption rate, whichever is greater. The new interstate revenue requirement would also include certain key broadband-related costs (*i.e.*, middle mile facilities and Internet backbone access). CAF support would be provided under this new mechanism for any provider's broadband costs that exceeded a specified benchmark representing wholesale broadband costs in urban areas. Existing HCLS and ICLS would phase out as customers adopt broadband. See Rural Associations *USF/ICC Transformation NPRM* Comments at iv-v, 27-38.

³²³ This is consistent with the approach taken in the *Universal Service First Report and Order*, 12 FCC Rcd at 8889, para. 204 ("rural carriers would gradually shift to a support system based on forward-looking economic cost at a date the Commission will set after further review"). "The Commission...will also consider whether a competitive bidding process could be used to set support levels for rural carriers." *Id.* 8918, para. 256.

³²⁴ According to NTCA's 2010 survey, 75 percent of NTCA's predominantly rural member carriers reported offering Internet access service at speeds of 1.5 to 3.0 Mbps (downstream). NTCA 2010 Broadband/Internet Availability Survey Report, National Telecommunications Cooperative Assoc. (Jan. 2011), available at http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2010_NTCA_Broadband_Survey_Report.pdf.

³²⁵ We intend to target support to areas where there is no unsubsidized competitor. In the FNPRM, we seek comment on how to apply this policy in areas where a rate-of-return ETC is overlapped in part by an unsubsidized competitor. See *infra* Section XVII.D (Eliminating Support for Areas with an Unsubsidized Competitor).

for future years, but we expect carriers will deploy scalable broadband to their communities and will monitor their progress in doing so, including through the annual reports they will be required to submit.³²⁶ The broadband deployment obligation we adopt is similar to the voice deployment obligations many of these carriers are subject to today.

207. We believe these public interest obligations are reasonable.³²⁷ Although many carriers may experience some reduction in support as a result of the reforms adopted herein, those reforms are necessary to eliminate waste and inefficiency and improve incentives for rational investment and operation by rate-of-return LECs. We note that these carriers benefit by receiving certain and predictable funding through the CAF created to address access charge reform.³²⁸ In addition, rate-of-return carriers will not necessarily be required to build out to and serve the most expensive locations within their service area.

208. Upon receipt of a reasonable request for service, carriers must deploy broadband to the requesting customer within a reasonable amount of time.³²⁹ We agree with the State Members of the Federal-State Joint Board on Universal Service that construction charges may be assessed, subject to limits.³³⁰ In the Accountability and Oversight section of this Order, we require ETCs to include in their annual reports to USAC and to the relevant state commission and Tribal government, if applicable, the number of unfulfilled requests for service from potential customers and the number of customer complaints, broken out separately for voice and broadband services.³³¹ We will monitor carriers' filings to determine whether reasonable requests for broadband service are being fulfilled, and we encourage states and Tribal governments to do the same. As discussed in the legal authority section above,³³² we are funding a broadband-capable voice network, so we believe that to the extent states retain jurisdiction over voice service, states will have jurisdiction to monitor these carriers' responsiveness to customer requests for service.

209. We recognize that smaller carriers serve some of the highest cost areas of the nation. We seek comment in the FNPRM below on alternative ways to meet the needs of consumers in these highest cost areas. Pending development of the record and resolution of these issues, rate-of-return carriers are simply required to extend broadband on reasonable request. We expect that rate-of-return carriers will follow pre-existing state requirements, if any, regarding service line extensions in their highest-cost areas.

3. Limits on Reimbursable Capital and Operating Costs

210. In this section, we adopt a framework for ensuring that companies do not receive more support than necessary to serve their communities. The framework consists of benchmarks for prudent

³²⁶ See *supra* paras. 105-106 (committing to initiating a proceeding no later than the end of 2014 to review performance requirements).

³²⁷ See *supra* paras. 92-100 (adopting broadband performance metrics).

³²⁸ See *infra* Section XIII.F.3 (Monitoring Compliance with Recovery Mechanism).

³²⁹ *C.f.* 47 C.F.R. § 54.202 (requiring any carrier petitioning to be federally-designated ETCs to “[c]ommit to provide service throughout its proposed designated service area to all customers making a reasonable request for service” and to certify that it will provide service “on a timely basis” to customers within its existing network coverage and “within a reasonable time” to customers outside of its existing network coverage if service can be provided at reasonable cost).

³³⁰ State Members *August 3 PN* Comments at Appx. A, 159.

³³¹ See *infra* para. 580.

³³² See *supra* section V (Legal Authority).

levels of capital and operating costs; these costs are used for purposes of determining high-cost support amounts for rate-of-return carriers. This framework will create structural incentives for rate-of-return companies to operate more efficiently and make prudent expenditures. In the attached FNPRM, we seek comment on a specific proposed methodology for setting the benchmark levels to estimate appropriate levels of capital expenses and operating expenses for each incumbent rate-of-return study area, using publicly available data.³³³ We delegate authority to the Wireline Competition Bureau to implement a methodology and expect that limits will be implemented no later than July 1, 2012.

211. *Background.* In the *USF/ICC Transformation NPRM*, we proposed to establish benchmarks for reimbursable capital and operating costs for loop plant for rate-of-return companies. Under our current rules, some carriers with high loop costs may have up to 100 percent of their marginal loop costs above a certain threshold reimbursed from the federal universal service fund.³³⁴ As we explained, this produces two interrelated effects that may lessen incentives for some carriers to control costs and invest rationally. First, carriers have incentives to increase their loop costs and recover the marginal amount entirely from the federal universal service fund. Second, carriers that take measures to cut their costs to operate more efficiently may actually lose support to carriers that increase their costs.³³⁵

212. To address these problems, we proposed to use regression analyses to estimate appropriate levels of capital expenses and operating expenses for each incumbent rate-of-return study area and limit expenses falling above a benchmark based on this estimate.³³⁶ We noted that the Nebraska Rural Companies had submitted an analysis of outside plant capital expenditures in January 2011.³³⁷ Consultants for the Nebraska Companies analyzed engineering cost estimates for hundreds of fiber-to-the-premises projects built or planned by rate-of-return companies from 2004 to 2010, with the goal of producing a statistically reliable cost predictor.³³⁸ They compared individual company non-public cost data to a variety of objective publicly available geographic and demographic variables (public variables) and performed regression analyses using the public variables as independent variables and construction cost per household as the dependent variable.³³⁹ Their final resulting regression equation included six independent public variables: linear density, households, frost index, wetlands percentage, soils texture, and road intersections frequency.³⁴⁰

213. The Nebraska Companies submitted a similar regression analysis designed to predict operating expenses of rate-of-return companies that operate voice and broadband-capable networks in

³³³ See *infra* section XVII.E.

³³⁴ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4624-26, paras. 201-07.

³³⁵ *Id.* at 4624-25, para. 202.

³³⁶ *Id.* at 4625, para. 203.

³³⁷ See Letter from Thomas Moorman, Counsel to Nebraska Rural Independent Companies, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, Attach. (Nebraska Rural Independent Companies' Capital Expenditure Study: Predicting the Cost of Fiber to the Premise) (dated Jan. 7, 2011) (Nebraska Companies' Capital Expenditure Study).

³³⁸ See Nebraska Companies' Capital Expenditure Study at 1-3; Reply Comments of the Nebraska Rural Independent Companies, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, at 13 (filed May 23, 2011).

³³⁹ Nebraska Companies' Capital Expenditure Study at 4-11.

³⁴⁰ *Id.* at 18.

rural areas.³⁴¹ In this regression the dependent variable was average annual operating expenses per connection (in thousands of dollars) and the four independent variables that were found to be significant were customer density, company location, company size, and number of employees.³⁴²

214. *Discussion.* We conclude that the Commission should use regression analyses to limit reimbursable capital expenses and operating expenses for purposes of determining high-cost support for rate-of-return carriers. The methodology will generate caps, to be updated annually, for each rate-of-return company. This rule change will place important constraints on how rate-of-return companies invest and operate that over time will incent greater operational efficiencies.

215. Several commenters support our proposal to impose reasonable limits on reimbursable capital and operating expenses.³⁴³ Although many small rate-of-return carriers seem to imply that we should not adopt operating expense benchmarks because their operating expenses are “fixed,”³⁴⁴ other representatives of rural rate-of-return companies support the concept of imposing reasonable benchmarks.³⁴⁵ The Rural Associations concede that “[t]o the extent any ‘race to the top’ occurs, it undermines predictability and stability for current USF recipients.”³⁴⁶

216. We set forth in the FNPRM and Appendix H a specific methodology for capping recovery for capital expenses and operating expenses using quantile regression techniques and publicly available cost, geographic and demographic data. The net effect would be to limit high-cost loop support amounts for rate-of-return carriers to reasonable amounts relative to other carriers with similar characteristics.³⁴⁷

³⁴¹ See Letter from Paul M. Schudel, Counsel to Nebraska Rural Independent Companies, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Attach. (Operating Expense Study Sponsored by the Nebraska Rural Independent Companies and Telegee Alliance of Certified Public Accounting Firms: Predicting the Operating Expenses of Rate-of-Return Telecommunications Companies) (dated May 10, 2011) (Nebraska Companies’ Operating Expense Study); Letter from Cheryl L. Parrino, Parrino Strategic Consulting Group, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket Nos. 10-90, 05-337, CC Docket No. 01-92, Attach. 2 (Operating Expense Study Sponsored by the Nebraska Rural Companies: Update to Predicting the Operating Expenses of Rate-of-Return Telecommunications Companies) (dated Sept. 29, 2011) (Parrino Sept. 29 Ex Parte).

³⁴² Nebraska Companies’ Operating Expense Study at 6-10.

³⁴³ See, e.g., Moss Adams *USF/ICC Transformation NPRM* Comments, at 13 (recommending that, “rather than drastically reducing or eliminating these funding mechanisms on a wholesale basis, the FCC could utilize expense and capital investment benchmarks to determine annual costs to be recovered by rural carriers”); CTIA *USF/ICC Transformation NPRM* Comments at 16; RBA *USF/ICC Transformation NPRM* Comments at 16-17; Moss Adams *August 3 PN* Comments at 6 (recognizing it may be appropriate to limit the costs that a company can incur in a year, taking into account variability of companies).

³⁴⁴ See e.g., Ducor Telephone *USF/ICC Transformation NPRM* Comments at 7. They also claim that the *USF/ICC Transformation NPRM* suggests that operating expenses are discretionary. *Id.*

³⁴⁵ See Moss Adams *August 3 PN* Comments, at 6 (recognizing it may be appropriate to limit the costs that a company can incur in a year, taking into account variability of companies); Rural Broadband Alliance *USF/ICC Transformation NPRM* Comments, at 16-17.

³⁴⁶ Rural Associations *USF/ICC Transformation NPRM* Comments at 9.

³⁴⁷ HCLS helps offset the non-usage based costs associated with the local loop in areas where the cost to provide voice service is relatively high compared to the national average cost per line. Today, 75 percent of loop costs are assigned to the intrastate jurisdiction and 25 percent of such costs are assigned to the interstate jurisdiction. Carriers recover up to 75 percent of their unseparated loop costs above a specified dollar figure from HCLS. The remaining 25 percent of loop cost is recovered through ICLS, to the extent the interstate common line revenue requirement exceeds their SLC revenues.

Specifically, the methodology uses NECA cost data and 2010 Census data to cap permissible expenses for certain costs used in the HCLS formula.³⁴⁸ We invite public input in the attached FNPRM on that methodology and anticipate that HCLS benchmarks will be implemented for support calculations beginning in July 2012.

217. We set forth here the parameters of the methodology that the Bureau should use to limit payments from HCLS. We require that companies' costs be compared to those of similarly situated companies. We conclude that statistical techniques should be used to determine which companies shall be deemed similarly situated. For purposes of this analysis, we conclude the following non-exhaustive list of variables may be considered: number of loops, number of housing units (broken out by whether the housing units are in urbanized areas, urbanized clusters, and nonurban areas), as well as geographic measures such as land area, water area, and the number of census blocks (all broken out by urbanized areas, urbanized clusters, and nonurban areas). We grant the Bureau discretion to determine whether other variables, such as soil type, would improve the regression analysis. We note that the soils data from the Natural Resource Conservation Service (NRCS) that the Nebraska study used to generate soil, frost and wetland variables do not cover the entire United States.³⁴⁹ We seek comment in the FNPRM on sources of other publicly available soil data. We delegate authority to the Bureau to adopt the initial methodology, to update it as it gains more experience and additional information, and to update its regression analysis annually with new cost data.

218. Each year the Wireline Competition Bureau will publish in a public notice the updated capped values that will be used in the NECA formula in place of an individual company's actual cost data for those rate-of-return cost companies whose costs exceed the caps, which will result in revised support amounts.³⁵⁰ We direct NECA to modify the high-cost loop support universal service formula for average schedule companies annually to reflect the caps derived from the cost company data.

219. We conclude that establishing reasonable limits on recovery for capital expenses and operating expenses will provide better incentives for carriers to invest prudently and operate efficiently than the current system.³⁵¹ Under our current HCLS rules, a company receives support when its costs are

³⁴⁸ NECA's HCLS formula, i.e., the 26-step Cost Company Loop Cost Algorithm, is *available at* <http://transition.fcc.gov/wcb/iatd/neca.html>. See National Exchange Carrier Assoc., Inc., NECA's Overview of Universal Service Fund, Submission of 2010 Study Results, at App. B (filed Sept. 30, 2011); 2010 United States Census Data, http://www2.census.gov/census_2010/01-Redistricting_File--PL_94-171/ and documentation at <http://www.census.gov/prod/cen2010/doc/pl94-171.pdf>. The census block level data was rolled up to study areas using Study Area Boundaries: Tele Atlas Telecommunications Suite, June 2010.

³⁴⁹ These data, called the Soil Survey Geographic Database or SSURGO, do not cover about 24 percent of the United States land mass, including Puerto Rico, Guam, American Samoa, US Virgin Islands and Northern Mariana Islands as well as Alaska, which accounts for much of the missing land area. Thus, there are some study areas where there is no SSURGO data (such as the study area served by Adak Tel Utility) and other study areas where the SSURGO data not cover the entire study area.

³⁵⁰ Incumbent local exchange carriers file investment and expense account data and loop counts pursuant to sections 36.611 and 36.612 of the Commission's rules for purposes of determining whether they are entitled to receive HCLS. See 47 C.F.R. §§ 36.611, 36.612. Only "cost" companies files such data, however. "Average schedule" companies are not required to perform company-specific cost studies – the basis upon which a carrier's HCLS is calculated. HCLS for average schedule companies is calculated pursuant to formulas developed by NECA and approved or modified annually by the Wireline Competition Bureau. See, e.g., *National Exchange Carrier Association, Inc. and Universal Service Administrative Company, 2010 Modification of Average Schedule Universal Service Support Formulas, High-Cost Universal Service Support*, WC Docket No. 05-337, Order, 25 FCC Rcd 17520 (Wireline Comp. Bur. 2010).

³⁵¹ Implementing this methodology would have two potential effects. First, as designed, it gives carriers an incentive to constrain their capital and operating costs. Carriers considering significant new capital investment will (continued...)

relatively high compared to a national average – without regard to whether a lesser amount would be sufficient to provide supported services to its customers. The current rules fail to create incentives to reduce expenditures; indeed, because of the operation of the overall cap on HCLS, carriers that take prudent measures to cut costs under our current rules may actually lose HCLS support to carriers that significantly increase their costs in a given year.

220. Under our new rule, we will place limits on the HCLS provided to carriers whose costs are significantly higher than other companies that are similarly situated, and support will be redistributed to those carriers whose unseparated loop cost is not limited by operation of the benchmark methodology. We note that the fact that an individual company will not know how the benchmark affects its support levels until after investments are made is no different from the current operation of high-cost loop support, in which a carrier receives support based on where its own cost per loop falls relative to a national average that changes from year to year. Even today, companies can only estimate whether their expenditures will be reimbursed through HCLS. In contrast to the current situation, the new rule will discourage companies from over-spending relative to their peers. The new rule will provide additional support to those companies that are otherwise at risk of losing HCLS altogether, and would not otherwise be well-positioned to further advance broadband deployment.

221. We reject the argument that imposing benchmarks in this fashion would negatively impact companies that have made past investments in reliance upon the current rules or the “no barriers to advanced services” policy. Section 254 does not mandate the receipt of support by any particular carrier. Rather, as the Commission has indicated and the courts have agreed, the “purpose of universal service is to benefit the customer, not the carrier.”³⁵² That is, while section 254 directs the Commission to provide support that is sufficient to achieve universal service goals, that obligation does not create any entitlement or expectation that ETCs will receive any particular level of support or even any support at all. The new rule will inject greater predictability into the current HCLS mechanism, as companies will have more certainty of support if they manage their costs to be in alignment with their similarly situated peers.

222. Our obligation to consumers is to ensure that they receive supported services. Our expectation is that carriers will provide such services to their customers through prudent facility investment and maintenance. To the extent costs above the benchmark are disallowed under this new rule, companies are free to file a petition for waiver to seek additional support.³⁵³

223. We find that our approach – which limits allowable investment and expenses with reference to similarly situated carriers – is a reasonable way to place limits on recovery of loop costs. The Rural Associations propose an alternative limitation on capital investment that would tie the amount of a rural company’s recovery of prospective investment that qualifies for high-cost support to the accumulated depreciation in its existing loop plant.³⁵⁴ Their proposal would limit only future annual loop investment
(Continued from previous page) _____

need to consider how those projects would impact their capital and operating expenses. Carriers could still choose a more expensive deployment, but if the costs associated with the capital expenditures exceed their benchmarks, these carriers would have to recover those costs from sources other than USF (such as from their customer base) to ensure a return on that increased investment. Just as carriers will be more mindful of the cost of their future capital expenditures, they will need to be mindful of future operating expenses associated with new investment. Second, this methodology also will help to identify those study areas where past investments may have been excessive and caps their reimbursement.

³⁵² *Rural Cellular Association v. FCC*, 588 F.3d 1095, 1103 (D.C. Cir. 2009) (quoting *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000)). See also *infra* paras. 293-294.

³⁵³ See *infra* paras. 539-544.

³⁵⁴ See Rural Associations *USF/ICC Transformation NPRM* Comments at 8-10, App. A.

for individual companies by multiplying (a) the ratio of accumulated loop depreciation to total loop plant or (b) twenty percent, whichever is lower, times (c) an estimated total loop plant investment amount (adjusted for inflation). This proposal would do little to limit support for capital expenses if past investments for a particular company were high enough to be more than sufficient to provide supported services, and would do nothing to limit support for operating expenses, which are on average more than half of total loop costs.³⁵⁵ In addition, it would likely be administratively impracticable for the Commission to verify the inflation adjustments each company would make for various pieces of equipment acquired at various times.

224. We also conclude that our approach can be more readily implemented and updated than the specific proposal presented by the Nebraska Companies.³⁵⁶ Consultants for the Nebraska Companies, in their regression analyses, used proprietary cost data. Because the proprietary cost data were not placed in the record, Commission staff was not able to verify the results of the Nebraska Companies' studies. The Nebraska Companies subsequently proposed that the Commission begin collecting similar investment and operating expense data, as well as independent variables such as density per route mile, to be used in similar regression analyses.³⁵⁷ For example, they suggest that "[o]ne useful source for this data would be the investment costs associated with actual broadband construction projects that meet or exceed current engineering standards."³⁵⁸ Although the Nebraska Companies' proposal shares objectives similar to our methodology, it would require the collection of additional data that the Commission does not currently have, which would lead to considerable delay in implementation. We also are concerned about the difficulty in obtaining a sufficiently representative and standardized data set based on construction projects that will vary in size, scope and duration. Moreover, regressions based on such data could not easily be updated on a regular basis without further data collection and standardization. On balance, we do not believe that any advantages of the Nebraska Companies' approach outweigh the benefits of relying on cost data that the Commission already collects on a regular basis. As explained in detail in the attached FNPRM and Appendix H, Commission staff used publicly available NECA cost data and other publicly available geographic and demographic data sets to develop the proposed benchmarks.³⁵⁹

225. Finally, we note that while the methodology in Appendix H is specifically designed to modify the formula for determining HCLS, we conclude that we should also develop similar benchmarks for determining ICLS. We direct NECA to file the detailed revenue requirement data it receives from carriers, no later than thirty days after release of this Order, so that the Wireline Competition Bureau can evaluate whether it should adopt a methodology using these data. Over time, benchmarks to limit reimbursable recovery of costs will provide incentives for each individual company to keep its costs lower than its own cap from prior years, and more generally moderate expenditures and improve

³⁵⁵ Indeed, as one commenter notes, such an approach would lock in past disparities in investment patterns, so that a company that spent excessively on its current plant could continue to invest significant amounts in the future, while a company that has not invested sufficiently in the past would face a limited budget to upgrade aging plant. Nebraska Rural Independent Companies *USF/ICC Transformation NPRM Reply*, at 6.

³⁵⁶ Parrino Sept. 29 Ex Parte, at Attach. 1 (Letter from Wendy Thompson Fast, Consolidated Companies, and Ken Pfister, Great Plains Communications, to Carol Matthey, FCC, GN Docket No. 09-51, WC Docket Nos. 10-90, 05-337, CC Docket No. 01-92).

³⁵⁷ *Id.* at Attach. 1, 2, 5-7.

³⁵⁸ *Id.* at Attach. 1, 2 ("Cost data should be derived solely from broadband networks that have been engineered to ensure that consumer applications in rural areas will remain comparable to those generally available and used in urban areas.").

³⁵⁹ See National Exchange Carrier Assoc., Inc., Universal Service Fund Data: NECA Study Results, 2010 Report (filed Sept. 30, 2011), <http://transition.fcc.gov/wcb/iatd/neca.html>.

efficiency, and we believe these objectives are as important in the context of ICLS as they are for HCLS. We seek comment in the FNPRM on ICLS benchmarks.

226. We delegate authority to the Wireline Competition Bureau to finalize a methodology to limit HCLS and ICLS reimbursements after this further input.

4. Corporate Operations Expense

227. *Background.* Corporate operations expenses are general and administrative expenses, sometimes referred to as overhead expense. More specifically, corporate operations expense includes expenses for overall administration and management, accounting and financial services, legal services, and public relations. Corporate operations expenses are currently eligible for recovery through HCLS, LSS, and ICLS. For many years the Commission has limited the amount of recovery for these expenses through HCLS but not through LSS and ICLS.³⁶⁰

228. In the *USF/ICC Transformation NPRM*, we proposed to reduce or eliminate universal service support for corporate operations expense.³⁶¹ We also sought comment on reducing or eliminating corporate operations expense as an eligible expense for both LSS and ICLS.³⁶²

229. *Discussion.* As supported by many parties,³⁶³ we will adopt the more modest reform proposal to extend the limit on recovery of corporate operations expense to ICLS effective January 1, 2012. We concluded in the *Universal Service First Report and Order* that the amount of recovery of corporate operations expense from HCLS should be limited to help ensure that carriers use such support only to offer better service to their customers through prudent facility investment and maintenance, consistent with their obligations under section 254(k).³⁶⁴ We now conclude that the same reasoning applies to ICLS.³⁶⁵ Extending the limit on the recovery of corporate operations expenses to ICLS likewise furthers our goal of fiscal responsibility and accountability.³⁶⁶

230. We note, however, that the current formula for limiting the eligibility of corporate operations expenses for HCLS has not been revised since 2001.³⁶⁷ The initial formula was implemented

³⁶⁰ 47 C.F.R. § 32.6720.

³⁶¹ See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4623, para. 194.

³⁶² See *id.* at 4624, para. 198. The FPSC supported eliminating eligibility of corporate operations expense from all support mechanisms. See Florida Commission *USF/ICC Transformation NPRM* Comments at 7-8.

³⁶³ See, e.g. Rural Associations *USF/ICC Transformation NPRM* Comments at 42; Alexicon *USF/ICC Transformation NPRM* Comments at 11; FairPoint *USF/ICC Transformation NPRM* Comments at 11-12; Montana Commission *USF/ICC Transformation NPRM* Reply at 6; Moss Adams *USF/ICC Transformation NPRM* Comments at 12-13.

³⁶⁴ See *Universal Service First Report and Order*, 12 FCC Rcd at 8930, para. 283.

³⁶⁵ The same reasoning also would apply to LSS; however, as discussed below in section VII.D.7 (Local Switching Support), we are eliminating LSS as a stand-alone support program and will not extend the corporate operations limit to LSS for the remainder of its existence. Those costs will be addressed through the ICC recovery mechanism adopted in section XII (Comprehensive Intercarrier Compensation Reform) and section XIII (Recovery Mechanism) below.

³⁶⁶ See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4560-61, para. 10.

³⁶⁷ See *Rural Task Force Order*, 16 FCC Rcd at 11270-77, paras. 60-76; 47 C.F.R. § 36.621(a)(4)

in 1998, based on 1995 cost data.³⁶⁸ In 2001, the formula was modified to reflect increases in Gross Domestic Product-Chained Price Index (GDP-CPI),³⁶⁹ but has not been updated since then.

231. There have been considerable changes in the telecommunications industry in the last decade, given the “ongoing evolution of the voice network into a broadband network,”³⁷⁰ and we believe updating the formula based on more recent cost data will ensure that it reflects the current economics of serving rural areas and appropriately provides incentives for efficient operations. Therefore, we now update the limitation formula based on an analysis of the most recent actual corporate operations expense submitted by rural incumbent LECs.³⁷¹ As set forth in Appendix C, the basic statistical methods for developing the limitation formula and the structure of the formula are the same as before.³⁷² We also conclude that the updated formula we adopt today should include a growth factor, consistent with the current formula that applies to HCLS.³⁷³

232. Accordingly, effective January 1, 2012, we modify the existing limitation on corporate operations expense formula as follows:

- For study areas with 6,000 or fewer total working loops the monthly amount per loop shall be (a) $\$42.337 - (.00328 \times \text{number of total working loops})$, or (b) $\$63,000 / \text{number of total working loops}$, whichever is greater;
- For study areas with more than 6,000, but fewer than 17,887 total working loops, the monthly amount per loop shall be $\$3.007 + (117,990 / \text{number of total working loops})$; and
- For study areas with 17,887 or more total working loops, the monthly amount per loop shall be $\$9.56$;
- Beginning January 1, 2013, the monthly per-loop limit shall be adjusted each year to reflect the annual percentage change in GDP-CPI.

233. The chart below depicts the per-line limits on corporate operations expense currently in place for 2011 compared to the new per-line limit we adopt today, which will become effective January 1, 2012.

³⁶⁸ See *Universal Service First Report and Order*, 12 FCC Rcd at 8930-32, paras. 283-85, 8942, para. 307.

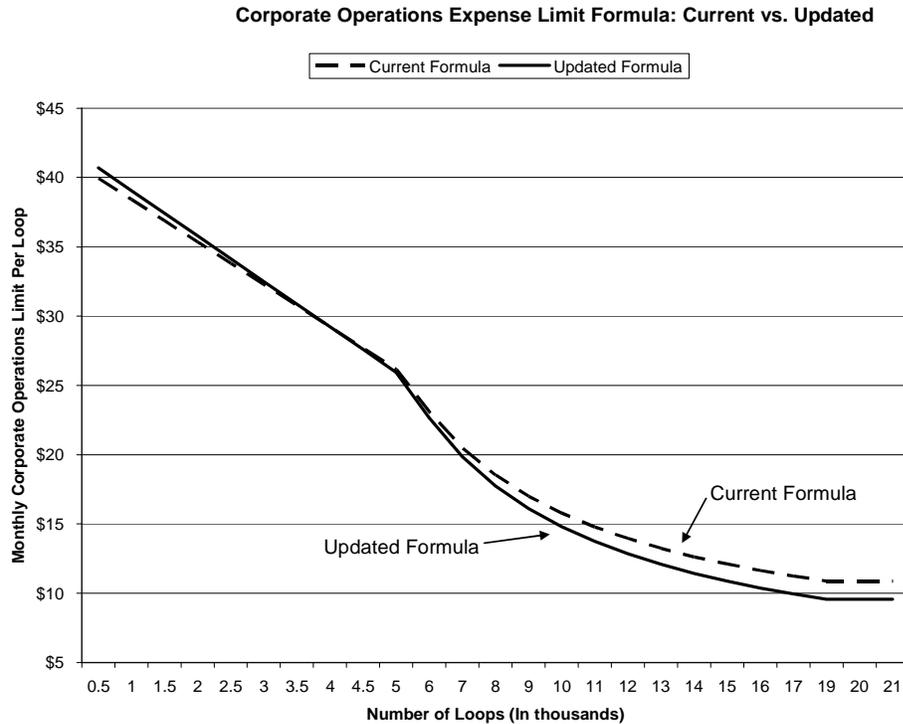
³⁶⁹ See *Rural Task Force Order*, 16 FCC Rcd at 11275, para. 73.

³⁷⁰ See *August 3 PN*; Rural Associations *August 3 PN* Comments at 19.

³⁷¹ In the *August 3 PN*, we sought comment on applying an updated formula to limit recovery of corporate operations expenses for HCLS, ICLS, and LSS. See *August 3 PN* 26 FCC Rcd at 11117.

³⁷² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10102-05, paras. 17-22 and Appendix B.

³⁷³ The Rural Associations commented that the updated formula did not include a growth factor to reflect increases in GDP-CPI, as does the current formula that applies to HCLS. See Rural Associations *August 3 PN* Comments at 21-22.



5. Reducing High Cost Loop Support for Artificially Low End-User Rates

234. *Background.* Section 254(b) of the Act requires that “[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”³⁷⁴ In the *USF/ICC Transformation NPRM*, we sought comment on tools, such as rate benchmarks and imputation of revenues, that might be used both today and as the marketplace fully transitions to broadband networks to meet this statutory mandate.³⁷⁵ Among other things, we sought comment on using a rate benchmark, or floor, based on local rates for voice service at the outset of any transition for high-cost support reform.³⁷⁶ One commenter, in response to the *USF/ICC Transformation NPRM*, suggested we develop a benchmark for voice service and reduce a carrier’s high-cost support by the amount that its rate falls below the benchmark.³⁷⁷

235. *Discussion.* We now adopt a rule to limit high-cost support where end-user rates do not meet a specified local rate floor. This rule will apply to both rate-of-return carriers and price cap companies.

³⁷⁴ 47 U.S.C. § 254(b)(3).

³⁷⁵ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4733-34, para. 573. Under a benchmark approach, the benchmarked rate is imputed to the carrier for purposes of determining support, but carriers typically are not required to raise their rates to the benchmark level.

³⁷⁶ *Id.* See also *id.* at 4603, para. 139 and n. 223 (seeking comment on developing a rate benchmark for voice [and broadband] services to satisfy Congress’s requirement that universal service ensure that services are available to all regions, “including rural, insular, and high cost areas,” at rates that are “affordable” and “reasonably comparable” to those in urban areas).

³⁷⁷ Ad Hoc USF/ICC Transformation NPRM Comments at 26. We sought comment specifically on this approach in a subsequent Public Notice addressing specific aspects of additional proposals and issues. *August 3 PN*, 26 FCC Rcd at 11118.

Section 254 obligates states to share in the responsibility of ensuring universal service. We recognize some state commissions may not have examined local rates in many years, and carriers may lack incentives to pursue a rate increase when federal universal service support is available. Based on evidence in the record, however, there are a number of carriers with local rates that are significantly lower than rates that urban consumers pay.³⁷⁸ Indeed, as noted in Figure 5 below, there are local rates paid by customers of universal service recipients as low as \$5 in some areas of the country. For example, we note that two carriers in Iowa and one carrier in Minnesota offer local residential rates below \$5 per month.³⁷⁹ We do not believe that Congress intended to create a regime in which universal service subsidizes artificially low local rates in rural areas when it adopted the reasonably comparable principle in section 254(b); rather, it is clear from the overall context and structure of the statute that its purpose is to ensure that rates in rural areas not be significantly higher than in urban areas.

236. We focus here on the impact of such a rule on rate-of-return companies.³⁸⁰ Data submitted by NECA summarizing residential R-1 rates for over 600 companies — a broad cross-section of carriers that typically receive universal service support — show that approximately 60 percent of those study areas have local residential rates that are below the 2008 national average local rate of \$15.62. This distribution plot shows that most rates fall within a five-dollar range of the national average, but more than one hundred companies, collectively representing hundreds of thousands of access lines, have a basic R-1 rate that is significantly lower. This appears consistent with rate data filed by other commenters.³⁸¹

Figure 5

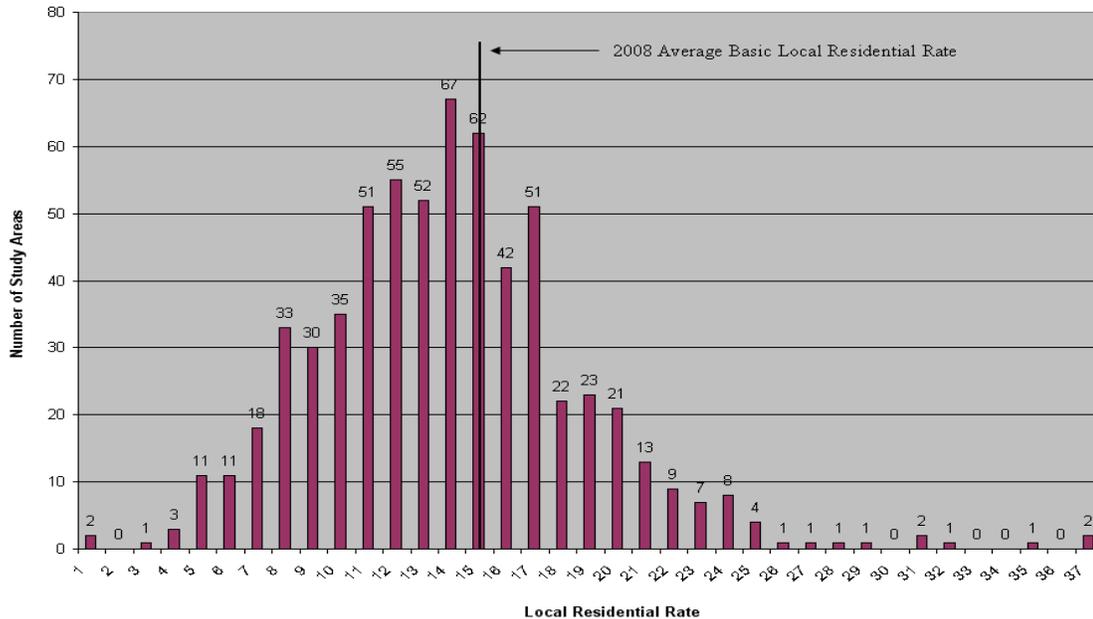
Sample of Local Residential Service Monthly Rates
NECA Survey of 641 Respondents

³⁷⁸ In the *August 3 PN*, we stated that our high-cost universal service rules may subsidize excessively low rates for consumers served by rural and rate-of-return carriers. *August 3 PN*, 26 FCC Rcd at 4614-15, para. 172. We noted that one commenter stated that roughly 20 percent of the residential lines of small rate-of-return companies have monthly rates of \$12 or less and another 22 percent have local rates between \$12 and \$15 per month, while the nationwide average urban rate, it contends, was approximately \$15.47 based on the most recent published reference book of rates by the FCC. *Id.* While individual consumers in those areas may benefit from such low rates, when a carrier uses universal service support to subsidize local rates well below those required by the Act, the carrier is spending universal service funds that could potentially be better deployed to the benefit of consumers elsewhere. *Id.*

³⁷⁹ Local residential rates, or flat rates for residential service, are more commonly referred to as the “R-1” rate. *See, e.g.*, Letter from the Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 3 (filed February 5, 2007) (referencing “the basic residential local rate (IFR or equivalent)”).

³⁸⁰ While price cap companies on average tend to have higher R-1 rates than rate-of-return companies, we note that data in the record indicates that a number of price cap companies also have local R-1 rates below the most recently available national average local rate, \$15.62, in a number of states. *See* Letter from Malena F. Barzilai, Regulatory Counsel & Director, Windstream Communications, to Marlene H. Dortch, Secretary, FCC, Confidential Information Subject to Protective Order in CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135, 10-90, and GN Docket No. 09-51 (filed Oct. 15, 2011) (*NECA Survey*); Letter from Michael D. Saperstein, Jr., Director of Federal Regulatory Affairs, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, Confidential Information Subject to Protective Order in CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135, 10-90, and GN Docket No. 09-51 (filed Dec. 16, 2010). In fact, price cap companies have some R-1 rates lower than \$9.

³⁸¹ The data for this distribution comes from the *NECA Survey*. *See also* Oregon Telecommunications Association and the Washington Independent Telecommunications Association Comments, Table 7 (filed July 12, 2010) (providing existing monthly local residential rates ranging from \$10.00 to \$27.39 not including subscriber line charges of \$6.50 per month); Oregon Telecommunications Association and the Washington Independent Telecommunications Association Reply Comments, Table 3 (filed August 11, 2010) (providing existing monthly local residential rates ranging from \$12.25 to \$30.50 not including subscriber line charges of \$6.50 per month).



237. It is inappropriate to provide federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability. Doing so places an undue burden on the Fund and consumers that pay into it. Specifically, we do not believe it is equitable for consumers across the country to subsidize the cost of service for some consumers that pay local service rates that are significantly lower than the national urban average.

238. Based on the foregoing, and as described below, we will limit high-cost support where local end-user rates plus state regulated fees (specifically, state SLCs, state universal service fees, and mandatory extended area service charges) do not meet an urban rate floor representing the national average of local rates plus such state regulated fees. Our calculation of this urban rate floor does not include federal SLCs, as the purposes of this rule change are to ensure that states are contributing to support and advance universal service and that consumers are not contributing to the Fund to support customers whose rates are below a reasonable level.³⁸²

239. We will phase in this rate floor in three steps, beginning with an initial rate floor of \$10 for the period July 1, 2012 through June 30, 2013 and \$14 for the period July 1, 2013 through June 30, 2014. Beginning July 1, 2014, and in each subsequent calendar year, the rate floor will be established after the Wireline Competition Bureau completes an updated annual survey of voice rates. Under this approach, the Commission will reduce, on a dollar-for-dollar basis, HCLS and CAF Phase I support to the extent that a carrier’s local rates (plus state regulated fees) do not meet the urban rate floor.

240. To the extent end-user rates do not meet the rate floor, USAC will make appropriate reductions in HCLS support. This calculation will be pursuant to a rule that is separate from our existing rules for calculation of HCLS, which is subject to an annual cap. As a consequence, any calculated

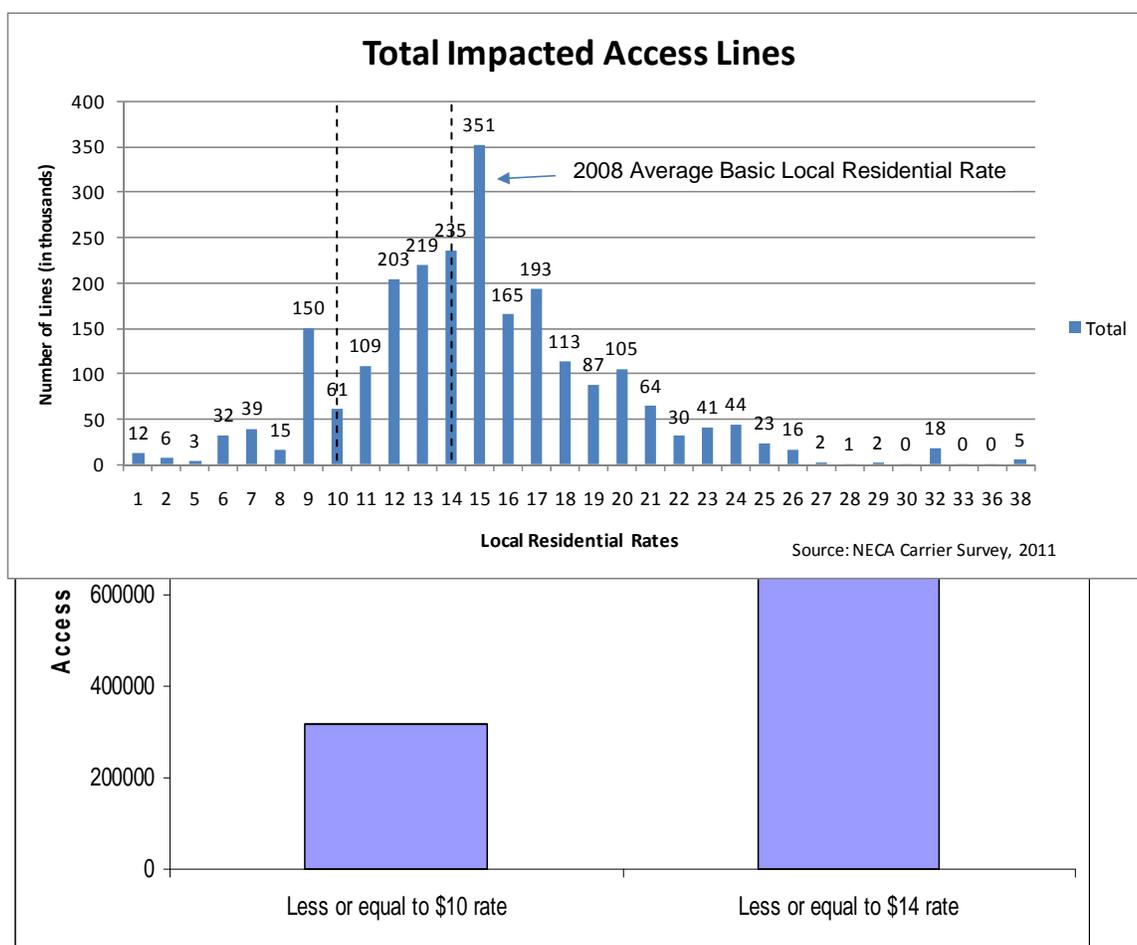
³⁸² See 47 U.S.C. §§ 254(b)(5), 254(f), 254(k); *Federal-State Joint Board on Universal Service*, Order on Remand, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, 22568 para. 17 (2003) (“The Act makes clear that preserving and advancing universal service is a shared federal and state responsibility.”).

reductions will not flow to other carriers that receive HCLS, but rather will be used to fund other aspects of the CAF pursuant to the reforms we adopt today.³⁸³

241. This offset does not apply to ICLS because that mechanism provides support for interstate rates, not intrastate end-user rates. Accordingly, we will revise our rules to limit a carrier’s high-cost loop support when its rates do not meet the specified local urban rate floor.³⁸⁴

242. As shown in Figures 6 and 7 below, phasing in this requirement in three steps will appropriately limit the impact of the new requirement in a measured way. Based on the NECA data, we estimate that there are only 257,000 access lines in study areas having local rates less than \$10 – which would be affected by the rule change in the second half of 2012 – and there are 827,000 access lines in study areas that potentially would be affected in 2013.³⁸⁵ We assume, however, that by 2013 carriers will have taken necessary steps to mitigate the impact of the rule change. By adopting a multi-year transition, we seek to avoid a flash cut that would dramatically affect either carriers or the consumers they serve.

Figure 6



³⁸³ See *supra* Section VII.H.

³⁸⁴ See *infra* Section 54.318, Appendix A.

³⁸⁵ The data for this distribution comes from the *NECA Survey*. See *supra* note 381.

243. In addition, because we anticipate that the rate floor for the third year will be set at a figure close to the sum of \$15.62 plus state regulated fees, we are confident that \$10 and \$14 are conservative levels for the rate floors for the first two years. \$15.62 was the average monthly charge for flat-rate service in 2008, the most recent year for which data was available.³⁸⁶ Under our definition of “reasonably comparable,” rural rates are reasonably comparable to urban rates under section 254(b) if they fall within a reasonable range above the national average.³⁸⁷ Under this definition, we could set the rate floor *above* the national average urban rate but within a range considered reasonable. In the present case, we are expecting to set the end point rate floor *at* the average rate, and we are setting rate floors well *below* our current best estimate of the average during the multi-year transition period.

244. Although the high-cost program is not the primary universal service program for addressing affordability, we note that some commenters have argued that if rates increase, service could become unaffordable for low-income consumers.³⁸⁸ However, staff analysis suggests that this rule change should not disproportionately affect low-income consumers, because there is no correlation between local rates and average incomes in rate-of-return study areas—that is, rates are not systematically lower where consumer income is lower and higher where consumer income is higher. We further note that the Commission’s Lifeline and Link Up program remains available to low-income consumers regardless of this rule change.³⁸⁹

245. In 2010, 1,048 rate-of-return study areas received HCLS support. Using data from the NECA survey filed pursuant to the Protective Order in this proceeding and U.S. Census data from third-party providers, we analyzed monthly local residential rate data for 641 of these study areas and median income data for 618 of those 641 study areas.³⁹⁰ Based on the 618 study areas for which we have both local rate data and median income data, when we set one variable dependent upon the other (price as a

³⁸⁶ Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service, Industry Analysis and Technology Division, Wireline Competition Bureau, Residential Rates for Local Service in Urban Areas, Table 1.1 (2008) (*2008 Reference Book of Rates*). We note that some parties have submitted information into the record indicating that the local rates are higher than this \$15.62 figure in a number of states. For example, Kansas has increased its affordable residential rates for rural incumbent LECs to \$16.25 per month, and Nebraska has conditioned state USF eligibility upon carriers increasing local rates to its adopted rate floor of \$17.95 in urban areas and \$19.95 in rural areas. Letter from Mark Sievers, Chairman, Kansas Corporation Commission; Orjiakor Isiogu, Chairman, Michigan Public Service Commission; Tim Schram, Chairman, Nebraska Public Service Commission; Patrick H. Lyons, Chairman, New Mexico Public Regulation Commission; Steve Oxley, Deputy Chair, Wyoming Public Service Commission, to Marlene H. Dortch, Secretary, FCC, re: Universal Service Intercarrier Compensation Transformation Proceeding, WC Docket Nos. 10-90, 07-135, 05-337 and 03-109; CC Docket Nos. 01-92 and 96-45; GN Docket No. 09-51 (filed September 15, 2011).

³⁸⁷ *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4101, para. 53 (2010) (*Qwest II Remand Order*).

³⁸⁸ See, e.g., Comments of the Asian American Justice Center at 2 (filed August 24, 2011); see also Comments of the National Association of State Utility Consumer Advocates at 51 (filed April 18, 2011); see generally Reply Comments of the National Association of State Utility Consumer Advocates at 50-51 (filed May 23, 2011).

³⁸⁹ For more than two decades, the Lifeline and Link Up Program has helped tens of millions of Americans afford basic phone service, providing a “lifeline” for essential daily communications as well as emergencies. See generally *Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up*, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109, Notice of Proposed Rulemaking, 26 FCC Rcd 2770 (2011).

³⁹⁰ See NECA Survey. Median income data was based on data from the U.S. Census Bureau.

function of income), we do not observe prices correlating at all with median income levels in the given study areas. We observe a wide range of prices — many are higher than expected and just as many are lower than expected. In fact, some areas with extremely low residential rates exhibit higher than average consumer income.

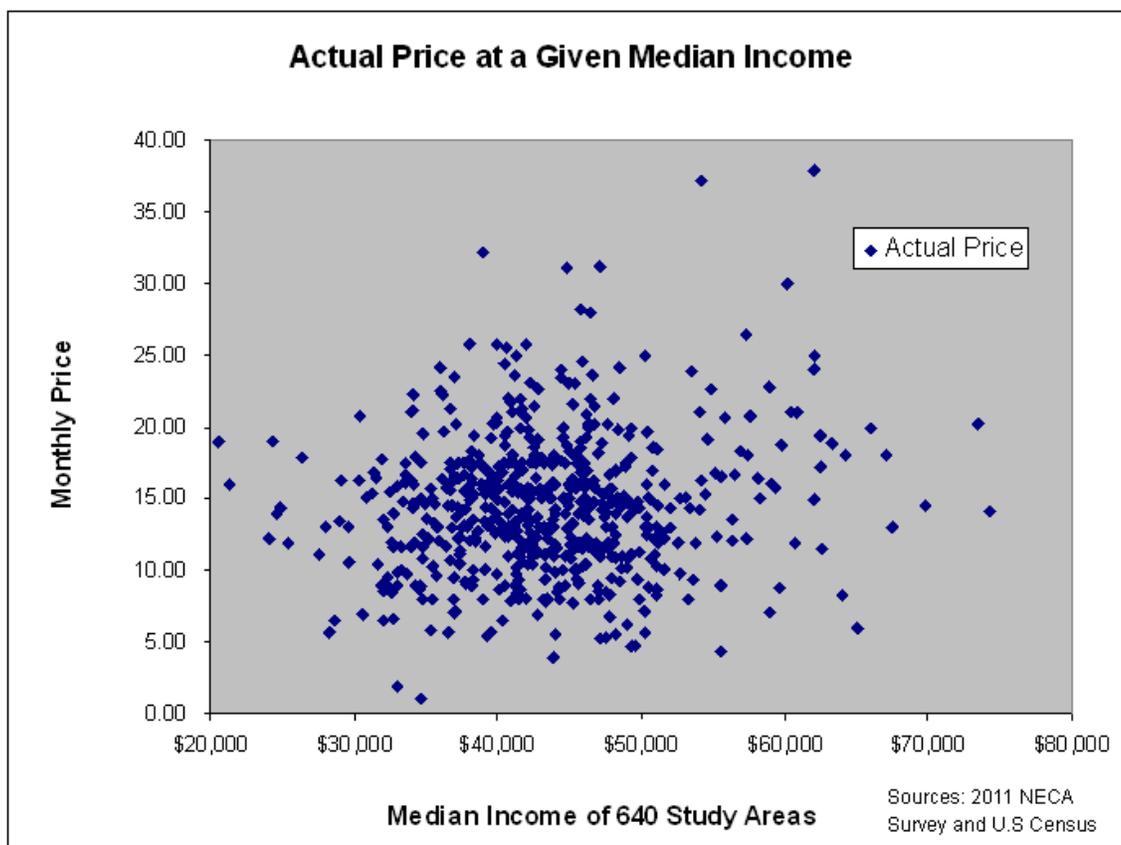


Figure 8

246. To implement these rule changes, we direct that all carriers receiving HCLS must report their basic voice rates and state regulated fees on an annual basis, so that necessary support adjustments can be calculated.³⁹¹ In addition, all carriers receiving frozen high-cost support will be required to report their basic voice rates and state regulated fees on an annual basis.³⁹² Carriers will be required to report their rates to USAC, as set forth more fully below [cross reference to reporting section: (*See* Section XX, *infra*)]. As noted above, we have delegated authority to the Wireline Competition Bureau and the Wireless Telecommunications Bureau to take all necessary steps to develop an annual rate survey for voice services.³⁹³ We expect this annual survey to be implemented as part of the annual survey described above in the section discussing public interest obligations for voice telephony. We expect the initial annual rate survey will be completed prior to the implementation of the third step of the transition.³⁹⁴

247. Finally, we note that the Joint RLECs contend that a benchmark approach for voice services fails to address rate comparability for broadband services.³⁹⁵ Although we address only voice services here, elsewhere in this Order we address reasonable comparability in rates for broadband services.³⁹⁶ We believe that it is critical to reduce support for voice — the supported service — where rates are artificially low. Doing so will relieve strain on the USF and, thus, greatly assist our efforts in bringing about the overall transformation of the high-cost program into the CAF.³⁹⁷

³⁹¹ Similarly, companies that receive HCMS (or any interim model support) will also be required to report their basic voice rates and state-regulated fees, so that USAC can determine any reductions in support that are required.

³⁹² *See supra* Section VII.C.1.

³⁹³ *See supra* Section VI.A.

³⁹⁴ *See Modernizing the FCC Form 477 Data Program, Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip, Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, Review of Wireline Competition Bureau Data Practices*, Notice of Proposed Rulemaking, WC Docket Nos. 11-10, 07-38, 08-90 and 10-132, 26 FCC Rcd 1508 (2011). The Bureau may elect to develop the relevant rate benchmark using data from Form 477 if changes in that collection provide access to relevant pricing information. Even if the Commission does decide to collect pricing information on Form 477, and even if that information will allow the development of a rate benchmark, we recognize that PRA requirements and other timing constraints may limit the availability of such data, particularly in the near future. Therefore, an additional separate survey to implement this rule may be necessary.

³⁹⁵ Rural Associations *August 3 PN* Comments at 31.

³⁹⁶ *See supra* Section VI.B.3.

³⁹⁷ The Rural Associations contend that if the Commission were to adopt the RLEC Plan and also the Ad Hoc Telecommunications Users Committee benchmark approach, it would create the potential for a “double whammy” for rural carriers and their customers; *i.e.*, that there would be two benchmarks – one for USF and one for ICC – with separate and distinct revenue reductions tied to a single rate charged to each customer, dramatically upsetting the careful balance of revenue reductions and support mechanisms. Rural Associations *August 3 PN* Comments at 32. Our benchmark mechanism in the universal service context is a floor for eligibility for support that complements the ICC residential rate ceiling by adding an incentive for local rate rebalancing. If a carrier’s rate is below the benchmark in the USF context, then its payments are reduced by the difference between its rates and the benchmark; *i.e.*, the benchmark rate is imputed to the carrier as the minimum amount a customer is expected to pay and of which USF will not cover. Once a carrier’s rates reach or exceed the benchmark, no reduction would be applied to the high-cost support the carrier would otherwise be eligible for.

6. Safety Net Additive

248. *Background.* In 2001, as part of the Rural Task Force proceeding, the Commission adopted the “safety net additive” with the intent of providing additional support to rural incumbent LECs who make additional significant investments, notwithstanding the cap on high-cost loop support.³⁹⁸ Once an incumbent LEC qualifies for such support, it receives such support for the qualifying year plus the four subsequent years.³⁹⁹ Specifically, the safety net additive provides additional loop support if the incumbent LEC realizes growth in year-end telecommunications plant in service (TPIS) (as prescribed in section 32.2001 of the Commission’s rules) on a per-line basis of at least 14 percent more than the study area’s TPIS per-line investment at the end of the prior period.⁴⁰⁰

249. From 2003 to 2010, the safety net additive increased from \$9.1 million to \$78.9 million.⁴⁰¹ It is projected to be \$94 million for 2011, an increase of approximately ten-fold in nine years.⁴⁰² To qualify for the safety net additive, an incumbent LEC’s year-over-year TPIS, *on a per-line basis*, must increase by a minimum of 14 percent. The majority of incumbent LECs that currently are receiving the safety net additive qualified in large part due to significant loss of lines, not because of significant increases in investment, which is contrary to the intent of the rule to provide additional funding only for significant new investment.⁴⁰³ When the Commission adopted the safety net additive, access lines were growing. The Commission did not anticipate that incumbent telephone companies would lose access lines as they have over the past decade. For the past two years, close to sixty percent of incumbent LECs that qualified for the safety net additive did not have total TPIS increase by more than 14 percent year-over-year.⁴⁰⁴ However, because of the loss of lines, such incumbent LECs qualified for the safety net

³⁹⁸ 47 C.F.R. § 36.605. The safety net additive was adopted based on the recommendation of the Rural Task Force. *See Rural Task Force Order*, 16 FCC Rcd at 11276-81, paras. 77-90. Specifically, the safety net additive is equal to the amount of capped high-cost loop support in the qualifying year minus the amount of support in the year prior to qualifying for support subtracted from the difference between the uncapped expense adjustment for the study area in the qualifying year minus the uncapped expense adjustment in the year prior to qualifying for support as shown in the by the following equation: Safety net additive support = (Uncapped support in the qualifying year–Uncapped support in the base year)–(Capped support in the qualifying year–Amount of support received in the base year). 47 C.F.R. § 36.605(b).

³⁹⁹ For the four subsequent years, the safety net additive is the lesser of the sum of capped support and the safety net additive support received in the qualifying year or the rural telephone company’s uncapped support. *See* 47 C.F.R. § 36.605(c)(3)(ii).

⁴⁰⁰ *See* 47 C.F.R. §§ 36.605(c) and 32.2001.

⁴⁰¹ *See* 2010 Universal Service Monitoring Report at Table 3.7.

⁴⁰² *See* Universal Service Administrative Company, Quarterly Administrative Filings for 2011, Fourth Quarter (4Q), Appendices at HC01 (filed Aug. 2, 2011) (USAC 4Q 2011 Filing), <http://www.usac.org/about/governance/fcc-filings/2011/>

⁴⁰³ For example, one incumbent LEC will receive approximately \$6.4 million in safety net additive during 2011 (the highest among any incumbent LEC), even though its total annual year-end TPIS has increased only in the range of between 5 percent and 9 percent per-year, during the past five years. That carrier, however, lost approximately 8 percent of its lines in each of the past two years and 18 percent of its lines over the past five years. Additionally, its cost per loop is well below the HCLS qualifying threshold and therefore does not qualify for HCLS. *See* USAC 2Q 2011 filing, Appendices at HC01; NECA 2010 USF Data Filing. We also note that two incumbent LECs qualified for safety net additive beginning 2010 due to line loss and their TPIS also declined. *See* NECA 2010 USF Data Filing and National Exchange Carrier Assoc., Inc., Universal Service Fund Data; NECA Study Results, 2009 Report (filed Sept. 30, 2009) (NECA 2009 USF Data Filing).

⁴⁰⁴ Staff analysis of National Exchange Carrier Assoc., Inc., Universal Service Fund Data: NECA Study Results, 2008 Report through 2010 Report, <http://www.fcc.gov/wcb/iatd/neca.html>.

additive because the rule is based on *per-line* investment. Accordingly, in the *USF/ICC Transformation NPRM*, we proposed to eliminate safety net additive support.⁴⁰⁵

250. *Discussion.* We conclude the safety net additive is not designed effectively to encourage additional significant investment in telecommunications plant,⁴⁰⁶ and therefore eliminate the rule immediately. We grandfather existing recipients and begin phasing out their support in 2012.⁴⁰⁷

251. Several commenters suggest that rather than eliminate the safety net additive, we revise the rule to base qualification on the *total* year-over-year changes in TPIS, rather than on *per-line* change in TPIS.⁴⁰⁸ We decline to adopt this suggestion, and we conclude instead that we should phase out safety net additive rather than modify how it operates. While revising the rule as some commenters suggested would address one deficiency with safety net additive support, doing so would not address our overarching concern that safety net additive as a whole does not provide the right incentives for investment in modern communications networks. It does not ensure that investment is reasonable or cost-efficient, nor does it ensure that investment is targeted to areas that would not be served absent support. For example, even if we changed the rule as proposed, safety net additive could continue to allow incumbent LECs to get additional support if, for instance, they choose to build fiber-to-the-home on an accelerated basis in an area that is also served by an unsubsidized cable competitor. That said, we do modify our proposed phase out of safety net additive based on the record.

252. We conclude that beneficiaries of safety net additive whose total TPIS increased by more than 14 percent over the prior year at the time of their initial qualification should continue to receive such support for the remainder of their eligibility period, consistent with the original intent of the rule. For the remaining beneficiaries of safety net, we find that such support should be phased down in 2012 because such support is not being paid on the basis of significant investment in telecommunications plant. Specifically, for the latter group of beneficiaries, the safety net additive will be reduced 50 percent in 2012, and eliminated in 2013. We do not provide any new safety net support for costs incurred after 2009.⁴⁰⁹

⁴⁰⁵ See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4621, para. 185.

⁴⁰⁶ Several parties support eliminating the safety net additive. See e.g. NCTA *USF/ICC Transformation NPRM* Comments at 12 (arguing that the safety net additive rule, as designed, is an inefficient use of limited universal service funds); Florida Commission *USF/ICC Transformation NPRM* Comments at 7; Nebraska Rural Companies *August 3 PN* Reply at 17 (“it is reasonable to remove SNA from companies that have received such funding due to line decreases, as well as not permit new recipients of SNA”).

⁴⁰⁷ While we focus here on rate-of-return companies, we note that today rural price cap companies also may receive SNA. As discussed more fully above in Section VII.C.I, SNA is completely eliminated for price cap companies, who will receive all support from a forward-looking model.

⁴⁰⁸ See, e.g. Rural Associations *USF/ICC Transformation NPRM* Comments at 42-43.

⁴⁰⁹ See Nebraska Rural Companies *August 3 PN* Reply at 17 (“it is reasonable to remove SNA from companies that have received such funding due to line decreases, as well as not permit new recipients of SNA”). We recognize that some carriers denied support under this rule may have made investments in 2010 and 2011 expecting to receive SNA in 2012 or 2013 for those expenditures. As described above, however, we reject the argument that carriers have any entitlement to support based on this expectation. See *supra* para. 221. Moreover, since early 2010, the Commission has given carriers ample notice that we intended to undertake comprehensive universal service reform in the near term. See, e.g., *Joint Statement on Broadband*, GN Docket No. 10-66, *Joint Statement on Broadband*, 25 FCC Rcd 3420, 3421 (2010); *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4560-61, para. 10. Thus, carriers that have not yet started receiving SNA but may have been anticipating such support based on 2010 and 2011 investments stand in a materially different position than companies that have already started receiving support based on earlier expenditures. Moreover, because SNA support has grown rapidly in recent years, allowing USF recovery (continued...)

7. Local Switching Support

253. *Background.* LSS allows rural incumbent LECs serving 50,000 access lines or fewer to allocate a larger percentage of their switching costs (including related overhead costs) to the interstate jurisdiction and recover those costs through the federal universal service fund.⁴¹⁰ Historically, the rationale for LSS was that traditional circuit switches, which were based on specialized hardware, were relatively expensive for the smallest of carriers because such switches were not easily scaled to the size of the carrier, and therefore required additional support from the federal jurisdiction. In recent years, however, telecommunications technology has been evolving from circuit-switched to IP-based, and many smaller rate-of-return carriers are purchasing soft switches and routers which tend to be cheaper and more efficiently scaled to smaller operating sizes than the specialized hardware-based switches that predominated when LSS was created.⁴¹¹ Qualification for LSS is solely based on the size of the incumbent LEC study area, i.e. the number of access lines served, with eligibility thresholds that bear no rational linkage to modern network architecture. Moreover, incumbent LECs do not have to meet a high-cost threshold to qualify for LSS.

254. In the *USF/ICC Transformation NPRM*, we proposed to eliminate local switching support, or in the alternative, to combine this program with high-cost loop support.⁴¹² A number of commenters agree that LSS should be eliminated because today's soft switches are less expensive and more efficiently scaled to small operating sizes than past circuit-based switches,⁴¹³ while other commenters oppose the elimination of LSS.⁴¹⁴ The Rural Associations state that the future of LSS should be addressed in conjunction with the Commission's ICC reform proceeding.⁴¹⁵

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for 2010 or 2011 investments would likely place large new burdens on the Fund, while slowing the Commission's effort to transition to more efficient, targeted, and accountable mechanisms for incenting new broadband deployment. See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4620-21, para. 184; Universal Service Administrative Company, Quarterly Administrative Filings for 2012, First Quarter (1Q), Appendices at HC06 (filed Nov. 2, 2011) (USAC 1Q 2012 Filing) (projecting SNA support of \$122 million for 2012), <http://www.usac.org/about/governance/fcc-filings/2012/>

⁴¹⁰ Incumbent LECs recover their interstate switching costs through interstate tariffs (i.e., interstate access charges) and recover intrastate switching costs (i.e., intrastate access charges and basic local service) as provided by the relevant state ratemaking authority. 47 C.F.R. § 36.125(f), (j). The precise amount of the extra allocation depends on a dial equipment minute (DEM) weighting factor determined by the number of access lines served by the incumbent LEC, with key thresholds established at 10,000, 20,000, and 50,000 lines. See 47 C.F.R. § 36.125(f); 47 C.F.R. § 54.301.

⁴¹¹ See, e.g., *High-Cost Universal Service Support*, WC Docket No. 05-337, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, 6610-14, App. A, paras. 254-57, 260-61. A soft switch connects calls by means of software running on a computer system. In such configurations the "switching" is virtual because the actual path through the electronics is based on signaling and database information rather than a physical pair of wires. Soft switches are economically desirable because they offer significant savings in procurement, development, and maintenance. Such devices feature vastly improved economies of scale compared to switches based on specialized hardware.

⁴¹² See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4621, para. 186.

⁴¹³ See e.g. Florida Commission *USF/ICC Transformation NPRM* Comments at 7-8; CTIA *USF/ICC Transformation NPRM* Comments at 15; Comcast *USF/ICC Transformation NPRM* Comments at 13; New Jersey Rate Counsel *USF/ICC Transformation NPRM* Reply at 7.

⁴¹⁴ Rural incumbent LECs and their trade associations generally oppose eliminating LSS or combining it with HCLS. See e.g. Rural Associations *USF/ICC Transformation NPRM* Comments at 43-45; Eastern Rural Telecom (continued...)

255. *Discussion.* We agree with the Rural Associations that reforms to LSS should be integrated with reforms to ICC and the accompanying creation of a CAF to provide measured replacement of lost intercarrier revenues. We continue to believe that the rationale for LSS has weakened with the advent of cheaper, more scalable switches and routers.⁴¹⁶ We also agree with the Ad Hoc Telecommunications Users Committee that the LSS funding mechanism provides a disincentive for those carriers owning multiple study areas in the same state to combine those study areas, potentially resulting in inefficient, costly deployment of resources.⁴¹⁷ Further, because qualification is solely based on the number of lines in the study area, LSS does not appropriately target funding to high-cost areas, nor does it target funding to areas that are unserved with broadband.⁴¹⁸

256. At the same time, we recognize that today many small companies recover a portion of the costs of their switching investment, both for circuit switches and recently purchased soft switches, through LSS. LSS is a form of explicit recovery for switching investment that otherwise would be recovered through intrastate access charges or end user rates. As such, any reductions in LSS would result in a revenue requirement flowing back to the state jurisdiction.

257. For all of these reasons, we conclude that it is time to end LSS as a stand-alone universal service support mechanism, but that, as discussed in more detail in the ICC section of this Order, limited recovery of the costs previously covered by LSS should be available pursuant to our ICC reform and the accompanying creation of an ICC recovery mechanism through the CAF. Effective July 1, 2012 we will eliminate LSS as a separate support mechanism. In order to simplify the transition of LSS, beginning January 1, 2012 and until June 30, 2012, LSS payments to each eligible incumbent LEC shall be frozen at 2011 support levels subject to true-up based on 2011 operating results. To the extent that the elimination of LSS support affects incumbent LECs interstate switched access revenue requirement, we address that issue in the ICC context.⁴¹⁹

8. Other High-Cost Rule Changes

a. Adjusted High Cost Loop Cap for 2012

258. *Background.* In 1993, the Commission adopted a cap on high-cost loop support.⁴²⁰ In 2001, the Commission modified the cap to adjust it annually by an index based on changes in the GDP/CPI and

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Association *USF/ICC Transformation NPRM* Comments at 4-5; Delhi Telephone *USF/ICC Transformation NPRM* Comments at 5; FairPoint *USF/ICC Transformation NPRM* Comments at 9-10.

⁴¹⁵ See Rural Associations *USF/ICC Transformation NPRM* Comments at 45.

⁴¹⁶ See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4621, para. 187.

⁴¹⁷ See Ad Hoc *USF/ICC Transformation NPRM* Comments at 12.

⁴¹⁸ For this reason, we decline to adopt Alexicon's alternative proposal that we adjust downward the qualifying threshold for LSS from 50,000 access lines to 15,000 access lines. See Alexicon *USF/ICC Transformation NPRM* Comments at 13-14. Changing the size threshold does not address our underlying concern that in an era of scalable soft switches, it does not make sense to base eligibility for LSS solely on the size of the study area, without regard to whether the area in question in fact is high-cost.

⁴¹⁹ See *infra* para. 872.

⁴²⁰ See *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No 80-286, Report and Order, 9 FCC Rcd 303 (1993) (subsequent history omitted).

access lines.⁴²¹ In recent years, with low inflation and loss of access lines, the annual cap for HCLS has been adjusted downward.

259. *Discussion.* NECA projects that the high-cost loop cap will be \$858 million for all rural incumbent LECs for 2012, which is \$48 million less than the \$906 million projected to be disbursed in 2011.⁴²² Due to the elimination of HCLS for price cap companies as discussed above, we are lowering the HCLS cap for 2012 by the amount of HCLS support price cap carriers would have received for 2012. We reset the 2012 high-cost loop cap to the level that remaining rate-of-return carriers are projected to receive in 2012. Although price cap holding companies currently receive HCLS in a few rate-of-return study areas, as a result of the rule changes discussed above, all of their remaining rate-of-return support will be distributed through a new transitional CAF program, rather than existing mechanisms like HCLS.⁴²³ Accordingly, NECA is required to re-calculate the HCLS cap for 2012 after deducting all HCLS that price cap carriers and their affiliated rate-of-return study areas would have received for 2012. NECA is required to submit to the Wireline Bureau the revised 2012 HCLS cap within 30 days of the release of this Order. NECA shall provide to the Wireline Bureau all calculations and assumptions used in re-calculating the HCLS cap.

b. Study Area Waivers

(i) Standards for Review

260. *Background.* A study area is the geographic territory of an incumbent LEC's telephone operations. The Commission froze all study area boundaries effective November 15, 1984.⁴²⁴ The Commission took this action to prevent incumbent LECs from establishing separate study areas made up only of high-cost exchanges to maximize their receipt of high-cost universal service support. A carrier must therefore apply to the Commission for a waiver of the study area boundary freeze if it wishes to transfer or acquire additional exchanges.⁴²⁵ In evaluating petitions seeking a waiver of the rule freezing study area boundaries, the Commission currently applies a three-prong standard: (1) the change in study area boundaries must not adversely affect the universal service fund; (2) the state commission having regulatory authority over the transferred lines does not object to the transfer; and (3) the transfer must be in the public interest.⁴²⁶ In evaluating whether a study area boundary change will have an adverse impact on the universal service fund, the Commission historically analyzed whether a study area waiver would result in an annual aggregate shift in an amount equal to or greater than one percent of nationwide high-cost support in the most recent calendar year.⁴²⁷

⁴²¹ 47 C.F.R. § 36.603

⁴²² National Exchange Carrier Association, Universal Service Fund, 2011 Submission of 2010 Data Collection Study Results (Sep. 30, 2011).

⁴²³ See *supra* paras. 115-193.

⁴²⁴ See *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Decision and Order, 50 Fed. Reg. 939 (1985) (*Part 67 Order*). See also 47 C.F.R. Part 36, App.

⁴²⁵ *Part 67 Order* Fed. Reg. at 939-40, para. 1.

⁴²⁶ See, e.g., *US WEST Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, AAD 94-27, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1772, para. 5 (1995) (*PTI/Eagle Order*).

⁴²⁷ See *id.* at 1774, paras. 14-17; see also *US WEST Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, and (continued...)

261. The Commission began applying the one-percent guideline in 1995 to limit the potential adverse impact of exchange sales on the overall fund, and partially in response to the concern that, because high-cost loop support was capped, an increase in the draw of any fund recipient necessarily would reduce the amounts that other LECs receive from that support fund.⁴²⁸ Although the Commission adopted the “parent trap” rule in 1997 prohibiting companies that acquire lines from realizing additional high-cost support for those lines, it continued to apply the one-percent guideline to determine the impact on the universal service fund on changes in safety valve support and ICLS, to which the parent trap rule did not apply.⁴²⁹

262. At the time the one-percent guideline was implemented in 1995, the Universal Service Fund consisted of high-cost loop support for incumbent LECs.⁴³⁰ The annual aggregate high-cost loop support at that time was approximately \$745 million.⁴³¹ The threshold for determining an adverse impact, therefore, was approximately \$7.45 million. Subsequently, the Telecommunications Act of 1996 directed the Commission to make universal service support explicit, rather than implicitly included in interstate access rates.⁴³² As a result, over the next few years the Commission created explicit universal service high-cost support mechanisms for local switching, interstate common line access, and interstate access.⁴³³

263. The expansion of universal service high-cost support to include additional mechanisms, pursuant to the 1996 Act, significantly increased the base from which the one-percent guideline is calculated. Currently, annual aggregate high-cost support for all mechanisms is projected to be approximately \$4.5 billion.⁴³⁴ One-percent of \$4.5 billion is \$45 million. No study area waiver request in recent years has come close to triggering the one-percent rule.⁴³⁵

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Petition for Waiver of Section 61.41(c) of the Commission's Rules, AAD 94-27, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 4644 (1997).

⁴²⁸ See *PTI/Eagle Order*, 10 FCC Rcd at 1773-74, para. 13.

⁴²⁹ 47 C.F.R. § 54.305; see *infra* note 444.

⁴³⁰ See *PTI/Eagle Order*, 10 FCC Rcd at 1773, para. 17; 47 C.F.R. § 36.601-631. Although dial equipment minute (DEM) weighting and other implicit support flows were present in the Commission's rules at the time, only high-cost loop support was considered for the purposes of the one-percent rule.

⁴³¹ See Universal Service Fund 1997 Submission of 1996 Study Results by the National Exchange Carrier Association, Tab 11, page 225 (October 1, 1997). This filing included five years of historical data. High-cost loop payments for 1995 were based on 1993 cost and loop data.

⁴³² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the 1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.* 47 U.S.C. § 254(e) (“Any such [universal service] support should be explicit and sufficient to achieve the purposes of this section.”).

⁴³³ 47 C.F.R. §§ 54.301, 54.901-904, and 54.800-809. Forward-looking high-cost model support was also implemented to provide support to non-rural incumbent LECs, however, but not as a result of the statute's requirement that all support be explicit. 47 C.F.R. § 54.309.

⁴³⁴ See USAC 4Q 2011 Filing at Appendices at HC01.

⁴³⁵ The study area waiver with the greatest estimated impact on universal service support in the past several years was the *United-Twin Valley Order* where the estimated increase in support was \$800,000 or only approximately 2 percent of the current \$45 million one-percent threshold. See *United Telephone Company of Kansas, United Telephone of Eastern Kansas, and Twin Valley Telephone, Inc., Joint Petition for Waiver of the Definition of “Study Area” Contained in Part 36 of the Commission's Rules; Petition for Waiver of Section 69.3(e)(11) of the* (continued...)

264. In the *USF/ICC Transformation NPRM*, we proposed to eliminate the one-percent guideline as a measure of evaluating whether a study area waiver will have an adverse impact on the universal service fund because continuing to apply the one-percent guideline in this manner is unlikely to shed any insight on whether a study area waiver should be granted.⁴³⁶

265. *Discussion.* We conclude that the one-percent guideline is no longer an appropriate guideline to evaluate whether a study area waiver would result in an adverse effect on the fund and, therefore, eliminate the one-percent guideline in evaluating petitions for study area waiver. Therefore, on a prospective basis, our standards for evaluating petitions for study area waiver are: (1) the state commission having regulatory authority over the transferred exchanges does not object to the transfer and (2) the transfer must be in the public interest.⁴³⁷ As proposed in the *USF/ICC Transformation NPRM*, our evaluation of the public interest benefits of a proposed study area waiver will include: (1) the number of lines at issue; (2) the projected universal service fund cost per line; and (3) whether such a grant would result in consolidation of study areas that facilitates reductions in cost by taking advantage of the economies of scale, *i.e.*, reduction in cost per line due to the increased number of lines.⁴³⁸ We stress that these guidelines are only guidelines and not rigid measures for evaluating a petition for study area waiver. We believe that this streamlined process will provide greater regulatory certainty and a more certain timetable for carriers seeking to invest in additional exchanges.

(ii) Streamlining the Study Area Waiver Process

266. *Background.* In the *USF/ICC Transformation NPRM*, we proposed to streamline the process for addressing petitions for study area waivers.⁴³⁹ The Commission's current procedures for addressing petitions for study area waiver require the Wireline Competition Bureau to issue an order either granting or denying the request. Most petitions for study area waiver are routine in nature and are granted as filed without modification. Nevertheless, the current procedure requires the issuance of an order granting the petition for waiver. In the *USF/ICC Transformation NPRM*, we proposed a process similar to the Bureau's processing of routine section 214 transfers of control applications.⁴⁴⁰ The section 214 process deems the application granted, absent any further action by the Bureau, on the 31st day after the date of the public notice listing the application as accepted for filing as a streamlined application.⁴⁴¹

267. *Discussion.* To more efficiently and effectively process petitions for waiver of the study area freeze, we adopt our proposal to streamline the study area waiver process. Upon receipt of a petition for study area waiver, a public notice shall be issued seeking comment on the petition. As is our usual practice, comments and reply comments will be due within 30 and 45 days, respectively, after release of the public notice. Absent any further action by the Bureau, the waiver will be deemed granted on the 60th day after the reply comment due date. Additionally, any study area waiver related waiver requests that petitioners routinely include in petitions for study area waiver and we routinely grant – such as requests
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Commission's Rules, Petition for Clarification or Waiver of Section 54.305 of the Commission's Rules, CC Docket No. 96-45, Order, 21 FCC Rcd 10111 (Wireline Comp. Bur. 2006) (United-Twin Valley Order).

⁴³⁶ See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4631-32, para. 224.

⁴³⁷ Petitions for study area waiver filed prior to the adoption of this order will be evaluated based on the former three-prong standard. See *supra* note 426.

⁴³⁸ See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4631-32, para. 224.

⁴³⁹ See *id.* at 4630, para. 219.

⁴⁴⁰ See *id.*; 47 C.F.R. §§ 63.03-04.

⁴⁴¹ 47 C.F.R. § 63.03.

for waiver of sections 69.3(e)(11) (to include any acquired lines in the NECA pool) and 69.605(c) (to remain an average schedule company after an acquisition of exchanges) – will also be deemed granted on the 60th day after the reply comment due date absent any further action by the Bureau.⁴⁴² Should the Bureau have concerns with any aspect of the petition for study area waiver or related waivers, however, the Bureau may issue a second public notice stating that the petition will not be deemed granted on the 60th day after the reply comment due date and is subject to further analysis and review.⁴⁴³

c. Revising the “Parent Trap” Rule, Section 54.305

268. *Background.* Section 54.305(b) of the Commission’s rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the acquired exchanges were eligible prior to their transfer.⁴⁴⁴ The Commission adopted section 54.305 to discourage a carrier from placing unreasonable reliance upon potential universal service support in deciding whether to purchase exchanges or merely to increase its share of high-cost universal service support.⁴⁴⁵

269. We proposed in the *USF/ICC Transformation NPRM* to eliminate the unintended consequence of the operation of section 54.305 that some rural incumbent LECs receive support pursuant to section 54.305 that would not otherwise receive support or would receive lesser support based on their own actual costs.⁴⁴⁶

270. *Discussion.* We find that the proposed minor revision to the rule will better effectuate the intent of section 54.305 that incumbent LECs not purchase exchanges merely to increase their high-cost

⁴⁴² 47 C.F.R. §§ 69.3(e)(11) and 69.605(c). Requests for waiver of section 54.305 are not routinely granted because such requests require a high degree of analysis. See *United-Twin Valley Order*, 21 FCC Rcd at 10117, n. 45.

⁴⁴³ See Appendix A for new rules.

⁴⁴⁴ 47 C.F.R. § 54.305(b). This rule applies to high-cost loop support and local switching support. A carrier’s acquired exchanges, however, may receive additional support pursuant to the Commission’s “safety valve” mechanism for additional significant investments. See 47 C.F.R. § 54.305(d)-(f). Since 2005, safety valve support has ranged from an annual low of \$700,000 to a projected high of \$6.2 million for 2011. See 2010 Universal Service Monitoring Report at Table 3.8; USAC 2Q 2011 Filing, Appendices at HC01. A carrier acquiring exchanges also may be eligible to receive ICLS, which is not subject to the limitations set forth in section 54.305(b). See 47 C.F.R. § 54.902.

⁴⁴⁵ See *Universal Service First Report and Order*, 12 FCC Rcd at 8942-43, para. 308. Prior to the adoption of section 54.305 of the Commission’s rules, the Common Carrier Bureau had approved several study area waivers relying on purported minimal increases in universal service support, and later the acquiring carriers subsequently received significant increases in universal service support. For example, in 1990 the Bureau approved a study area waiver in order to permit Delta Telephone Company (Delta) to change its study area boundaries in conjunction with its acquisition of Sherwood Telephone Company (Sherwood). Delta stated in its petition for waiver that it did not currently receive universal service support while Sherwood only received \$468 for 1989, and Delta stated that the acquisition would not skew high cost support in Delta’s favor. The Bureau concluded that the merging of the two carriers could not have a substantial impact on the high cost support program. After completion of the merger, Delta’s support grew from \$83,000 in 1991 to \$397,000 in 1993. See *Delta Telephone Company, Waiver of the Definition of “Study Area” contained in Part 36, Appendix-Glossary, of the Commission’s Rules*, AAD 90-20, Memorandum Opinion and Order, 5 FCC Rcd 7100 (Com. Car. Bur. 1990). In another example, in the US West and Gila River Telecommunications, Inc. (Gila River) study area waiver proceeding, Gila River’s high-cost support escalated from \$169,000 to \$492,000 from 1992 to 1993. See *US West Communications and Gila River Telecommunications, Inc., Joint Petition for Waiver of the Definition of “Study Area” contained in Part 36, Appendix-Glossary, of the Commission’s Rules*, AAD 91-2, Memorandum Opinion and Order, 7 FCC Rcd 2161 (Com. Car. Bur. 1992).

⁴⁴⁶ See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4633, para. 227.

universal service support and should not dissuade any transactions that are in the public interest. Therefore, effective January 1, 2012, any incumbent LEC currently and prospectively subject to the provisions of section 54.305, that would otherwise receive no support or lesser support based on the actual costs of the study area, will receive the lesser of the support pursuant to section 54.305 or the support based on its own costs.⁴⁴⁷

271. We note that above, we freeze all support under our existing high-cost support mechanisms on a study area basis for price cap carriers and their rate-of-return affiliates, at 2011 levels, effective January 1, 2012.⁴⁴⁸ Our modification of the operation of section 54.305 is not intended to reduce support levels for those companies; they will receive frozen high-cost support equal to the amount of support each carrier received in 2011 in a given study area, adjusted downward as necessary to the extent local rates are below the specified urban rate floor.

9. Limits on Total per Line High-Cost Support

272. *Background.* In the *USF/ICC Transformation NPRM*, we proposed to adopt a \$3,000 per year cap on total support per line for all companies, both incumbent LECs and competitive ETCs, operating in the continental United States.⁴⁴⁹ Although the current HCLS mechanism is capped in the aggregate, there is no cap on the amount of high-cost loop support an individual incumbent LEC study area may receive. Further, there is no limit on support either in the aggregate or for an individual incumbent LEC study area for ICLS and LSS.

273. For calendar year 2010, out of a total of approximately 1,442 incumbent LEC study areas receiving support, fewer than twenty incumbents received more than \$3,000 per line annually (*i.e.*, more than \$250 monthly) in high-cost universal service support; all of those study areas were served by rate-of-return companies.⁴⁵⁰ In addition, two competitive ETCs received support in 2010 in excess of \$3,000 per line annually. We sought comment on whether requiring American consumers and businesses, whose contributions support universal service, to pay more than \$3,000 annually or more than \$250 per month for a single phone line is consistent with fiscally responsible universal service reform. A number of commenters supported the proposed cap, while the State members of the Joint Board suggested that support should be capped at a lower amount, \$100 per line per month instead of \$250.⁴⁵¹

⁴⁴⁷ See Appendix A for the revised rule.

⁴⁴⁸ See *supra* para. 128.

⁴⁴⁹ See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4626, para. 208.

⁴⁵⁰ See *id.* at 4626, para. 209; 2010 Disbursement Analysis; USAC High-Cost Disbursement Tool.

⁴⁵¹ The State Members of the Universal Service Joint Board argue that satellite-based broadband service is generally available for about \$80 per month, therefore, a \$100 limit per high-cost location would allow for some terrestrial service to receive a subsidy higher than the prevailing retail price of satellite service. See State Members *USF/ICC Transformation NPRM* Comments at 58-59. Ad Hoc, the Massachusetts DTC, CRUSIR, COMPTTEL, CTIA, Florida Commission, and Hawaiian Telecom all support a per-line cap. See Ad Hoc *USF/ICC Transformation NPRM* Comments at 22-25; Massachusetts DTC *USF/ICC Transformation NPRM* Comments at 9-10; CRUSIR *USF/ICC Transformation NPRM* Comments at 7; COMPTTEL *USF/ICC Transformation NPRM* Comments at 30; CTIA *USF/ICC Transformation NPRM* Comments at 16; Florida Commission *USF/ICC Transformation NPRM* Comments at 8-9; Hawaiian Telecom *USF/ICC Transformation NPRM* Comments at 6. GCI states that support should be applied to “contiguous” states, not the “continental” United States. GCI *USF/ICC Transformation NPRM* Comments at 30-31. JSI states that the State Members recommendation to limit support at \$100 per month is also arbitrary and unfair because it does not address the facts of terrain and vegetation that preclude the areas from receiving satellite service. See JSI *USF/ICC Transformation NPRM* Reply at 6.

274. *Discussion.* After consideration of the record, we find it appropriate to implement responsible fiscal limits on universal service support by immediately imposing a presumptive per-line cap on universal service support for all carriers, regardless of whether they are incumbents or competitive ETCs. For administrative reasons, we find that the cap shall be implemented based on a \$250 per-line monthly basis rather than a \$3,000 per-line annual basis because USAC disburses support on a monthly basis, not on an annual basis. We find that support drawn from limited public funds in excess of \$250 per-line monthly (not including any new CAF support resulting from ICC reform) should not be provided without further justification.

275. This rule change will be phased in over three years to ease the potential impact of this transition.⁴⁵² From July 1, 2012 through June 30, 2013, carriers shall receive no more than \$250 per-line monthly plus two-thirds of the difference between their uncapped per-line amount and \$250. From July 1, 2013 through June 30, 2014, carriers shall receive no more than \$250 per-line monthly plus one-third of the difference between their uncapped per-line amount and \$250. July 1, 2014, carriers shall receive no more than \$250 per-line monthly.

276. The Rural Associations argue that a cap on total annual per-line high-cost support should not be imposed without considering individual circumstances and that if such a cap is imposed only on non-tribal companies located in the contiguous 48 states, about 12,000 customers would experience rate increases of \$9.24 to \$1,200 per month and the overall effect would reduce high-cost disbursements by less than \$15 million.⁴⁵³ The Rural Associations also point out while that it is reasonable to ask whether it makes sense for USF to support extremely high per-line levels going forward, the Commission must consider the consequences of imposing such a limit on companies with high costs based on past investments.⁴⁵⁴

277. We emphasize that virtually all (99 percent) of incumbent LEC study areas currently receiving support are under the \$250 per-line monthly limit. Only eighteen incumbent carriers and one competitive ETC today receive support in excess of \$250 per-line monthly, and as a result of the other reforms described above, we estimate that only twelve will continue to receive support in excess of \$250 per-line monthly.

278. We also recognize that there may be legitimate reasons why certain companies have extremely high support amounts per line. For example, some of these extremely high-cost study areas exist because states sought to ensure a provider would serve a remote area. We estimate that the cap we adopt today will affect companies serving approximately 5,000 customers, many of whom live in extremely remote and high-cost service territories.⁴⁵⁵ That is, all of the affected study areas total just 5,000 customers. Therefore, as suggested by the Rural Associations,⁴⁵⁶ we will consider individual circumstances when applying the \$250 per-line monthly cap. Any carrier affected by the \$250 per-line monthly cap may file a petition for waiver or adjustment of the cap that would include additional financial data, information, and justification for support in excess of the cap using the process we set forth below.⁴⁵⁷ We do not anticipate granting any waivers of undefined duration, but rather would expect

⁴⁵² ICORE states that a \$3,000 per-line cap should be phased in gradually. ICORE *USF/ICC Transformation NPRM* Comments at 10.

⁴⁵³ See Rural Associations *USF/ICC Transformation NPRM* Comments at 45-46.

⁴⁵⁴ *Id.* at 47.

⁴⁵⁵ The number of affected customers is after all other reforms we adopt today.

⁴⁵⁶ See Rural Associations *USF/ICC Transformation NPRM* Comments at 45-46.

⁴⁵⁷ See *infra* paras. 539-544.

carriers to periodically re-validate any need for support above the cap. We also note that even if a carrier can demonstrate the need for funding above the \$250 per-line monthly cap, they are only entitled to the amount above the cap they can show is necessary, not the amount they were previously receiving.

279. Absent a waiver or adjustment of the \$250 per-line monthly cap, USAC shall commence reductions of the affected carrier's support to \$250 per-line monthly six months after the effective date of these rules. This six month delay should provide an opportunity for companies to make operational changes, engage in discussions with their current lenders, and bring any unique circumstances to the Commission's attention through the waiver process. To reach the \$250 per-line cap, USAC shall reduce support provided from each universal support mechanism, with the exception of LSS, based on the relative amounts received from each mechanism.⁴⁵⁸

10. Elimination of Support in Areas with 100 Percent Overlap

280. *Background.* We noted in the *USF/ICC Transformation NPRM* that in many areas of the country, "universal service provides more support than necessary to achieve our goals" by "subsidizing a competitor to a voice and broadband provider that is offering service without government assistance."⁴⁵⁹ To address this inefficiency, we sought comment on NCTA's proposal "to reduce the amount of universal service support provided to carriers in those areas of the country where there is extensive, unsubsidized facilities-based voice competition and where government subsidies no longer are needed to ensure that service will be made available to consumers."⁴⁶⁰ In addition, in the *August 3rd Public Notice*, we sought comment on the suggestion in the RLEC Plan to reduce an incumbent's support if another facilities-based provider proves that it provides sufficient voice *and* broadband service to at least 95 percent of the households in the incumbent's study area without any support or cross-subsidy.⁴⁶¹

281. *Discussion.* We now adopt a rule to eliminate universal service support where an unsubsidized competitor⁴⁶² – or a combination of unsubsidized competitors – offers voice and broadband service throughout an incumbent carrier's study area, and seek comment on a process to reduce support where such an unsubsidized competitor offers voice and broadband service to a substantial majority, but not 100 percent of the study area. Providing universal service support in areas of the country where another voice and broadband provider is offering high-quality service without government assistance is an inefficient use of limited universal service funds. We agree with commenters that "USF support should be directed to areas where providers would not deploy and maintain network facilities absent a USF subsidy, and not in areas where unsubsidized facilities-based providers already are competing for customers."⁴⁶³ For this reason, we exclude from the CAF areas that are overlapped by an unsubsidized

⁴⁵⁸For example, if the per-line cap is \$250 and an incumbent LEC would have received, prior to the application of a cap, \$300, \$200, and \$100 (\$600 total) in HCLS, LSS, and ICLS, respectively, HCLS, and ICLS would each absorb 75 percent, and 25 percent, respectively, of the \$350 in excess of the per-line cap of \$250.

⁴⁵⁹ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4559, para. 7.

⁴⁶⁰ *Id.* at 4674, para. 391 (citing NCTA Petition for Rulemaking at I; Universal Service Reform Act of 2010, H.R. 5828, 111th Cong. (2010)).

⁴⁶¹ RLEC Plan at 51-56.

⁴⁶² *See supra* para. 103.

⁴⁶³ Sprint Nextel *USF/ICC Transformation NPRM* Comments at 34-35. Sprint Nextel further expressed concern that "If providers are willing and able to serve an area without support, then USF subsidies to the incumbents in those locales serve only to deter competition and/or allow the subsidized provider to earn artificially inflated profits." *Id.* at 35; *see also* Coalition for Rational Universal Service and Intercarrier Compensation Reform *USF/ICC Transformation NPRM* at 9 ("As a general rule, subsidies should not be given in order to allow a subsidized carrier to run a competitor out of town."); NCTA *USF/ICC Transformation NPRM* Comments at 12; CTIA *USF/ICC Transformation NPRM* Comments at 26-27.

competitor (*see infra* Section VII.C). Likewise, we do not intend to continue to provide current levels of high-cost support to rate-of-return companies where there is overlap with one or more unsubsidized competitors.⁴⁶⁴

282. At the same time, we recognize that there are instances where an unsubsidized competitor offers broadband and voice service to a significant percentage of the customers in a particular study area (typically where customers are concentrated in a town or other higher density sub-area), but not to the remaining customers in the rest of the study area, and that continued support may be required to enable the availability of supported voice services to those remaining customers.⁴⁶⁵ In those cases, we agree with the Rural Associations that there should be a process to determine appropriate support levels.

283. Accordingly, we adopt a rule to phase out all high-cost support received by incumbent rate-of-return carriers over three years in study areas where an unsubsidized competitor – or a combination of unsubsidized competitors – offers voice and broadband service at speeds of at least 4 Mbps downstream/1 Mbps upstream, and with latency and usage limits that meet the broadband performance requirements described above,⁴⁶⁶ for 100 percent of the residential and business locations in the incumbent’s study area.

284. The FNPRM seeks comment on the methodology and data for determining overlap. Upon receiving a record on those issues, we direct the Wireline Competition Bureau to publish a finalized methodology for determining areas of overlap and to publish a list of companies for which there is a 100 percent overlap. In study areas where there is 100 percent overlap, we will freeze the incumbent’s high-cost support at its total 2010 support, or an amount equal to \$3,000 times the number of reported lines as of year end 2010, whichever is lower,⁴⁶⁷ and reduce such support over three years (i.e. by 33 percent each year).⁴⁶⁸ In addition, in the FNPRM, we seek comment on a process for determining support in study areas with less than 100 percent overlap.

11. Impact of These Reforms on Rate-of-Return Carriers and the Communities They Serve

285. We agree with the Rural Associations that “there is ... without question a need to modify certain of the existing universal service mechanism to enhance performance and improve sustainability.”⁴⁶⁹ We take a number of important steps to do so in this Order, and we are careful to implement these changes in a gradual manner so that our efforts do not jeopardize service to consumers or investments made consistent with existing rules. It is essential that we ensure the continued availability and affordability of offerings in the rural and remote communities served by many rate-of-return carriers.

⁴⁶⁴ Cincinnati Bell *August 3 PN Comments* at 14 (“[T]he Commission should strive for consistency in its approach to universal service; if it is going to deny support to some areas that have cable broadband service, it should treat all such areas similarly.”).

⁴⁶⁵ CenturyLink *USF/ICC Transformation NPRM Comments* at 35.

⁴⁶⁶ *See supra* Section VI.B.

⁴⁶⁷ For this purpose, “total 2010 support” is the amount of support disbursed to carrier for 2010, without regard to prior period adjustments related to years other than 2010 and as determined by USAC on January 31, 2011.

⁴⁶⁸ Consistent with our discussion above, we do not disturb any existing state voice COLR obligations, and therefore carriers must satisfy those voice requirements as required by their state. For those states that still maintain voice COLR obligations, we encourage them to review their respective regulations and policies in light of the changes we adopt here today and revisit the appropriateness of maintaining those obligations for entities that no longer receive either state or federal high-cost universal service funding and where competitive services are available to consumers. *See supra* para. 1100.

⁴⁶⁹ *See Rural Associations USF/ICC Transformation NPRM Comments* at i.

The existing regulatory structure and competitive trends have placed many small carriers under financial strain and inhibited the ability of providers to raise capital.⁴⁷⁰

286. Today, we reaffirm our commitment to these communities. We provide rate-of-return carriers the predictability of remaining under the legacy universal service system in the near-term, while giving notice that we intend to transition to more incentive-based regulation in the near future.⁴⁷¹ We also provide greater certainty and a more predictable flow of revenues than the status quo through our intercarrier compensation reforms, and set a total budget to direct up to \$2 billion in annual universal service (including CAF associated with intercarrier compensation reform) payments to areas served by rate-of-return carriers. We believe that this global approach will provide a more stable base going forward for these carriers, and the communities they serve.

287. Today's package of universal service reforms is targeted at eliminating inefficiencies and closing gaps in our system, not at making indiscriminate industry-wide reductions. Many of the rules addressed today have not been comprehensively examined in more than a decade, and direct funding in ways that may no longer make sense in today's marketplace. By providing an opportunity for a stable 11.25 percent interstate return for rate-of-return companies, regardless of the necessity or prudence of any given investment, our current system imposes no practical limits on the type or extent of network upgrades or investment. Our system provides universal service support to both a well-run company operating as efficiently as possible, and a company with high costs due to imprudent investment decisions, unwarranted corporate overhead, or an inefficient operating structure.

288. In this Order, we take the overdue steps necessary to address the misaligned incentives in the current system by correcting program design flaws, extending successful safeguards, ensuring basic fiscal responsibility, and closing loopholes to ensure our rules reward only prudent and efficient investment in modern networks. Today's reforms will help ensure rate-of-return carriers retain the incentive and ability to invest and operate modern networks capable of delivering broadband as well as voice services, while eliminating unnecessary spending that unnecessarily limits funding that is available to consumers in high-cost, unserved communities.

289. Because our approach is focused on rooting out inefficiencies, these reforms will not affect all carriers in the same manner or in the same magnitude. After significant analysis, including review of numerous cost studies submitted by individual small companies and cost consultants,⁴⁷² NECA and USAC data, and aggregated information provided by the Rural Utilities Service (RUS) on their current loan portfolio,⁴⁷³ we are confident that these incremental reforms will not endanger existing service to

⁴⁷⁰ See, e.g., CoBank *USF/ICC Transformation NPRM* Comments at 3-5; Letter from Jonathan Adelstein, Rural Utilities Service, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al.*, Attach. (July 29, 2011) (*RUS Letter*); Letter from C. Douglas Jarrett, Rural Telephone Finance Cooperative, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, *et al.* (Aug. 10, 2011).

⁴⁷¹ We seek comment in the FNPRM on the Rural Associations' proposal for a broadband-focused CAF and in particular ask how we could modify that proposal to incorporate appropriate incentives for efficient investment and operations. See Rural Associations *USF/ICC Transformation NPRM* Comments at 7-38; See *infra* Section XVII (Further Notice of Proposed Rulemaking).

⁴⁷² See, e.g., JSI *Ex Parte* (filed Mar. 29, 2011); Fred Williamson & Associates, Inc. *Ex Parte* (filed May 19, 2011). We note that many of the carriers or their consultants presented an analysis of the reforms as proposed in the NPRM, assuming that the Commission would adopt all of the proposals. Because the package of reforms we adopt today is more modest than originally proposed, with a number of reforms phased in over a period of time, the impact is much less significant than those commenters projected.

⁴⁷³ RUS *Ex Parte* (filed Aug. 8, 2011).

consumers. Further, we believe strongly that carriers that invest and operate in a prudent manner will be minimally affected by this Order.

290. Indeed, based on calendar year 2010 support levels, our analysis shows that nearly 9 out of 10 rate-of-return carriers will see reductions in high-cost universal service receipts of less than 20 percent annually, and approximately 7 out of 10 will see reductions of less than 10 percent.⁴⁷⁴ In fact, almost 34 percent of rate-of-return carriers will see no reductions whatsoever, and more than 12 percent of providers will see an increase in high-cost universal service receipts. This, coupled with a stabilized path for ICC, will provide the predictability and certainty needed for new investment.

291. Looking more broadly at all revenues, we believe that the overall regulatory and revenue predictability and certainty for rate-of-return carriers under today's reforms will help facilitate access to capital and efficient network investment. Specifically, it is critical to underscore that legacy high-cost support is but one of four main sources of revenues for rate-of-return providers: universal service revenues account for approximately 30 percent of the typical rate-of-return carrier's total revenues.⁴⁷⁵ Today's action does not alter a provider's ability to collect regulated or unregulated end-user revenues, and comprehensively reforms the fourth main source of revenues, the intercarrier compensation system. Importantly, ICC reforms will provide rate-of-return carriers with access to a new explicit recovery mechanism in CAF, offering a source of stable and certain revenues that the current intercarrier system can no longer provide.⁴⁷⁶ Taking into account these other revenue streams, and the complete package of reforms, we believe that rate-of-return carriers on the whole will have a stronger and more certain foundation from which to operate, and, therefore, continue to serve rural parts of America.

292. We are, therefore, equally confident that these reforms, while ensuring significant overall cost savings and improving incentives for rational investment and operation by rate-of-return carriers, will in general not materially impact the ability of these carriers to service their existing debt. Based on an analysis of the reform proposals in the Notice, RUS projects that the Times Interest Earned Ratio (TIER) for some borrowers could fall below 1.0, which RUS considers a minimum baseline level for a healthy borrower.⁴⁷⁷ However, the package of reforms adopted in this Order is more modest than the set proposed in the Notice. In addition, companies may still have positive cash flow and be able to service their debt even with TIERs of less than 1.0.⁴⁷⁸ Indeed of the 444 RUS borrowers in 2010, 75 (17 percent) were

⁴⁷⁴ In order to analyze the impact of reforms, Commission staff estimated the dollar impact of each individual rule change on every cost company for which it had data, using the most recently available disbursement and cost data. Commission staff utilized data from both NECA and USAC. *See e.g.*, National Exchange Carrier Assoc., Inc., Universal Service Fund Data: NECA Study Results, 2010 Report (filed Sept. 30, 2011); USAC High-Cost Disbursement Tool. Staff then summed the individual change in support amounts (positive or negative) across the individual programs to derive a company-specific net change, both in actual dollars and on a percentage basis. For calculations involving changes to HCLS, estimates did not take into account the effect of the shift in the national average cost per line resulting from all rule changes; actual impacts therefore could vary slightly.

⁴⁷⁵ *See* Western Telecommunications Alliance Comments in re NBP PN #19 (*Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan*, GN Docket No. 09-47, 09-51, 09-137, Public Notice, 24 FCC Rcd 13757 (WCB 2009) (*NBP PN #19*)) at 25, 27 (filed Dec. 7, 2009) (stating that for small rural LECs, high cost represents 30–40 percent of regulated revenues); RUS *Ex Parte* (filed Aug. 1, 2011), Attach. at slide 24 (stating that over 70 percent of RUS borrowers receive greater than 25 percent of operating revenues from USF).

⁴⁷⁶ *See infra* section XII (Comprehensive Intercarrier Compensation Reform).

⁴⁷⁷ RUS indicates that over a five-year horizon, it expects borrowers to maintain a minimum 1.25 TIER ratio. RUS *Ex Parte* (filed Aug. 1, 2011), Attach. at slides 18-21.

⁴⁷⁸ *Id.* at slide 18. The RUS modeling assumed a percentage loss of USF support and then analyzed the impact on borrowers, but the analysis did not include the possibility that borrowers' profits could rise through increased (continued...)

below TIER 1.0.⁴⁷⁹ Moreover, whereas RUS assumed that all USF reductions directly impact borrowers' bottom lines, in fact we expect many borrowers affected by our reforms will be able to achieve operational efficiencies to reduce operating expenses, for instance, by sharing administrative or operating functions with other carriers, and thereby offset reductions in universal service support.

293. We, therefore, reject the sweeping argument that the rule changes we adopt today would unlawfully necessarily affect a taking.⁴⁸⁰ Commenters seem to suggest that they are entitled to continued USF support as a matter of right. Precedent makes clear, however, that carriers have no vested property interest in USF. To recognize a property interest, carriers must "have a legitimate claim of entitlement to" USF support.⁴⁸¹ Such entitlement would not be established by the Constitution, but by independent sources of law.⁴⁸² Section 254 does not expressly or impliedly provide that particular companies are entitled to ongoing USF support. Indeed, there is no statutory provision or Commission rule that provides companies with a vested right to continued receipt of support at current levels, and we are not aware of any other, independent source of law that gives particular companies an entitlement to ongoing USF support. Carriers, therefore, have no property interest in or right to continued USF support.⁴⁸³

(Continued from previous page) _____

revenues and profits from non-regulated services, or other possible sources of revenues, *e.g.*, by raising artificially low rates.

⁴⁷⁹ *Id.* at slide 26.

⁴⁸⁰ Alexicon *USF/ICC Transformation NPRM* Comments at 25-29; SureWest *USF/ICC Transformation NPRM* Reply at 2.

⁴⁸¹ *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).

⁴⁸² *Id.*; see also *Members of the Peanut Quota Holders Assoc. v. U.S.*, 421 F.2d 1323, 1334 (Fed. Cir. 2005), *cert. denied*, 548 U.S. 904 (2006) (finding that congressional action amending peanut quota program to exclude prior beneficiaries from that program did not effect a takings because "peanut quota is entirely the product of a government program unilaterally extending benefits to the quota holders, and nothing in the terms of the statute indicated that the benefits could not be altered or extinguished at the government's election").

⁴⁸³ Moreover, even if we were to recognize a property interest in USF support, our action today would not result in a taking in circumstances such as these, where the "interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Penn Central Transportation v. New York City*, 438 U.S. 104, 124 (1978); see also *Connolly v. Pension Benefit Guaranty Corporation*, 475 U.S. 211, 225 (1986). The "purpose of universal service is to benefit the customer, not the carrier." *Rural Cellular Association v. FCC*, 588 F.3d 1095, 1103 (D.C. Cir. 2009) (quoting *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000)). As we have made clear, our national goal is to advance broadband availability while preserving the voice and broadband service that exists today, and this objective would be achieved more effectively by revising our current rules and adjusting support amounts for particular recipients, balancing the principles set forth in section 254(b). The Commission has discretion to balance competing section 254(b) principles. *Qwest Communications Intern., Inc. v. FCC*, 298 F.3d 1222, 1234 (10th Cir. 2005) ("The FCC may exercise its discretion to balance the principles against one another when they conflict, but may not depart from them altogether to achieve some other goal."). Thus, the Commission may balance the principles posited in section 254(b)(3) ("Access to advanced telecommunications and information services should be provided in all regions of the Nation") and (b)(4) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services" at rates that are reasonably comparable to urban rates) with the principle in section 254(b)(5) principle ("There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service"). Nothing in the Takings Clause or section 254 precludes the Commission from such reasoned decision making, even if it means taking support away from some current support recipients. The requirement that support should be "specific, predictable and sufficient" does not mean that support levels can never change and does not establish a right to the funding.

294. Additionally, carriers have not shown that elimination of USF support will result in confiscatory end-user rates. To be confiscatory, government-regulated rates must be so low that they threaten a regulated entity's "financial integrity"⁴⁸⁴ or "destroy the value" of the company's property.⁴⁸⁵ Carriers face a "heavy burden" in proving confiscation as a result of rate regulation.⁴⁸⁶ To the extent that any rate-of-return carrier can effectively demonstrate that it needs additional support to avoid constitutionally confiscatory rates, the Commission will consider a waiver request for additional support.⁴⁸⁷ We will seek the assistance of the relevant state commission in review of such a waiver to the extent that the state commission wishes to provide insight based on its understanding of the carrier's activities and other circumstances in the state. We do not expect to routinely grant requests for additional support, but this safeguard is in place to help protect the communities served by rate-of-return carriers.

E. Rationalizing Support for Mobility

295. Mobile voice and mobile broadband services are increasingly important to consumers and to our nation's economy. Given the important benefits of and the strong consumer demand for mobile services, ubiquitous mobile coverage must be a national priority. Yet despite growth in annual funding for competitive ETCs of almost 1000 percent over the past decade—from less than \$17 million in 2001 to roughly \$1.22 billion in 2010⁴⁸⁸—there remain many areas of the country where people live, work, and travel that lack any mobile voice coverage, and still larger geographic areas that lack current generation mobile broadband coverage. To increase the availability of current generation mobile broadband, as well as mobile voice, across the country, universal service funding for mobile networks must be deployed in a more targeted and efficient fashion than it is today.

296. It is clear that the current system does not efficiently serve the nation. In 2008, the Commission concluded that rapid growth in support to competitive ETCs as a result of the identical support rule threatened the sustainability of the universal service fund.⁴⁸⁹ Further, it found that providing the same per-line support amount to competitive ETCs had the consequence of encouraging wireless competitive ETCs to supplement or duplicate existing services while offering little incentive to maintain or expand investment in unserved or underserved areas.⁴⁹⁰ As a consequence, the Commission adopted an interim state-by-state cap on high-cost support for competitive ETCs, subject to two exceptions, pending comprehensive high-cost universal service reform.⁴⁹¹

⁴⁸⁴ *Illinois Bell Tel. Co. v. FCC*, 988 F.2d 1254, 1263 (D.C. Cir. 1993).

⁴⁸⁵ *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989).

⁴⁸⁶ *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 605 (1944).

⁴⁸⁷ See *infra* paras. 539-544.

⁴⁸⁸ *Interim Cap Order*, 23 FCC Rcd at 8837-38, para. 6 (noting growth from \$17 million in 2001 to \$1.18 billion in 2007); *2010 Disbursement Analysis*.

⁴⁸⁹ Section 54.307 of the Commission's rules, also known as the "identical support rule," provides competitive ETCs the same per-line amount of high-cost universal service support as the incumbent local exchange carrier serving the same area. 47 C.F.R. § 54.307.

⁴⁹⁰ *Interim Cap Order*, 23 FCC Rcd at 8843-44, paras. 20-21.

⁴⁹¹ *Id.* at 8837, para. 5. Specifically, the Commission capped support for competitive ETCs in each state at the total amount of support for which all competitive ETCs serving the state were eligible to receive in March 2008, annualized. *Id.* at 8846, paras. 26-28. The *Interim Cap Order* included exceptions for competitive ETCs serving Tribal lands and Alaska Native regions ("covered locations") and for competitive ETCs submitting cost studies demonstrating their own high costs of providing service. *Id.* at 8848-49, paras. 31-33. The interim cap for (continued...)

297. The interim cap slowed the growth in competitive ETC funding, but it did not address where such funding is directed or whether there are better ways to achieve our goal of advancing mobility in areas where such service would not exist absent universal service support. Many areas are served by multiple wireless competitive ETCs that likely are competing with each other.⁴⁹² In other areas of the country, mobile coverage is lacking, and there may be no firms willing to enter the market, even at current support levels.

298. Today we adopt reforms that will secure funding for mobility directly, rather than as a side-effect of the competitive ETC system, while rationalizing how universal service funding is provided to ensure that it is cost-effective and targeted to areas that require public funding to receive the benefits of mobility. While we proposed providing support to a single fixed or mobile service provider, many commenters supported the establishment of separate fixed and mobile programs.⁴⁹³ As described above, we establish ubiquitous availability of mobile services as a universal service goal.⁴⁹⁴

299. To accomplish this goal, we establish the Mobility Fund. The first phase of the Mobility Fund will provide one-time support through a reverse auction, with a total budget of \$300 million, and will provide the Commission with experience in running reverse auctions for universal service support. We expect to distribute this support as quickly as feasible, with the goal of holding an auction in 2012, with support beginning to flow no later than 2013. As part of this first phase, we also designate an additional \$50 million for one-time support for advanced mobile services on Tribal lands, for which we expect to hold an auction in 2013. The second phase of the Mobility Fund will provide ongoing support for mobile service with the goal of holding the auction in the third quarter of 2013 and support disbursed

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competitive ETCs was set at \$1.36 billion. See Letter from Sharon Gillett, Chief, Wireline Competition Bureau, to Karen Majcher, USAC, WC Docket No. 05-337, DA 11-243 (dated Feb. 8, 2011). Actual disbursements to competitive ETCs in 2010 were approximately \$1.22 billion. *2010 Disbursement Analysis*. Actual competitive ETC disbursements vary from the interim cap amount for two reasons. First, true-ups and other out-of-period adjustments sometimes result in disbursements in a year other than the one against the payments apply for interim cap purposes. Second, some states have seen a reduction in demand for competitive ETC support since the cap was established and, as a result, total support disbursed is less than the interim cap amount.

⁴⁹² See Federal Communications Commission Response to United States House of Representatives Committee on Energy and Commerce, Universal Service Fund Data Request of June 22, 2011, Request 7: Study Areas with the Most Eligible Telecommunications Carriers (Table 1: Study Areas with the Most Eligible Telecommunications Carriers in 2010), available at <http://republicans.energycommerce.house.gov/Media/file/PDFs/2011usf/ResponsetoQuestion7.pdf>. (*FCC Response to House Energy and Commerce Committee*). Ten incumbent study areas have 11 or more competitive ETCs, albeit not necessarily serving overlapping service areas within the incumbent study areas. *Id.*

⁴⁹³ In the *USF/ICC Transformation NPRM*, we proposed moving to a long-term CAF that would provide ongoing support for a single mobile or fixed broadband provider in any given geographic area, but also sought comment on creating separate programs to support mobile and fixed services. *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4697-701, paras. 479-89. AT&T *USF/ICC Transformation NPRM* Comments at 87, 108; Mid-Rivers *USF/ICC Transformation NPRM* Reply at 14; Nebraska Commission *USF/ICC Transformation NPRM* Comments at 17; Rural Associations *USF/ICC Transformation NPRM* Comments at 83; RICA *USF/ICC Transformation NPRM* Comments, at 4; South Dakota Public Utilities Commission *USF/ICC Transformation NPRM* Reply at 5; TCA *USF/ICC Transformation NPRM* Comments, at 15-16; T-Mobile *USF/ICC Transformation NPRM* Comments at 2, 4-6; US Cellular *USF/ICC Transformation NPRM* Comments, at 10-11. See also *Joint Board 2007 Recommended Decision*, 22 FCC Rcd 20477 (recommending establishment of a separate Mobility Fund).

⁴⁹⁴ See *supra* para. 53.

starting in 2014, with an annual budget of \$500 million.⁴⁹⁵ This dedicated support for mobile service supplements the other competitive bidding mechanisms under the Connect America Fund.⁴⁹⁶

300. In the remainder of this section, we establish Phase I of the Mobility Fund and the dedicated Tribal Mobility Fund, each providing for one-time support; establish the budget for Phase II of the Mobility Fund to provide ongoing support; and establish the transition from the identical support rule to these new dedicated funding mechanisms for mobility. In the FNPRM, we seek comment on specific proposals to determine and distribute ongoing support in Phase II of the Mobility Fund, including proposals to target dedicated funding to Tribal lands.

1. Mobility Fund Phase I

a. Introduction and Background

301. Millions of Americans live in communities where current-generation mobile service is unavailable, and millions more work in or travel through such areas. In order to help ensure the availability of mobile broadband across America, we establish the Mobility Fund. In the three decades since the Commission issued the first cellular telephone licenses, the wireless industry has continually expanded and upgraded its networks to the point where third generation (often called “advanced” or “3G”) mobile wireless services are now widely available.⁴⁹⁷ Such services typically include both voice telecommunications service and Internet access. However, significant mobility gaps remain a problem for residents, public safety first responders, businesses, public institutions, and travelers, particularly in rural areas. Such gaps impose significant disadvantages on those who live, work, and travel in these areas. Today’s Order seeks to address these gaps.

302. The Mobility Fund builds on prior proposals for modernizing the structure and operation of the USF. It was the Federal-State Joint Board on Universal Service (“Joint Board”) that first recognized the importance of directly addressing the infrastructure needs in areas unserved by mobile service, and in the 2007 *Recommended Decision*, the Joint Board recommended that the Commission establish a Mobility Fund.⁴⁹⁸ In the *Recommended Decision*, the Joint Board acknowledged that the universal availability of mobile services was a national priority and proposed that a Mobility Fund be created to subsidize the costs of construction of new facilities in “unserved” areas where significant population density lacked wireless voice service.⁴⁹⁹ The Joint Board also contemplated that funds would be available to construct facilities along roads and highways, to advance important public safety interests.⁵⁰⁰ Finally, the Joint Board recommended that some funds be made available – at least for some limited period of time – to provide continuing operating subsidies to carriers where service is essential but where usage is so slight that there is not a business case to support ongoing operations, even with substantial support for construction.⁵⁰¹

⁴⁹⁵ See *infra* para. 481.

⁴⁹⁶ See *supra* section VII.C.2.

⁴⁹⁷ In this Order, we use the terms “current generation,” “3G,” and “advanced” interchangeably to refer to mobile wireless services that provide voice telecommunications service on networks that also provide data services such as Internet access. The meaning of “advanced” in this context is constantly evolving. We expect that some would include 4G today and that, in the near future, 4G and subsequent technologies also will be within the meaning of “advanced” mobile services.

⁴⁹⁸ See *Recommended Decision*, 22 FCC Rcd at 20,482, paras. 16-18.

⁴⁹⁹ *Id.* at 20,478, para. 4, 20,482, para. 16.

⁵⁰⁰ *Id.* at 20,482, para. 16.

⁵⁰¹ *Id.* at 20,482 para. 16, 20,486, para. 38.

303. Following on the Joint Board's work, the *National Broadband Plan* recommended a Mobility Fund in connection with broader reforms of the USF.⁵⁰² The plan recommended targeted, one-time support for deployment of 3G infrastructure in order to bring all states to a minimum level of mobile service availability, without increasing the size of the USF.

304. In the *USF Reform NOI/NPRM*, the Commission sought comment on the use of a form of procurement auction to determine and target one-time subsidies for deployment of broadband-capable networks in areas unserved by such networks.⁵⁰³ In the *Mobility Fund NPRM*, the Commission outlined a process by which it would solicit bids for support by providers willing to expand current generation wireless networks into areas without such service.⁵⁰⁴

305. Following the release of the *Mobility Fund NPRM*, the Wireless Bureau released a Public Notice seeking comment on a series of more detailed questions focused on how to facilitate service to Tribal lands.⁵⁰⁵ The Public Notice proposed various mechanisms by which Tribal governments might help shape the outcome of an auction to bring mobile services to Tribal lands.

b. Overall Design of Mobility Fund Phase I

(i) Legal Authority

306. We have discussed above the Commission's authority to provide universal service funding to support the provision of voice telephony services. We explained that, pursuant to our statutory authority, we may require that universal service support be used to ensure the deployment of broadband networks capable of offering not only voice telephony services, but also advanced telecommunications and information services, to all areas of the nation, as contemplated by the principles set forth in section 254(b) of the Act. In this section, we apply our legal analysis of our statutory authority to the establishment of Phase I and II of the Mobility Fund.⁵⁰⁶ We note that multiple commenters support our authority to extend universal service support to providers of mobile services.⁵⁰⁷

307. As an initial matter, it is wholly apparent that mobile wireless providers offer "voice telephony services" and thus offer services for which federal universal support is available. Furthermore, wireless providers have long been designated as ETCs eligible to receive universal service support. Nonetheless, a number of parties responding to the *Mobility Fund NPRM* question the Commission's

⁵⁰² National Broadband Plan at 146.

⁵⁰³ *USF Reform NOI/NPRM*, 25 FCC Rcd at 6674-76, paras. 43-48.

⁵⁰⁴ See, generally, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14,716 (2010) (*Mobility Fund NPRM*).

⁵⁰⁵ *Further Inquiry into Tribal Issues Relating to Establishment of a Mobility Fund*, WT Docket No. 10-208, Public Notice, 26 FCC Rcd 5997 (Wireless Telecom. Bur. 2011) (*Tribal Mobility Fund Public Notice*).

⁵⁰⁶ The prior discussion of the Commission's legal authority to support networks capable of offering voice and broadband addresses some of the arguments commenters made in response to the *Mobility Fund NPRM*. For example, Cellular South contended in comments responding to the *Mobility Fund NPRM* that the proposal violated a statutory mandate to support competition together with universal service. See Cellular South et al. *Mobility Fund NPRM* Comments at 17-19. As noted above in the discussion of the Commission's general legal authority, our proposals today further both competition and universal service. See *supra* paras. 68-69.

⁵⁰⁷ See, e.g., TIA *Mobility Fund NPRM* Comments at 2, 6-7; Verizon *Mobility Fund NPRM* Comments at 6-7; Verizon *Mobility Fund NPRM* Reply at 3, 12-13, and 15.

authority to establish the Mobility Fund as described below.⁵⁰⁸ We reject those arguments for the reasons stated below.

308. First, we reject the argument that we may not support mobile networks that offer services other than the services designated for support under section 254. As we have already explained, under our longstanding “no barriers” policy, we allow carriers receiving high-cost support “to invest in infrastructure capable of providing access to advanced services” as well as supported voice services.⁵⁰⁹ Moreover, section 254(e)’s reference to “facilities” and “services” as distinct items for which federal universal service funds may be used demonstrates that the federal interest in universal service extends not only to supported services but also the nature of the facilities over which they are offered. Specifically, we have an interest in promoting the deployment of the types of facilities that will best achieve the principles set forth in section 254(b) (and any other universal service principle that the Commission may adopt under section 254(b)(7)), including the principle that universal service program be designed to bring advanced telecommunications and information services to all Americans, at rates and terms that are comparable to the rates and terms enjoyed in urban areas. Those interests are equally strong in the wireless arena. We thus conclude that USF support may be provided to networks, including 3G and 4G wireless services networks, that are capable of providing additional services beyond supported voice services.⁵¹⁰

309. For similar reasons, we reject arguments made by MetroPCS, NASUCA, and US Cellular that the Mobility Fund would impermissibly support an “information service;”⁵¹¹ by Free Press and the Florida Commission that establishment of the Mobility Fund would violate section 254 because mobile data service is not a supported service;⁵¹² and by various parties that section 254(c)(1) prohibits funding for services to which a substantial majority of residential customers do not subscribe.⁵¹³ All of these arguments incorrectly assume that the Mobility Fund will be used to support mobile data service as a supported service in its own right. To the contrary, the Mobility Fund will be used to support the provision of “voice telephony service” and the underlying mobile network. That the network will also be used to provide information services to consumers does not make the network ineligible to receive

⁵⁰⁸ Apart from the Commission’s authority to establish a Mobility Fund, several parties also dispute the Commission’s authority to fund it from reserve USF funds that were relinquished by Verizon Wireless and Sprint. *See, e.g.,* MTPCS *Mobility Fund NPRM* Comments at 6-8; RCA *Mobility Fund NPRM* Comments at 11-12; USA Coalition *Mobility Fund NPRM* Comments at 25-26; US Cellular *Mobility Fund NPRM* Comments at 16-18; SouthernLINC *Mobility Fund NPRM* Reply at 5-6. We address and reject those arguments elsewhere. *See infra* Appendix F.

⁵⁰⁹ *Rural Task Force Order*, 16 FCC Rcd at 11,322, para. 200 (“[U]se of support to invest in infrastructure capable of providing access to advanced services does not violate section 254(e), which mandates that support be used ‘only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.’ The public switched telephone network is not a single-use network. Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services.”) (footnote omitted).

⁵¹⁰ *Rural Task Force Order*, 16 FCC Rcd at 11,322, para. 199 (“[O]ur universal service policies should not inadvertently create barriers to the provision of access to advanced services.”).

⁵¹¹ *See* MetroPCS *Mobility Fund NPRM* Comments at 4-5; NASUCA *Mobility Fund NPRM* Comments at 3; US Cellular *Mobility Fund NPRM* Comments at 6, 10. *Cf.* USA Coalition *Mobility Fund NPRM* Comments at 4 (“wireless networks are an integrated facility capable of providing both supported telecommunications services *as well as* information services.”).

⁵¹² Free Press *Mobility Fund NPRM* Comments at 2; Florida Commission *Mobility Fund NPRM* Reply at 2-3.

⁵¹³ Free Press *Mobility Fund NPRM* Comments at 2; USA Coalition *Mobility Fund NPRM* Comments at 5-6, 8; Benton et al. *Mobility Fund NPRM* Reply at 3; USA Coalition *Mobility Fund NPRM* Reply at 7-8. Compare HITN *Mobility Fund NPRM* Reply at 3 (“majority of Americans do indeed have access to mobile broadband services”).

support; to the contrary, such use directly advances the policy goals set forth in section 254(b), our new universal service principle recommended by the Joint Board, as well as section 706.⁵¹⁴

310. We also reject the argument that the Mobility Fund violates the principle in section 254(b)(5) that “[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”⁵¹⁵ Commenters argue that non-recurring funding won in a reverse auction is not “predictable” because the final amount of support is not known in advance of the bidding or “sufficient” because non-recurring funding will not meet recurring costs.⁵¹⁶ We disagree. The terms “predictable” and “sufficient” modify “Federal and State mechanisms.” Here, our reverse auction rules establish a predictable mechanism to support universal service in that the carrier receiving support has notice of its rights and obligations before it undertakes to fulfill its universal service obligations.⁵¹⁷ Moreover, this interpretation of the statute was upheld by the Fifth Circuit’s decision in *Alenco Commc’ns v. FCC*.⁵¹⁸ In determining whether certain universal service distribution mechanisms were “predictable,” as required by section 254(b)(5), the *Alenco* court found that “the Commission reasonably construed the predictability principle to require only predictable rules that govern *distribution of subsidies*....”⁵¹⁹

311. Our mechanism is also “sufficient.” The auction process is effectively a self-selecting mechanism: Bidders are presumed to understand that Mobility Fund Phase I will provide one-time support, that bidders will face recurring costs when providing service, and that they must tailor their bid amounts accordingly. We decline to interpret the “sufficiency” requirement so broadly as to require the Commission to guarantee that carriers who receive support make the correct business judgments in deciding how to structure their bids or their service offerings to consumers.

312. Cellular South contends that “by collecting USF contributions from all ETCs and awarding distributions to only a limited set of ETCs, support auctions would transform the Fund into an unconstitutional tax.”⁵²⁰ Again, we disagree. As the Supreme Court has explained, “a statute that creates a particular governmental program and that raises revenue to support that program, as opposed to a statute that raises revenue to support Government generally, is not a ‘Bil[I] for raising Revenue’ within the meaning of the Origination Clause.”⁵²¹ This analysis clearly applies to the sections of the Telecommunications Act of 1996 authorizing the Universal Service Fund, including the Mobility Fund. Moreover, we conclude that the Fifth Circuit’s analysis of this issue with respect to paging carriers applies equally to all carriers. As that court explained: “universal service contributions are part of a particular program supporting the expansion of, and increased access to, the public institutional

⁵¹⁴ 47 U.S.C. § 254(b). Because we are not designating mobility as a supported service, we need not concern ourselves with RICA’s argument that doing so could jeopardize existing support to incumbent LECs and wireline competitive ETCs not offering mobility. RICA *Mobility Fund NPRM* Reply at 3. RICA’s argument is premised on 47 U.S.C. § 214(e)(1)(A), which requires ETCs to offer all supported services throughout their service territory. *Id.*

⁵¹⁵ 47 U.S.C. § 254(b)(5).

⁵¹⁶ Cellular South et al. *Mobility Fund NPRM* Comments at 19; RTG *Mobility Fund NPRM* Comments at 5; USA Coalition *Mobility Fund NPRM* Reply at 6.

⁵¹⁷ See Verizon *Mobility Fund NPRM* Reply at 13.

⁵¹⁸ *Alenco Communications et al. v. FCC*, 201 F.3d 608 (5th Cir. 2000).

⁵¹⁹ *Alenco*, 201 F.3d at 623 (emphasis added); see also *id.* at 622 (explaining that universal service support for high-cost loops was “predictable” because “[t]he methodology governing subsidy *disbursements* [wa]s plainly stated and made available to LECs.”) (emphasis added).

⁵²⁰ Cellular South et al. *Mobility Fund NPRM* Comments at 16.

⁵²¹ *United States v. Munoz-Flores*, 495 U.S. 385, 398 (1990).

telecommunications network. Each paging carrier directly benefits from a larger and larger network and, with that in mind, Congress designed the universal service scheme to exact payments from those companies benefiting from the provision of universal service.”⁵²² Finally, as Verizon notes, there is always likely to be a disparity between the contributions parties make to the USF and the amounts that they receive from the USF.⁵²³ Indeed, section 254(d) requires contributions from “every telecommunications carrier that provides interstate telecommunications services,” not just ETCs or funding recipients.⁵²⁴

(ii) Size of Mobility Fund Phase I

313. *Background.* In the *Mobility Fund NPRM*, the Commission proposed to use \$100 million to \$300 million in USF high-cost universal service support to fund, on a one-time basis, the expansion of current-generation mobile wireless services through creation of the Mobility Fund.⁵²⁵ The Commission noted that the ultimate impact of any amount of support would depend on a variety of factors, including the extent to which non-recurring funding makes it possible to offer service profitably in areas previously uneconomic to serve and the extent to which new customers adopt services newly made available.⁵²⁶ The *Mobility Fund NPRM* sought comment on what amount was optimal to provide effective, targeted support to expand coverage within a relatively short timeframe to those areas without current-generation networks where build out of such networks may be accelerated with one-time assistance.⁵²⁷

314. *Discussion.* We conclude that \$300 million is an appropriate amount for one-time Mobility Fund Phase I support, and is consistent with our goal of swiftly extending current generation wireless coverage in areas where it is cost effective to do so with one-time support. We believe that there are unserved areas for which such support will be useful, and that competition among wireless carriers for support to serve these areas will be sufficient to ensure that the available funds are distributed efficiently and effectively. We agree with those commenters that suggest a one-time infusion of \$300 million will achieve significant benefits, while at the same time ensuring adequate universal service monies are available for other priorities, including broader reform initiatives to address ongoing support.⁵²⁸ We also note that, consistent with a number of comments filed in response to the *Mobility Fund NPRM*,⁵²⁹ we are

⁵²² See *Texas Office of Public Utility Counsel et al. v. FCC*, 183 F.3d 393, 428 (5th Circ. 1999) (rejecting argument of paging carriers that collecting contributions from them for universal service violates the Origination Clause). The Fifth Circuit also concluded, in dicta, that contributions under the Universal Service Fund are fees and not taxes, for purposes of the Taxation Clause. *Id.* at n.52.

⁵²³ Verizon *Mobility Fund NPRM* Reply at 13. There is no statutory or regulatory requirement that ETCs derive a benefit from the program equivalent to their contributions to USF. Moreover, USF contributions typically are collected by ETCs directly from consumers, as a separate line item, on consumers’ phone bills. As such, the benefits of USF rightly flow to consumers, as contemplated by section 254.

⁵²⁴ 47 U.S.C. § 254(d). For the same reason, we disagree with Cellular South that auctions would be “inequitable and discriminatory” in violation of section 254(d). Cellular South et al. *Mobility Fund NPRM* Comments at 17. Nothing in that section suggests that contributors are entitled to USF disbursements.

⁵²⁵ *Mobility Fund NPRM*, 25 FCC Rcd at 14,722, para. 13.

⁵²⁶ *Id.* at 14,722, para. 14.

⁵²⁷ *Id.*

⁵²⁸ See, e.g., Verizon *Mobility Fund NPRM* Comments at 5; ACA *Mobility Fund NPRM* Reply at 4. See also CWA *Mobility Fund NPRM* Comments at 2-4 (limit one-time support to reserve USF support for more comprehensive reform); Windstream *Mobility Fund NPRM* Comments at 4-6 (Mobility Fund should serve as complement to CAF).

⁵²⁹ See, e.g., Alaska Telephone *Mobility Fund NPRM* Comments at 2; CTIA *Mobility Fund NPRM* Comments at 6-11; ITTA *Mobility Fund NPRM* Comments at 3-4; RTG *Mobility Fund NPRM* Comments at 5-6; Texas Statewide (continued...)

deciding to provide significant ongoing support for mobile services through our Mobility Fund Phase II. We recognize that a number of commenters, in responding to the *Mobility Fund NPRM*, contend that the originally proposed range of \$100-\$300 million in one-time support for the Mobility Fund would not be sufficient to achieve ubiquitous deployment of mobile broadband.⁵³⁰ We find, however, that \$300 million should be sufficient to enable the deployment of 3G or better mobile broadband to many of the areas where such services are unavailable.⁵³¹

(iii) Basic Structure for Mobility Fund Phase I

315. *Background.* Given the Commission's goals for the Mobility Fund, it proposed in the *Mobility Fund NPRM* not to adopt the structure of the USF's existing competitive ETC rules, which allow support for multiple providers in one area, but rather to provide support to no more than one entity in any given geographic area.⁵³² The Commission also proposed to adopt certain terms and conditions to minimize competitive concerns raised by certain wireless providers.⁵³³

316. *Discussion.* We decline to adopt the structure of the current competitive ETC rules, which provide support for multiple providers in an area. As discussed elsewhere, we are concluding that that structure has led to duplicative investment by multiple competitive ETCs in certain areas at the expense of investment that could be directed elsewhere, including areas that are not currently served. We therefore conclude that, as a general matter, the Commission should not award Mobility Fund Phase I support to more than one provider per area unless doing so would increase the number of units (road miles) served, as is possible with partially overlapping bids. We agree with numerous commenters that our priority in awarding USF support should be to expand service,⁵³⁴ and that permitting multiple winners as a routine matter in any geographic area to serve the same pool of customers would drain Mobility Fund

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Mobility Fund NPRM Comments at 6-7; TIA *Mobility Fund NPRM* Comments at 2-9; T-Mobile *Mobility Fund NPRM* Comments at 5; USA Coalition *Mobility Fund NPRM* Comments at 20-22; Alaska Governor *Mobility Fund NPRM* Reply at 2; CTIA *Mobility Fund NPRM* Reply at 4-5; GCI *Mobility Fund NPRM* Reply at 6; RCA *Mobility Fund NPRM* Reply at 4-5; SouthernLINC *Mobility Fund NPRM* Reply at 4; USA Coalition *Mobility Fund NPRM* Reply at 6, 9.

⁵³⁰ See, e.g., AT&T *Mobility Fund NPRM* Comments at 2-3; New EA *Mobility Fund NPRM* Comments at 6; Indiana Commission *Mobility Fund NPRM* Comments at 6-7; Mid-Rivers *Mobility Fund NPRM* Comments at 4; Ohio Commission *Mobility Fund NPRM* Comments at 3; RCA *Mobility Fund NPRM* Comments at 9; RTG *Mobility Fund NPRM* Comments at 2; T-Mobile *Mobility Fund NPRM* Comments at 2, 6; USA Coalition *Mobility Fund NPRM* Comments at 20-24; Alaska Commission *Mobility Fund NPRM* Reply at 7-8. CTIA's 2011 *Mobility Study* finds that it would require \$7.8 billion of initial investment to ensure ubiquitous coverage of both HSPA and EvDO (3G) mobile broadband services, and \$21 billion of initial investment to ensure ubiquitous coverage of both LTE and WiMax (4G) mobile broadband services. We note that significant private investment is being made to deploy mobile wireless broadband, and conclude we should not, and cannot, structure our universal service support for mobility to displace private investment being used to expand coverage of 3G and 4G networks. Instead, our goal is to supplement that investment where and to the degree necessary. See CTIA-The Wireless Association, U.S. Ubiquitous Mobility Study, dated September 21, 2011, submitted in *ex parte* notification filed by the CTIA-The Wireless Association on September 22, 2011, in GN Docket No. 09-51, WC Docket Nos. 96-45, 05-337, and 10-90; WT Docket No. 10-208; and CC Docket No. 01-92 (*CTIA 2011 Mobility Study*).

⁵³¹ See *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4560-61, para. 10; see also National Broadband Plan at 149-150.

⁵³² *Mobility Fund NPRM*, 25 FCC Rcd at 14,723, para. 15.

⁵³³ *Id.* at 14,723, para. 15, 14,728, para. 36.

⁵³⁴ See CenturyLink *Mobility Fund NPRM* Comments at 8; ITTA *Mobility Fund NPRM* Comments at 4-5; Indiana Commission *Mobility Fund NPRM* Comments at 4; Verizon *Mobility Fund NPRM* Reply at 16.

resources with limited corresponding benefits to consumers.⁵³⁵ We note, however, that in certain limited circumstances, the most efficient use of resources may result in small overlaps in supported service. Thus, we delegate to the Bureaus, as part of the auctions procedures process, the question of the circumstances, if any, in which to allow overlaps in supported service to permit the widest possible coverage given the overall budget.⁵³⁶

317. Commenters that oppose our proposal maintain that it would unfairly deprive customers of the benefits of competition,⁵³⁷ create barriers to entry,⁵³⁸ and require the Commission to “hyper regulate” to protect against anti-competitive behavior.⁵³⁹ Some assert that these presumed consequences violate express provisions of the Communications Act regarding universal service support.⁵⁴⁰

318. Many of the objections to the Commission’s authority assume that the Universal Service Fund’s existing competitive ETC rules, which allow support for multiple providers in one area, are the only way to fulfill the goals of the statute. We disagree with this premise. As Verizon notes, the statute’s goal is to expand availability of service to users.⁵⁴¹ It is certainly true that section 214(e) allows the states to designate more than one provider as an eligible telecommunications provider in any given area.⁵⁴² But nothing in the statute compels the states (or this Commission) to do so; rather, the states (and this Commission) must determine whether that is in the public interest. Likewise, nothing in the statute compels that every party eligible for support actually receive it.

319. We acknowledge that in the past the Commission concluded that universal service subsidies should be portable, and allowed multiple competitive ETCs to receive support in a given geographic area. Based on the experience of a decade, however, we conclude that this prior policy of supporting multiple networks may not be the most effective way of achieving our universal service goals. In this case, we choose not to subsidize competition through universal service in areas that are challenging for even one provider to serve.⁵⁴³ Given that Mobility Fund Phase I seeks to expand the availability of current and next generation services, it will be used to offer services where no provider

⁵³⁵ See *Verizon Mobility Fund NPRM Reply* at 16. The *CTIA 2011 Mobility Study* provides an indication of how much more money could be required to support multiple providers. Specifically, the study found \$10 billion would be required to ensure 4G mobile broadband coverage using either LTE or WiMax technologies, but more than double that amount, \$21 billion, would be required to ensure 4G broadband coverage using both LTE and WiMax.

⁵³⁶ See *infra* para. 420.

⁵³⁷ See *ACS Mobility Fund NPRM Comments* at 5-6; *ATA Mobility Fund NPRM Comments* at 3; *Cellular South et al. Mobility Fund NPRM Comments* at 21-22; *CTIA Mobility Fund NPRM Comments* at 7-9; *Sprint Mobility Fund NPRM Comments* at 2; *T-Mobile Mobility Fund NPRM Comments* at 3, 7; *US Cellular Mobility Fund NPRM Comments* at 20-21. But see *Verizon Mobility Fund NPRM Reply* at 14 (competitive bidding would treat all market participants alike; “there will be no mystery to the application process or the criteria for selecting winning bidders.”).

⁵³⁸ See *New EA Mobility Fund NPRM Comments* at 4-5.

⁵³⁹ See, e.g., *US Cellular Mobility Fund NPRM Comments* at 20-21.

⁵⁴⁰ See *RCA Mobility Fund NPRM Comments* at 8; *SouthernLINC Mobility Fund NPRM Reply* at 3; *NE Colorado Mobility Fund NPRM Reply* at 6; *US Cellular Mobility Fund NPRM Reply* at 13.

⁵⁴¹ *Verizon Mobility Fund NPRM Reply* at 10 (“Nowhere in the USF policy goals listed in section 254(b) of the Act does it say that universal service programs should be designed to prop up multiple providers with government subsidies in areas that are prohibitively expensive for even one provider to serve.”).

⁵⁴² 47 U.S.C. § 214(e).

⁵⁴³ See *infra* section VII.E.4. (Eliminating the Identical Support Rule); see also *Verizon Mobility Fund NPRM Reply* at 10, 16.

currently offers such service. We conclude that the public interest is best served by maximizing the expansion of networks into currently unserved communities given the available budget, which will generally result in providing support to no more than one provider in a given area.

320. We further note, however, that participation in Mobility Fund Phase I is conditioned on collocation and data roaming obligations designed to minimize anticompetitive behavior. We also require that recipients provide services with Mobility Fund Phase I support at reasonably comparable rates.⁵⁴⁴ These obligations should help address the concerns of those that argue for continued support of multiple providers in a particular geographic area and further our goal to ensure the widest possible reach of Phase I of the Mobility Fund.

(iv) Auction To Determine Awards of Support

321. *Background.* In the *Mobility Fund NPRM*, the Commission proposed to use a competitive bidding mechanism to determine the entities that would receive support and the amount of support they would receive. That is, it proposed to award support based on the lowest per-unit bid amounts submitted in a reverse auction, subject to the constraint discussed above that there will be no more than one recipient per geographic area, so as to make the limited funds available go as far as possible.⁵⁴⁵ The *Mobility Fund NPRM* sought comment on this approach generally and on particular aspects of how such an auction might work. The Commission further proposed to give the Wireline Bureau and the Wireless Bureau discretion to determine specific auction procedures in a separate pre-auction proceeding, consistent with our approach in spectrum auctions.

322. *Discussion.* The goal of Mobility Fund Phase I is to extend the availability of mobile voice service on networks that provide 3G or better performance and to accelerate the deployment of 4G wireless networks in areas where it is cost effective to do so with one-time support. The purpose of the mechanism we choose is to identify those areas where additional investment can make as large a difference as possible in improving current-generation mobile wireless coverage. We adopt a reverse auction format because we believe it is the best available tool for identifying such areas – and associated support amounts – in a transparent, simple, speedy, and effective way. In such a reverse auction, bidders are asked to indicate the amount of one-time support they would require to achieve the defined performance standards for specified numbers of units in given unserved areas. We discuss later the details of the auction mechanism, including our proposal to award support to maximize the number of units covered given the funds available. Here, we conclude simply that a reverse auction is the best way to achieve our overall objective of maximizing consumer benefits given the available funds.

323. Objections to our proposal to use a competitive bidding mechanism largely challenge or misunderstand the goals of the instant proposal. GVNW, for example, argues that the Mobility Fund will not provide adequate support over the longer term. This fails to recognize that Mobility Fund Phase I is focused solely on identifying recipients that can extend coverage with one-time support.⁵⁴⁶ Other commenters argue that our approach is unlikely to provide support for the areas that are the very hardest to cover, noting how important high-cost USF support is in these areas.⁵⁴⁷ In this regard, we reiterate that Phase I has a limited and targeted purpose and is not intended to ensure that the highest cost areas receive support. Those issues are addressed separately in the sections of the Order discussing Mobility Fund Phase II and other aspects of CAF, as well as in the FNPRM adopted today.

⁵⁴⁴ See *infra* paras. 384-385.

⁵⁴⁵ *Mobility Fund NPRM*, 25 FCC Rcd at 14,723, para. 16.

⁵⁴⁶ GVNW *Mobility Fund NPRM* Comments at 3-8.

⁵⁴⁷ ACS *Mobility Fund NPRM* Comments at 3-4; ATA *Mobility Fund NPRM* Comments at 2-3; Alaska Commission *Mobility Fund NPRM* Reply at 4; Alaska Governor *Mobility Fund NPRM* Reply at 2.

324. Others contend that funding will be directed to areas that will be built out with private investment even without support.⁵⁴⁸ To prevent funding from going to such areas, Windstream suggests that the Commission could require a certain level of private investment before any subsidy kicks in or include an assessment of revenue/expense forecasts as part of the selection process.⁵⁴⁹ We observe that the areas eligible for Mobility Fund Phase I funding generally are ones where the economics have not been sufficient to date to attract private investment. While it may be true that some of these areas potentially could be built out using private investment over time, our goal in establishing the Mobility Fund is to provide the necessary “jump start” to accelerate service to areas where it is cost effective to do so. As discussed below, we are also excluding from auction those areas where a provider has made a regulatory commitment to provide 3G or better wireless service, or has received a funding commitment from a federal executive department or agency in response to the carrier’s commitment to provide 3G or better service.⁵⁵⁰ Taken together, we believe these measures provide sufficient safeguards to exclude funding for areas that would otherwise be built with private investment in the near term.

325. Other commenters object to our proposal to use an auction based on issues that are common to any competitive mechanism. The Blooston Rural Carriers, among others, argue that reverse auctions can lead to construction and equipment quality short-cuts due to cost cutting measures.⁵⁵¹ We must of course define clear performance standards and effective enforcement of those standards, as is prudent when seeking any commitment for specific performance. We expect that bidders will consider cost-effective ways of fairly meeting those requirements, which in turn is consistent with our objective to extend coverage for mobile services as much as possible given available funds.

326. We are unpersuaded by arguments that we should not conduct a reverse auction because larger carriers, with greater economies of scale or other potential advantages, will be able to bid more competitively than smaller providers.⁵⁵² For a variety of reasons noted elsewhere, we are confident that both the auction design and natural advantages of carriers with existing investments in networks in rural areas should provide opportunities for smaller providers to compete effectively at auction. Some parties have contended that reverse auctions generally unduly harm small businesses or offer no benefits to federal agencies that make use of them, citing prior attempts to utilize reverse auctions in other contexts, such as Medicare.⁵⁵³ The examples provided, however, illustrate issues in implementing specific reverse auction programs, rather than demonstrating that reverse auctions are inherently biased against small

⁵⁴⁸ See, e.g., Free Press *Mobility Fund NPRM* Comments at 3; GCI *Mobility Fund NPRM* Comments at ii; RCA *Mobility Fund NPRM* Comments at 9; Windstream *Mobility Fund NPRM* Comments at 4-5; ACA *Mobility Fund NPRM* Reply at 5; Benton et al. *Mobility Fund NPRM* Reply at 4; GCI *Mobility Fund NPRM* Reply at 9.

⁵⁴⁹ Windstream *Mobility Fund NPRM* Comments at 5-6.

⁵⁵⁰ See *infra* paras. 341-342.

⁵⁵¹ Blooston *Mobility Fund NPRM* Comments at 2; Cellular South et al. *Mobility Fund NPRM* Comments at 12; GVNW *Mobility Fund NPRM* Comments at 8; RTG *Mobility Fund NPRM* Comments at 7.

⁵⁵² See, e.g., Blooston *Mobility Fund NPRM* Comments at 5-6; JCPES *Mobility Fund NPRM* Comments at 4-5; Mid-Rivers *Mobility Fund NPRM* Comments at 6; MTPCS *Mobility Fund NPRM* Comments at 4; RTG *Mobility Fund NPRM* Comments at 7-8; RCA *Mobility Fund NPRM* Reply at 9; RICA *Mobility Fund NPRM* Reply at 6.

⁵⁵³ See Nex-Tech and Carolina West Wireless, *Ex Parte* Notice, December 8, 2010 (Redacted); Nex-Tech Wireless, Carolina West Wireless, and Cellular One of East Central Illinois, *Ex Parte* Notice, September 28, 2010 (Redacted); see also United States Government Accountability Office, Medicare, CMS Working To Address Problems from Round 1 of the Durable Medical Equipment Competitive Bidding Program, GAO-10-207, November 2009.

businesses.⁵⁵⁴ Accordingly, we do not find that these examples demonstrate that small businesses are unable to meaningfully participate in a well-designed and executed reverse auction.

327. MTPCS and US Cellular advocate that the Commission take into account factors other than the lowest price, and consider factors such as quality of service, the existence of redundant connections, and availability of quality equipment.⁵⁵⁵ The commenters do not, however, suggest how such metrics could be implemented in this context. Indeed, we conclude that, for purposes of Mobility Fund Phase I, the difficulty in appropriately weighting such differences in the service provided outweigh the benefits that might be gained from such an approach. Rather, we choose to focus on the more concrete and direct approach of adopting appropriate, uniform, minimum performance requirements applicable to all support recipients.

328. Finally, certain commenters object to the use of a reverse auction on the grounds that a reverse auction would provide support to at most one bidder in an area.⁵⁵⁶ For reasons discussed above, we have decided not to provide support routinely to more than one provider in an area, contrary to current provision of support to competitive ETCs.

329. *Delegation of Authority.* We also adopt our proposal to delegate to the Bureaus authority to administer the policies, programs, rules and procedures to implement Mobility Fund Phase I as established today. The only commenter addressing this particular point, T-Mobile, supported the delegation to the Wireless Bureau to provide useful flexibility in pre-auction preparation.⁵⁵⁷ In addition to the specific tasks noted elsewhere, such as identifying areas eligible for Mobility Fund support and the number of units associated with each, this delegation includes all authority necessary to conduct a Mobility Fund Phase I auction and conduct program administration and oversight consistent with the policies and rules we adopt in this Order.⁵⁵⁸

(v) Identifying Unserved Areas Eligible for Support

330. In the *Mobility Fund NPRM*, the Commission proposed to identify unserved areas on a census block basis and offer support by census tracts, grouping together all unserved census blocks in the same tract for purposes of awarding support based on competitive bidding.⁵⁵⁹ This proposal involves several related elements, including determining the geographic basis for identifying served and unserved areas, the coverage units associated with unserved geographic areas, and the minimum geographic basis on which unserved areas will be grouped when offered in bidding for Mobility Fund Phase I support. For the reasons discussed with respect to each element, we adopt the proposal in the *Mobility Fund NPRM*, with modifications. We will use road miles, rather than residential population, as the baseline for coverage units in each unserved area, and we delegate to the Bureaus, as part of the auctions procedures

⁵⁵⁴ For example, according to the Government Accountability Office (GAO), the primary problems with Round 1 of the Durable Medical Equipment Competitive Bidding program involved “poor timing and lack of clarity in bid submission information, a failure to inform all suppliers that losing bids could be reviewed, and an inadequate electronic bid submission system.” GAO Highlights, Highlights of GAO-10-27, Medicare, CMS Working to Address Problems from Round 1 of the Durable Medical Equipment Competitive Bidding Program, November 2009. Nonetheless, the GAO noted that competitive bidding “has the potential to produce considerable benefits, including reducing overall Medicare spending for [durable medical equipment].” *Id.*

⁵⁵⁵ MTPCS *Mobility Fund NPRM* Comments at 4; US Cellular *Mobility Fund NPRM* Reply at 24.

⁵⁵⁶ Cellular South et al. *Mobility Fund NPRM* Comments at 17, 21; RCA *Mobility Fund NPRM* Comments at 2-4; US Cellular *Mobility Fund NPRM* Comments at 20-22; NE Colorado Cellular *Mobility Fund NPRM* Reply at 1.

⁵⁵⁷ T-Mobile *Mobility Fund NPRM* Comments at 16.

⁵⁵⁸ See *infra* paras. 337 and 353.

⁵⁵⁹ *Mobility Fund NPRM*, 25 FCC Rcd at 14,724, para. 20.

process, the question of whether to use a minimum area for bidding like census tracts, as we had proposed, or whether to provide for bidding on individual census blocks with the opportunity for package bidding on combinations of census blocks.

(a) Using Census Blocks to Identify Unserved Areas

331. *Background.* The Commission proposed to determine the availability of service at the census block level as the first step in identifying those areas that are eligible for Mobility Fund Phase I support.⁵⁶⁰ The census block is the smallest geographic unit for which the Census Bureau collects and tabulates decennial census data. Determining the extent of current-generation mobile wireless services by census block should provide a very detailed picture of the availability of 3G mobile services.

332. *Discussion.* We will identify areas eligible for Mobility Fund Phase I support at the census block level. We believe a granular review will allow us to identify unserved areas with greater accuracy than if we used larger areas.⁵⁶¹ Although census blocks, particularly in rural areas, may include both served and unserved areas,⁵⁶² it is not feasible to identify unserved areas on a more granular level for Mobility Fund Phase I, since as noted, census blocks are the smallest unit for which the Census Bureau provides data. NTCH observes that reviewing service by census block will result in a larger absolute number of unserved areas than a review based on larger geographic areas,⁵⁶³ but we do not believe this larger absolute number of unserved areas will unduly complicate administration of the fund.

(b) Identifying Unserved Census Blocks

(i) Using American Roamer Data

333. *Background.* The Commission further proposed to measure the availability of current-generation mobile wireless services by using American Roamer data identifying the geographic coverage of networks using EV-DO, EV-DO Rev A, and UMTS/HSPA.⁵⁶⁴ The *Mobility Fund NPRM* sought comment on whether there are differences in the way that carriers report information to American Roamer that should affect our decision on this issue and whether possible alternative datasets exist for this purpose.⁵⁶⁵

334. *Discussion.* We conclude that American Roamer data is the best available choice at this time for determining wireless service at the census-block level. American Roamer data is recognized as the industry standard for the presence of service, although commenters note that the data may not be comprehensive and accurate in all cases.⁵⁶⁶ We anticipate that the Bureaus will exercise their delegated authority to use the most recent American Roamer data available in advance of a Phase I auction in 2012. We note that, in so doing, they should use the data to determine the geographic coverage of networks

⁵⁶⁰ *Id.* at 14,724, para 21.

⁵⁶¹ T-Mobile *Mobility Fund NPRM* Comments at 10-11.

⁵⁶² See Letter from Bruce A. Olcott, Counsel to the State of Hawaii, to Hon. Julius Genachowski, Chairman, FCC, at 2, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51 (Oct. 19, 2011).

⁵⁶³ NTCH *Mobility Fund NPRM* Comments at 3.

⁵⁶⁴ *Mobility Fund NPRM*, 25 FCC Rcd at 14,724, para. 22.

⁵⁶⁵ *Id.* at 14,724-25, para. 23.

⁵⁶⁶ AT&T *Mobility Fund NPRM* Comments at 9-10; Alaska Commission Reply at 11; Benton et al. Reply at 9; HITN Reply at 3-4; NE Colorado Cellular Reply at 9. *But see* Verizon *Mobility Fund NPRM* Comments at 16 (“Using American Roamer data for this purpose is sensible and . . . we are not aware of any other source that presents a viable alternative.”)

using the technologies noted in the *Mobility Fund NPRM* (i.e., EV-DO, EV-DO Rev A, UMTS/HSPA) or better.⁵⁶⁷

335. Some commenters propose that the Commission rely instead on data provided for the National Broadband Map created pursuant to the American Recovery and Reinvestment Act, or on data previously submitted to the Commission on FCC Form 477, though the latter source would not reflect reporting by census block.⁵⁶⁸ For future mobility-focused auctions, it may be possible to obtain information from state and Tribal governments to identify areas in need of support. In addition, it may soon be possible to rely, at least in part, on the data provided in connection with the National Broadband Map and FCC Form 477, depending on our anticipated reform to that data collection. Inconsistencies with respect to wireless services have been noted in the initial phase of data gathering for the National Broadband Map, however. Although we expect those discrepancies to be resolved as the project evolves over time,⁵⁶⁹ we cannot now conclude that National Broadband Map data will be an appropriate source of data in time for a Mobility Fund Phase I auction.

336. Some commenters observe that American Roamer data relies on reporting by existing providers and therefore may tend to over-report the extent of existing coverage.⁵⁷⁰ While we intend to be as accurate as possible in determining the extent of coverage, we recognize that perfect information is not available. We know of no data source that is more reliable than American Roamer, nor does the record reflect any other viable options. Moreover, to the extent that American Roamer data may reflect over-reporting of coverage, we note that this makes it less likely that we will mistakenly identify areas already served by 3G networks as unserved, and hence, less likely that we will assign support to cover areas that are not in fact unserved by our definition. Our objective is, of course, to identify unserved areas as accurately as possible.

337. Several commenters note that the potential for error is unavoidable and therefore advocate that some provision be made for outside parties to appeal or initiate a review of the initial coverage determination for a particular area.⁵⁷¹ We conclude that we will, within a limited timeframe only, entertain challenges to our determinations regarding unserved geographic areas for purposes of Mobility Fund Phase I. Specifically, we will make public a list of unserved areas as part of the pre-auction process and afford parties a reasonable opportunity to respond by demonstrating that specific areas identified as unserved are actually served and/or that additional unserved areas should be included.

⁵⁶⁷ Here, we make clear that in identifying unserved census blocks we will exclude census blocks that are served by 3G or better service. Better than 3G service would include any 4G technologies, including, for example, HSPA+ or LTE.

⁵⁶⁸ California Commission *Mobility Fund NPRM* Comments at 12-14; Verizon *Mobility Fund NPRM* Comments at 16.

⁵⁶⁹ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, Seventh Broadband Progress Report and Order on Reconsideration, 26 FCC Rcd 8008, 8078-93, App. F (2011) (*Section 706 Seventh Report and Order on Reconsideration*).

⁵⁷⁰ New EA *Mobility Fund NPRM* Comments at 5; Alaska Commission *Mobility Fund NPRM* Reply at 11; Benton et al. *Mobility Fund NPRM* Reply at 9; HITN *Mobility Fund NPRM* Reply at 3-4; NE Colorado *Mobility Fund NPRM* Reply at 9-10.

⁵⁷¹ AT&T *Mobility Fund NPRM* Comments at 9-10; Texas Statewide Coop *Mobility Fund NPRM* Comments at 6; WorldCall *Mobility Fund NPRM* Comments at 10. HITN cautions that we should require parties who seek to challenge that a specific area is unserved to provide empirical data rather than rely on advertising claims to support any such challenge. HITN *Mobility Fund NPRM* Reply at 4.

Our goal is to accelerate expanded availability of mobile voice service over current-generation or better networks by providing one-time support from a limited source of funds, and any more extended pre-auction review process might risk undue delay in making any support available. Providing for post-auction challenges would similarly inject uncertainty and delay into the process. We therefore conclude that it is important to provide finality prior to the auction with respect to the specific unserved census blocks eligible for support. Accordingly, the Bureaus will finalize determinations with respect to which areas are eligible for support in a public notice establishing final procedures for a Mobility Fund Phase I auction.

(ii) Other Service-Related Factors

338. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on whether factors other than existing mobile service, including the presence of voice and broadband services on non-mobile networks, should be considered in determining which census blocks are unserved and eligible for support.⁵⁷²

339. *Discussion.* After review of the record, we conclude that we will not consider the presence in a census block of voice or broadband services over non-mobile networks in determining which census blocks are unserved. As noted by commenters, mobile services provide benefits, consistent with, and in furtherance of the principles of section 254, not offered by fixed services.⁵⁷³ The ability to communicate from any point within a mobile network's coverage area lets people communicate at times when they may need it most, including during emergencies. The fact that fixed communications may be available nearby does not detract from this critical benefit. Moreover, the Internet access provided by current and next generation mobile networks renders them qualitatively different from existing voice-only mobile networks. Current and next generation networks offer the ability to tap resources well beyond the resources available through basic voice networks. Accordingly, in identifying blocks eligible for Mobility Fund support, we will not consider whether voice and/or broadband services are available using non-mobile technologies or pre-3G mobile wireless technologies.

340. Some commenters also suggest that the Commission prioritize support to those areas where there is no wireless service availability at all.⁵⁷⁴ We share commenters' goal of expanding the availability of basic mobile services to all Americans. However, the areas that currently lack basic mobile services are likely to be among the most difficult or expensive to serve and would likely require significant ongoing support to remain operational. Given the limited size and scope of the Mobility Fund Phase I, we do not believe that this support mechanism, even with a priority for completely unserved areas, would most efficiently address those areas. Rather, we address these areas in the parts of this Order and the FNPRM addressing ongoing support for wireless services and highest cost areas.

341. That said, to help focus Mobility Fund Phase I support toward unserved locations where it will have the most significant impact, we provide that support will not be offered in areas where, notwithstanding the current absence of 3G wireless service, any provider has made a regulatory commitment to provide 3G or better wireless service, or has received a funding commitment from a

⁵⁷² *Mobility Fund NPRM*, 25 FCC Rcd at 14,724-25, para. 23.

⁵⁷³ WorldCall *Mobility Fund NPRM* Comments at 11-12.

⁵⁷⁴ See AT&T *Mobility Fund NPRM* Comments at 4; Free Press *Mobility Fund NPRM* Comments at 3; MetroPCS *Mobility Fund NPRM* Comments at 8; CWA *Mobility Fund NPRM* Reply at 4; RCA *Mobility Fund NPRM* Reply at 3-4; RICA *Mobility Fund NPRM* Reply at 2.

federal executive department or agency in response to the carrier's commitment to provide 3G or better wireless service.⁵⁷⁵

342. To implement this decision, we will require that all wireless competitive ETCs that receive USF high cost support, under either legacy or reformed programs, as well as all parties that seek Mobility Fund support, review the list of areas eligible for Mobility Fund support when published by the Commission and identify any areas with respect to which they have made a regulatory commitment to provide 3G or better wireless service or received a federal executive department or agency funding commitment in exchange for their commitment to provide 3G or better wireless service. We recognize that a regulatory commitment ultimately may not result in service to the area in question. Nevertheless, given the limited resources provided for Mobility Fund Phase I and the fact that the commitments were made in the absence of any support from the Mobility Fund, we conclude that it would not be an appropriate use of available resources to utilize Mobility Fund support in such areas.

(iii) Using Centroid Method

343. *Background.* In the *Mobility Fund NPRM*, the Commission proposed to consider any census block as unserved, *i.e.*, eligible for support, if the American Roamer data indicates that the geometric center of the block – referred to as the centroid⁵⁷⁶ – is not covered by networks using EV-DO, EV-DO Rev A, or UMTS/HSPA or better.⁵⁷⁷ The Commission also sought comment on alternative approaches.⁵⁷⁸

344. *Discussion.* We conclude that employing the centroid method is relatively simple and straightforward, and will be an effective method for determining whether a block is uncovered. Some commenters support the Commission proposal to use the centroid method both as manageable and effective,⁵⁷⁹ while others prefer the alternative proportional method described in the *Mobility Fund NPRM*.⁵⁸⁰ Parties advocating for the alternative method assert that a proportional process will be more accurate.⁵⁸¹ More specifically, some note that although most census blocks are small, some can be large, particularly in low-density rural areas, and that coverage at the centroid might result, incorrectly, in the entirety of those large areas being deemed served.⁵⁸² While we acknowledge that advantages and disadvantages exist with both methods, we find that, on balance, the centroid method is the best approach for this purpose. We note that the Commission has consistently used the centroid method for determining coverage in other contexts, such as evaluating competition in the mobile wireless services industry, where it is also useful to have a clear and consistent methodology for determining whether a given area has coverage. Based on our experience in these contexts, we find the centroid method to be an

⁵⁷⁵ Such federal funding commitments may have been made under, but are not limited to, the Broadband Technology Opportunities Program (BTOP) and Broadband Initiatives Program (BIP) authorized by the American Recovery and Reinvestment Act of 2009, P.L. 111-5, 123 Stat. 115 (ARRA).

⁵⁷⁶ We use the term “centroid” to refer to the internal point latitude/longitude of a census block polygon. For more information, see U.S. Census Bureau, *Putting It All Together*, http://lehd.did.census.gov/led/library/doc/PuttingItTogether_20100817.pdf (visited Nov. 4, 2011).

⁵⁷⁷ *Mobility Fund NPRM*, 25 FCC Rcd at 14,724, para. 22.

⁵⁷⁸ *Id.* at 14,724-5, paras. 22-23.

⁵⁷⁹ AT&T *Mobility Fund NPRM* Comments at 10; Verizon *Mobility Fund NPRM* Comments at 16.

⁵⁸⁰ Greenlining *Mobility Fund NPRM* Comments at 3. *Cf.* Mid-Rivers *Mobility Fund NPRM* Comments at 7; NTCH *Mobility Fund NPRM* Comments at 4.

⁵⁸¹ Greenlining *Mobility Fund NPRM* Comments at 3.

⁵⁸² Mid-Rivers *Mobility Fund NPRM* Comments at 7.

administratively simple and efficient approach that, if used here, will permit us to begin distributing this support without undue delay. For these reasons, we will use the centroid method to determine which census blocks are unserved by 3G or better networks for purposes of Mobility Fund Phase I.

(c) Offering Support for Unserved Areas by Census Block

345. *Background.* The Commission proposed in the *Mobility Fund NPRM* to group unserved census blocks by larger areas – census tracts – as the minimum area for competitive bidding, since individual census blocks may be too small to serve as a viable basis for providing support.⁵⁸³ The Commission therefore proposed to accept bids for support to expand coverage to all the unserved census blocks within a particular census tract and sought comment on that approach.⁵⁸⁴

346. *Discussion.* Upon review of the comments and further reflection, we determine that the census block should be the minimum geographic building block for defining areas for which support is provided. Using census blocks as the minimum geographic area gives the Commission and bidders more flexibility to tailor their bids to their business plans. Because census blocks are numerous and can be quite small, we believe that we will need to provide at the auction for the aggregation of census blocks for purposes of bidding. We delegate to the Bureaus, as part of the auctions procedures process, the task of deciding whether to provide a minimum area for bidding comprised of an aggregation of eligible census blocks (*e.g.*, census tracts or block groups) or whether to permit bidding on individual census blocks and provide bidders with the opportunity to make “all-or-nothing” package bids on combinations of census blocks. Package bidding procedures could specify certain predefined packages,⁵⁸⁵ or could provide bidders greater flexibility in defining their own areas, comprised of census blocks. However, we would not expect that any aggregation, whether predetermined by the Bureaus or defined by bidders, would exceed the bounds of one Cellular Market Area (CMA).⁵⁸⁶

347. In deciding this issue, we recognize that the unique circumstances raised by the large size of census areas in Alaska may require that bidding be permitted on individual census blocks, rather than a larger pre-determined area, such as a census tract or block group. In Alaska, the average census block is more than 50 times the size of the average census block in the other 49 states and the District of Columbia,⁵⁸⁷ such that the large size of census areas poses distinctive challenges in identifying unserved communities and providing service.⁵⁸⁸

⁵⁸³ *Mobility Fund NPRM*, 25 FCC Rcd at 14,725, paras. 25-26. Census tracts generally have between 1,200 and 8,000 inhabitants and average about 4,000 inhabitants. Each census tract consists of multiple census blocks and every census block fits within a census tract. There are over 11 million census blocks nationwide.

⁵⁸⁴ *Id.* at 14,725, para. 25. As discussed herein, a provider receiving support would be considered to cover a particular census block when it demonstrates compliance with the performance requirements adopted by the Commission, and not simply by covering the block’s centroid.

⁵⁸⁵ See, *e.g.*, *Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76*, Public Notice, 22 FCC Rcd 18,141, 18,179-81, paras. 138-144 (Wireless Telecom. Bur. 2007) (*700 MHz Auction Procedures Public Notice*).

⁵⁸⁶ Cellular Market Areas (CMAs) are the areas in which the Commission initially granted licenses for cellular service. Cellular markets comprise Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs). See 47 C.F.R. § 22.909.

⁵⁸⁷ 2010 census data indicates that the average census block size in Alaska is 14.7 square miles, while the average census block size in the other 49 states and the District of Columbia is .28 square miles.

⁵⁸⁸ See *ACS Mobility Fund NPRM* Comments at 5; *GCI Mobility Fund NPRM* Comments at 4; Alaska Commission *Mobility Fund NPRM* Reply at 10.

348. Few commenters address the minimum geographic building block issue directly. Those that do generally support the Commission's initial proposal to structure the auction to provide for bidding on census tracts that include unserved census blocks, although few took issue with the possibility of using census blocks as the basic building block.⁵⁸⁹ Others propose alternatives, such as permitting carriers to define their own service areas in which they seek to bid.⁵⁹⁰ Nearly all of the comments touching on the minimum geographic bidding area acknowledge the underlying goals of making a selection based on ease of administration, effective identification of unserved areas, and promoting the widest possible deployment of mobile services.

(d) Establishing Unserved Units

349. *Background.* In the *Mobility Fund NPRM*, the Commission proposed to use population as the base unit with which to compare unserved census blocks.⁵⁹¹ It also sought comment on taking into account characteristics such as road miles, traffic density, and/or community anchor institutions in determining the number of units in each unserved census block and asked how, if multiple characteristics were to be used, the various factors should be weighted.⁵⁹²

350. *Discussion.* After further consideration, we conclude that we will use a single characteristic, the number of linear road miles – rather than population – as the basis for calculating the number of units in each unserved census block. We base this decision on a number of factors. First, we find that requiring additional coverage of road miles more directly reflects the Mobility Fund's goal of extending current generation *mobile* services, as some commenters noted.⁵⁹³ We also find that using road miles, rather than population, as a unit for bids and awards of support is more consistent with our decision to measure mobile broadband service based on drive tests and to require coverage of a specified percentage of road miles as described below.

351. Moreover, we believe that using per-road mile bids as a basis for awarding support implicitly will take into account many of the other factors that commenters argue are important – such as business locations, recreation areas, and work sites – since roads are used to access those areas.⁵⁹⁴ And while traffic data might be superior to simple road miles as a measure of actual use, we have not found comprehensive and consistent traffic data across multiple states and jurisdictions nationwide. Because bidders are likely to take potential roaming and subscriber revenues into account when deciding where to bid for support under Mobility Fund Phase I, we believe that support will tend to be disbursed to areas where there is greater traffic, even without our factoring traffic into the number of road mile units.

352. Further, using road miles as the basic unit for the Mobility Fund Phase I will be relatively simple to administer, since standard nationwide data exists for road miles, as it does for population. In both cases, the data can be disaggregated to the census block level. Commenters that supported our proposal to use population as a unit did so largely based on its simplicity and its

⁵⁸⁹ See, e.g., AT&T *Mobility Fund NPRM* Comments at 10-11; Greenlining Institute *Mobility Fund NPRM* Comments at 3; NTCH *Mobility Fund NPRM* Comments at 3-4; T-Mobile *Mobility Fund NPRM* Comments at 10-11; Verizon *Mobility Fund NPRM* Comments at 15; Windstream *Mobility Fund NPRM* Comments at 6.

⁵⁹⁰ See ACS *Mobility Fund NPRM* Comments at 5; Alaska Commission *Mobility Fund NPRM* Reply at 11; see also Mid-Rivers *Mobility Fund NPRM* Comments at 6-7 (proposing the use of licensed coverage areas).

⁵⁹¹ *Mobility Fund NPRM*, 25 FCC Rcd at 14,725, para. 27.

⁵⁹² *Id.*

⁵⁹³ WorldCall *Mobility Fund NPRM* Comments at 8; Mid-Rivers *Mobility Fund NPRM* Comments at 7.

⁵⁹⁴ CTIA *Mobility Fund NPRM* Comments at 12; NTCH *Mobility Fund NPRM* Comments at 4.

straightforward nationwide applicability, so that the logic of those commenters is consistent with our decision to use road miles instead.⁵⁹⁵

353. We note that the TIGER road miles data made available by the Census Bureau can be used to establish the road miles associated with each census block eligible for Mobility Fund Phase I support. TIGER data is comprehensive and consistent nationwide, and available at no cost. As with our standard for identifying census blocks that will be eligible for Phase I support, we anticipate that in the pre-auction process, the Bureaus will establish the road miles associated with each and identify the specific road categories considered – e.g., interstate highways, etc. – to be consistent with our performance requirements and with our goal of extending coverage to the areas where people live, work, and travel.

(e) Distributing Mobility Fund Phase I Support Among Unserved Areas

354. *Background.* In the *Mobility Fund NPRM*, the Commission invited comment on distributing support among unserved areas nationwide and on various alternative methods for targeting support to a subset of unserved areas, such as states that significantly lag behind the level of 3G coverage generally available nationwide.⁵⁹⁶ In particular, the Commission requested any insights commenters could provide regarding which of these alternatives would most effectively utilize the offered support to maximize the public benefits of expanded 3G coverage.⁵⁹⁷ The Commission also sought comment on whether and how to prioritize support for unserved areas that currently lack any mobile wireless service.⁵⁹⁸

355. *Discussion.* As discussed elsewhere, we will create a separate Mobility Fund Phase I to support the extension of current generation wireless service in Tribal lands. For both general and Tribal Mobility Fund Phase I support, we also require providers seeking to serve Tribal lands to engage with the affected Tribal governments, where appropriate, and we provide a bidding credit for Tribally-owned and controlled providers seeking to serve Tribal lands with which they are associated.⁵⁹⁹ Apart from these provisions, we conclude that we should not attempt to prioritize within the areas otherwise eligible for support from Phase I.

356. Commenters note a variety of factors that might be relevant to whether to prioritize some unserved areas over others, such as adoption rates and projected rates of population growth or decline.⁶⁰⁰ Several commenters addressing this issue favor making support available on a consistent basis to all areas defined as unserved by mobile broadband.⁶⁰¹ Others take up the Commission's suggestion and propose prioritizing support for unserved areas lacking any mobile service.⁶⁰²

357. After careful consideration of these alternatives, we find that we will achieve the greatest amount of new coverage with Mobility Fund Phase I support if we impose no restrictions on the unserved

⁵⁹⁵ AT&T *Mobility Fund NPRM* Comments at 11; Verizon *Mobility Fund NPRM* Comments at 17.

⁵⁹⁶ *Mobility Fund NPRM*, 25 FCC Rcd at 14,726-27, para. 32.

⁵⁹⁷ *Id.*

⁵⁹⁸ *Id.*

⁵⁹⁹ See *infra* paras. 489-490.

⁶⁰⁰ Ohio Commission *Mobility Fund NPRM* Comments at 6-7.

⁶⁰¹ AT&T *Mobility Fund NPRM* Comments at 11-12; TechAmerica *Mobility Fund NPRM* Comments at 3; Verizon *Mobility Fund NPRM* Comments at 18.

⁶⁰² T-Mobile *Mobility Fund NPRM* Comments at 11.

areas that are eligible for the program, and allow all unserved areas to compete for funding on an equal footing. We conclude that making all unserved areas eligible for support and allowing the auction process to prioritize which areas can be served is most likely to achieve our goal of maximizing the number of units covered given the funds available.

(vi) **Public Interest Obligations**

(a) **Mobile Performance Requirements**

358. *Background.* In the *Mobility Fund NPRM*, the Commission proposed that Mobility Fund support be used to expand the availability of advanced mobile communications services comparable or superior to those provided by networks using HSPA or EV-DO, which are commonly available 3G technologies.⁶⁰³ The Commission suggested that supported carriers would have to demonstrate that they provide services over a 3G network that supports voice and has achieved particular data rates under particular conditions, and sought comment on whether to require 4G instead.⁶⁰⁴ The Commission also proposed that recipients be required to meet certain deployment milestones in each unserved census block in a tract in order to remain qualified for the full amount of any Mobility Fund award.⁶⁰⁵ In addition, the Commission sought comment on establishing appropriate coverage metrics.⁶⁰⁶

359. *Discussion.* This Order elsewhere provides an overview of the public interest obligations that must be met by all recipients of Connect America Fund support, including recipients of Mobility Fund support.⁶⁰⁷ Recipients of Mobility Fund support, like all CAF support recipients, must offer voice service.⁶⁰⁸ Likewise, all recipients of Mobility Fund support must offer standalone voice service to the public as a condition of support.⁶⁰⁹ As the broader overview notes, however, specific broadband service requirements, unlike voice service requirements, vary for CAF recipients depending upon the particular public interest goal being met by the support provided.⁶¹⁰ Our objective for Mobility Fund Phase I is to provide support to expand current and next generation mobile services to areas without such services today. The voice and broadband services offered with support must be reasonably comparable to service

⁶⁰³ *Mobility Fund NPRM*, 25 FCC Rcd at 14,728-29, para. 37. Universal service support may be provided for services based on widely available current generation technologies – or superior next generation technologies available at the same or lower costs – even though supported services could be based on earlier technologies. Technologies used to provide the services supported by universal service funds need not be technologies that are strictly limited to providing the particular services designated for support. *See Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 18 FCC Rcd 15,090, 15,095-96, para. 13 (2003) (“We recognize that the network is an integrated facility that may be used to provide both supported and non-supported services. We believe that . . . our policy of not impeding the deployment of plant capable of providing access to advanced or high-speed services is fully consistent with the Congressional goal of ensuring access to advanced telecommunications and information services throughout the nation.”) (subsequent history omitted).

⁶⁰⁴ *Mobility Fund NPRM*, 25 FCC Rcd at 14,728-30, paras. 37, 40.

⁶⁰⁵ *Id.* at 14,729, para. 39.

⁶⁰⁶ *Id.* at 14,728, para. 34.

⁶⁰⁷ *See supra* section VI. (Public Interest Obligations).

⁶⁰⁸ *See id.*

⁶⁰⁹ *See id.*

⁶¹⁰ *See id.*

available in urban areas.⁶¹¹ We detail below the mobile broadband service public interest obligations that Mobility Fund recipients must meet to satisfy this requirement.⁶¹²

360. Mobile service providers receiving non-recurring Mobility Fund Phase I support will be obligated to provide supported services over a 3G *or better* network that has achieved particular data rates under particular conditions. Specifically, Phase I recipients will be required to specify whether they will be deploying a network that meets 3G requirements or 4G requirements in areas eligible for support as those requirements are detailed here. Numerous commenters concur with our proposal to require that supported networks meet or exceed a minimum standard for voice service and data rates established by reference to current generation services, *i.e.*, 3G services.⁶¹³ As noted in some comments, this approach is also consistent with permitting providers to provide 4G services instead.⁶¹⁴ Other commenters, however, argue that the Commission should support *only* 4G networks, contending that current generation networks will soon be obsolete, in light of the on-going roll-out of 4G.⁶¹⁵

361. Recognizing the unavoidable variability of mobile service within a covered area, we proposed and are adopting performance standards that will adopt a strong floor for the service provided. Consequently, we expect that many users will receive much better service when, for example, accessing the network from a fixed location or when close to a base station. In light of this fact, and our decision to permit providers to elect whether to provide 3G or 4G service, we are adopting different speeds than originally proposed for those providing 3G, while retaining our original proposal for those that offer 4G. For purposes of meeting a commitment to deploy a 3G network, providers must offer mobile transmissions to and from the network meeting or exceeding an outdoor minimum of 200 kbps downstream and 50 kbps upstream to handheld mobile devices.

362. Recipients that commit to provide supported services over a network that represents the latest generation of mobile technologies, or 4G, must offer mobile transmissions to and from the network meeting or exceeding the following minimum standards: outdoor minimum of 768 kbps downstream and 200 kbps upstream to handheld mobile devices. As with the 3G speeds set forth above, we further specify that these data rates should be achievable in both fixed and mobile conditions, at vehicle speeds consistent with typical speeds on the roads covered. These minimum standards must be achieved throughout the cell area, including at the cell edge. Signal coverage satisfying these 4G standards will produce substantially faster speeds under conditions closer to the base station, very often exceeding the 4 Mbps downstream and 1Mbps upstream that have been proposed as minimum speeds for fixed broadband.

363. With respect to latency, in order to assure that recipients offer service that enables the use of real-time applications such as VoIP, we also require that round trip latencies for communications over the network be low enough for this purpose.

364. With respect to capacity, we decline at this time to adopt a specific minimum capacity

⁶¹¹ *See id.*

⁶¹² We note that some parties contend that limiting support to one carrier per area will require undue regulation to protect the public interest, contrary to the Commission's efforts to minimize regulation. *See, e.g.*, Cellular South et al. *Mobility Fund NPRM* Comments at 19-20. We reject these arguments and find that the requirements set forth herein are consistent with the Commission's policy of regulating only to the extent necessary to serve the public interest.

⁶¹³ *See, e.g.*, Sprint *Mobility Fund NPRM* Comments at 8; Tech America *Mobility Fund NPRM* Comments at 3; T-Mobile *Mobility Fund NPRM* Comments at 12; Verizon *Mobility Fund NPRM* Comments at 20.

⁶¹⁴ Verizon *Mobility Fund NPRM* Comments at 20.

⁶¹⁵ Greenlining *Mobility Fund NPRM* Comments at 6-7; MetroPCS *Mobility Fund NPRM* Comments at 6; New EA *Mobility Fund NPRM* Comments at 9.

requirement that supported providers must offer mobile broadband users. However, we emphasize that any usage limits imposed by a provider on its mobile broadband offerings supported by the Mobility Fund must be reasonably comparable to any usage limits for comparable mobile broadband offerings in urban areas.⁶¹⁶

365. Recipients that elect to provide supported services over 3G networks will have two years to meet their requirements and those that elect to deploy 4G networks will have three years. At the end of the applicable period for build-out, providers will be obligated to provide the service defined above in the areas for which they receive support, over at least 75 percent of the road miles associated with census blocks identified as unserved by the Bureaus in advance of the Mobility Fund Phase I auction. The Commission delegates to the Bureaus the question of whether a higher coverage threshold should be required should the Bureaus permit bidding on individual census blocks. We note that a higher coverage threshold may be appropriate in such circumstances because bidders can choose the particular census blocks they can cover. Presumably, this would allow them to choose areas in which their coverage can be 95 to 100 percent, as suggested by the *Mobility Fund NPRM*.

366. Many commenters oppose requiring 100 percent coverage within areas identified as unserved for purposes of a Mobility Fund Phase I auction.⁶¹⁷ Commenters note that due to the relatively high expense of providing last mile coverage in difficult circumstances, requiring 100 percent coverage may dissuade parties from seeking support and expanding coverage.⁶¹⁸ Proposals to address this difficulty include permitting bidders to state the extent of the coverage that they will offer as a component of their bid for support.⁶¹⁹ A number of commenters support a coverage requirement of at least 95 percent but less than 100 percent, as discussed in the *Mobility Fund NPRM*.⁶²⁰ Alternatively, some commenters suggest lower thresholds of coverage, *e.g.*, 50 to 80 percent, as minimum requirements.⁶²¹

367. Should the Bureaus choose to implement a coverage area requirement of less than 100 percent, a recipient will receive support only for those road miles actually covered and not for the full 100 percent of road miles of the census blocks or tracts for which it is responsible. For example, if a recipient covers 90 percent of the road miles in the minimum geographic area (and it meets the threshold), then that recipient will receive 90 percent of the total support available for that area. To the extent that a recipient covers additional road miles, it will receive support in an amount based on its bid per road mile up to 100 percent of the road miles associated with the specific unserved census blocks covered by a bid.⁶²²

368. In contrast to other support provided under CAF, support provided through Mobility Fund Phase I will be non-recurring. Consequently, we will not plan to modify the service obligations of providers that receive Phase I support.

⁶¹⁶ We note that this should not be interpreted to mean that the Commission intends to regulate usage limits, nor that the Commission is approving of or endorsing usage limits.

⁶¹⁷ ITTA *Mobility Fund NPRM* Comments at 11; MTPCS *Mobility Fund NPRM* Comments at 10; Verizon *Mobility Fund NPRM* Comments at 14.

⁶¹⁸ ITTA *Mobility Fund NPRM* Comments at 11.

⁶¹⁹ AT&T *Mobility Fund NPRM* Comments at 13, fn. 35; Verizon *Mobility Fund NPRM* Comments at 18.

⁶²⁰ T-Mobile *Mobility Fund NPRM* Comments at 11-12. *Cf.* TIA *Mobility Fund NPRM* Comments at 12.

⁶²¹ Verizon *Mobility Fund NPRM* Comments at 19.

⁶²² Accordingly, when reserving available support based upon those bids that are determined to be winning bids, the Commission will reserve an amount necessary to pay the support that the recipient would be entitled to in the event that it covered 100 percent of the road miles in the previously unserved census blocks.

(b) Measuring and Reporting Mobile Broadband

369. *Background.* In the *Mobility Fund NPRM*, the Commission proposed using data submitted from drive tests to measure whether recipients meet performance requirements.⁶²³

370. *Discussion.* As proposed in the *Mobility Fund NPRM*, we will require that parties demonstrate that they have deployed a network that covers the relevant area and meets their public interest obligations with data from drive tests.⁶²⁴ The drive test data satisfying the requirements must be submitted by the deadline for providing the service.⁶²⁵

371. Several commenters acknowledge that the Commission is building on current industry practice in proposing to require drive tests for proof of deployment.⁶²⁶ No commenters take issue with the particular data rates in the Commission's proposal, although some seek some leeway in meeting the standard, due to potential variability in conditions.⁶²⁷ Others contend that simple self-certification should suffice for proof of deployment.⁶²⁸ Some commenters contend that the Commission's proposal to measure data rates fails to measure rates in a manner that will reflect the end-to-end performance that matters to members of the public utilizing the access.⁶²⁹

372. GCI argues that our proposed requirement regarding drive tests demonstrating data speeds "to the network" considers only data speeds from towers to the mobile user and therefore could be satisfied by networks with insufficient "middle mile" capacity to deliver the same data speeds to and from the Internet.⁶³⁰ We do not agree with GCI's interpretation of the proposed rule but, in light of their interpretation, take this opportunity to clarify what "to the network" means for these purposes. "To the network" means to the physical location of core network equipment, such as the mobile switching office or the evolved packet core. We envision that a test server utilized to conduct drive tests will be at such a central location rather than at a base station, so that the drive test results take into account the effect of backhaul on communication speeds.

373. AT&T proposes that instead of requiring support recipients to meet fixed minimum requirements, we should "permit recipients to follow standard industry benchmarks (i.e., data rates should be no lower than x percent of the industry average)."⁶³¹ Such an approach would enable the relevant metrics to evolve along with industry practices. However, in the context of non-recurring funding, we believe that setting a clear and consistent measurement of service better achieves the public interest than allowing the measurement to change depending on industry practice.

⁶²³ *Mobility Fund NPRM*, 25 FCC Rcd at 14,729-30, para. 40.

⁶²⁴ *Id.*

⁶²⁵ We are also requiring recipients to submit drive test data to demonstrate they have met the 50 percent minimum coverage requirement required to receive the second payment of Mobility Fund Phase I support. *See infra* para. 466.

⁶²⁶ *See, e.g., AT&T Mobility Fund NPRM Comments at 17; Sprint Mobility Fund NPRM Comments at 9-10.*

⁶²⁷ TIA *Mobility Fund NPRM Comments at 12.* We note that ACS contends that drive tests are not feasible in Alaska because of lack of roads. ACS *Mobility Fund NPRM Comments at 7.* This contention may have had merit when we were considering drive tests as a means of measuring coverage provided to resident population. However, at least with respect to support that requires providers to cover road miles in the area rather than population, we conclude that ACS' objection regarding feasibility does not apply. *See supra* para. 350.

⁶²⁸ Verizon *Mobility Fund NPRM Comments at 21-22.*

⁶²⁹ GCI *Mobility Fund NPRM Comments at 7.*

⁶³⁰ *Id.*

⁶³¹ AT&T *Mobility Fund NPRM Comments at 17.*

374. CTIA argues against “overly burdensome performance requirements” and contends that providers’ performance is best measured by participation of new broadband customers in previously unserved areas and not by static metrics.⁶³² Expanding mobile coverage to new areas will benefit not only new customers in previously unserved areas but also customers in other areas who either want to communicate with those in the previously unserved area or travel through it. However, these benefits will depend on a minimum level of functional service in the newly covered area. We conclude that the public interest mandates that when public support is provided for a service, we should require that a minimum level of service be provided.

(c) Collocation

375. *Background.* In the *Mobility Fund NPRM*, the Commission proposed to encourage future competition in the market for 3G or better services in geographic areas being supported by the Mobility Fund.⁶³³ As some have observed, the incompatibility of existing 3G technologies, *e.g.*, CDMA and GSM, limits the benefits of an expanded network to users of the same technology.⁶³⁴ Consequently, the Commission proposed that any new tower constructed to satisfy Mobility Fund performance obligations provide the opportunity for collocation and sought comment on whether to require any minimum number of spaces for collocation on any new towers and/or specify terms for collocation.⁶³⁵

376. *Discussion.* We will require that recipients of Mobility Fund support allow for reasonable collocation by other providers of services that would meet the technological requirements of the Mobility Fund on newly constructed towers that Mobility Fund recipients own or manage in the unserved area for which they receive support. This includes a duty: (1) to construct towers where reasonable in a manner that will accommodate collocations; and (2) to engage in reasonable negotiations on a not unreasonably discriminatory basis with any party that seeks to collocate equipment at such a site in order to offer service that would meet the technological requirements of the Mobility Fund.⁶³⁶ Furthermore, we prohibit Mobility Fund recipients from entering into arrangements with third parties for access to towers or other siting facilities wherein the Mobility Fund recipients restrict the third parties from allowing other providers to collocate on their facilities.⁶³⁷ We conclude that these collocation requirements are in the public interest because they will help increase the benefits of the expanded coverage made possible by the Mobility Fund, by facilitating service that meets the requirements of the Mobility Fund by providers using different technologies.⁶³⁸

377. Commenters generally recognize that requiring collocation potentially will benefit competition.⁶³⁹ While most commenters find a collocation requirement to be “acceptable” or even

⁶³² CTIA *Mobility Fund NPRM* Comments at 10.

⁶³³ *Mobility Fund NPRM*, 25 FCC Rcd at 14,728, para. 36.

⁶³⁴ *See id.* at 14,723, para. 15. *See also* Alaska Telephone *Mobility Fund NPRM* Comments at 3; CTIA *Mobility Fund NPRM* Comments at 7-9.

⁶³⁵ *Mobility Fund NPRM* at 14,728, para. 36.

⁶³⁶ We do not require Mobility Fund recipients to permit collocation for other purposes.

⁶³⁷ We recognize that many towers on which communications licenses locate their facilities are owned and managed by third parties, and we do not impose any affirmative obligations on the owners of such towers.

⁶³⁸ We clarify that we do not require Mobility Fund recipients to favor providers of services that meet Mobility Fund requirements over other applicants for limited collocation spaces.

⁶³⁹ PCIA *Mobility Fund NPRM* Comments at 1, 4; Sprint *Mobility Fund NPRM* Comments at 7. *But see* ITTA *Mobility Fund NPRM* Comments at 12-13 (“ITTA urges the Commission to maintain focus on the goal of extending coverage, a pursuit that should not be confused with expanding competition.”).

preferable, many also agree that the Commission should not specify a minimum number of spaces for collocation on new towers.⁶⁴⁰ AT&T contends that the Commission should limit any collocation requirement to a requirement for good faith negotiation on a non-discriminatory basis without additional required terms.⁶⁴¹ We agree with commenters that attempting to specify collocation practices that are applicable in all circumstances may unduly complicate efforts to expand coverage, and thus decline to adopt more specific requirements for collocation by any specific number of providers or require any specific terms or conditions as part of any agreement for collocation.

(d) Voice and Data Roaming⁶⁴²

378. *Background.* In the *Mobility Fund NPRM*, the Commission also proposed that Mobility Fund recipients be required to provide data roaming on reasonable and not unreasonably discriminatory terms and conditions on the mobile broadband networks that are built through Mobility Fund support.⁶⁴³

379. *Discussion.* We will require that recipients of Mobility Fund support comply with the Commission's voice and data roaming requirements on networks that are built through Mobility Fund support. Subsequent to the *Mobility Fund NPRM*, the Commission adopted rules that create a general mandate for data roaming.⁶⁴⁴ Specifically, we require that recipients of Mobility Fund support provide roaming pursuant to section 20.12 of the Commission's rules on networks that are built through Mobility Fund support.⁶⁴⁵

380. Some commenters responding to the *Mobility Fund NPRM* contend that there is no need to adopt a data roaming requirement specifically for Mobility Fund recipients because our general data roaming rules already address the issue or that such a requirement is unrelated to the goals of the Mobility Fund.⁶⁴⁶ We disagree. Our general policy of distributing federal universal service support to only one provider per area raises competitive issues for those providers not receiving funds. As a result, we believe it is appropriate to attach roaming conditions even though generally applicable requirements also exist. Making compliance with these rules a condition of universal service support will mean that violations can result in the withholding or clawing back of universal service support – sanctions based on the receipt of federal support – that would be in addition to penalties for violation of our generally applicable data roaming rules. Moreover, in addition to the sanctions that would apply to any party violating our general requirements, Mobility Fund recipients may lose their eligibility for future Mobility Fund participation as a consequence of any violation. Recipients shall comply with these requirements without regard to any judicial challenge thereto.

381. Other commenters contend that our roaming requirements will not mitigate the competitive advantage that recipients of Mobility Fund support receive from the additional coverage the

⁶⁴⁰ AT&T *Mobility Fund NPRM* Comments at 15.

⁶⁴¹ *Id.*

⁶⁴² Commissioner McDowell does not join in this subsection and would not impose a data roaming requirement for the reasons stated in his dissenting statement in *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411, 5483-84 (2011) (*Roaming Second Report and Order*).

⁶⁴³ *Mobility Fund NPRM*, 25 FCC Rcd at 14,728, para. 36.

⁶⁴⁴ *See, generally, Roaming Second Report and Order*, 26 FCC Rcd 5411.

⁶⁴⁵ 47 C.F.R. § 20.12.

⁶⁴⁶ AT&T *Mobility Fund NPRM* Comments at 15; Verizon *Mobility Fund NPRM* Comments at 19-20; CWA *Mobility Fund NPRM* Reply at 5.

funding supports.⁶⁴⁷ In light of the public interest in expanding coverage, we conclude that our roaming requirements are sufficient to balance against any competitive advantage Mobility Fund recipients obtain.

382. Consistent with this Order, any interested party may file a formal or informal complaint using the Commission's existing processes if it believes a Mobility Fund recipient has violated our roaming requirements.⁶⁴⁸ As noted, the Commission intends to address roaming-related disputes expeditiously.⁶⁴⁹ The Commission also has the authority to initiate enforcement actions on its own motion.

(e) Reasonably Comparable Rates

383. *Background.* The Commission sought comment in the *Mobility Fund NPRM* on how to implement, in the context of the Mobility Fund, the statutory principle that supported services should be made available to consumers in rural, insular, and high-cost areas at rates that are reasonably comparable to rates charged for similar services in urban areas.⁶⁵⁰ Given the absence of affirmative regulation of rates charged for commercial mobile services, as well as the rate practices and structures used by providers of such services, the Commission asked how parties might demonstrate that the rates they charge in areas where they receive support are reasonably comparable to rates charged in urban areas.⁶⁵¹ The Commission further sought input regarding an appropriate standard for "reasonably comparable" and "urban areas" in this context.⁶⁵²

384. *Discussion.* We will evaluate the rates for services offered with Mobility Fund Phase I support based on whether they fall within a reasonable range of urban rates for mobile service. The record on this issue was mixed. Some commenters argue that the Commission should require support recipients to certify their compliance with section 254(b)(3), in expectation that nationwide pricing plans will tend to result in carriers offering reasonably comparable rates to those in urban areas.⁶⁵³ Others propose that the Commission adopt a target for evaluating rates and require that providers offer rates within a particular range of that target figure.⁶⁵⁴

385. To implement the statutory principle regarding comparable rates while offering Mobility Fund Phase I support at the earliest time feasible, the Bureaus may develop target rate(s) for Mobility Fund Phase I before fully developing all the data to be included in a determination of comparable rates with respect to other Connect America Fund support. For Mobility Fund Phase I, we will require recipients to certify annually that they offer service in areas with support at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas.⁶⁵⁵

⁶⁴⁷ USA Coalition *Mobility Fund NPRM* Reply at 15.

⁶⁴⁸ See, e.g., 47 C.F.R. § 20.12.

⁶⁴⁹ *Roaming Second Report and Order*, 26 FCC Rcd at 5449-50, para. 77. As described in the roaming proceeding, Accelerated Docket procedures, including pre-complaint mediation, are among the various dispute resolution procedures available with respect to data roaming disputes. See *id.*, 47 C.F.R. § 1.730.

⁶⁵⁰ *Mobility Fund NPRM*, 25 FCC Rcd at 14,729, para. 38; 47 U.S.C. § 254(b)(3).

⁶⁵¹ *Mobility Fund NPRM* at 14,729, para. 38.

⁶⁵² *Id.*

⁶⁵³ AT&T *Mobility Fund NPRM* Comments at 15; Sprint *Mobility Fund NPRM* Comments at 9; T-Mobile *Mobility Fund NPRM* Comments at 12.

⁶⁵⁴ Greenlining *Mobility Fund NPRM* Comments at 11; ITTA *Mobility Fund NPRM* Comments at 14; Sprint *Mobility Fund NPRM* Comments at 8-9.

⁶⁵⁵ We note that Cellular South contends that providing support to one provider per area through the Mobility Fund will result in the supported carrier charging excessively high rates and therefore violates section 254. Cellular South (continued...)

Recipients' service offerings will be subject to this requirement for a period ending five years after the date of award of support. The Bureaus, under their delegated authority, may define these conditions more precisely in the pre-auction process. We will retain our authority to look behind recipients' certifications and take action to rectify any violations that develop.

c. Mobility Fund Phase I Eligibility Requirements

386. The Commission proposed that to be eligible for Mobility Fund support, entities must (1) be designated as a wireless ETC pursuant to section 214(e) of the Communications Act, by the state public utilities commission ("PUC") (or the Commission, where the state PUC does not have jurisdiction to designate ETCs) in any area that it seeks to serve; (2) have access to spectrum capable of 3G or better service in the geographic area to be served; and (3) certify that it is financially and technically capable of providing service within the specified timeframe.⁶⁵⁶ With a limited exception, discussed *infra*,⁶⁵⁷ we adopt these requirements.

387. As noted elsewhere, we also adopt a two-stage application filing process for participants in the Mobility Fund Phase I auction, similar to that used in spectrum license auctions, which will, among other things, require potential Mobility Fund recipients to make disclosures and certifications establishing their eligibility. Specifically, in the pre-auction "short-form" application, a potential bidder will need to establish its eligibility to participate in the Mobility Fund Phase I auction and, in a post-auction "long-form" application, a winning bidder will need to establish its eligibility to receive support. Such an approach should provide an appropriate screen to ensure serious participation without being unduly burdensome. Below, we discuss these eligibility requirements and the timing of each.

(i) ETC Designation

388. *Background.* The Commission proposed to require that applicants be designated as wireless ETCs covering the relevant geographic area prior to participating in an auction.⁶⁵⁸ As an alternative, the Commission asked commenters whether entities that have applied for designation as ETCs in the relevant area should be eligible to participate in an auction.⁶⁵⁹ The Commission also sought broad comment on the ETC designation requirements of section 214(e), and how to best interpret all the interrelated requirements of that section in order to achieve the purposes of the Mobility Fund.⁶⁶⁰

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et al. *Mobility Fund NPRM* Comments at 20-21. Given the rules being adopted in this Order, we disagree with Cellular South's factual premise and legal conclusion. The requirement we adopt with respect to reasonably comparable rates is one of the provisions that helps ensure that section 254 will not be violated.

⁶⁵⁶ *Mobility Fund NPRM* at 14,731, para. 45.

⁶⁵⁷ See *infra* para. 491, 47 C.F.R. § 54.1004(a).

⁶⁵⁸ *Mobility Fund NPRM* at 14,731, para. 47.

⁶⁵⁹ *Id.* at 14,732, para. 48. Pursuant to 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.101(b), an ETC is obligated to provide all of the supported services defined in 47 C.F.R. § 54.101(a) throughout the area for which it has been designated an ETC. Therefore, an ETC must be designated (or have applied for designation) with respect to an area that includes area(s) on which it wishes to receive Mobility Fund support. Moreover, a recipient of Mobility Fund support will remain obligated to provide supported services throughout the area for which it is designated an ETC if that area is larger than the areas for which it receives Mobility Fund support.

⁶⁶⁰ *Mobility Fund NPRM* at 14,732, para. 49.

389. *Discussion.* We generally adopt our proposal and require that Mobility Fund Phase I participants be ETCs prior to participating in the auction.⁶⁶¹ As a practical matter, this means that parties that seek to participate in the auction must be ETCs in the areas for which they will seek support at the deadline for applying to participate in the auction.

390. By statute, the states, along with the Commission, are empowered to designate common carriers as ETCs.⁶⁶² ETCs must satisfy various service obligations, consistent with the public interest. We decline to adopt new federal rules to govern the ETC designation process solely for purposes of designating entities to receive non-recurring support, as suggested by some commenters.⁶⁶³ In light of the roughly comparable amounts of time required for the Commission and states to process applications to be designated as an ETC and the time required to move from the adoption of this R&O to the acceptance of applications to participate in a Mobility Fund Phase I auction, parties contemplating requesting new designations as ETCs for purposes of participating in the auction should act promptly to begin the process. The Commission will make every effort to process such applications in a timely fashion, and we urge the states to do likewise.

391. Many commenters request that the Commission eliminate or streamline many of the service obligations that apply to ETCs, on ground that these obligations are unrelated to the Mobility Fund and its immediate goals.⁶⁶⁴ We do not see this as cause to set aside those obligations. The Mobility Fund will offer existing ETCs support to accelerate the expansion of coverage by current generation wireless networks within their designated service area as a means to meeting their ETC obligations. We are not, however, crafting an alternative to the USF but rather developing a mechanism to effectively use a portion of existing funds to promote the expansion of mobile voice service over current-generation (or better) network technology. Given that current ETCs already have their existing obligations throughout their service area, it would be a step backwards to relieve them of those obligations based on the receipt of Mobility Fund support. Accordingly, we retain existing ETC requirements and obligations and move forward by adopting our proposal to require that parties be ETCs in the area in which they seek Mobility Fund support.⁶⁶⁵

392. Furthermore, with the narrow exception discussed *infra*, we decline to adopt the alternative of allowing parties to bid for support prior to being designated an ETC, provided they have an application for designation pending.⁶⁶⁶ We believe this approach would inject uncertainties as to eligibility that could interfere with speedy deployment of networks by those that are awarded support, or disrupt the Mobility Fund auction. Moreover, requiring that applicants be designated as ETCs prior to a Mobility Fund Phase I auction may help ensure that the pool of bidders is serious about seeking support and meeting the obligations that receipt of support would entail.

⁶⁶¹ As discussed *infra*, we adopt a narrow exception to permit participation by Tribally-owned or controlled entities that have filed for ETC designation prior to the short-form application deadline. See *infra* para. 491, 47 C.F.R. § 54.1004(a).

⁶⁶² Generally, the states have primary jurisdiction to designate ETCs; the Commission designates ETCs where states lack jurisdiction. See 47 U.S.C. § 214(e).

⁶⁶³ AT&T *Mobility Fund NPRM* Comments at 6-8; Sprint *Mobility Fund NPRM* Comments at 4-5.

⁶⁶⁴ Sprint *Mobility Fund NPRM* Comments at 4-5.

⁶⁶⁵ It is sufficient for purposes of an application to participate in the Mobility Fund Phase I auction that the applicant has received its ETC designation conditioned only upon receiving Mobility Fund Phase I support.

⁶⁶⁶ *Mobility Fund NPRM*, 25 FCC Rcd at 14,732, para. 48.

(ii) Access to Spectrum

393. *Background.* In order to participate in a Mobility Fund auction and receive support, the Commission proposed in the *Mobility Fund NPRM* that an entity must hold, or otherwise have access to, a Commission authorization to provide service in a frequency band that can support 3G or better services. The Commission sought comment on a number of questions relating to this proposed eligibility requirement.⁶⁶⁷

394. *Discussion.* We require that any applicant for a Mobility Fund Phase I auction have access to the necessary spectrum to fulfill any obligations related to support. Many commenters support this requirement.⁶⁶⁸ Thus, those eligible for Mobility Fund Phase I support include all entities that, prior to an auction, hold a license authorizing use of appropriate spectrum, as discussed more fully below, in the geographic area(s) for which support is sought. As suggested by some commenters, we also conclude that the spectrum access requirement can be met by leasing appropriate spectrum, prior to an auction, covering the relevant geographic area(s).⁶⁶⁹ We require that spectrum access through a license or leasing arrangement be in effect prior to auction for an applicant to be eligible for an award of support. We also require that whether an applicant claims required access to spectrum through a license or a lease, it must retain access for at least five years from the date of award of Phase I support.⁶⁷⁰ For purposes of calculating term length, parties may include opportunities for license and/or lease renewal.

395. Further, we seek to facilitate participation by parties that may make their acquisition of license or their lease of spectrum access contingent on winning support from Mobility Fund Phase I. Accordingly, parties may satisfy the spectrum access requirement if they have acquired spectrum access, including any necessary renewal expectancy, that is contingent on their obtaining support in the auction. Other contingencies, however, will render the relevant spectrum access insufficient for the party to meet our requirements for participation.

396. We reject the suggestion of some commenters that we should use a substantially more relaxed standard that might allow entities to seek to acquire access to spectrum (as a licensee or lessee) only after becoming a winning bidder.⁶⁷¹ For instance, New EA argues that limiting eligibility to only those carriers holding licenses would “reinforce[] incumbent control,” and asserts that a more liberal approach ought not to be problematic given that areas with no mobile broadband “typically have an abundance of fallow spectrum.”⁶⁷² We conclude, however, that failing to ensure spectrum access, on at least a conditional basis, prior to entering a Mobility Fund auction would be inconsistent with the serious undertakings implicit in bidding for support. We therefore require applicants to ensure that if they become winning bidders, they will have the spectrum to meet their obligations as quickly and successfully as possible.

397. As noted, in the *Mobility Fund NPRM*, the Commission proposed that entities seeking to receive support from the Mobility Fund must have access to spectrum capable of supporting the required services. The Commission noted that spectrum for use in Advanced Wireless Services, the 700 MHz Band, Broadband Radio Services, broadband PCS, or cellular bands should all be capable of 3G services,

⁶⁶⁷ *Id.* at 14,732-33, paras. 50-53.

⁶⁶⁸ CenturyLink *Mobility Fund NPRM* Comments at 8-9; ITTA *Mobility Fund NPRM* Comments at 15-16; MetroPCS *Mobility Fund NPRM* Comments at 11; RTG *Mobility Fund NPRM* Comments at 11.

⁶⁶⁹ Verizon *Mobility Fund NPRM* Comments at 24-25; RTG *Mobility Fund NPRM* Comments at 11.

⁶⁷⁰ See 47 C.F.R. § 54.1003(b).

⁶⁷¹ See New EA *Mobility Fund NPRM* Comments at 5-6; NTCH *Mobility Fund NPRM* Comments at 7-8.

⁶⁷² New EA *Mobility Fund NPRM* Comments at 6, 8.

and asked if other spectrum bands would be appropriate.⁶⁷³ The Commission also asked whether it should require that parties seeking support have access to a minimum amount of bandwidth and whether only paired blocks of bandwidth should be deemed sufficient. The few comments we received on these issues generally support requiring that auction participants demonstrate access to spectrum that is adequate to support the services demanded of Mobility Fund providers, but did not provide specifics on what that spectrum should be.⁶⁷⁴

398. T-Mobile noted that carriers with spectrum in lower bands would have an advantage over those with access to higher band spectrum due to propagation characteristics that may make it less costly to provide wireless broadband in rural areas using lower frequencies.⁶⁷⁵ While we recognize that access to lower band spectrum, particularly sub-1 GHz spectrum, reduces the cost of build-out,⁶⁷⁶ we disagree with T-Mobile that this is an “unfair” advantage in the context of the Mobility Fund. The Mobility Fund is designed to provide support in areas where it is cost effective to do so with the limited available funds. Thus, its ultimate goal is to maximize the number of units covered given the funds available.

399. We agree with commenters that advocate a simple approach to defining what spectrum will establish eligibility for the Mobility Fund. Therefore, we will require entities seeking to receive support from the Mobility Fund to certify that they have access to spectrum capable of supporting the required services. While we decline to restrict the frequencies applicants must use to be eligible for Mobility Fund Support, we note that there are certain spectrum bands that will not support mobile broadband (*e.g.*, paging service). As discussed below in connection with our discussion of application requirements, we will require that applicants identify the particular frequency bands and the nature of the access on which they assert their eligibility for support. We will assess the reasonableness of eligibility certifications based on information we will require be submitted in short- and long-form applications. Should entities make this certification and not have access to the appropriate level of spectrum, they will be subject to the penalties described below.

(iii) Certification of Financial and Technical Capability

400. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on how best to determine if an entity has sufficient resources to satisfy Mobility Fund obligations.⁶⁷⁷ The Commission also sought comment on a certification regarding an entity’s technical capacity.⁶⁷⁸ The Commission asked if we need to be specific as to the minimum showing required to make the certification, or whether we can rely on our post-auction performance requirements.⁶⁷⁹

401. *Discussion.* We will require that an applicant certify, in the pre-auction short-form application and in the post-auction long-form application, that it is financially and technically capable of providing 3G or better service within the specified timeframe in the geographic areas for which it seeks

⁶⁷³ *Mobility Fund NPRM*, 25 FCC Rcd at 14,733, para. 53.

⁶⁷⁴ ITTA *Mobility Fund NPRM* Comments at 15-16; TechAmerica *Mobility Fund NPRM* Comments at 3; T-Mobile *Mobility Fund NPRM* Comments at 14.

⁶⁷⁵ T-Mobile *Mobility Fund NPRM* Comments at 9.

⁶⁷⁶ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 10-133, Fifteenth Report, 26 FCC Rcd 9664, 9834-35, para. 293 (2011) (*15th Annual Mobile Wireless Competition Report*).

⁶⁷⁷ *Mobility Fund NPRM* at 14,733, para. 54.

⁶⁷⁸ *Id.*

⁶⁷⁹ *Id.*

support. Given that Mobility Fund Phase I provides non-recurring support, applicants for Phase I funds need to assure the Commission that they can provide the requisite service without any assurance of ongoing support for the area in question after Phase I support has been exhausted.

402. Among commenters, there was no dispute that the Commission should require parties to be financially and technically capable of satisfying the performance requirements.⁶⁸⁰ Some contend, however, that there is no need for financial or technical certifications given the requirements bidders must satisfy to qualify as ETCs and to participate in the Mobility Fund.⁶⁸¹ In contrast, one commenter urges that, even before bidding, the Commission should require applicants to submit details about the technology and the network they will use to satisfy Mobility Fund obligations.⁶⁸² Another draws a parallel between the Commission and investors, comparing requiring qualifications to due diligence.⁶⁸³ One commenter proposes requiring applicants to demonstrate that they will bear a fixed percentage of the total costs of extending coverage.⁶⁸⁴ Comments also argue against Commission review, suggesting that the Commission's expertise might not be adequate to make the determinations in the process of reviewing applications.⁶⁸⁵

403. We conclude that applicant certifications of qualifications are sufficient, both at the short and long-form application stage. In the context of our spectrum auctions, we have relied successfully on certifications to ensure certain regulatory and legal obligations have been met by the applicants. Notwithstanding the differences between the spectrum license and USF contexts, we conclude that such an approach is appropriate here as well. Taking the time to review the finances and technical capacities of all applicants, particularly at the short-form stage when there may be far more applicants than eventually will receive support, could result in a substantial delay in making Mobility Fund support available for very little gain.

404. Moreover, we elect not to require that Mobility Fund Phase I participants finance a fixed percentage of any build-out with non-Mobility Fund funds.⁶⁸⁶ While requiring that Fund recipients put up a share of their own funds for a project may be an effective way to ensure that the recipient has sufficient stake in the project to effect its completion, we do not believe this requirement is needed in light of the other measures we adopt here.

405. Finally, requiring a certification of financial and technical capability is a real additional safeguard. Applicants making certifications to the Commission expose themselves to liability for false certifications. Applicants should take care to review their resources and their plans before making the required certification and be prepared to document their review, if necessary.

⁶⁸⁰ AT&T *Mobility Fund NPRM* Comments at 9.

⁶⁸¹ T-Mobile *Mobility Fund NPRM* Comments at 14-15.

⁶⁸² AT&T *Mobility Fund NPRM* Comments at 9.

⁶⁸³ ITTA *Mobility Fund NPRM* Comments at 16.

⁶⁸⁴ MetroPCS *Mobility Fund NPRM* Comments at 9-10.

⁶⁸⁵ New EA *Mobility Fund NPRM* Comments at 8.

⁶⁸⁶ MetroPCS suggests that the Commission require a Mobility Fund recipient to demonstrate that it has the financial capacity to make a substantial matching investment by requiring it to contribute from its own funds, 75 percent of the project costs. In addition, MetroPCS would have us provide Mobility Fund support to a recipient only after the recipient has expended the full amount of its 75 percent share of the project funding, reasoning that such a requirement would provide incentive for the recipient to compete the project quickly. MetroPCS *Mobility Fund NPRM* Comments at 9-10.

(iv) Other Qualifications

406. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on whether it should impose any other eligibility requirements on entities seeking to receive support from the Mobility Fund, including whether there are any steps we should take to encourage smaller eligible parties to participate in the Mobility Fund.⁶⁸⁷

407. *Discussion.* We conclude that, with one exception, we will not impose any additional eligibility requirements to participation in the Mobility Fund. One commenter advocates barring Tier 1 carriers from participation,⁶⁸⁸ while another contends that Verizon should not be allowed to participate, given that it already voluntarily relinquished the funds to be disbursed through the Mobility Fund.⁶⁸⁹ Other commenters seek to limit eligibility to participate in the Mobility Fund based on other criteria such as labor relations and exclusive handset arrangements.⁶⁹⁰

408. We will not bar any party from seeking Mobility Fund Phase I support based solely on the party's past decision to relinquish Universal Service Funds provided on another basis. We see no inconsistency in Verizon Wireless or Sprint relinquishing support previously provided under the identical support rule – ongoing support provided with no specific obligation to expand voice coverage where it was lacking – and seeking one-time support under new rules to expand voice and broadband service over current generation wireless networks to areas presently lacking such facilities.

409. We also decline to bar any particular class of parties out of concern that they might appear to be better positioned to win Mobility Fund support, for example due to their size. As we have done in the context of spectrum auctions, we expect that our general auction rules and the more detailed auction procedures to be developed on delegated authority for a specific auction will provide the basis for an auction process that will promote our objectives for the Mobility Fund and provide a fair opportunity for serious, interested parties to participate.

410. One commenter questions whether the Mobility Fund should be available to parties in particular areas if the party previously, *i.e.*, without respect to Mobility Fund support, indicated an intention to deploy wireless voice and broadband service in that area.⁶⁹¹ We conclude that this concern has merit and we will restrict parties from bidding for support in certain limited circumstances to assure that Mobility Fund Phase I support does not go to finance coverage that carriers would have provided in the near term without any subsidy. In particular, we will require an applicant for Mobility Fund Phase I support to certify that it will not seek support for any areas in which it has made a public commitment to deploy 3G or better wireless service by December 31, 2012. This restriction will not prevent a provider from seeking and receiving support for a geographic area where another carrier has announced such a commitment to deploy 3G or better, but it may conserve funds and avoid displacing private investment by making a carrier that made such a commitment ineligible for Mobility Fund Phase I support with respect to the identified geographic area(s). Because circumstances are more likely to change over a longer term, we do not agree that providers should be held to statements for any time period beyond December 31, 2012.⁶⁹²

⁶⁸⁷ *Mobility Fund NPRM*, 25 FCC Rcd at 14,733, para. 55.

⁶⁸⁸ RTG *Mobility Fund NPRM* Comments at 11.

⁶⁸⁹ RCA *Mobility Fund NPRM* Reply at 9-10.

⁶⁹⁰ See CWA *Mobility Fund NPRM* Reply at 5; Blooston *Mobility Fund NPRM* Comments at 8-9.

⁶⁹¹ GCI *Mobility Fund NPRM* Comments at 9.

⁶⁹² *Id.*

d. Reverse Auction Mechanism

411. We adopt our proposal, discussed below, to establish program and auction rules for the Mobility Fund Phase I in this proceeding, to be followed by a process conducted by the Bureaus on delegated authority identifying areas eligible for support, and seeking comment on specific detailed auction procedures to be used, consistent with this Order.⁶⁹³ This process will be initiated by the release of a Public Notice announcing an auction date, to be followed by a subsequent Public Notice specifying the auction procedures, including dates, deadlines, and other details of the application and bidding process.

(i) Basic Auction Design

412. *Background.* In the *Mobility Fund NPRM*, the Commission proposed to use a single-round sealed bid reverse auction to select awardees for Mobility Fund support, determine the areas that will receive support, and establish award amounts.⁶⁹⁴ The Commission also sought comment on alternatives.

413. *Discussion.* We continue to believe that our proposal to use a single-round sealed bid format is most appropriate for Mobility Fund Phase I reverse auction, although we do not make a final determination here. In the context of our spectrum auctions, the question of whether to conduct bidding in one or more rounds is typically addressed in the pre-auction development of specific procedures and we conclude that we should do the same here.

414. A variety of commenters supported a format with more than one round of bidding.⁶⁹⁵ MetroPCS supported a multi-round format to allow more informed bidding.⁶⁹⁶ Verizon suggested that allowing 2-3 rounds of bidding would result in more competitive bidding, claiming that more rounds would reduce costs of the program in the long-run since bidders will be generally very conservative in their first-round bids.⁶⁹⁷ NE Colorado Cellular commented that a single round auction would worsen industry concentration.⁶⁹⁸ T-Mobile, however, supported our proposal to conduct a single-round auction, citing simplicity and lower costs for participants, and, in contrast to NE Colorado Cellular's position, claimed that such a format may improve smaller carriers' chances of winning Mobility Fund support.⁶⁹⁹

415. We are not convinced that multiple bidding rounds are needed in order for bidders to make informed bid decisions or submit competitive bids. A Mobility Fund Phase I auction provides a mechanism by which to identify whether, and if so, at what price, providers are willing to extend coverage over relatively small unserved areas in exchange for a one-time support payment – decisions that depend upon internal cost structures, private assessments of risk, and other factors related to the providers' specific circumstances. While uncertainty about many of these considerations must be taken into account when determining a bid amount, as when making other financial commitments, the bid amounts of other auction participants are unlikely to contain information that will affect significantly the bidder's own cost assessments and bid decisions. Nor do we agree that a single round auction for Mobility Fund Phase I support, as opposed to a multiple round format, would have an adverse effect on

⁶⁹³ See *supra* para. 329.

⁶⁹⁴ *Mobility Fund NPRM*, 25 FCC Rcd at 14,734, para. 58.

⁶⁹⁵ Comment *Mobility Fund NPRM* Comments at 6; MetroPCS *Mobility Fund NPRM* Comments at 11-12; MTPCS *Mobility Fund NPRM* Comments at 11; Verizon *Mobility Fund NPRM* Comments at 25.

⁶⁹⁶ MetroPCS *Mobility Fund NPRM* Comments at 11-12.

⁶⁹⁷ Verizon *Mobility Fund NPRM* Comments at 25.

⁶⁹⁸ NE Colorado Cellular *Mobility Fund NPRM* Reply at 1.

⁶⁹⁹ T-Mobile *Mobility Fund NPRM* Comments at 16.

industry structure, as asserted by one commenter. For all these reasons, we would be inclined to implement our proposal to conduct Phase I auction using a single-round sealed bid format. Nevertheless, given that under our general approach to establishing auction procedures, this issue would typically be delegated to the Bureaus to consider in connection with establishing detailed auction procedures, we leave it to the Bureaus to implement a format with more than one round, if they deem it more appropriate.

(ii) Application Process

416. *Background.* The *Mobility Fund NPRM* sought comment on a proposal to use a two-stage application process similar to the one we use in spectrum license auctions. Parties interested in participating at auction would submit a “short-form” application providing basic ownership information and certifying as to its qualifications to receive support.⁷⁰⁰ After the auction, we would conduct a more extensive review of the winning bidders’ qualifications through “long-form” applications.⁷⁰¹

417. *Discussion.* Consistent with record support, we adopt a two-stage application process described above, noting that our experience with such a process for spectrum licensing auctions has been positive, and balances the need to collect essential information with administrative efficiency.⁷⁰²

418. We adopt our proposals regarding the types of information bidders should be required to disclose in Mobility Fund auction short-form applications. Thus, we will require that each auction applicant provide information to establish its identity, including disclosure of parties with ownership interests, consistent with the ownership interest disclosure required in Part 1 of our rules for applicants for spectrum licenses, and any agreements the applicant may have relating to the support to be sought through the auction.⁷⁰³ With respect to eligibility requirements relating to ETC designation and spectrum access, applicants will be required to disclose and certify their ETC status as well as the source of the spectrum they plan to use to meet Mobility Fund obligations in the particular area(s) for which they plan to bid. Specifically, applicants will be required to disclose whether they currently hold or lease the spectrum, or have entered into a binding agreement, and have submitted an application with the Commission, to either hold or lease spectrum. Moreover, applicants will be required to certify that they will retain their access to the spectrum for at least five years from the date of award of support. We anticipate that the Bureaus will exercise their delegated authority to establish the specific form in which such information will be collected from applicants. We conclude that this approach strikes an appropriate balance in ensuring that entities are “legally, technically and financially qualified,”⁷⁰⁴ as AT&T suggests, while minimizing undue burden on applicants and Commission staff.

(iii) Bidding Process

419. *Background.* The *Mobility Fund NPRM* also sought comment on certain other aspects of the proposed bidding process, including the process used to determine winning bidders and maximize the available support.⁷⁰⁵

⁷⁰⁰ *Mobility Fund NPRM*, 25 FCC Rcd at 14,731, 14,734, paras. 46, 59.

⁷⁰¹ *Id.*

⁷⁰² Verizon *Mobility Fund NPRM* Comments at 25; T-Mobile *Mobility Fund NPRM* Comments at 16-19.

⁷⁰³ See 47 C.F.R. §§ 1.21001(b), 54.1005(a)(1). Applicants will only be able to make minor modifications to their short-form applications. Major amendments, for example, changes in an applicant’s ownership that constitute an assignment or transfer of control, will make the applicant ineligible to bid. See 47 C.F.R. § 1.21001(d)(4).

⁷⁰⁴ AT&T *Mobility Fund NPRM* Comments at 8-9.

⁷⁰⁵ *Mobility Fund NPRM*, 25 FCC Rcd at 14,735-37, paras. 63-74.

420. *Discussion.* We delegate authority to the Bureaus to administer the policies, programs, rules, and procedures we establish for Mobility Fund Phase I today and take all actions necessary to conduct a Phase I auction. We anticipate that the Bureaus will exercise this authority by conducting a pre-auction notice-and-comment process to establish the specific procedures for the auction. Such procedures will implement the general rule we adopt to enable the establishment of procedures for reviewing bids and determining winning bidders. The overall objective of the bidding in this context is to maximize the number of units to be covered in unserved areas given our overall budget for support. The Bureaus have discretion to adopt the best procedures to achieve this objective during the pre-auction process taking into account all relevant factors, including the implementation feasibility and the simplicity of bidder participation.

421. Several commenters address our proposal to base winning bids on the lowest per-unit bid amounts, expressing concern that it would marginalize rural areas⁷⁰⁶ and suggesting instead that bids be evaluated by giving priority to the hardest-to-serve areas.⁷⁰⁷ One commenter asserts that determining winners based on low bids would encourage the winner to do only the minimum required to meet service obligations.⁷⁰⁸ We agree with these and other commenters' concerns that there are areas that may not be good candidates for one-time support under Mobility Fund Phase I – and may be better served through other USF reform initiatives, such as Mobility Fund Phase II. We also recognize that some areas that benefit from Phase I support may eventually have been built out anyway, but we see significant benefit in accelerating that build-out. We disagree, however, with the suggestion that Mobility Fund Phase I would not serve rural areas generally; we believe that many rural areas will be able to benefit from Phase I support, although we acknowledge that support is not likely to be sufficient to reach the most remote areas. With respect to the concern that winners selected on the basis of a low bid will have little incentive to meet more than the minimum service obligations, we note that this issue arises regardless of selection criteria. Hence, in this R&O, we adopt performance requirements and enforcement procedures to ensure that Mobility Fund Phase I support is utilized as intended.

422. We also address here several additional aspects of the general framework for the bidding process on which we sought comment in the *Mobility Fund NPRM*.

423. *Maximum Bids and Reserve Prices.* The Commission proposed a rule in the *Mobility Fund NPRM* to provide for auction procedures that establish maximum acceptable per-unit bid amounts and reserve amounts, separate and apart from any maximum opening bids, and to provide that those reserves may be disclosed or undisclosed.⁷⁰⁹

424. Commenters are divided on the issue of whether reserve prices and maximum bids are needed or desired, and if implemented, how they should be determined, but none oppose our proposal to retain the discretion to establish such amounts. Some suggest that no reserve prices are necessary because we can rely on competition to discipline bids,⁷¹⁰ while others assume that we will base any reserve prices on estimated costs.⁷¹¹ Another proposes that we conduct bidding on a regional basis, and base reserve prices for each region on the unserved populations in each region.⁷¹² We adopt our proposed rule on

⁷⁰⁶ ATA *Mobility Fund NPRM* Comments at 4.

⁷⁰⁷ US Cellular *Mobility Fund NPRM* Comments at 10-11; RCA *Mobility Fund NPRM* Comments at 8-9; AT&T *Mobility Fund NPRM* Comments at 4.

⁷⁰⁸ Texas Statewide Coop *Mobility Fund NPRM* Comments at 6-7.

⁷⁰⁹ *Mobility Fund NPRM*, 25 FCC Rcd at 14,736, para. 66.

⁷¹⁰ AT&T *Mobility Fund NPRM* Comments at 18-19; T-Mobile *Mobility Fund NPRM* Comments at 17.

⁷¹¹ Cellular South et al. *Mobility Fund NPRM* Comments at 22-23; NASUCA *Mobility Fund NPRM* Comments at 7.

⁷¹² Verizon *Mobility Fund NPRM* Comments at 26-27.

reserve prices and anticipate that, as detailed procedures for a Mobility Fund Phase I auction are established during the pre-auction period, the Bureaus will consider these and other proposals with respect to reserve prices in light of the specific timing of and other circumstances related to the auction.

425. *Aggregating Service Areas and Package Bidding.* In the *Mobility Fund NPRM*, the Commission proposed a rule to provide for auction procedures that permit bidders to submit bids on packages of tracts, with any specific procedures to be determined as part of the pre-auction process.⁷¹³ The Commission also invited comment on the use of package bidding – in which a single bid is submitted to cover a group of areas – in the Mobility Fund, and specifically mentioned some ways of implementing limited package bidding.⁷¹⁴

426. We received no comments specifically on our proposal to address issues related to package bidding in the process of establishing detailed auction procedures and will address issues relating to package bidding as part of the pre-auction process, which is consistent with the way we approach this issue for spectrum auctions.⁷¹⁵ Interested parties will have an opportunity to comment on the desirability of package bidding in the pre-auction process in connection with the determination of the minimum area for bidding.⁷¹⁶ Potential bidders will be able to provide input on whether specific package bidding procedures would allow them to formulate and implement bidding strategies to incorporate Mobility Fund Phase I support into their business plans and capture efficiencies, and on how well those procedures will facilitate the realization of the Commission's objectives for Mobility Fund Phase I.

427. *Refinements to the Selection Mechanism to Address Limited Available Funds.* In the *Mobility Fund NPRM*, the Commission proposed a rule that would provide the discretion to establish procedures in the pre-auction process to deal with the possibility that funds may remain available after the auction has identified the last lowest per-unit bid that does not assign support exceeding the total funds available.⁷¹⁷ The Commission also proposed a rule to give discretion to address a situation where there are two or more bids for the same per-unit amount but for different areas (“tied bids”) and remaining funds are insufficient to satisfy all of the tied bids.⁷¹⁸

428. We adopt our proposed rules to provide the Bureaus with discretion to develop appropriate procedures to address these issues during the pre-auction notice-and-comment process. These procedures shall be consistent with our objective of awarding support so as to maximize the number of units that will gain coverage in unserved areas subject to our overall budget for support.

429. *Withdrawn Bids.* In the *Mobility Fund NPRM*, the Commission proposed that, as in the case of spectrum auctions, it would establish a rule to provide for procedures for withdrawing provisionally winning bids.⁷¹⁹ We adopt the proposed rule on withdrawn bids, but as noted in the *Mobility Fund NPRM*, we do not expect the Bureaus to permit withdrawn bids, particularly if the

⁷¹³ *Mobility Fund NPRM*, 25 FCC Rcd at 14,736, paras. 67-68.

⁷¹⁴ *Id.*

⁷¹⁵ See 47 C.F.R. § 1.2103(b). See also, e.g., *Auction of 700 MHz Band Licenses Scheduled for January 16, 2008; Comment Sought on Competitive Bidding Procedures For Auction 73*, Public Notice, 22 FCC Rcd 15,004, 15,010-14, paras. 17-24 (Wireless Telecom. Bur. 2007); *700 MHz Auction Procedures Public Notice*, 22 FCC Rcd at 18,179-81, paras. 138-144.

⁷¹⁶ See *supra* para. 346.

⁷¹⁷ *Mobility Fund NPRM*, 25 FCC Rcd at 14,736, para. 69.

⁷¹⁸ *Id.* at 14,736-37, para. 70.

⁷¹⁹ *Id.* at 14,737, paras. 72-74.

Mobility Fund Phase I auction will be conducted in a single round. Furthermore, we address how we will deal with auction defaults below.⁷²⁰

430. *Preference for Tribally-Owned or Controlled Providers.* As we do for Tribal Mobility Fund Phase I, discussed below,⁷²¹ we adopt a 25 percent bidding credit for Tribally-owned or controlled providers that participate in a Mobility Fund Phase I auction. The preference would act as a “reverse” bidding credit that would effectively reduce the bid amount by 25 percent for the purpose of comparing it to other bids, thus increasing the likelihood that a Tribally-owned or controlled entity would receive funding. The preference would be available solely with respect to the eligible census blocks located within the geographic area defined by the boundaries of the Tribal land associated with the Tribal entity seeking support.

(iv) Information and Competition

431. In the *Mobility Fund NPRM*, the Commission proposed to prohibit applicants competing for support in the auction from communicating with one another regarding the substance of their bids or bidding strategies and to limit public disclosure of auction-related information as appropriate.⁷²² We adopt our proposed rules, which are similar to those used for spectrum license auctions. We anticipate that the Bureaus will seek comment during the pre-auction procedures process and decide on the details and extent of information to be withheld until the close of the auction.

(v) Auction Cancellation

432. The *Mobility Fund NPRM* proposed to provide discretion to delay, suspend, or cancel bidding before or after a reverse auction begins under a variety of circumstances, including natural disasters, technical failures, administrative necessity, or any other reason that affects the fair and efficient conduct of the bidding.⁷²³ We received no comments on this proposal. Based on our experience with a similar rule for spectrum license auctions, we conclude that such a rule is necessary and adopt it here.

e. Post-Auction Long-Form Application Process

433. After the auction has concluded, a winning bidder will be required to file a “long-form” application to qualify for and receive Mobility Fund support. Those applications will be subject to an in-depth review of the applicants’ eligibility and qualifications to receive USF support. Here, we discuss the long-form applications and the review process that will precede award of support from the Mobility Fund.

(i) Long-Form Application

434. *Background.* In the *Mobility Fund NPRM*, the Commission proposed that a winning bidder would be required to provide detailed information showing that it is legally, technically and financially qualified to receive support from the Mobility Fund.⁷²⁴ The Commission sought comment on our proposal and on the specific information that winning bidders should be required to provide to make the required showings.⁷²⁵

435. *Discussion.* We adopt the long-form application process we proposed in the *Mobility Fund NPRM*. As we discuss above, we delegate to the Wireless and Wireline Bureaus responsibility for

⁷²⁰ See *infra* paras. 458-461.

⁷²¹ See *infra* para. 490.

⁷²² *Mobility Fund NPRM* at 14,737, para. 75.

⁷²³ *Id.* at 14,737, para. 76.

⁷²⁴ *Id.* at 14,739, paras. 79-81.

⁷²⁵ *Id.*

establishing the necessary FCC application form(s). RCA notes that “onerous” application requirements will deter smaller bidders, although it does not suggest that our specific proposals regarding the application process would be problematic.⁷²⁶ We do not view the application process that we have outlined as “onerous,” nor do other commenters indicate that the proposals would be burdensome. Our experience with such a long-form application process for spectrum licensing auctions has been positive, balancing the need to collect essential information with administrative efficiency. Therefore, we adopt our proposal to require a post-auction long-form application as described below.

436. After bidding for Mobility Fund Phase I support has ended, the Commission will declare the bidding closed and identify and notify the winning bidders. Unless otherwise specified by public notice, within 10 business days after being notified that it is a winning bidder for Mobility Fund support, a winning bidder will be required to submit a long-form application. In the sections below, we address the information an applicant will be required to submit as part of the long-form application.

(ii) Ownership Disclosure

437. *Background.* In the *Mobility Fund NPRM*, we sought comment on the specific information that should be required at the long-form application stage sufficient to establish their ownership and control, as well as eligibility to receive support.⁷²⁷

438. *Discussion.* We will adopt for the Mobility Fund the existing ownership disclosure requirements in Part 1 of our rules that already apply to short-form applicants to participate in spectrum license auctions and long-form applicants for licenses in the wireless services.⁷²⁸ Thus, an applicant for Mobility Fund support will be required to fully disclose its ownership structure as well as information regarding the real party- or parties-in-interest of the applicant or application.⁷²⁹ Wireless providers that have participated in spectrum auctions will already be familiar with these requirements, and are likely to already have ownership disclosure information reports (FCC Form 602) on file with the Commission, which may simply need to be updated. To minimize the reporting burden on winning bidders, we will allow them to use ownership information stored in existing Commission databases and update that ownership information as necessary.

(iii) Eligibility To Receive Support

439. *ETC Designation.* As noted, with the limited exception discussed *infra*, we require any entity bidding for Mobility Fund support to be designated an ETC prior to the Mobility Fund auction short-form application deadline.⁷³⁰ A winning bidder will be required to submit with its long-form application appropriate documentation of its ETC designation in all of the areas for which it will receive support. In the event that a winning bidder receives an ETC designation conditioned upon receiving Mobility Fund support, it may submit documentation of its conditional designation, provided that it promptly submits documentation of its final designation after its long-form application has been approved but before any disbursement of Mobility Fund funds.

440. *Access to Spectrum.* Applicants for Mobility Fund support will also be required to identify the particular frequency bands and the nature of the access (*e.g.*, licenses or leasing arrangements) on which they assert their eligibility for support. Because not all spectrum bands are

⁷²⁶ RCA *Mobility Fund NPRM* Comments at 9.

⁷²⁷ *Mobility Fund NPRM* at 14,739-40, paras. 82-83.

⁷²⁸ *See, e.g.*, 47 C.F.R. § 1.2112(a). Because applicants for Mobility Fund Phase I support will not be applying for designated entity status, only subsection (a) of 47 C.F.R. § 1.2112 will be applicable.

⁷²⁹ *See* 47 C.F.R. § 1.2112(a).

⁷³⁰ *See supra* para. 730.

capable of supporting mobile broadband, and leasing arrangements can be subject to wide variety of conditions and contingencies, before an initial disbursement of support is approved, we will assess the reasonableness of these assertions.⁷³¹ Should an applicant not have access to the appropriate level of spectrum, it will be found not qualified to receive Mobility Fund support and will be subject to an auction default payment.⁷³²

(iv) Project Construction

441. *Background.* In the *Mobility Fund NPRM*, we proposed that a participant be required to submit with its long-form application a project schedule that identifies a variety of project milestones.⁷³³

442. *Discussion.* Consistent with record support, we conclude that a winning bidder's long-form application should include a description of the network it will construct with Mobility Fund support.⁷³⁴ We will require carriers to specify on their long-form applications whether the supported project will qualify as either a 3G or 4G network, including the proposed technology choice and demonstration of technical feasibility. Applications should also include a detailed description of the network design and contracting phase, construction period, and deployment and maintenance period. We will also require applicants to provide a complete projected budget for the project and a project schedule and timeline. Recipients will be required to provide updated information in their annual reports and in the information they provide to obtain a disbursement of funds. In addition, as we do for Tribal Mobility Fund Phase I, discussed below, winning bidders of areas that include Tribal lands must comply with Tribal engagement obligations to demonstrate that they have engaged Tribal governments in the planning process and that the service to be provided will advance the goals established by the Tribe.⁷³⁵

(v) Financial Security and Guarantee of Performance

443. *Background.* In the *Mobility Fund NPRM*, we asked whether a winning bidder should be required to post financial security as a condition to receiving Mobility Fund support to ensure that it has committed sufficient financial resources to meeting the program obligations associated with such support.⁷³⁶

444. *Discussion.* As discussed in greater detail below, we will require winning bidders for Mobility Fund support to provide us with an irrevocable stand-by Letter of Credit ("LOC"), issued in substantially the same form as set forth in the model Letter of Credit provided in Appendix N⁷³⁷ by a bank

⁷³¹ We recognize that an applicant whose access to spectrum derives from a spectrum manager leasing arrangement pursuant to section 1.9020 of the Commission's rules may have a greater burden than other licensees and spectrum lessees to demonstrate through the execution of contractual conditions in its leasing arrangements that it has the necessary access to spectrum required to qualify for disbursement of MCAF-I support. *See, e.g.*, 47 C.F.R. §§ 1.9010, 1.9020, 1.9030.

⁷³² *See infra* para. 458.

⁷³³ *Mobility Fund NPRM*, 25 FCC Rcd at 14,740, para. 84.

⁷³⁴ AT&T *Mobility Fund NPRM* Comments at 9; T-Mobile *Mobility Fund NPRM* Comments at 19. Because the long-form application will be a public document, states will have access to this information for the ETCs that are within their jurisdiction.

⁷³⁵ *See infra* para. 489.

⁷³⁶ *Mobility Fund NPRM* at 14,740, para. 85.

⁷³⁷ A Mobility Fund support recipient's LOC must be issued in substantially the same form as our model LOC and, in any event, must be acceptable in all respects to the Commission.

that is acceptable to the Commission,⁷³⁸ in an amount equal to the amount of support as it is disbursed, plus an additional percentage of the amount of support disbursed which shall serve as a default payment, which percentage will be determined by the Bureaus in advance of the auction.

445. We received few comments on the method by which we should secure our financial commitment. MetroPCS maintains that the Commission would benefit from requiring a performance bond, because it would allow third parties to evaluate and back the bidder's business plan and ensure that the recipient actually builds what it promises.⁷³⁹ It suggests that a performance bond is preferable to an LOC because the latter generally requires a deposit in the amount of the obligation, which "will detract from the money available to construct and operate the system."⁷⁴⁰ In contrast, MTPCS and T-Mobile believe that a posting of financial security is unnecessary.⁷⁴¹ MTPCS comments that, in the "unlikely event" a carrier becomes insolvent, another carrier would purchase and operate the system, whereas requiring an LOC "could fatally impair a company's ability to obtain private or public markets funding" because "existing senior lenders who finance larger portions of a company's assets and operations would insist upon retaining their primary status."⁷⁴²

446. Although we recognize the benefit of requiring winning bidders to obtain a performance bond, we think an LOC will be more effective in this instance in ensuring that we achieve the Mobility Fund's objectives, and we are reluctant to require winning bidders to undertake the expense of obtaining both instruments. A performance bond would have the advantage of providing a source of funds to complete build-out in the unserved area in the case of a recipient's default. However, we must first be concerned with protecting the integrity of the USF funds disbursed to the recipient. Should a recipient default on its obligations under the Mobility Fund, our priority should be to secure a return of the USF funds disbursed to it for this purpose, so that we can reassign the support consistent with our goal to maximize the number of units covered given the funds available. We also recognize that a Mobility Fund recipient's failure to fulfill its obligations may impose significant costs on the Commission and higher support costs for USF. Therefore, we also conclude that it is necessary to adopt a default payment obligation for performance defaults. With these priorities in mind, we disagree with commenters suggesting that the posting of financial security is unnecessary or that in the event of the insolvency of the recipient of Mobility Fund support, we should rely on whichever carrier eventually purchases the recipient's system. Moreover, companies who have existing lenders regularly use LOCs in the normal course of operating their businesses and are able to maintain multiple forms of financing, thus, we give little credence to the suggestion that this requirement could fatally impair a company's ability to obtain private or public market funding.

447. Consistent with our goal of using the LOC to protect the government's interest in the funds it disburses in Mobility Fund Phase I, we will require winning bidders to obtain an LOC in an amount equal to the amount of support it receives plus an additional percentage of the amount of support disbursed to safeguard against costs to the Commission and the USF. The precise amount of this additional percentage will not exceed 20 percent and will be determined by the Bureaus as part of its process for establishing the procedures for the auction. Thus, before an application for Mobility Fund support is granted and funds are disbursed, we will require the winning bidder to provide an LOC in the

⁷³⁸ The rules we adopt today provide specific requirements for a bank to be acceptable to the Commission to issue the LOC. Those requirements vary for United States banks and non-U.S. banks. See 47 C.F.R. § 54.1007(a)(1).

⁷³⁹ MetroPCS *Mobility Fund NPRM* Comments at 12-13.

⁷⁴⁰ *Id.*

⁷⁴¹ MTPCS *Mobility Fund NPRM* Comments at 12; T-Mobile *Mobility Fund NPRM* Comments at 19.

⁷⁴² MTPCS *Mobility Fund NPRM* Comments at 12. MTPCS believes requiring performance bonds would likewise hinder applicants. *Id.* at 13.

amount of the first one-third of the support associated with the unserved census tract that will be disbursed upon grant of its application, plus the established additional default payment percentage. Before a participant receives the second third of its total support, it will be required to provide a second letter of credit or increase the initial LOC to correspond to the amount of that second support payment such that LOC coverage will be equal to the total support amount plus the established default payment percentage. The LOC(s) will remain open and must be renewed to secure the amounts disbursed as necessary until the recipient has met the requirements for demonstrating coverage and final payment is made. This approach will help to reduce the costs recipients incur for maintaining the LOCs, because they will only have to maintain LOCs in amounts that correspond to the actual USF funds as they are being disbursed.

448. Consistent with the purpose of the LOC, we will require recipients to maintain the LOC in place until at least 120 days after they have completed their supported expansion to unserved areas and received their final payment of Mobility Fund Phase I support. Under the terms of the LOC, the Commission will be entitled to draw upon the LOC upon a recipient's failure to comply with the terms and conditions upon which USF support was granted. The Commission, for example, will draw upon the LOC when the recipient fails to meet its required deployment milestone(s).⁷⁴³ Failure to satisfy essential terms and conditions upon which USF support was granted or to ensure completion of the supported project, including failure to timely renew the LOC, will be deemed a failure to properly use USF support and will entitle the Commission to draw the entire amount of the LOC. Failure to comply will be evidenced by a letter issued by the Chief of either the Wireless Bureau or Wireline Bureau or their designees, which letter, attached to an LOC draw certificate, shall be sufficient for a draw on the LOC.⁷⁴⁴ In addition, a recipient that fails to comply with the terms and conditions of the Mobility Fund support it is granted could be disqualified from receiving additional Mobility Fund support or other USF support.⁷⁴⁵

449. In the *Mobility Fund NPRM*, the Commission sought comment on the relative merits of performance bonds and LOCs and the extent to which performance bonds, in the event of the bankruptcy of the recipient of Mobility Fund support, might frustrate our goal of ensuring timely build-out of the network.⁷⁴⁶ We think an LOC will better serve our objective of minimizing the possibility that Mobility Fund support becomes property of a recipient's bankruptcy estate for an extended period of time, thereby preventing the funds from being used promptly to accomplish the Mobility Fund's goals. It is well established that an LOC and the proceeds thereunder are not property of a debtor's estate under section 541 of Title 11 of the United States Code (the "Bankruptcy Code").⁷⁴⁷ In a proper draw upon an LOC, the issuer honors a draft under the LOC from its own assets and not from the assets of the debtor who caused the letter of credit to be issued.⁷⁴⁸ Because the proceeds under an LOC are not property of the bankruptcy estate, absent extreme circumstances such as fraud, neither the LOC nor the funds drawn down under it are subject to the automatic stay provided by the Bankruptcy Code. This is an additional reason for our decision to require recipients of Mobility Fund support to provide LOCs rather than performance bonds.

⁷⁴³ Parties receiving support are required to cover at least 75 percent of the designated units in the unserved census blocks, as a condition of support. *See supra* para. 365.

⁷⁴⁴ While such letter may not foreclose an appeal or challenge by the recipient, it will not prevent a draw on the LOC.

⁷⁴⁵ *See* 47 C.F.R. §§ 54.1006(f), 54.1007(c)(1).

⁷⁴⁶ *Mobility Fund NPRM*, 25 FCC Rcd at 14,741-42, paras. 88, 94.

⁷⁴⁷ 11 U.S.C. § 541; *see also, e.g., Kellog v. Blue Quail Energy, Inc.*, 831 F.2d 586, 589 (5th Cir. 1987).

⁷⁴⁸ *Kellog*, 831 F.2d at 589.

450. In the long-form application filing, we will require each winning bidder to submit a commitment letter from the bank issuing the LOC.⁷⁴⁹ The winning bidder will, however, be required to have its LOC in place before it is authorized to receive Mobility Fund Phase I support and before any Mobility Fund Phase I support is disbursed. Further, at the time it submits its LOC, a winning bidder will be required to provide an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations and qualifications, that in a proceeding under Bankruptcy Code, the bankruptcy court would not treat the LOC or proceeds of the LOC as property of winning bidder's bankruptcy estate, or the bankruptcy estate of any other bidder-related entity requesting issuance of the LOC, under section 541 of the Bankruptcy Code.⁷⁵⁰

451. We will not limit the LOC requirement to a subset of bidders that fail to meet certain criteria, such as a specified minimum credit rating, a particular minimum debt to equity ratio, or other minimum capital requirements.⁷⁵¹ We think that such criteria would require a level of financial analysis of applicants that is likely to be more complex and administratively burdensome than is warranted for a program that will provide one-time support, and could result in undue delay in funding and deployment of service. Moreover, limiting the LOC requirement to bidders below a certain level of capitalization would likely disproportionately burden small business entities, even though small entities are often less able to sustain the additional cost burden of posting financial security while still being able to compete with larger entities.

(vi) Other Funding Restrictions

452. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on whether participants who receive support from the Mobility Fund should be barred from receiving funds for the same activity under any other federal program, including, for example, federal grants, awards, or loans.⁷⁵²

453. *Discussion.* While we agree with commenters that Mobility Fund recipients might benefit if they were able to leverage resources from other federal programs, we must also take care to ensure that USF funds are put to their most efficient and effective use. Therefore, as noted elsewhere, we will exclude all areas from the Mobility Fund where, prior to the short-form filing deadline, any carrier has made a regulatory commitment to provide 3G or better service, or has received a funding commitment from a federal executive department or agency in response to the carrier's commitment to provide 3G or better service.⁷⁵³ ITTA believes the Commission should not bar Mobility Fund recipients from receiving funding from other Federal programs, since recipients "should enjoy the benefit of leveraging multiple resources."⁷⁵⁴ As we noted in the *Mobility Fund NPRM*, however, our intention is to direct funding to those places where deployment of mobile broadband is otherwise unlikely.⁷⁵⁵

⁷⁴⁹ The commitment letter will at a minimum provide the dollar amount of the LOC and the issuing bank's agreement to follow the terms and conditions of the Commission's model LOC, found in Appendix N.

⁷⁵⁰ 11 U.S.C. § 541.

⁷⁵¹ See *Mobility Fund NPRM*, 25 FCC Rcd at 14,740, para. 85.

⁷⁵² *Id.* at 14,741, para. 89.

⁷⁵³ Such federal funding commitments may have been made under, but are not limited to, the Broadband Technology Opportunities Program (BTOP) and Broadband Initiatives Program (BIP) authorized by the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (ARRA). See *CenturyLink Mobility Fund NPRM Comments* at 9; *NTCH Mobility Fund NPRM Comments* at 8 (supporting exclusion of areas that received federal loan or grant funding).

⁷⁵⁴ *ITTA Mobility Fund NPRM Comments* at 17.

⁷⁵⁵ See *Mobility Fund NPRM*, 25 FCC Rcd at 14,721-22, paras. 11, 14.

(vii) Post-Auction Certifications

454. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on a number of possible certifications that we might require of a winning bidder to receive Mobility Fund support.⁷⁵⁶

455. *Discussion.* We adopt our proposal regarding post-auction certifications. Prior to receiving Mobility Fund support, an applicant will be required in its long-form application to certify to the availability of funds for all project costs that exceed the amount of support to be received from the Mobility Fund and certify that they will comply with all program requirements.

456. As discussed above, recipients of Mobility Fund support are required by statute to offer services in rural areas at rates that are reasonably comparable to those charged to customers in urban areas.⁷⁵⁷ Accordingly, our post-auction long-form certifications will include a certification that the applicant will offer services in rural areas at rates that are reasonably comparable to those charged to customers in urban areas.

(viii) Auction Defaults

457. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on the procedures that we should apply to a winning bidder that fails to submit a long-form application by the established deadline.⁷⁵⁸

458. *Discussion.* Auction Default Payments. We will impose a default payment on winning bidders that fail to timely file a long-form application. We also conclude that such a payment is appropriate if a bidder is found ineligible or unqualified to receive Mobility Fund support, its long-form application is dismissed for any reason, or it otherwise defaults on its bid or is disqualified for any reason after the close of the auction.⁷⁵⁹

459. In its comments, T-Mobile advocates the imposition of a significant payment obligation for the withdrawal of a bid after the Mobility Fund auction closes “to discourage manipulation of the bidding process or disruption of the distribution of support.”⁷⁶⁰ We agree that adoption of some measure, in addition to dismissal of any late-filed application, is needed to ensure that auction participants fulfill their obligations and do not impose significant costs on the Commission and the USF. Our competitive bidding rules for spectrum license auctions provide that if, after the close of an auction, a winning bidder defaults on a payment obligation or is disqualified, the bidder is liable for a default payment.⁷⁶¹ The Wireless Bureau in advance of each spectrum license auction as part of the process for establishing the procedures for the auction sets the precise percentage to be applied in calculating the default payment.

460. Here, too, failures to fulfill auction obligations may undermine the stability and predictability of the auction process, and impose costs on the Commission and higher support costs for USF. In the case of a reverse auction for USF support, we think a default payment is appropriate to

⁷⁵⁶ *Id.* at 14,741, para. 90.

⁷⁵⁷ See 47 U.S.C. § 254(b)(3).

⁷⁵⁸ *Mobility Fund NPRM* at 14,739, para. 81.

⁷⁵⁹ See 47 U.S.C. §§ 154(i), 254(d).

⁷⁶⁰ T-Mobile *Mobility Fund NPRM* Comments at 17.

⁷⁶¹ This payment consists of a deficiency portion, which would not be applicable in this context, plus an additional payment equal to between 3 and 20 percent. See *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, Report and Order, 21 FCC Rcd 891, 903-04, paras. 30-32 (2006).

ensure the integrity of the auction process and to safeguard against costs to the Commission and the USF. We leave it to the Bureaus to consider methodologies for determining such a payment. We recognize that the size of the payment and the method by which it is calculated may vary depending on the procedures established for the auction, including auction design. In advance of the auction, the Bureaus will determine whether a default payment should be a percentage of the defaulted bid amount or should be calculated using another method, such as basing the amount on differences between the defaulted bid and the next best bid(s) to cover the same number of road miles as without the default. If the Bureaus establish a default payment to be calculated as a percentage of the defaulted bid, that percentage will not exceed 20 percent of the total amount of the defaulted bid. However it is determined, agreeing to that payment in event of a default will be a condition for participating in bidding. The Bureaus may determine prior to bidding that all participants will be required to furnish a bond or place funds on deposit with the Commission in the amount of the maximum anticipated default payment. A winning bidder will be deemed to have defaulted on its bid under a number of circumstances if it withdraws its bid after the close of the auction, it fails to timely file a long form application, it is found ineligible or unqualified to receive Mobility Fund Phase I support, its long-form application is dismissed for any reason, or it otherwise defaults on its bid or is disqualified for any reason after the close of the auction. In addition to being liable for an auction default payment, a bidder that defaults on its bid may be subject to other sanctions, including but not limited to disqualification from future competitive bidding for USF support.⁷⁶²

461. We distinguish here between a Mobility Fund auction applicant that defaults on its winning bid and a winning bidder whose long-form application is approved but subsequently fails or is unable to meet its minimum coverage requirement or demonstrate an adequate quality of service that complies with Mobility Fund requirements. In the latter case of a recipient's performance default, in addition to being liable for a performance default payment, the recipient will be required to repay the Mobility Fund all of the support it has received and, depending on the circumstances involved, could be disqualified from receiving any additional Mobility Fund or other USF support.⁷⁶³ As we have discussed above, we may obtain its performance default payment and repayment of a recipient's Mobility Fund support by drawing upon the irrevocable stand-by letter of credit that recipients will be required to provide in the full amount of support received.

462. **Undisbursed Support Payments.** We received no comments on the disposition of Mobility Fund support for which a winning bidder does not timely file a long-form application. We anticipate that when a winning bidder defaults on its bid or is disqualified for any reason after the close of the auction, the funds that would have been provided to such an applicant will be used in a manner consistent with the purposes of the Universal Service program.

f. Accountability and Oversight

463. In the *Mobility Fund NPRM* the Commission sought comment on issues relating to the administration, management and oversight of the Mobility Fund. On a number of these issues we adopt uniform requirements that will apply to all recipients of high-cost and CAF support, including recipients of Mobility Fund Phase I support. Recipients of Phase I support will be subject generally to the reporting, audit, and record retention requirements that are discussed in the Accountability and Oversight section of this Order. We discuss below certain aspects of support disbursement, and the annual reporting and record retention requirements that will apply specifically to Mobility Fund Phase I.

⁷⁶² See 47 C.F.R. § 1.21004(c).

⁷⁶³ See 47 C.F.R. § 54.1006(f).

(i) Disbursing Support Payments

464. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on our proposal to disburse support payments in one-third increments.⁷⁶⁴ We received four comments reflecting a wide range of views. On one end, AT&T supports withholding the disbursement of all funds until the winning bidder certifies that it is providing the supported service throughout its designated service area.⁷⁶⁵ AT&T suggests, in the alternative, disbursing one-third of the support amount once the Commission selects a provider's bid and the remaining two-thirds after completion of construction and after the selected bidder certifies that it is offering the supported service throughout its designated service area.⁷⁶⁶ The Florida Commission supports the proposal set forth in the *Mobility Fund NPRM* (*i.e.*, the one-third payment structure) "because it places the burden on carriers seeking support to demonstrate progress towards achieving the program objectives."⁷⁶⁷ Verizon urges the Commission to give recipients at least 50 percent of their support upfront because in the areas targeted by the Mobility Fund, the upfront investment costs to deploy infrastructure will be significant.⁷⁶⁸ Finally, T-Mobile supports disbursing the "bulk" of the Mobility Fund support when the application is granted, given difficulty in obtaining private financing in high cost areas.⁷⁶⁹

465. *Discussion.* Mobility Fund Phase I support will be provided in three installments. This approach strikes the appropriate balance between advancing funds to expand service and assuring that service is actually expanded.

466. Specifically, each party receiving support will be eligible to receive from USAC a disbursement of one-third of the amount of support associated with any specific census tract once its long-form application for support is granted. Although we are not adopting an interim deployment milestone requirement, we will allow support recipients to demonstrate coverage as a basis for receiving a second support payment for an unserved area prior to completion of the project. Thus, a recipient will be eligible to receive the second third of its total support when it files a report demonstrating it has met 50 percent of its minimum coverage requirement for the census block(s) deemed unserved that are within that census tract.⁷⁷⁰ While we realize that some carriers might incur higher up front project costs prior to actually being in a position to commence the provision of service to the targeted area, after the initial payment of one-third of the support amount, we will not disburse support without proof of coverage. Disbursing support based on the construction expenses incurred by the carrier instead of on actual service to an unserved area would be contrary to the Mobility Fund's objective of spurring deployment of new mobile

⁷⁶⁴ *Mobility Fund NPRM*, 25 FCC Rcd at 14,742, para. 92.

⁷⁶⁵ AT&T *Mobility Fund NPRM* Comments at 20. AT&T believes this approach is "the safest course" because it will "protect against half-completed, useless networks" as well as "guarantee bidders live up to their commitments" and "best protect consumers." *Id.*

⁷⁶⁶ *Id.* AT&T adds that a second disbursement at the 50 percent coverage benchmark makes little sense because that "threshold corresponds neither to a provider's costs not to how it deploys a network, where it may take many months to reach 50 percent but only a short time thereafter to reach 100 percent coverage." *Id.*

⁷⁶⁷ Florida Commission *Mobility Fund NPRM* Reply at 4.

⁷⁶⁸ Verizon *Mobility Fund NPRM* Comments at 28.

⁷⁶⁹ T-Mobile *Mobility Fund NPRM* Comments at 19. T-Mobile adds that, if a winning bidder fails to follow its projected build-out, it should be "required to repay any support it received [plus interest and other fines or assessments], and its affiliates should be help responsible if the bidder fails to meet its obligations." *Id.*

⁷⁷⁰ Because we propose below to delegate jointly to the Wireless Bureau and the Wireline Bureau the authority to determine the method and procedures by which parties submit documents and information required to receive Mobility Fund support, we do not propose here specific filing procedures for these reports.

wireless service. For this reason, to qualify for the second installment of support, a recipient will be required to demonstrate it has met 50 percent of its minimum coverage requirement using the same drive tests that will be used to analyze network coverage to provide proof of deployment at the end of the project to receive its final installment of support. The report a recipient files for this purpose will be subject to review and verification before support is disbursed. We note that input from states on recipients' filed reports could be very helpful to this process.

467. A party will receive the remainder of its support after filing with USAC a report with the required data that demonstrates that it has deployed a network covering at least the required percent of the relevant road miles in the unserved census block(s) within the census tract. This data will be subject to review and verification before the final support payment for an unserved area is disbursed to the recipient. A party's final payment would be the difference between the total amount of support based on the road miles of unserved census blocks actually covered, *i.e.*, a figure between the required percent and 100 percent of the road miles, and any support previously received.

468. Because we will disburse at least some support to qualifying applicants in advance of fulfilling their service obligations, we recognize some risk of lost funds to parties that ultimately fail to meet those obligations. However, to minimize that risk, we are requiring participants to maintain their letter(s) of credit in place until after they have completed their supported network construction and received their final payment of Mobility Fund Phase I support. In addition, we will require participants to certify that they are in compliance with all requirements for receipt of Mobility Fund Phase I support at the time that they request disbursements.

469. As we explain above,⁷⁷¹ our purpose in this proceeding is to aggressively extend coverage, and recipients will not be allowed to receive Mobility Fund support if they fail to cover at least the required percentage of the road miles in the unserved census blocks for which they received support. Accordingly we decline the suggestion to adopt a level of service that falls short of the required percentage of coverage for which we would allow the recipient to offset its liability for repayment, because doing so would be inconsistent with our objective.⁷⁷²

(ii) Annual Reports

470. *Background.* The Commission proposed in the *Mobility Fund NPRM* that parties receiving Mobility Fund support be required to file annual reports with the Commission demonstrating the coverage provided with support from the Mobility Fund for five years after qualifying for support.⁷⁷³ The proposed reports were to include maps illustrating the scope of the area reached by new services, the population residing in those areas (based on Census Bureau data and estimates), and information regarding efforts to market the service to promote adoption among the population in those areas. In addition, annual reports were to include all drive test data that the party receives or makes use of, whether the tests were conducted pursuant to Commission requirements or any other reason.

471. *Discussion.* We will adopt our proposal with some minor modifications. To the extent that a recipient of Mobility Fund support is a carrier subject to other existing or new annual reporting requirements under section 54.313 of our rules based on their receipt of universal service support under another high cost mechanism, it will be permitted to satisfy its Mobility Fund Phase I reporting requirements by filing a separate Mobility Fund annual report or by including this additional information in a separate section of its other annual report filed with the Commission.⁷⁷⁴ Mobility Fund recipients

⁷⁷¹ See *supra* para. 28.

⁷⁷² Verizon *Mobility Fund NPRM* Comments at 18-19.

⁷⁷³ *Mobility Fund NPRM*, 25 FCC Rcd at 14,731, para. 44.

⁷⁷⁴ See *infra* paras. 576-614.

choosing to fulfill their Mobility Fund reporting requirements in an annual report filed under section 54.313 must, at a minimum, file a separate Mobility Fund annual report notifying us that the required information is included the other annual report.

472. Based on our decision to define unserved units based on the linear road miles associated with unserved census blocks, we will require that a Mobility Fund Phase I recipient provide annual reports that include maps illustrating the scope of the area reached by new services, the population residing in those areas (based on Census Bureau data and estimates), and the linear road miles covered. In addition, annual reports must include all coverage test data for the supported areas that the party receives or makes use of, whether the tests were conducted pursuant to Commission requirements or any other reason. Further, annual reports will include any updated project information including updates to the project description, budget and schedule. We would welcome state input on these aspects of the annual reports of Mobility Fund Phase I recipients.

473. Because we do not impose any marketing requirements other than the advertising requirements to which designated ETCs are already subject, we do not require that annual reports include information on marketing efforts.

474. Few commenters addressed the proposal regarding annual reports. One party notes a discrepancy between the proposal set forth in the discussion in the *Mobility Fund NPRM* (and described above) and the text of the proposed rules regarding the number of years for which annual reports would be required.⁷⁷⁵ Verizon suggests requiring reports from winning bidders until the project dollars are invested.⁷⁷⁶ We clarify here and in the final rules that the proposal we adopt requires filing of annual reports on the use of Mobility Fund support as described for five years after the winning bidder is authorized to receive Mobility Fund support.

(iii) Record Retention

475. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on what records Mobility Fund recipients should be required to retain related to their participation in the Fund.⁷⁷⁷ We proposed that the record retention requirements for recipients of support apply to all agents of the recipient, and any documentation prepared for or in connection with the recipient's Mobility Fund Phase I support.⁷⁷⁸ We also proposed a five-year period for record retention, consistent with the rules we previously adopted for those receiving other universal service high cost support.⁷⁷⁹

476. *Discussion.* Elsewhere in this Order, we adopt revised requirements that extend the record retention period to ten years for all recipients of high-cost and CAF support, including recipients of

⁷⁷⁵ AT&T *Mobility Fund NPRM* Comments at 16-17. The proposed rule section 54.1005(a) in the *Mobility Fund NPRM* stated that annual reports would be submitted for ten years. *Mobility Fund NPRM*, 25 FCC Rcd at 14,753.

⁷⁷⁶ Verizon *Mobility Fund NPRM* Comments at 27.

⁷⁷⁷ *Mobility Fund NPRM*, 25 FCC Rcd at 14,743-44, paras. 98-100.

⁷⁷⁸ *Id.* at 14,744, para. 99. We further proposed that beneficiaries be required to make all such documents and records that pertain to them, contractors, and consultants working on behalf of the beneficiaries, available to the Commission's Office of Managing Director, Wireless Bureau, Wireline Bureau, and Office of Inspector General, the USF Administrator, and their auditors. *Id.*

⁷⁷⁹ *Id.* at 14,744, para. 100. See 47 C.F.R. § 54.202(e) (2007). *Cf.* the five-year limitation on imposition of forfeitures for violations of section 220(d) of the Act. 47 C.F.R. § 1.80(c)(2).

Mobility Fund Phase I.⁷⁸⁰ We find that the new retention period will be adequate to facilitate audits of Mobility Fund program participants, with one clarification regarding the required retention period.⁷⁸¹

477. We received two comments on this issue. Sprint suggests that all reporting and certification requirements should sunset within three years after expenditure of the support dollars received.⁷⁸² T-Mobile favors a period of five years for retention of records associated with Mobility Fund support.⁷⁸³ In view of the record retention requirements we adopt for recipients of other USF high-cost and CAF support, we believe it is reasonable to apply the same retention period to recipients of Mobility Fund support.

478. We clarify, however, that for the purpose of the Mobility Fund program, the ten-year period for which records must be maintained will begin to run only after a recipient has received its final payment of Mobility Fund support. That is, because recipients will receive Mobility Fund support in up to three installments, but recipients that ultimately fail to deploy a network that meets our minimum coverage and performance requirements or otherwise fail to meet their Mobility Fund public interest obligations will be liable for repayment of all previously disbursed Mobility Fund support, we will require recipients to retain records for ten years from the receipt of the final disbursement of Mobility Fund funds.

2. Service to Tribal Lands

479. In the *Mobility Fund NPRM*, the Commission acknowledged the relatively low level of telecommunications deployment on Tribal lands and the distinct challenges in bringing connectivity to these areas.⁷⁸⁴ The Commission observed that communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population.⁷⁸⁵ The *Mobility Fund NPRM* also noted that Tribal lands are often in rural, high-cost areas, and present distinct obstacles to the deployment of broadband infrastructure.⁷⁸⁶ The Commission observed that greater financial support therefore may be needed in order to ensure the availability of broadband in Tribal lands.⁷⁸⁷ In light of the Commission's unique government-to-government relationship with Tribes and the distinct challenges in bringing communications services to Tribal lands, the Commission also noted that a more tailored approach regarding Mobility Fund support for Tribal lands may be beneficial.⁷⁸⁸

480. In April 2011, the Wireless Bureau released a Public Notice seeking comment on specific proposals that could be used in the context of a Mobility Fund to address Tribal issues.⁷⁸⁹ The Public Notice sought comment on establishing: (1) possible requirements for engagement with Tribal governments prior to auction; (2) a possible preference for Tribally-owned and controlled providers; and

⁷⁸⁰ See *infra* para. 620.

⁷⁸¹ See *infra* para. 621; 47 C.F.R. § 54.320(b) (“All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. This documentation must be maintained for at least ten years from the receipt of funding.”).

⁷⁸² Sprint *Mobility Fund NPRM* Comments at 10.

⁷⁸³ T-Mobile *Mobility Fund NPRM* Comments at 13, 20.

⁷⁸⁴ *Mobility Fund NPRM*, 25 FCC Rcd at 14,727, para. 33. See *supra* note 197.

⁷⁸⁵ *Mobility Fund NPRM* at 14,727, para. 33.

⁷⁸⁶ *Id.*

⁷⁸⁷ *Id.*

⁷⁸⁸ *Id.*

⁷⁸⁹ See, generally, *Tribal Mobility Fund Public Notice*, 26 FCC Rcd 5997.

(3) a possible mechanism to reflect Tribal priorities for competitive bidding. The Public Notice also sought comment on the timing of any Tribal Mobility Fund auction.

a. Tribal Mobility Fund Phase I

481. We adopt our proposal to establish a separate Tribal Mobility Fund Phase I to provide one-time support to deploy mobile broadband to unserved Tribal lands,⁷⁹⁰ which have significant telecommunications deployment and connectivity challenges.⁷⁹¹ We anticipate that an auction will occur as soon as feasible after a general Mobility Fund Phase I auction, providing for a limited period of time in between so that applicants that may wish to participate in both auctions may plan and prepare for a Tribal Phase I auction after a general Phase I auction.⁷⁹² Our decision to establish a Tribal Mobility Fund Phase I stems from the Commission's policy regarding "Covered Locations,"⁷⁹³ and represents our commitment to Tribal lands, including Alaska. We agree with the Alaska Commission that "[a] separate fund would indeed direct support to many areas that currently lag behind the nation in provisioning of advanced wireless services."⁷⁹⁴ We allocate \$50 million from universal service funds reserves for Tribal Mobility Fund Phase I, separate and apart from the \$300 million we are allocating for the general Mobility Fund Phase I. Providers in Tribal lands will be eligible for both the general and Tribal Mobility Fund Phase I auctions. Consistent with the approach we took with the general Mobility Fund Phase I, we delegate to the Bureaus authority to administer the policies, programs, rules and procedures to implement Tribal Mobility Fund Phase I as established today.

482. We determine that allocating \$50 million from universal service fund reserves to support the deployment of mobile broadband to unserved Tribal lands is necessary, separate and apart from the \$300 million we are allocating for Mobility Fund Phase I, because of special challenges involved in deploying mobile broadband on Tribal lands. As we have previously observed, various characteristics of Tribal lands may increase the cost of entry and reduce the profitability of providing service, including: "(1) The lack of basic infrastructure in many tribal communities; (2) a high concentration of low-income individuals with few business subscribers; (3) cultural and language barriers where carriers serving a tribal community may lack familiarity with the Native language and customs of that community; (4) the process of obtaining access to rights-of-way on tribal lands where tribal authorities control such access; and (5) jurisdictional issues that may arise where there are questions concerning whether a state may assert jurisdiction over the provision of telecommunications services on tribal lands."⁷⁹⁵ Commenters

⁷⁹⁰ Some carriers request a separate funding mechanism for insular areas. *See, e.g.,* PR Wireless *Mobility Fund NPRM* Comments at 1-5. Because these areas generally do not face the same level of deployment challenges as Tribal lands, we decline to create a separate component of the Mobility Fund for them.

⁷⁹¹ *Mobility Fund NPRM*, 25 FCC Rcd at 14,727, para. 33. *See, e.g.,* Alaska Commission *Mobility Fund NPRM* Reply at 2 (explaining that "there are more than 200 remote rural locations with low populations that are accessible only by air, water or snowmobile").

⁷⁹² We are mindful of commenters' views that a "separate track" should not be a "slow track," and believe that conducting a Tribal Mobility Fund Phase I auction shortly after concluding the general Mobility Fund Phase I auction will ensure that Tribal lands are not disadvantaged. *See* NPM and NCAI *Mobility Fund NPRM* Comments at 11-12.

⁷⁹³ As discussed *supra*, the Commission adopted the Covered Locations exemption in 2008, in recognition that many Tribal lands have low penetration rates for basic telephone. *High-Cost Universal Service Support et al*, WC Docket No. 05-337, CC Docket No.96-45, Order, 23 FCC Rcd 8834, 8848, para. 32 (2008).

⁷⁹⁴ Alaska Commission *Mobility Fund NPRM* Reply at 12.

⁷⁹⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12,208, 12,226, para. 32 (2000) (*USF Twelfth Report and Order*).

confirm that the particular challenges in deploying telecommunications services on Tribal lands remain.⁷⁹⁶ As discussed below, there are areas where \$50 million in one-time support will help to extend the availability of mobile voice and broadband services.

483. We further observe that promoting the development of telecommunications infrastructure on Tribal lands is consistent with the Commission's unique trust relationship with Tribes. As we recognized previously, "by increasing the total number of individuals, both Indian and non-Indian, who are connected to the network within a tribal community the value of the network for tribal members in that community is greatly enhanced."⁷⁹⁷ By structuring the support to benefit Tribal lands, rather than attempting to require wireless providers to distinguish between Tribal and non-Tribal customers, we will "reduc[e] the possible administrative burdens associated with implementation of the enhanced federal support, [and] eliminate a potential disincentive to providing service on Tribal lands."⁷⁹⁸

484. Support for Tribal lands generally will be awarded on the same terms and subject to the same rules as general Mobility Fund Phase I support.⁷⁹⁹ We find, however, that in some instances a more tailored approach is appropriate. For example, we adopt modest revisions to our general rules for establishing appropriate coverage units. We also adopt Tribal engagement requirements and preferences that reflect our unique relationship with Tribes. We believe that these measures should provide meaningful support to expand service to unserved areas in a way that acknowledges the unique characteristics of Tribal lands and reflects and respects Tribal sovereignty. As discussed below, we also propose an ongoing support mechanism for Tribal lands in Phase II of the Mobility Fund, as well as a separate Connect America Fund mechanism to reach the most remote areas, including Tribal lands.

485. *Size of Fund.* We dedicate \$50 million in one-time support for the Tribal Mobility Fund Phase I, which should help facilitate mobile deployment in unserved areas on Tribal lands. This amount is in addition to the \$300 million to be provided under the general Mobility Fund Phase I, for which qualifying Tribal lands would also be eligible, and is in addition to the up to \$100 million in ongoing support being dedicated to Tribal lands in the Tribal Mobility Fund Phase II.⁸⁰⁰ We believe that a one-time infusion of \$50 million through the Tribal Mobility Fund can make a difference in expanding the availability of mobile broadband in Tribal lands unserved by 3G. The \$50 million in one-time support we allocate today is approximately 25 percent of the ongoing support awarded to competitive ETCs serving Covered Locations in 2010. The more targeted nature of this support will enhance the impact of this significant one-time addition to current support levels. At the same time, this funding level is consistent with our commitment to fiscal responsibility and the varied objectives we have for our limited funds, including our proposals for ongoing support for mobile services as established below. We also observe that, although \$50 million reflects a smaller percentage of total Mobility Fund support than suggested by

⁷⁹⁶ See *Gila River Mobility Fund NPRM* Comments at 3-4; *NNTRC Mobility Fund NPRM* Reply at 2; *NPM and NCAI Mobility Fund NPRM* Comments at 4-5; *Smith Bagley April 18 PN* Comments at 3; *Standing Rock April 18 PN* Comments at 2-6.

⁷⁹⁷ *USF Twelfth Report and Order*, 15 FCC Rcd at 12,225, para. 29.

⁷⁹⁸ *Id.* at 12,225-26, para. 31.

⁷⁹⁹ We incorporate by reference the eligible geographic area, provider eligibility, public interest obligations, auction and post-auction processes, and program management and oversight measures established for Phase I of the Mobility Fund. To address concerns raised by commenters regarding the performance challenges posed by the reliance on satellite backhaul in Alaska, we clarify that funds may be used to construct or upgrade middle mile facilities. See *ACS Mobility Fund NPRM* Comments at 8; *GCI Mobility Fund NPRM* Comments at 2-3.

⁸⁰⁰ See *infra* para. 494.

some commenters,⁸⁰¹ the \$300 million we adopt today is at the upper end of our proposed range and, thus, \$50 million is roughly equivalent to what many commenters suggested. On balance, we believe that there is an opportunity for entities to obtain meaningful support – both through the Tribal and general Mobility Fund Phase I auctions, in addition to the ongoing support mechanisms – in order to accelerate mobile broadband deployment on Tribal lands.

486. *Mechanism To Award Support.* Consistent with our general approach to awarding Phase I support, to maximize consumer benefits we generally will award support to one provider per qualifying area by reverse auction and will only award support to more than one provider per area where doing so would allow us to cover more total units given the budget constraint.⁸⁰² We recognize that some commenters suggested alternative mechanisms for awarding support to Tribal lands. These included a procurement model under which Tribes would solicit bids for service,⁸⁰³ a scoring mechanism the Commission could use to evaluate proposals according to certain criteria (generally reflective of need),⁸⁰⁴ and a process to give Tribal carriers first priority in receiving funds.⁸⁰⁵

487. We agree that it is essential to award support in a way that respects and reflects Tribal needs. To that end, and as discussed below, we adopt Tribal engagement obligations to ensure that needs are identified and appropriate solutions are developed. We also adopt a bidding credit for Tribally-owned or controlled providers seeking to expand service on their Tribal lands. At the same time, we remain committed to our goal of awarding support in a fiscally responsible manner and targeting support to locations where it is most likely to make a difference. We are concerned that none of the alternatives suggested thus far would provide an effective means to maximize the impact of our limited budget to expand service as far as possible on unserved Tribal lands. In addition, we are committed to awarding funds openly, transparently, and fairly. We believe that any subjective mechanism to assess the merits of various proposals or any mechanism that would provide an absolute priority to Tribes that have established their own communications service provider is less likely to promote these objectives. Accordingly, we conclude that a reverse auction mechanism, together with the Tribal engagement and preferences we adopt below, would best achieve our goals in expanding service to Tribal lands in a respectful, fair, and fiscally responsible manner.

488. *Establishing Unserved Units.* For purposes of determining the number of unserved units in a given geographic area, we conclude that for a Tribal Phase I auction, a population-based metric is more appropriate than road miles, which will be used in a general Mobility Fund Phase I auction.⁸⁰⁶

⁸⁰¹ See, e.g., Gila River *Mobility Fund NPRM* Comments at 7 (recommending 20 percent allocation of one-time Mobility Fund to Tribal lands); NTTA *Mobility Fund NPRM* Comments at 7 (recommending up to 30 percent allocation); NPM and NCAI *Mobility Fund NPRM* Comments at 8 (recommending 33 percent allocation).

⁸⁰² We note that in certain limited circumstances, depending on the bidding at auction, allowing small overlaps in support could result in greater overall coverage.

⁸⁰³ NTTA *Mobility Fund NPRM* Comments at 14-15; NTTA *April 18 PN* Comments at 7-8.

⁸⁰⁴ Standing Rock Sioux *April 18 PN* Comments at 5-7.

⁸⁰⁵ NPM and NCAI *Mobility Fund NPRM* Comments at 11. Several commenters note that the Commission should also undertake efforts to identify spectrum to more effectively serve Tribal lands. See Gila River *Mobility Fund NPRM* Comments at 11-12; NPM and NCAI *Mobility Fund NPRM* Comments at 6; NTTA *Mobility Fund NPRM* Comments at 4. We note that we have raised those issues in the *Spectrum over Tribal Lands* proceeding, and recognize that proceeding's importance. See *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, WT Docket No. 11-40, Notice of Proposed Rulemaking, 26 FCC Rcd 2623 (2011) (*Spectrum over Tribal Lands NPRM*).

⁸⁰⁶ In light of this conclusion, we note that the “drive tests” used to demonstrate coverage supported by Tribal Mobility Fund Phase I may be conducted by means other than in automobiles on roads. Providers may demonstrate (continued...)

While road miles generally best reflect the value of mobility, there are compelling concerns raised here that warrant a different approach in the context of Tribal lands. We are sensitive to concerns raised by Tribes that mobile wireless deployment to date on Tribal lands has largely centered along major highways and has, unlike other rural deployments, ignored population centers and community anchor institutions.⁸⁰⁷ Moreover, we observe that infrastructure generally is less developed on Tribal lands, particularly in Alaska.⁸⁰⁸ While we note that the stringent coverage requirement we incorporate here will help to mitigate the concern that these patterns could continue in Mobility-Fund-supported areas, we find that, taken together, this concern still suggests that a population-based metric is more appropriate for Tribal lands.

b. Tribal Engagement Obligation

489. Throughout this proceeding, commenters have repeatedly stressed the essential role that Tribal consultation and engagement plays in the successful deployment of mobile broadband service.⁸⁰⁹ We agree. For both the general and Tribal Mobility Fund Phase I auctions, we encourage applicants seeking to serve Tribal lands to begin engaging with the affected Tribal government as soon as possible but no later than the submission of its long-form.⁸¹⁰ Moreover, any bidder winning support for areas within Tribal lands must notify the relevant Tribal government no later than five business days after being identified by Public Notice as such a winning bidder. Thereafter, at the long-form application stage, in annual reports, and prior to any disbursement of support from USAC, Mobility Fund Phase I winning bidders will be required to comply with the general Tribal engagement obligations discussed *infra* in Section IX.A.⁸¹¹

c. Preference for Tribally-Owned or Controlled Providers

490. Consistent with record evidence⁸¹² and Commission precedent,⁸¹³ we adopt a preference for Tribally-owned or controlled providers⁸¹⁴ seeking general or Tribal Mobility Fund Phase I support. (Continued from previous page) _____

coverage of an area with a statistically significant number of tests in the vicinity of residences being covered. Moreover, equipment to conduct the testing can be transported by off-road vehicles, such as snow-mobiles or other vehicles appropriate to local conditions.

⁸⁰⁷ See, e.g., NPM and NCAI *Mobility Fund NPRM* Comments at 7-8; Benton et al. *Mobility Fund NPRM* Reply at 11.

⁸⁰⁸ See, e.g., ACS *Mobility Fund NPRM* Comments at 2-3; Gila River *Mobility Fund NPRM* Comments at 3-4; NPM and NCAI *Mobility Fund NPRM* Comments at 5.

⁸⁰⁹ See, e.g., NPM and NCAI *Mobility Fund NPRM* Comments at 8-9; Navajo Commission *Mobility Fund NPRM* Reply at 4; Twin Houses *April 18 PN* Comments at 1-3, 6.

⁸¹⁰ We note, however, that any such engagement must be done consistent with our auction rules prohibiting certain communications during the competitive bidding process.

⁸¹¹ See *infra* Section IX.A.

⁸¹² See NTTA *April 18 PN* Comments at 11; So Cal TDV *April 18 PN* Comments at 2; Twin Houses *April 18 PN* Comments at 3.

⁸¹³ See, e.g., *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52, First Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 1583, 1587-97, paras. 7-27 (2010) (*Rural Radio R&O and FNPRM*); see also *Spectrum over Tribal Lands NPRM*, 26 FCC Rcd at 2635-37, paras. 35-40.

⁸¹⁴ Eligible entities include Tribes or tribal consortia, and entities majority owned or controlled by Tribes. *Rural Radio R&O and FNPRM*, 25 FCC Rcd at 1587, para. 7. Currently there are eight Tribally-owned and controlled providers.

The preference will act as a “reverse” bidding credit that will effectively reduce the bid amount of a qualified Tribally owned- or controlled provider by a designated percentage for the purpose of comparing it to other bids, thus increasing the likelihood that Tribally-owned and controlled entities will receive funding. The preference will be available with respect to the eligible census blocks located within the geographic area defined by the boundaries of the Tribal land associated with the Tribal entity seeking support. While commenters generally support a preference for Tribally-owned and controlled providers, we received no comment on the appropriate size of a bidding credit. We note that, in the spectrum auction context, the Commission typically awards small business bidding credits ranging from 15 to 35 percent, depending on varying small business size standards.⁸¹⁵ We believe that a bidding credit in that range would further Tribal self-government by increasing the likelihood that the bid would be awarded to a Tribal entity associated with the relevant Tribal land, without providing an unfair advantage over substantially more cost-competitive bids. Accordingly we adopt a 25 percent bidding credit.⁸¹⁶

d. ETC Designation for Tribally-Owned or Controlled Entities

491. To afford Tribes an increased opportunity to participate at auction, in recognition of their interest in self-government and self-provisioning on their own lands, we will permit a Tribally-owned or controlled entity that has an application for ETC designation pending at the relevant short-form application deadline to participate in an auction to seek general and Tribal Mobility Fund Phase I support for eligible census blocks located within the geographic area defined by the boundaries of the Tribal land associated with the Tribe that owns or controls the entity. We note that allowing such participation at auction in no way prejudices the ultimate decision on a Tribally-owned or controlled entity’s ETC designation and that support will be disbursed only after it receives such designation.⁸¹⁷

e. Tribal Priority

492. We conclude that further comment is warranted before we would move forward with a Tribal priority process that would afford Tribes “priority units” to allocate to areas of particular importance to them.⁸¹⁸ As noted below, we are seeking additional input on this proposal in the context of the Tribal Mobility Fund Phase II. In the meantime, we believe that the Tribal engagement obligations we adopt here, combined with build-out obligations, will ensure that Tribal needs are met in bringing service to unserved Tribal communities in the Mobility Fund Phase I.

3. Mobility Fund Phase II

493. In addition to Phase I of the Mobility Fund, we also establish today Phase II of the Mobility Fund, which will provide ongoing support for mobile services in areas where such support is needed. As noted above, millions of Americans live in communities where current-generation mobile service is unavailable or where current-generation mobile service is available only with universal service support, and millions more work in or travel through such areas. Whereas Mobility Fund Phase I will provide one-time funding for the expansion of current and next generation mobile networks, here, we establish Phase II of the Mobility Fund in recognition of the fact that there are areas in which offering of mobile services will require ongoing support. We adopt a budget for Phase II below and seek further comment on the details of Phase II in the FNRPM accompanying this Order.

⁸¹⁵ See 47 C.F.R. § 1.2110(f).

⁸¹⁶ See also *infra* para. 1166 (seeking comment on a proposal to adopt a similar credit for Mobility Fund Phase II).

⁸¹⁷ A Tribally-owned or controlled entity that does not obtain and provide the required ETC designation will not be entitled to any support payments and may ultimately be in default in accordance with the rules. See 47 C.F.R. § 54.1005(b)(3)(v); 47 C.F.R. § 1.21004.

⁸¹⁸ See discussion *infra*; see also *Tribal Mobility Fund Public Notice*, 26 FCC Rcd at 5998-99.

494. We designate \$500 million annually for ongoing support for mobile services, to be distributed in Phase II of the Mobility Fund. Of this amount, we anticipate that we would designate up to \$100 million to address the special circumstances of Tribal lands. We set a budget of \$500 million to promote mobile broadband in these areas, where a private sector business case cannot be met without federal support. Although the budget for fixed services exceeds the budget for mobile services, we note that today significantly more Americans have access to 3G mobile coverage than have access to residential broadband via fixed wireless, DSL, cable, or fiber.⁸¹⁹ We expect that as 4G mobile service is rolled out, this disparity will persist – private investment will enable the availability of 4G mobile service to a larger number of Americans than will have access to fixed broadband with speeds of at least 4 Mbps downstream and 1 Mbps upstream.⁸²⁰

495. In 2010, wireless ETCs other than Verizon Wireless and Sprint received \$921 million in high-cost support. Under 2008 commitments to phase down their competitive ETC support, Verizon Wireless and Sprint have already given up significant amounts of the support they received under the identical support rule, and there is nothing in the record showing that either carrier is reducing coverage or shutting down towers even as this support is eliminated. Nor is there anything in the record that suggests AT&T or T-Mobile would reduce coverage or shut down towers in the absence of ETC support. We therefore find that it reasonable to assume that the four national carriers will maintain at least their existing coverage footprints even if the support they receive today is phased out. In 2010, \$579 million flowed to regional and small carriers, *i.e.*, carriers other than the four nationwide providers.⁸²¹ Of this \$579 million, we know in many instances that this support is being provided to multiple wireless carriers in the same geographic area.⁸²² We also note that the State Members of the Federal State Joint Board on Universal Service have proposed that the Commission establish a dedicated Mobility Fund that would provide \$50 million in the first year, \$100 million in the second year, and then increase by \$100 million each year until support reaches \$500 million annually.⁸²³ Thus, we believe that our \$500 million annual budget will be sufficient to sustain and expand the availability of mobile broadband. We anticipate as well that mobile providers may also be eligible for support in CAF 1 in areas where price cap carriers opt not to accept the state-level commitment, in addition to Mobility Fund Phase II support.

496. We recognize that some small proportion of geographic areas may be served by a single wireless ETC, which might reduce coverage if it fails to win ongoing support within our \$500 million budget. But the current record does not persuade us that the best approach to ensure continuing service in those instances is to increase our overall \$500 million budget. Rather, we have established a waiver process as discussed below, that a wireless ETC may use to demonstrate that additional support is needed for its customers to continue receiving mobile voice service in areas where there is no terrestrial mobile

⁸¹⁹ See *15th Annual Mobile Wireless Competition Report*, 26 FCC Rcd at 9742-43, paras. 120-122. See also *Section 706 Seventh Report and Order on Reconsideration*, 26 FCC Rcd at 8049-51, App. B.

⁸²⁰ *15th Annual Mobile Wireless Competition Report*, 26 FCC Rcd at 9736-41, paras. 109-116 and Table 11.

⁸²¹ See *2010 Disbursement Analysis*.

⁸²² Federal Communications Commission Response to United States House of Representatives Committee on Energy and Commerce, Universal Service Fund Data Request of June 22, 2011, Request 7: Study Areas with the Most Eligible Telecommunications Carriers (Table 1: Study Areas with the Most Eligible Telecommunications Carriers in 2010), (*Waxman Report*) available at <http://republicans.energycommerce.house.gov/Media/file/PDFs/2011usf/ResponsetoQuestion7.pdf>.

⁸²³ State Joint Board May 2, 2011 Comments at 68-73 (proposing that this support be provided through grants awarded by States on a project-specific basis to fund 50 percent of the debt cost of new construction, with the grants to be paid over ten years).

alternative.⁸²⁴

497. Of the \$500 million, we set aside up to \$100 million for a separate Tribal Mobility Fund, for the same reasons we articulated with respect to the Tribal Mobility Fund Phase I. In addition, we acknowledge that many Tribal lands require ongoing support in order to provide service and therefore designate a substantial level of funding to ensure that these communities are not left behind. We observe that this amount is roughly equivalent to the amount of funding currently provided to Tribal lands in the lower 48 states and in Alaska, excluding support awarded to study areas that include the most densely populated communities in Alaska.⁸²⁵

4. Eliminating the Identical Support Rule

498. *Background.* Section 54.307 of the Commission's rules, also known as the "identical support rule," provides competitive ETCs the same per-line amount of high-cost universal service support as the incumbent local exchange carrier serving the same area.⁸²⁶ As shown below, the identical support rule's primary role has been to support mobile services, although the Commission did not identify that purpose when it adopted the rule.⁸²⁷

499. In the NPRM, we sought comment on eliminating the identical support rule as we establish better targeted mechanisms to support mobility.⁸²⁸

500. The Federal-State Joint Board on Universal Service urged the Commission to eliminate the identical support rule in 2007, and the state members recently reiterated that viewpoint in this proceeding.⁸²⁹ In the current proceeding, a broad cross-section of stakeholders have advocated eliminating the identical support rule.⁸³⁰

⁸²⁴ See *infra* Section VII.G.

⁸²⁵ See NECA and USAC Data, USF Data Under USAC Memo of Understanding (Appendix C), CETCAAnalysisMOU5Extract.XLS, at http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/CETCAAnalysisMOU5Extract.XLS (listing initial competitive ETC support payments by month and by incumbent local exchange carrier study area).

⁸²⁶ 47 C.F.R. § 54.307. In adopting the identical support rule, the Commission assumed that competitive ETCs would be competitive LECs (*i.e.*, wireline telephone providers) competing directly with incumbent LECs for particular customers. See *Universal Service First Report and Order*, 12 FCC Rcd at 8932, para. 286. Based on this assumption, the Commission concluded that high-cost support should be portable – *i.e.*, that support would follow the customer to the new LEC when the customer switched service providers. *Id.* at 8932-33, paras. 287-88. The Commission planned that eventually all support would be provided based on forward-looking economic cost estimates and not based on the incumbents' embedded costs. *Id.* at 8932, paras. 287. The Commission did not contemplate the complementary role that mobile service would play in the years ahead.

⁸²⁷ See *Universal Service First Report and Order*, 12 FCC Rcd at 8944-45 paras. 311-13. As discussed in paragraph 501, wireline competitive ETCs received only \$23 million out of \$1.2 billion disbursed to competitive ETCs in 2010. *2010 Disbursement Analysis*

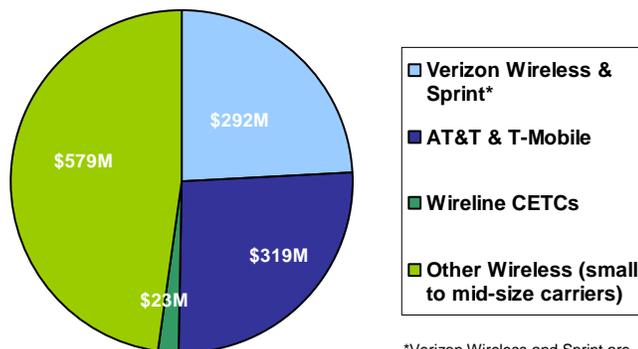
⁸²⁸ See American Cable Ass'n *USF/ICC Transformation NPRM* Comments at 18-19; Comcast *USF/ICC Transformation NPRM* Comments at 15; Iowa Utilities Board *USF/ICC Transformation NPRM* Comments at 9-10; Moss Adams *USF/ICC Transformation NPRM* Comments at 14; Rural Associations *USF/ICC Transformation NPRM* Comments at 57; Windstream *USF/ICC Transformation NPRM* Comments at 30-32; see also *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4677-78 paras. 403-07.

⁸²⁹ See *Joint Board 2007 Recommended Decision*, 22 FCC Rcd at 20491-94, paras. 55-68; State Joint Board Members *USF/ICC Transformation NPRM* Comments at 10.

⁸³⁰ See Verizon & Verizon Wireless *USF/ICC Transformation NPRM* Comments at 47-50; AT&T *USF/ICC Transformation NPRM* Comments at 90, 107; CenturyLink *USF/ICC Transformation NPRM* Comments at 30, 35; (continued...)

501. In 2010, 446 competitive ETCs, owned by 212 holding companies, received funding under the identical support rule.⁸³¹ Aside from Verizon Wireless, which agreed in 2008 to give up its competitive ETC high-cost support as a condition of obtaining Commission approval of a transfer of control, the largest competitive ETC recipient by holding company in 2010 was AT&T, which received \$289 million.⁸³² Last year, about \$611 million went to one of the four national wireless providers, representing approximately 50 percent of competitive ETC support disbursed in 2010. The remaining \$602 million was disbursed to the other 208 competitive ETC holding companies. Of this, approximately \$23 million was disbursed to wireline competitive ETCs.

Total 2010 CETC Funding



Total : \$1.2B

*Verizon Wireless and Sprint are already subject to voluntary phase-down of high-cost competitive ETC support.

502. *Discussion.* We eliminate the identical support rule. Based on more than a decade of experience with the operation of the current rule and having received a multitude of comments noting that (Continued from previous page) _____

Windstream *USF/ICC Transformation NPRM* Comments at 30-32; Florida Public Service Commission *USF/ICC Transformation NPRM* Comments at 10-11; NASUCA *USF/ICC Transformation NPRM* Comments at 46-47. Several commenters supported retaining the identical support rule for some carriers, in some places, or with adjustments, but not as it currently exists for all competitive ETCs. See ACS *USF/ICC Transformation NPRM* Comments at 21 (proposing per-line freeze); Cox *USF/ICC Transformation NPRM* Comments at 10-11 & n.14 (proposing to retain identical support for wireline competitive ETCs until CAF is implemented); GCI *USF/ICC Transformation NPRM* Comments at 30 (proposing to retain identical support for Covered locations); Docomo Pacific et al *USF/ICC Transformation NPRM* Comments at 14-15 (proposing to retain identical support in U.S. Territories).

⁸³¹ Actual disbursements in 2010 were \$1.22 billion. *2010 Disbursement Analysis*; USAC High-Cost Disbursement Tool. These amounts include disbursements to Verizon Wireless and Sprint that USAC now is in the process of reclaiming pursuant to the *Corr Wireless Order*. *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, 25 FCC Rcd 12854, 12859-63, paras. 14-22 (2010) (*Corr Wireless Order*).

⁸³² *2010 Disbursement Analysis*; USAC High-Cost Disbursement Tool.

the current rule fails to efficiently target support where it is needed, we reiterate the conclusion that this rule has not functioned as intended.⁸³³ As described in more detail below, identical support does not provide appropriate levels of support for the efficient deployment of mobile services in areas that do not support a private business case for mobile voice and broadband. Because the explicit support for mobility we adopt today will be designed to appropriately target funds to such areas, the identical support rule is no longer necessary or in the public interest.

503. The Commission anticipated that universal service support would be driven to the most efficient providers as they captured customers from the incumbent provider in a competitive marketplace. It originally expected that growth in subscribership to a competitive ETC's services would necessarily result in a reduction in subscribership to the incumbent's services. Instead, the vast majority of competitive ETC support has been attributable to the growing role of wireless in the United States. Overwhelmingly, high-cost support for competitive ETCs has been distributed to wireless carriers providing mobile services.⁸³⁴ Although nearly 30 percent of households nationwide have cut the cord and have only wireless voice service, many households subscribe to both wireline voice service and wireless voice service.⁸³⁵ Moreover, because households typically have multiple mobile phones, wireless competitive ETCs have been able to receive multiple subsidies for the same household. Although the expansion of wireless service has brought many benefits to consumers, the identical support rule was not designed to efficiently provide appropriate levels of support for mobility.

504. The support levels generated by the identical support rule bear no relation to the efficient cost of providing mobile voice service in a particular geography. In areas where the incumbent's support per line is high, a competitive ETC will receive relatively high levels of support per line, while it would receive markedly less support in an adjacent area with the same cost characteristics, if the incumbent there is receiving relatively little support per line. This makes little sense. Demographics, topography, and demand by travelers for mobile coverage along roads, as opposed to residences, are considerations that may create different business cases for fixed vs. mobile voice services in different areas, with a resulting effect on the level of need for subsidization.⁸³⁶ As a result of these and other differences in cost and revenue structures, the per-line amounts received by competitive ETCs are a highly imperfect approximation of the amount of subsidy necessary to support mobile service in a particular geographic area and such structures have simply missed the mark.

505. Given the way the identical support rule operates, wireless competitive ETCs often do not have appropriate incentives for entry. Some areas with per-line support amounts that are relatively high may be attracting multiple competitive ETCs, each of which invests in its own duplicative infrastructure. Indeed, many areas have four or more competitive ETCs providing overlapping service.⁸³⁷ These areas

⁸³³ *Interim Cap Order*, 23 FCC Rcd at 8843-44, paras. 19-20. *See also supra* note 826.

⁸³⁴ USAC estimates that 95 to 97 percent of high-cost support to competitive ETCs is provided to wireless carriers. High-Cost Program Quarterly Statistics, "High-Cost Support Distribution by Wireless & Wireline CETCs, 1998-1Q2011" available at <http://www.usac.org/about/universal-service/fund-facts/fund-facts-high-cost-quarterly-program-statistics.aspx>

⁸³⁵ Blumberg & Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July – December 2010*, CDC Division of Health Interview Statistics, National Center for Health Statistics (rel. June 8, 2011) available at www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201106.pdf.

⁸³⁶ *See OBI Broadband Availability Gap*; see also Rural Associations *USF/ICC Transformation NPRM* Comments at 57 ("[d]ifferent network technologies provide different service functionalities and entail different construction, operating and maintenance costs").

⁸³⁷ Most of Puerto Rico, including San Juan, is served by four or more competitive ETCs receiving support. *See Universal Service Administrative Company, Federal Universal Service Support Mechanism Fund Size Projections* (continued...)

may be attracting investment that could otherwise be directed elsewhere, including areas that are not currently served. Conversely, in some areas the subsidy provided by the identical support rule may be too low, so that no competitive ETCs seek to serve the area, resulting in inadequate mobile coverage.

506. Moreover, today, competitive ETC support is calculated, and lines are reported, according to the billing address of the subscriber.⁸³⁸ Although the identical support rule provides a per-line subsidy for each competitive ETC handset in service, the customer need not use the handset at the billing address in order to receive support. Indeed, mobile competitive ETCs may receive support for some customers that rarely use their handsets in high-cost areas, but typically use their cell phones on highways and in towns or other places in which coverage would be available even without support.⁸³⁹ As currently constructed, the rule fails to ensure that facilities are built in areas that actually lack coverage.⁸⁴⁰

507. We reject contentions that competitive ETCs serving certain types of areas should be exempted from elimination of the identical support rule.⁸⁴¹ For example, a number of commenters from Alaska suggest that Alaska should be excluded altogether from today's reforms, and that high-cost support should generally continue in Alaska at existing levels with redistribution of that support within the state.⁸⁴² We appreciate and recognize that Alaska faces uniquely challenging operating conditions, and agree that national solutions may require modification to serve the public interest in Alaska. We do not, however, believe that the Alaskan proposals ultimately best serve the interest of Alaskan consumers. (Continued from previous page) _____

for Fourth Quarter 2011, filed Aug. 2, 2011, at Apps. HC10, HC19. Similarly, four or more competitive ETCs are designated to serve much of Mississippi and Alabama, including sizable communities such as Jackson, Birmingham, and Huntsville, and along the Interstate highways and other major roadways of the state. *Id.* at App. HC21. *See also FCC Response to House Energy and Commerce Committee*, Table 1.

⁸³⁸ 47 C.F.R. § 54.307(b).

⁸³⁹ Conversely, some carriers have recognized that the use of billing addresses does not accurately represent the costs of serving their customers who reside in low-cost areas but use their mobile phones in remote areas, such as oil fields. *See Arctic Slope Tel. Ass'n Cooperative, Inc.*, Petition for Waiver of the Federal Communications Commissions Rules Concerning the Administration of the Universal Service Fund, CC Docket No. 96-45 (filed Jan. 31, 2008); Letter from John Nakahata, Counsel to General Communications, Inc., to Dana Shaffer, FCC, filed January 26, 2009 (proposing alternative methods of locating customers for high-cost universal service purposes).

⁸⁴⁰ We acknowledge that ETC designations typically create build-out requirements for wireless carriers that are designated ETCs. *See Mississippi PSC USF/ICC Transformation NPRM Comments* at 4-6. However, we believe that federal support to advance our goal of achieving universal availability of mobile voice and broadband should provide direct incentives for the achievement of our goals, aligning support payments with deployment and coverage.

⁸⁴¹ *See GCI USF/ICC Transformation NPRM Comments* at 30 (proposing to retain identical support for Covered locations); Smith Bagley *USF/ICC Transformation NPRM Comments* at 9 (proposing to retain identical support for Covered Locations); Docomo Pacific et al *USF/ICC Transformation NPRM Comments* at 14-15 (proposing to retain identical support in Territories); ACS *USF/ICC Transformation NPRM Comments* at 21 (proposing "improved" identical support frozen on a per-line basis); Alaska Rural August 29 *USF/ICC Transformation NPRM Comments* at 7-11; National Tribal Telecom Ass'n *USF/ICC Transformation NPRM Comments* at 49; MTPCS *USF/ICC Transformation NPRM Comments* at 7-8; MTPCS & Viaero *USF/ICC Transformation NPRM Comments* at 22-24; IT&E *USF/ICC Transformation NPRM Reply* at 2. Nonetheless, as described below, *see infra* paras. 529-531, we delay the phase-down of identical support for certain competitive ETCs serving remote areas of Alaska and for Standing Rock Telecommunications, a Tribally owned competitive ETC, by two years. During that interim, the identical support rule will continue to apply in those areas, albeit subject to constraints. The identical support rule will be fully eliminated in all areas when the delayed phase-down begins.

⁸⁴² *GCI USF/ICC Transformation NPRM Comments* at 30; *ACS USF/ICC Transformation NPRM Comments* at 21; *Alaska Rural August 3 PN Comments* at 7-11.

We believe that the package of reforms adopted in the Order targeting funding for broadband and mobility, eliminating duplicative support, and ensuring all mechanisms provide incentives for prudent and efficient network investment and operation is the best approach for all parts of the Nation, including Alaska.

508. That said, it is important to ensure our approach is flexible enough to take into account the unique conditions in places like Alaska, and we make a number of important modifications to the national rules, particularly with respect to public interest obligations,⁸⁴³ the Mobility Funds,⁸⁴⁴ and competitive ETC phase down,⁸⁴⁵ to account for those special circumstances, such as 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. Further, to the extent specific proposals have a disproportionate or inequitable impact on any carriers (wireline or wireless) serving Alaska, we note that we will provide for expedited treatment of any related waiver requests for all Tribal and insular areas.⁸⁴⁶ We believe this approach, on balance, provides the benefits of our national approach while taking into account the unique operating conditions in some communities. Analogous proposals to maintain existing wireline and wireless support levels in other geographic areas, including the U.S. Territories and other Tribal lands, suffer the same infirmities as the proposals related to Alaska,⁸⁴⁷ and are also rejected.

509. We note that the elimination of the identical support rule applies also to competitive ETCs providing fixed services, including competitive wireline service providers. The reforms we adopt elsewhere in the Order are designed to achieve nearly ubiquitous broadband deployment. In those states where the incumbent price cap carrier declines to make a state-level commitment to build broadband in exchange for model-based support, all competitive ETCs will have the opportunity to compete to provide supported services. In other areas, where the incumbent service providers will be responsible for achieving the universal service goals, we find it would not be in the public interest to provide additional support to carriers providing duplicative services. In addition, in areas where unsubsidized providers have built out service, no carrier – incumbent or competitive – will receive support, placing all providers on even footing.⁸⁴⁸

510. We reject any arguments that we may not eliminate the identical support rule because doing so would prevent some carriers from receiving high-cost support. Section 254 does not mandate the receipt of support by any particular carrier. Rather, as the Commission has indicated and the courts have agreed, the “purpose of universal service is to benefit the customer, not the carrier.”⁸⁴⁹ ETCs are not entitled to the expectation of any particular level of support, or even any support, so long as the level of support provided is sufficient to achieve universal service goals. As explained above, we find that the

⁸⁴³ See *supra* para. 101.

⁸⁴⁴ See *supra* paras. 481-492, 497.

⁸⁴⁵ See *infra* paras. 529-531.

⁸⁴⁶ See *infra* para. 544.

⁸⁴⁷ See, e.g., Smith Bagley *USF/ICC Transformation NPRM* Comments at 9; National Tribal Telecom Ass’n *USF/ICC Transformation NPRM* Comments at 49; MTPCS *USF/ICC Transformation NPRM* Comments at 7-8; Docomo Pacific et al. *USF/ICC Transformation NPRM* Comments at 14-15; IT&E *USF/ICC Transformation NPRM* Reply at 2.

⁸⁴⁸ See *supra* para. 170.

⁸⁴⁹ *Rural Cellular Association v. FCC*, 588 F.3d 1095, 1103 (D.C. Cir. 2009) (quoting *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000)). See also *supra* para. 293.

identical support rule does not provide an amount to any particular carrier that is reasonably calculated to be sufficient but not excessive for universal service purposes.

511. For all of these reasons, we find the identical support rule does not effectively serve the Commission's goals, and we eliminate the rule effective January 1, 2012.

5. Transition of Competitive ETC Support to CAF

512. *Background.* In the NPRM, we proposed to transition all existing support for competitive ETCs to a new CAF program over a five-year period.⁸⁵⁰ In the alternative, we proposed to transition existing support to the new CAF program over a five-year period, but to allow individual competitive ETCs to make either rules-based or waiver-based showings that would permit them to continue to receive support until the new CAF program had been implemented.⁸⁵¹ We also sought comment on GCI's proposal that any transition of competitive ETC support to the CAF include an exception for competitive ETCs serving Tribal lands and Alaska Native regions ("covered locations").⁸⁵²

513. *Discussion.* We transition existing competitive ETC support to the CAF, including our reformed system for supporting mobile service over a five-year period beginning July 1, 2012. We find that a transition is desirable in order to avoid shocks to service providers that may result in service disruptions for consumers. Several commenters supported longer transition periods, but we do not find their arguments compelling.⁸⁵³ We understand that current recipients would prefer a slower, longer transition that provides them with more universal service revenues under the current system. We find, however, that a five-year transition will be sufficient for competitive ETCs that are currently receiving high-cost support to adjust and make necessary operational changes to ensure that service is maintained during the transition.

514. Moreover, during this period, competitive ETCs offering mobile wireless services will have the opportunity to bid in the Mobility Fund Phase I auction in 2012 and participate in the second phase of the Mobility Fund in 2013. Competitive ETCs offering broadband services that meet the performance standards described above will also have the opportunity to participate in competitive bidding for CAF support in areas where price cap companies decline to make a state-level broadband commitment in exchange for model-determined support, as described above, in 2013. With these new funding opportunities, many carriers, including wireless carriers, could receive similar or even greater amounts of funding after our reforms than before, albeit with that funding more appropriately targeted to the areas that need additional support.

515. For the purpose of this transition, we conclude that each competitive ETC's baseline support amount will be equal to its total 2011 support in a given study area, or an amount equal to \$3,000 times

⁸⁵⁰ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4640-42, paras. 246-49.

⁸⁵¹ *Id.* at paras. 250-55.

⁸⁵² *Id.* at para. 259.

⁸⁵³ See RTG *USF/ICC Transformation NPRM* Comments at 4, 10; United States Cellular *USF/ICC Transformation NPRM* Comments at 15; USA Coalition at 22. Some commenters urged immediate elimination of competitive ETC funding. XO Communications *USF/ICC Transformation NPRM* Comments at 38-39; RICA *USF/ICC Transformation NPRM* Comments at 11-15 (proposing immediate elimination of identical support rule, but support based on own costs); see also NASUCA *USF/ICC Transformation NPRM* Comments at 45 (proposing immediate elimination of IAS for competitive ETCs); Sprint Nextel *USF/ICC Transformation NPRM* Comments at 34 (proposing 3-year phase-down); Verizon *USF/ICC Transformation NPRM* Comments at 49-50 (proposing immediate 40 percent reduction).

the number of reported lines as of year-end 2011, whichever is lower.⁸⁵⁴ Using a full calendar year of support to set the baseline will provide a reasonable approximation of the amount that competitive ETCs would currently expect to receive, absent reform, and a natural starting point for the phase-down of support.

516. In addition, we limit the baseline to \$3,000 per line in order to reflect similar changes to our rules limiting support for incumbent wireline carriers to \$3,000 per line per year.⁸⁵⁵ As discussed above, the per-line amounts received by competitive ETCs are a highly imperfect approximation of the amount of subsidy necessary to support mobile service in a particular geographic area. There is no indication in the record before us that competitive ETCs need support in excess of \$3,000 per line to maintain existing service pending transition to the Mobility Fund. Moreover, if we did not apply the \$3,000 per line limit to the baseline amount for competitive ETCs, their baselines could, in some circumstances, be much higher than the amount that they would have been permitted had we retained the identical support rule going forward, due to other changes that may lower support for the incumbent carrier.

517. Because the amount of Mobility Fund Phase II support provided will be designed to provide a sufficient level of support for a mobile carrier to provide service, we find there is no need for any carrier receiving Mobility Fund Phase II support to also continue receiving legacy support. Therefore, any such carrier will cease to be eligible for phase-down support in the first month it is eligible to receive support pursuant to the Mobility Fund Phase II. The receipt of support pursuant to Mobility Fund Phase I will not impact a carrier's receipt of support under the phase-down. Similarly, the receipt of support pursuant to Mobility Fund Phase II for service to a particular area will not affect a carrier's receipt of phase-down support in other areas.⁸⁵⁶

518. We note that, pursuant to section 214(e) of the Act, competitive ETCs are required to offer service throughout their designated service areas.⁸⁵⁷ This requirement remains in place, even as support provided pursuant to the identical support rule is phased down. A competitive ETC may request modification of its designated service area by petitioning the entity with the relevant jurisdictional authority.⁸⁵⁸ In considering such petitions, the Commission will examine how an ETC modification would affect areas for which there is no other mobile service provider, and we encourage state commissions to do the same.

519. Competitive ETC support per study area will be frozen at the 2011 baseline, and that monthly baseline amount will be provided from January 1, 2012 to June 30, 2012. Each competitive ETC will then receive 80 percent of its monthly baseline amount from July 1, 2012 to June 30, 2013, 60 percent of its baseline amount from July 1, 2013, to June 30, 2014, 40 percent from July 1, 2014, to June 30, 2015, 20 percent from July 1, 2015, to June 30, 2016, and no support beginning July 1, 2016. We

⁸⁵⁴ For the purpose of this transition, "total 2011 support" is the amount of support disbursed to a competitive ETC for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by USAC on January 31, 2012.

⁸⁵⁵ See *supra* paras. 272-279. For the purpose of applying the \$3,000 per line limit, USAC shall use the average of lines reported by a competitive ETC pursuant to line count filings required for December 31, 2010, and December 31, 2011. This will provide an approximation of the number of lines typically served during 2011.

⁸⁵⁶ In the FNPRM, we seek comment on whether competitive ETCs providing fixed service should be subject to a similar rule to the extent they win CAF Phase II support. See *infra* paras. 1095-1097.

⁸⁵⁷ 47 U.S.C. § 214(e). We seek comment on issues related to ETC service areas in the attached Further Notice. See *infra* paras. 1089-1120.

⁸⁵⁸ 47 U.S.C. §§ 214(e)(2), (6). A competitive ETC may also be required to seek redefinition of a rural telephone company's service area in some instances. 47 U.S.C. § 214(e)(5).

expect that the Mobility Fund Phase I auction will occur in 2012, and that ongoing support through the Mobility Fund Phase II will be implemented by 2013, with \$500 million expressly dedicated to mobility. If the Mobility Fund Phase II is not operational by June 30, 2014, we will halt the phase-down of support until it is operational.⁸⁵⁹ We will similarly halt the phase-down of support for competitive ETCs serving Tribal lands if the Mobility Fund Phase II for Tribal lands has not been implemented at that time. We anticipate that any temporary halt of the phase-down would be accompanied by additional mobile broadband public interest obligations, to be determined.⁸⁶⁰

520. We note that Verizon Wireless and Sprint will continue to be subject to the phase-down commitments they made in the November 2008 merger Orders.⁸⁶¹ Consistent with the process we set forth in the *Corr Wireless Order*, their specific phase downs will be applied to the revised rules of general applicability we adopt today.⁸⁶² As a result, each carrier will have its baseline support calculated based on disbursements, with a 20 percent reduction applied beginning July 1, 2012. Sprint, which elected Option A described in the *Corr Wireless Order*, will, in 2012, have an additional reduction applied as necessary to reduce its support to 20 percent of its 2008 baseline amount. Verizon Wireless, which elected Option B, will, in 2012, have an 80 percent reduction applied to the support it would otherwise receive. In 2013, neither carrier will receive phase down support, consistent with the commitments. To the extent that they qualify by remaining ETCs or obtaining ETC designations and agreeing to the obligations imposed on all Mobility Fund recipients, they will be permitted to participate in Mobility Fund Phases I and II.⁸⁶³

521. In determining this transition process, we also considered (a) applying the reduction factors to each state's interim cap amount, or (b) converting each competitive ETC's baseline amount to a per-line amount, to which the reduction factor would be applied. We reject these alternatives because they would provide less certainty regarding support amounts for competitive ETCs during the transition and would create greater administrative burdens and complexity. Under the first alternative, an individual competitive ETC's support would continue to be affected by line counts, support calculations and relinquishments for other, unrelated carriers within the state. Under the second alternative, a competitive

⁸⁵⁹ We estimate that this would stabilize competitive ETC phase-down support at approximately \$600 million annually.

⁸⁶⁰ The temporary halt will apply to wireline competitive ETCs as well as competitive ETCs providing mobile services. As noted above, *see supra* para. 501, wireline competitive ETCs receive a relatively small portion of total competitive ETC support and developing administrative procedures to separately address wireline competitive ETCs would be unduly administratively burdensome.

⁸⁶¹ *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008); *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570 (2008).

⁸⁶² *Corr Wireless Order*, 25 FCC Rcd at 12589-61, paras. 14-17. The *Corr Wireless Order* provided Sprint and Verizon Wireless each with two options regarding how the merger commitments would be applied. Option A established a fixed baseline support amount to which a specified reduction factor would be applied each year during the phasedown. After calculating the carrier's support pursuant to the Commission's rules, the carrier's support is reduced pursuant to the merger commitment only if the support exceeds the reduced baseline. *Id.* Under Option B, the carrier's baseline floats each quarter, based on the amount of support it is eligible to receive pursuant to the Commission's rules, and the specified reduction factor is applied to that support amount. Sprint elected Option A and Verizon Wireless elected Option B.

⁸⁶³ *See supra* paras. 386-410.

ETC's support would fluctuate based on line growth or loss. We believe, on balance, that the additional certainty to all competitive ETCs and the administrative efficiencies for USAC of freezing study area support as the baseline, particularly at a time when considerable demands will be placed on USAC to implement an entirely new support mechanism, outweigh the potential negative impact to any individual competitive ETCs that otherwise might receive greater support amounts during the transition to the CAF. In addition, competitive ETCs will be relieved of the obligation to file quarterly line counts, which will reduce their administrative burden as well.

522. In the NPRM, we sought comment on whether exceptions to the phase down or other modified transitions should be permitted for some carriers.⁸⁶⁴ Although we adopt limited exceptions for some remote parts of Alaska described below and for one Tribally-owned carrier whose ETC designation was modified after release of the *USF-ICC Transformation NPRM*, we decline to adopt any general exceptions to our transition. Although some commenters have argued that broad exceptions will be needed, they did not generally provide the sort of detailed data and analysis that would enable us to develop a general rule for which carriers would qualify.⁸⁶⁵ The purpose of the phase down is to avoid unnecessary consumer disruption as we transition to new programs that will be better designed to achieve universal service goals, especially with respect to promoting investment in and deployment of mobile service to areas not yet served. We do not wish to encourage further investment based on the inefficient subsidy levels generated by the identical support rule. We conclude that phasing down and transitioning existing competitive support will not create significant or widespread risks that consumers in areas that currently have service, including mobile service, will be left without any viable mobile service provider serving their area.⁸⁶⁶

523. We will, however, consider waiver requests on a case-by-case basis.⁸⁶⁷ Consistent with the phase-down support's purpose of protecting existing service during the transition to the Mobility Fund programs, we would not find persuasive arguments that waivers are necessary in order to expand deployment and service offerings to new areas. We anticipate that future investment supported with universal service support will be provided pursuant to the new programs.

524. The Commission will carefully consider all requests for waiver of the phase down that meet the requirements described above. We expect that those requests will not be numerous. We note that two of the four nationwide carriers – Verizon Wireless and Sprint – have already given up significant amounts of the support they received under the identical support rule, and there is no indication in the record before us that those companies have turned off towers as a consequence of relinquishing their support.

525. We note that the transition we adopt here will include those carriers currently receiving support under the Covered Locations exception to the interim cap and those carriers that have sought to take advantage of the own-costs exception to the cap.⁸⁶⁸ In adopting the Covered Locations exception to the funding cap in the 2008 *Interim Cap Order*, we recognized that penetration rates for basic telephone

⁸⁶⁴ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4640-42, paras. 250-55.

⁸⁶⁵ See RTG *USF/ICC Transformation NPRM* Comments at 11; see also NASUCA *USF/ICC Transformation NPRM* Comments at 46 (arguing that fixed rules would be subject to abuse, but waivers may be necessary).

⁸⁶⁶ As described, *supra* para. 509, we think any loss of service is particularly unlikely with respect to consumers served by competitive ETCs providing *fixed* services – e.g., wireline competitive ETCs – because the incumbent LEC in the area served by the competitive carrier is required to provide voice service throughout its service territory.

⁸⁶⁷ See *infra* paras. 539-544.

⁸⁶⁸ See *Interim Cap Order*, 23 FCC Rcd at 8848-49, para. 31-33.

service on Tribal lands⁸⁶⁹ were lower than for the rest of the Nation, and we concluded that competitive ETCs serving those areas were not merely providing complementary services.⁸⁷⁰ Under this exception, competitive ETCs serving Tribal lands have operated without a cap, and have benefited from significant funding increases. Indeed, support provided for service in Covered Locations has nearly doubled, from an estimated \$72 million in 2008 to an estimated \$150 million in 2011, while competitive ETC high-cost support for the remainder of the nation was frozen.⁸⁷¹

526. We note that a significant numbers of supported lines under the Covered Locations exception are in larger cities in Alaska where multiple competitive ETCs often serve the same area.⁸⁷² The result is that a significant amount of support in Alaska is provided to competitive ETCs serving the three largest Alaskan cities, Anchorage, Fairbanks, and Juneau.⁸⁷³

527. The interim cap—along with its exceptions—was intended to be in place only until the Commission adopted comprehensive reforms to the high-cost program.⁸⁷⁴ We adopt those reforms today. It is therefore appropriate, as we transition away from the identical support rule and the interim cap to a new high-cost support mechanism, including for mobile services, that this transition should begin for all competitive ETCs, including those that previously received uncapped support under exceptions to the interim cap.

528. With respect to Covered Locations, we recognize the significant strides that competitive ETCs have made in Covered Locations in the last two years, and that more still must be done to support expanded mobile coverage on Tribal lands. But, as with the rest of the Nation, we conclude that the most effective way to do so will be through mechanisms that specifically and explicitly target support to expand coverage in Tribal lands where there is no economic business case to provide mobile service, not through the permanent continuation of the identical support rule.⁸⁷⁵ Our newly created Mobility Funds will provide dedicated funding to Tribal lands in a manner consistent with the policy objectives underlying our Covered Locations policy to continue to promote deployment in these communities.

529. We therefore lift the Covered Locations exception, and conclude that those carriers serving Tribal lands will be subject to the national five-year transition period. We find persuasive, however,

⁸⁶⁹ Covered Locations were defined in the *Interim Cap Order* to include tribal lands or Alaska Native regions as those terms are defined in section 54.400(e) of the Commission's rules. See 47 C.F.R. 54.400(e) (tribal lands or Alaska Native regions are "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.").

⁸⁷⁰ See *Interim Cap Order*, 23 FCC Rcd at 8848, para. 32.

⁸⁷¹ See High-Cost Program Quarterly Statistics, "Covered Locations Study Area Support" available at <http://usac.org/about/universal-service/fund-facts-charts/Covered-Locations-Study-Area-Support.pdf>

⁸⁷² Universal Service Administrative Company, Federal Universal Service Support Mechanism Fund Size Projections For First Quarter 2012, filed Nov. 2, 2011, at App. HC19. Fifty-nine percent of competitive ETC lines in Alaska are in three study areas that include Anchorage, Juneau, and Fairbanks. *Id.* In each of those study areas, at least three competitive ETCs receive funding today.

⁸⁷³ Twenty percent of 2010 high-cost competitive ETC disbursements in Alaska were distributed to competitive ETCs serving the Anchorage, Fairbanks, and Juneau study areas alone. Competitive ETC Support by Incumbent Study Area by Month as Provided by USAC (Attach. C Report 5, submitted pursuant to Memorandum of Understanding between Federal Communications Commission and the Universal Service Administrative Company), available at <http://transition.fcc.gov/wcb/iatdineca.html>.

⁸⁷⁴ See *Interim Cap Order*, 23 FCC Rcd at 8834, para. 1.

⁸⁷⁵ See *supra* paras. 481-492, 497.

arguments that carriers serving remote parts of Alaska,⁸⁷⁶ including Alaska Native villages, should have a slower transition path in order to preserve newly initiated services and facilitate additional investment in still unserved and underserved areas during the national transition to the Mobility Funds.⁸⁷⁷ Over 50 remote communities in Alaska have no access to mobile voice service today, and many remote Alaskan communities have access to only 2G services.⁸⁷⁸ While carriers serving other parts of Alaska will be subject to the national five-year transition period, we are convinced a more gradual approach is warranted for carriers in remote parts of Alaska. Specifically, in lifting the Covered Locations exception, we delay the beginning of the five-year transition period for a two-year period for remote areas of Alaska. As a result, we expect that ongoing support through the Mobility Fund Phase II, including the Tribal Mobility Fund Phase II, will be implemented prior to the beginning of the five-year transition period in July 2014 for remote parts of Alaska, providing greater certainty and stability for carriers in these areas.⁸⁷⁹ During this two-year period, we establish an interim cap for remote areas of Alaska⁸⁸⁰ for high-cost support for competitive ETCs, which balances the need to control the growth in support to competitive ETCs in uncapped areas and the need to provide a more gradual transition for the very remote and very high-cost areas in Alaska to reflect the special circumstances carriers and consumers face in those communities.⁸⁸¹

530. In addition, we adopt a limited exception to the phase-down of support for Standing Rock Telecommunications, Inc. (Standing Rock), a Tribally-owned competitive ETC that had its ETC designation modified within calendar year 2011 for the purpose of providing service throughout the entire

⁸⁷⁶ For purposes of this Order, we treat as remote areas of Alaska all areas other than the study areas, or portions thereof, that include the three major cities in Alaska with over 30,000 in population, Anchorage, Juneau, and Fairbanks. See <http://quickfacts.census.gov/qfd/states/02/0224230.html>. With respect to Anchorage, we exclude the ACS of Anchorage study area (SAC 613000) as well as Eagle River Zones 1 and 2 and Chugiak Zones 1 and 2 of the Matanuska Telephone Authority study area (SAC 619003). For Fairbanks, we exclude zone 1 of the ACS of Fairbanks (SAC 613008), and for Juneau, we exclude the ACS Alaska - Juneau study area (SAC 613012). We note that ACS and GCI concur that the study areas, or portions thereof, that include these three cities are an appropriate proxy for non-remote areas of Alaska. See Letter from John Nakahata, counsel to General Communications, Inc., to Marlene H. Dortch, Secretary, FCC (filed Oct. 21, 2011) (GCI/ACS Oct. 21 Letter). There is no evidence on the record that any accommodation is necessary to preserve service or protect consumers in these larger Alaskan communities.

⁸⁷⁷ GCI/ACS Oct. 21 Letter.

⁸⁷⁸ *Id.* at 2.

⁸⁷⁹ As noted above, carriers in remote areas of Alaska may not receive phase-down support in any area in which they receive support pursuant to either component of Mobility Fund Phase II. See *supra* para. 517. Further, we note that the halt of the phase-down described above would apply to remote areas of Alaska as well. See *supra* para. 519.

⁸⁸⁰ This cap will be modeled on the state-by-state interim cap that has been in place under the *Interim Cap Order*. 23 FCC Rcd at 8846, paras. 26-28. Specifically, the interim cap for remote areas of Alaska will be set at the total of all competitive ETC's baseline support amounts in remote areas of Alaska using the same process described above. See *supra* paras. 515-516. On a quarterly basis, USAC will calculate the support each competitive ETC would have received under the frozen per-line support amount as of December 31, 2011 capped at \$3000 per year, and then, if necessary, calculate a state reduction factor to reduce the total amount down to the cap amount for remote areas of Alaska. Specifically, USAC will compare the total amount of uncapped support to the interim cap for remote areas of Alaska. Where the total uncapped support is greater than the available support amount, USAC will divide the interim cap support amount by the total uncapped amount to yield the reduction factor. USAC will then apply the reduction factor to the uncapped amount for each competitive ETC within remote areas of Alaska to arrive at the capped level of high-cost support. If the uncapped support is less than the available capped support amount, no reduction will be required.

⁸⁸¹ See *supra* paras. 507-508.

Standing Rock Sioux Reservation.⁸⁸² We recognize that Tribally-owned ETCs play a vital role in serving their communities, often in remote, low-income, and unserved and underserved regions. We find that a tailored approach in this particular instance is appropriate because of the unique federal trust relationship we share with federally recognized Tribes,⁸⁸³ which requires the federal government to adhere to certain fiduciary standards in its dealings with Tribes.⁸⁸⁴ In this regard, the federal government has a longstanding policy of promoting Tribal self-sufficiency and economic development, as embodied in various federal statutes.⁸⁸⁵ As an independent agency of the federal government, “the Commission recognizes its own general trust relationship with, and responsibility to, federally recognized Tribes.”⁸⁸⁶ In keeping with this recognition, the Commission has previously taken actions to aid Tribally-owned companies, which are entities of their Tribal governments and instruments of Tribal self-determination.⁸⁸⁷ For example, we have adopted licensing procedures to increase radio station ownership by Tribes and Tribally-owned entities through the use of a “Tribal Priority.”⁸⁸⁸

531. A limited exception to the phase-down of competitive ETC support will give Standing Rock, a nascent Tribally-owned ETC that was designated to serve its entire Reservation and the only such ETC to have its ETC designation modified since release of the *USF-ICC Transformation NPRM* in February 2011, the opportunity to ramp up its operations in order to reach a sustainable scale to serve consumers in its service territory. We find that granting a two-year exception to the phase-down of support to this Tribally-owned competitive ETC is in the public interest. For a two-year period, Standing Rock will receive per-line support amounts that are the same as the total support per line received in the fourth quarter of this year. We adopt this approach in order to enable Standing Rock 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.⁸⁸⁹

⁸⁸² See *Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Area; Petition for Reconsideration of Standing Rock Telecommunications, Inc.’s Designation as an Eligible Telecommunications Carrier on the Standing Rock Sioux Reservation*, WC Docket No. 09-197, Memorandum Opinion and Order on Reconsideration, 26 FCC Rcd 9160 (2011) (*Standing Rock Final ETC Designation Order*).

⁸⁸³ See, e.g., *Seminole Nation v. United States*, 316 U.S. 286, 296 (1942) (citations omitted).

⁸⁸⁴ See, e.g., *United States v. Mitchell*, 463 U.S. 206 (1983).

⁸⁸⁵ See, e.g., *The Indian Financing Act of 1974*, 25 U.S.C. § 1451(1974); *The Indian Self-Determination and Education Assistance Act of 1975*, 25 U.S.C. § 450 (1975); *The Indian Civil Rights Act of 1968*, 25 U.S.C. § 1301 (1968).

⁸⁸⁶ *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, 16 FCC Rcd 4078, 4080-81 (2000) (*Tribal Policy Statement*).

⁸⁸⁷ See *Improving Communications Services for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672, 2677-78 (2011) (*Native Nations NOI*) (“Emphasizing the historic federal trust relationship between itself and the Tribes, and the ability of the Commission to create the Tribal Priority based on the constitutional classification of Tribes as governmental entities, the Commission limited eligibility for the Tribal Priority to Tribes and entities majority owned by Tribes and proposing to serve Tribal lands.”) (citing *Policies To Promote Rural Radio and To Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52, First Report and Order and Notice of Proposed Rulemaking, 25 FCC Rcd 1583, 1590, 1596) (*Rural Radio First Report and Order*).

⁸⁸⁸ *Rural Radio First Report and Order*, 25 FCC Rcd at 1587-88.

⁸⁸⁹ According to its most recently reported line counts, Standing Rock reported serving only 808 lines. See Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for First Quarter 2012, at Apps. HC19, HC20 (filed Nov. 2, 2011).

532. We conclude that carriers that have sought to take advantage of the “own-costs” exception to the existing interim cap on competitive ETC funds should not be exempted from the phase down of support. The “own costs” exception was intended to exempt carriers filing their own cost data from the interim cap to the extent their costs met an appropriate threshold.⁸⁹⁰ Because we are transitioning away from support based on the identical support rule and toward new high-cost support mechanisms, we see no reason to continue to make the exception available going forward.⁸⁹¹

F. Connect America Fund in Remote Areas

533. In this section, we establish a budget for CAF support in remote areas. This reflects our commitment to ensuring that Americans living in the most remote areas of the nation, where the cost of deploying wireline or cellular terrestrial broadband technologies is extremely high, can obtain affordable broadband through alternative technology platforms such as satellite and unlicensed wireless. As the National Broadband Plan observes, the cost of providing service is typically much higher for terrestrial networks in the hardest-to-serve areas of the country than in less remote but still rural areas.⁸⁹² Accordingly, we have exempted the most remote areas, including fewer than 1 percent of all American homes, from the home and business broadband service obligations that otherwise apply to CAF recipients.⁸⁹³ By setting aside designated funding for these difficult-to-serve areas, however, and by modestly relaxing the broadband performance obligations associated with this funding to encourage its use by providers of innovative technologies like satellite and fixed wireless, which may be significantly less costly to deploy in these remote areas, we can ensure that those who live and work in remote locations also have access to affordable broadband service.

534. Although we seek further comment on the details of distributing dedicated remote-areas funding in the Further Notice of Proposed Rulemaking accompanying this Order, we set as the budget for this funding at least \$100 million annually. Our choice of budget necessarily involves the reasonable exercise of predictive judgment, rather than a precise calculation: Many of the innovative, lower-cost approaches to serving hard to reach areas continue to evolve rapidly; we are not setting the details of the distribution mechanism in this Order; and we are balancing competing priorities for funding. Nevertheless, we conclude that a budget of at least \$100 million per year is likely to make a significant difference in ensuring meaningful broadband access in the most difficult-to-serve areas.

535. We note in this regard that some remote areas in rural America already have broadband that meets the performance requirements we establish above, and we do not envision that the dedicated funding we establish with this budget would be available in those areas. For example, the CQBAT model relied on by the ABC Plan predicts that there are 1.2 million residential and business locations where the

⁸⁹⁰ *Interim Cap Order*, 23 FCC Rcd at 8848, para. 31. *See also id.* at 8850, para. 36 & n.108 (noting that the interim cap would go into effect immediately, but that the exceptions would go into effect only after approval of the relevant reporting requirements by the Office of Management and Budget).

⁸⁹¹ The Commission will address pending petitions filed pursuant to the own-cost exception in a separate proceeding.

⁸⁹² *See* National Broadband Plan at 138; OBI, Broadband Availability Gap at 6.

⁸⁹³ As described above, we have excluded from carriers’ broadband service obligations in price-cap territories all areas where the model-estimated cost to serve a location is above an “extremely high cost” threshold. For rate-of-return areas, we may adopt a similar approach once the CAF model is finalized. In the meantime, rate-of-return carriers are required to extend broadband on reasonable request. *See supra* section VII.D.2. (Public Interest Obligations of Rate-of-Return Carriers).

forward-looking cost of wireline broadband service is greater than \$256 per month, and that of these, only approximately 670,000 locations are unserved by any terrestrial broadband.⁸⁹⁴

536. Based on the RUS's prior experience with dedicated satellite funding to remote areas, we are confident that a budget of at least \$100 million could make a significant difference in expanding availability of affordable broadband service at such locations. Satellite broadband is already available to most households and small businesses in remote areas,⁸⁹⁵ and is likely to be available at increasing speeds over time,⁸⁹⁶ but current satellite services tend to have significantly higher prices to end-users than terrestrial fixed broadband services, and include substantial up-front installation costs.⁸⁹⁷ To help overcome these barriers in the RUS's BIP satellite program, supported providers received a one-time upfront payment per location to offer service for at least one year at a reduced price.⁸⁹⁸ There has been substantial consumer participation in this program, with providers estimating that they would be able to provide service to approximately 424,000 people at the reduced rates.⁸⁹⁹ Were the FCC to take a similar approach in distributing the \$100 million we set aside for remote areas funding, we could, in principle, provide a one-time sign-up subsidy to *almost all* of the estimated 670,000 remote, terrestrially-unserved locations within 4 years.⁹⁰⁰

537. We emphasize that this calculation is only illustrative. For one, we do not anticipate restricting the technology that can be used for remote area support. To the contrary, we seek to encourage

⁸⁹⁴ Of the remainder, some areas already have broadband meeting our performance requirements, while other areas have some form of basic broadband that does not yet meet those requirements. *See* Letter from Mike Lieberman, AT&T, Michael D. Saperstein, Jr., Frontier, Jeffrey S. Lanning, CenturyLink, Maggie McCready, Verizon, Michael T. Skrivan, Fairpoint Communications, Frank Schueneman, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed Sept. 28, 2011).

⁸⁹⁵ While such funding will be available to community anchor institutions, we observe that community anchor institutions in rural America often are located near the more densely populated area in a given county – the small town, the county seat, and so forth – which are less likely to be extremely high cost areas.

⁸⁹⁶ *See, e.g.*, Satellite Broadband Providers (DISH, EchoStar, Hughes, ViaSat, WildBlue) Joint Comments at 10-11; ViaSat Comments at 2-3, 5; Satellite Broadband Providers (DISH, EchoStar, Hughes, ViaSat, WildBlue) Joint Reply Comments at 3.

⁸⁹⁷ We seek comment below in the FNPRM on how and whether Remote Areas Fund support should be allocated to defray the higher startup costs for satellite services. *See infra* paras. 1269-1271.

⁸⁹⁸ Generally, providers must offer their Basic Service Package for no more \$50 per month for at least one year, with no length of service requirements. Certain exceptions apply to the extent a provider is offering a Basic Service Package for \$40 or less/month or for Expanded or Commercial Service Packages. In addition, providers must provide customer premise equipment (CPE) at no cost. *See* Broadband Initiatives Program, Request for Proposals. Federal Register 75 (7 May 2010) 25185-25195.

⁸⁹⁹ Spacenet, Inc., EchoStar XI Operating LLC, Hughes Network Systems, and WildBlue Communications were awarded \$100 million in grant funds, with approximately 424,000 people standing to benefit nationwide. *See* Rural Utility Service, Press Release, *Satellite Awards, Broadband Initiatives Program* (Oct. 20, 2010) available at <http://www.rurdev.usda.gov/supportdocuments/BIPSatelliteFactSheet10-20-10.pdf>.

⁹⁰⁰ The CQBAT model relied on by the ABC plan indicates that there are approximately 670,000 remote, terrestrially-unserved locations. *See supra* note 894. The average number of people per household in the U.S. is 2.59, indicating that there are approximately 1,735,300 people living in remote locations. *See* U.S. Census Bureau, Current Population Survey, 2010 Annual Social and Economic (ASEC) Supplement, Table AVG1 (last visited Oct. 28, 2011) available at <http://www.census.gov/population/socdemo/hh-fam/cps2010/tabAVG1.xls>. Thus, if we took an approach similar to the RUS BIP, only 39,300 people (or approximately 15,000 households) would not have received a one time subsidy at the end of four years.

maximum participation of providers able to serve these most difficult to reach areas. In addition, the Commission may choose to disburse funding for remote areas in ways that either increase or decrease the dollars per supported customer, as compared to the RUS program. For example, the Commission may choose to provide ongoing support, in addition to or instead of a one-time subsidy, or we may adopt a means-tested approach to reducing the cost of service in remote areas, to target support to those most in need. We seek comment on each of these approaches in the Further Notice.

538. Notwithstanding this uncertainty, however, the record before us is sufficient for us to conclude that a budget of at least \$100 million falls within a reasonable initial range for a program targeted at innovative broadband technologies in remote areas. We expect to revisit this decision over time, and will adjust support levels as appropriate.

G. Petitions for Waiver

539. During the course of this proceeding, various parties, both incumbents and competitive ETCs, have argued that reductions in current support levels would threaten their financial viability, imperiling service to consumers in the areas they serve.⁹⁰¹ We cannot, however, evaluate those claims absent detailed information about individualized circumstances, and conclude that they are better handled in the course of case-by-case review. Accordingly, we permit any carrier negatively affected by the universal service reforms we take today to file a petition for waiver that clearly demonstrates that good cause exists for exempting the carrier from some or all of those reforms, and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice service.

540. We do not, however, expect to grant waiver requests routinely, and caution petitioners that we intend to subject such requests to a rigorous, thorough and searching review comparable to a total company earnings review. In particular, we intend to take into account not only all revenues derived from network facilities that are supported by universal service but also revenues derived from unregulated and unsupported services as well.⁹⁰² The intent of this waiver process is not to shield companies from secular market trends, such as line loss or wireless substitution. Waiver would be warranted where an ETC can demonstrate that, without additional universal service funding, its support would not be “sufficient to achieve the purposes of [section 254 of the Act].”⁹⁰³ In particular, a carrier seeking such waiver must demonstrate that it needs additional support in order for its customers to continue receiving voice service in areas where there is no terrestrial alternative. We envision granting relief only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service using the same or other technologies that provide the functionalities required for supported voice service.⁹⁰⁴ We envision granting relief only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service to consumers using the same or other technologies that provide the functionalities required for supported voice service. We will also consider whether the specific reforms would cause a provider to default on

⁹⁰¹ See, e.g., Kansas Rural Independent Telephone Companies, et al. *August 3 PN Comments* at 2; RCA *USF/ICC Transformation Comments* at 22; Moss Adams LLP *USF/ICC Transformation Comments* at 4-9; Utah Public Service Commission *USF/ICC Transformation Comments* at 2.

⁹⁰² See Comcast *August 3 PN Comments* at 18-19.

⁹⁰³ 47 U.S.C. 254(e)

⁹⁰⁴ We do not require petitioners to demonstrate that satellite voice service is unavailable in the area at issue. The record before us does not conclusively establish that, at this time, satellite voice services (which typically involve higher latencies than terrestrial services) provide the same consumer benefits as terrestrial voice services. As satellite services evolve, we may revisit this issue.

existing loans and/or become insolvent. For mobile providers, we will consider as a factor specific showings regarding the impact on customers, including roaming customers, if a petitioner is the only provider of CDMA or GSM coverage in the affected area.

541. Petitions for waiver must include a specific explanation of why the waiver standard is met in a particular case.⁹⁰⁵ Conclusory assertions that reductions in support will cause harm to the carrier or make it difficult to invest in the future will not be sufficient.

542. In addition, petitions must include all financial data and other information sufficient to verify the carrier's assertions, including, at a minimum, the following information:

- Density characteristics of the study area or other relevant geographic area including total square miles, subscribers per square mile, road miles, subscribers per road mile, mountains, bodies of water, lack of roads, remoteness, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, short construction season or any other characteristics that contribute to the area's high costs.
- Information regarding existence or lack of alternative providers of voice and whether those alternative providers offer broadband.
- (For incumbent carriers) How unused or spare equipment or facilities is accounted for by providing the Part 32 account and Part 36 separations category this equipment is assigned to.
- Specific details on the make-up of corporate operations expenses such as corporate salaries, the number of employees, the nature of any overhead expenses allocated from affiliated or parent companies, or other expenses.
- Information regarding all end user rate plans, both the standard residential rate and plans that include local calling, long distance, Internet, texting, and/or video capabilities.
- (For mobile providers) A map or maps showing (1) the area it is licensed to serve; (2) the area in which it actually provides service; (3) the area in which it is designated as a CETC; (4) the area in which it is the sole provider of mobile service; (5) location of each cell site. For the first four of these areas, the provider must also submit the number of road-miles, population, and square miles. Maps shall include roads, political boundaries, and major topographical features. Any areas, places, or natural features discussed in the provider's waiver petition shall be shown on the map.
- (For mobile providers) Evidence demonstrating that it is the only provider of mobile service in a significant portion of any study area for which it seeks a waiver. A mobile provider may satisfy this evidentiary requirement by submitting industry-recognized carrier service availability data, such as American Roamer data, for all wireless providers licensed by the FCC to serve the area in question. If a mobile provider claims to be the sole provider in an area where an industry-recognized carrier service availability data indicates the presence of

⁹⁰⁵ Generally, the Commission may waive its rules for good cause shown. *See* 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.

other service, then it must support its claim with the results of drive tests throughout the area in question. In the parts of Alaska or other areas where drive testing is not feasible, a mobile provider may offer a statistically significant number of tests in the vicinity of locations covered. Moreover, equipment to conduct the testing can be transported by off-road vehicles, such as snow-mobiles or other vehicles appropriate to local conditions. Testing must examine a statistically meaningful number of call attempts (originations) and be conducted in a manner consistent with industry best practices. Waiver petitioners that submit test results must fully describe the testing methodology, including but not limited to the test's geographic scope, sampling method, and test set-up (equipment models, configuration, etc.). Test results must be submitted for the waiver petitioner's own network and for all carriers that the industry-recognized carrier service availability data shows to be serving the area in which the petitioner claims to be the only provider of mobile service.

- (For mobile providers). Revenue and expense data for each cell site for the three most recent fiscal years. Revenues shall be broken out by source: end user revenues, roaming revenues, other revenues derived from facilities supported by USF, all other revenues. Expenses shall be categorized: expenses that are directly attributable to a specific cell site, network expenses allocated among all sites, overhead expenses allocated among sites. Submissions must include descriptions the manner in which shared or common costs and corporate overheads are allocated to specific cell sites. To the extent that a mobile provider makes arguments in its waiver petition based on the profitability of specific cell sites, petitioner must explain why its cost allocation methodology is reasonable.
- (For mobile providers) Projected revenues and expenses, on cell-site basis, for 5 years, with and without the waiver it seeks. In developing revenue and expense projections, petitioner should assume that it is required to serve those areas in which it is the sole provider for the entire five years and that it is required to fulfill all of its obligations as an ETC through December 2013.
- A list of services other than voice telephone services provided over the universal service supported plant, e.g., video or Internet, and the percentage of the study area's telephone subscribers that take these additional services.
- (For incumbent carriers) Procedures for allocating shared or common costs between incumbent LEC regulated operations, competitive operations, and other unregulated or unsupported operations.
- Audited financial statements and notes to the financial statements, if available, and otherwise unaudited financial statements for the most recent three fiscal years. Specifically, the cash flow statement, income statement and balance sheets. Such statements shall include information regarding costs and revenues associated with unregulated operations, e.g., video or Internet.
- Information regarding outstanding loans, including lender, loan terms, and any current discussions regarding restructuring of such loans.
- Identification of the specific facilities that will be taken out of service, such as specific cell towers for a mobile provider, absent grant of the requested waiver.
- For Tribal lands and insular areas, any additional information about the operating conditions, economic conditions, or other reasons warranting relief based on the unique characteristics of those communities.

543. Failure to provide the listed information shall be grounds for dismissal without prejudice. In addition to the above, the petitioner shall respond and provide any additional information as requested by

Commission staff. We will also welcome any input that the relevant state commission may wish to provide on the issues under consideration, with a particular focus on the availability of alternative unsubsidized voice competitors in the relevant area and recent rate-setting activities at the state level, if any.

544. We delegate to the Wireline Competition and Wireless Telecommunications Bureaus the authority to approve or deny all or part of requests for waiver of the phase-down in support adopted herein. Such petitions will be placed on public notice, with a minimum of 45 days provided for comments and reply comments to be filed by the general public and relevant state commission. We direct the Bureaus to prioritize review of any applications for waiver filed by providers serving Tribal lands and insular areas, and to complete their review of petitions from providers serving Tribal lands and insular areas within 45 days of the record closing on such waiver petitions.

H. Enforcing the Budget for Universal Service

545. As previously noted, we have established an annual budget for the high-cost portion of the USF of no more than \$4.5 billion for the next six years, which will include all support disbursed under legacy high-cost mechanisms as they are phased out as well as support under new mechanisms, including the CAF access replacement mechanism discussed more fully below.⁹⁰⁶ In this section, we address administrative issues regarding the implementation of that budget target.

546. Specifically, we adopt a framework that will permit the universal service fund to accumulate reserves in the near term to be used to facilitate the transition to the CAF and to fund one-time universal service expenses, such as the Mobility Fund Phase I, without causing undesirable volatility in the contribution factor. To do this, we amend section 54.709(b), giving the Commission greater flexibility to direct USAC to manage collections to mitigate fluctuations in the contribution factor. Using this new flexibility, we then provide instruction to USAC to set quarterly demand filings so that consumers collectively do not contribute more than \$4.5 billion on an annual basis to support service in rural and high cost areas. We also provide instructions to USAC for winding down the existing broadband reserve account established pursuant to the *Corr Wireless Order*.

1. Creating New Flexibility To Manage Fluctuations in Demand

547. *Background.* In the *Corr Wireless Order*, the Commission, among other actions, created a temporary reserve account in the Universal Service Fund for the purpose of funding future universal service program changes without causing undue volatility in the contribution factor.⁹⁰⁷ The Commission accomplished this through two actions. First, it instructed USAC, in its quarterly contribution factor demand filing, to forecast high-cost demand by competitive ETCs at the full amount of the interim cap on competitive ETC support, even if forecasted demand would otherwise be lower.⁹⁰⁸ Second, the Commission waived section 54.709(b) of its rules, which would otherwise require USAC to reduce its forecasted demand in a subsequent quarter by an amount equal to any excess contributions received.⁹⁰⁹ Pursuant to the waiver, the Commission instructed USAC not to make such prior period adjustments as they relate to competitive ETC support for a period of 18 months and to instead place the funds in a reserve account.⁹¹⁰ The eighteen-month waiver is due to expire on February 3, 2012. In addition to providing these instructions and waiving section 54.709(b), the Commission also sought comment on

⁹⁰⁶ See *infra* section XIII.

⁹⁰⁷ *Corr Wireless Order*, 25 FCC Rcd at 12862 paras. 20-22.

⁹⁰⁸ *Id.* at 12862 para. 21.

⁹⁰⁹ *Id.* at 12862-63 para. 22.

⁹¹⁰ *Id.*

amending section 54.709(b) to permit it to provide alternative instructions to USAC in the future without waiving the rule.⁹¹¹

548. *Discussion.* We adopt the proposed amendment to section 54.709(b) to permit the Commission to instruct USAC to take alternative action with regard to prior period adjustments when making its quarterly demand filings. Currently, the section requires that excess contributions received in a quarter “will be carried forward to the following quarter.”⁹¹² We amend the rule to add paragraph 54.709(b)(1), which shall read, “The Commission may instruct USAC to treat excess contributions in a manner other than as prescribed in paragraph (b). Such instructions may be made in the form of a Commission Order or a Public Notice released by the Wireline Competition Bureau. Any such Public Notice will become effective fourteen days after release of the Public Notice, absent further Commission action.”

549. Permitting the Commission to modify its current treatment of excess contributions as necessary on a case-by-case basis will permit it to better manage the effects of one-time and seasonal events that may create undue volatility in the contribution factor. Programmatic changes, one-time distributions of support (such as Mobility Fund Phase I), and other transitional processes will likely cause the quarterly funding demands to fluctuate considerably until the transitions are complete, similarly to how large, unforecasted one-time contributions have caused significant fluctuations in the past.⁹¹³ The ability to provide specific, case-by-case instructions will allow the Commission to smooth the effects of such events on the contribution factor, rendering it more predictable for the consumers who ultimately pay for universal service.

550. In response to the NPRM seeking comment on whether to modify section 54.709(b), some commenters raise questions about whether section 254 of the Act provides the Commission the authority to establish a broadband reserve fund intended to make disbursements according to rules that were, at the time, not yet adopted.⁹¹⁴ As RICA put it, section 254 requires carriers to contribute to the “specific,

⁹¹¹ *Id.* at 12863-64 paras. 25-26. In that NPRM, the Commission also sought comment on a modification to its rules governing the interim cap on competitive ETC support. *Id.* at para. 24. The Commission adopted the rule – reducing the interim cap amount when a competitive ETC relinquishes its ETC status – in a subsequent Order. *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 25 FCC Rcd 18146 (2010).

⁹¹² 47 C.F.R. § 54.709(b).

⁹¹³ *See, e.g., AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services, Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133 and 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, 4836-37 paras. 30-33 (2005) (ordering AT&T to restate revenues by an estimated \$160 million for universal service purposes).

⁹¹⁴ *See* Comments of Verizon and Verizon Wireless, WC Docket No. 05-337, CC Docket No. 96-45, at 5 (filed Oct. 5, 2010) (Verizon Corr Comments); Comments of Rural Telecommunications Group, Inc., WC Docket No. 05-337, CC Docket No. 96-45, at 3-5 (filed Oct. 7, 2010); Comments of Rural Independent Competitive Alliance, WC Docket No. 05-337, CC Docket No. 96-45, at 5 (filed Oct. 7, 2010) (RICA Corr Comments); Reply Comments of CTIA, WC Docket No. 05-337, CC Docket No. 96-45, at 8 (filed Oct. 21, 2010). In any event, that is not the case here. As set forth below, the temporary reserve was used to support the E-rate inflation adjustment in FY 2010, and will be used to fund Phase I of the Mobility Fund and CAF Phase I established by this Order. *See infra* paras. 564-567. Other commenters supported the Commission’s determination to create the reserve fund. *See* Comments of Free Press at 4 (filed Oct. 7, 2010) (“The Commission’s proposed implementation timetable for USF reform is appropriately aggressive. Under this timetable, it makes sense to keep the contribution factor stable by holding reserves as the Connect America Fund is designed and implemented.”). *See also* Comments of the Public Utilities Commission of Ohio at 6-7 (filed Oct. 7, 2010); Comments of Telephone Association of Maine at 2 (filed Oct. 7, 2010).

(continued...)

predictable, and sufficient mechanisms established (not *to be* established) by the Commission to preserve and advance Universal Service.”⁹¹⁵ Verizon, similarly, suggests that section 254’s reference to “‘specific’ and ‘predictable’ USF programs and support—and contributions collected for ‘established’ universal service mechanisms—counsels against reserving support for mechanisms that do not yet exist.”⁹¹⁶ Nevertheless, for the reasons set forth below, we conclude that a broadband reserve account is consistent with section 254 of the Act.

551. Section 254(d) of the Act provides:

TELECOMMUNICATIONS CARRIER CONTRIBUTION.—Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. The Commission may exempt a carrier or class of carriers from this requirement if the carrier’s telecommunications activities are limited to such an extent that the level of such carrier’s contribution to the preservation and advancement of universal service would be *de minimis*. Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.⁹¹⁷

552. We do not read this language as limiting the Commission’s authority to require contributions only to support specific mechanisms that are already established at the time the contributions are required, for several reasons.

553. Broadly speaking, we understand section 254(d) to be directed to explaining *who* must contribute to the Federal universal service mechanisms—specifically, telecommunications carriers that provide interstate telecommunications services, unless exempted by the Commission, as well as other providers of interstate telecommunications if the Commission determines the public interest so requires.⁹¹⁸ The reference in section 254(d) to “the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service” is not, as these commenters suggest, a limitation on what kinds of mechanisms—*i.e.*, already-established mechanisms—will be supported; it is instead a reference to language in section 254(b), which directs the Commission (as well as the Joint Board) to be guided by several principles in establishing universal service policies, including the principle that “[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.” In other words, it merely requires that contributions under section 254 are to be used to support the Federal mechanisms that are established under section 254.

554. We also find that commenters’ argument is unpersuasive given the grammatical construction of the relevant section of the law. In the phrase “mechanisms established by the Commission,” the clause “established by the Commission” functions as an adjectival phrase identifying which mechanisms are funded through section 254(d). Specifically, the mechanisms funded by section 254(d) are the mechanisms “established by the Commission” consistent with the principles of section 254(b) (that they

(Continued from previous page) _____

⁹¹⁵ RICA Corr Comments at 5 (emphasis in original).

⁹¹⁶ Verizon Corr Comments at 5.

⁹¹⁷ 47 U.S.C. § 254(d).

⁹¹⁸ Our understanding, in addition to being the most natural reading of the statute, is also consistent with the legislative history. *See* S. Conf. Rep. 104-230 at 131 (noting that section 254(d) “requires that all telecommunications carriers providing interstate telecommunications services shall contribute to the preservation and advancement of universal service.”).

be specific, predictable, and sufficient). When used in this way, the word “established” is not a word in the past tense; it is not a word that signifies any particular tense at all.⁹¹⁹ Commenters who read the word “established” as signifying the past tense are, we conclude, improperly reading “already” into the phrase, so that it would read “mechanisms already established by the Commission.” Congress could have written the statute that way, but it did not. Admittedly, Congress could have written the statute in yet other ways that would have made clearer that these commenters’ concerns are misplaced. But that indicates only that the statute is amenable to various interpretations. And for the reasons explained here, we conclude our interpretation is the better reading of the statute.

555. These commenters’ view also raises troubling questions of interpretation, which we believe Congress did not intend. That is, under these commenters’ reading of the statute, contributions may only be collected to fund a mechanism that has already been established. Broadly speaking, all of the rule changes that the Commission has implemented since the 1996 Act, including those adopted in this Order, have been to effectuate the general statutory directive that consumers should have access to telecommunication and information services in rural and high cost areas. As such, the entire collection of rules can be viewed as the “high-cost mechanism,” and the specific existing programs, as well as the Connect America Fund that we establish today, are part of that high-cost mechanism.

556. To read the statute in any other way would create significant administrative issues that we cannot believe Congress would have intended. How would the Commission—or a court—decide whether a modified mechanism is a new, not-yet-established mechanism (which could not provide support until new funds are collected for it), or whether the modifications are minor enough such that the mechanism, although different, is still the mechanism that was already established? We do not believe that Congress intended either the Commission or a court to be required to wrestle with such questions, which serve no obvious congressional purpose. Alternatively, any change, no matter how minor, could transform the mechanism into one that was not-yet-established. Interpreting the statute in that way would similarly serve no identifiable congressional purpose, but would serve only to slow down and complicate reforms to support mechanisms that the Commission determines are appropriate to advance the public interest.⁹²⁰ Significantly in this regard, Congress in section 254 specifically contemplated that universal service programs would change over time;⁹²¹ reading the statute the way these commenters suggest would add unnecessary burdens to that process.

⁹¹⁹ The D.C. Circuit has repeatedly held that where (as here) a statutory phrase is “simply an adjectival phrase, not a verbal phrase indicating the past tense,” the phrase “allows alternative temporal readings.” See *United States Dep’t of the Treasury v. FLRA*, 960 F.2d 1068, 1072 (D.C. Cir. 1992) (the phrase “adversely affected” could reasonably be construed by FLRA to refer to future as well as past adverse effects); see also *County of Los Angeles v. Shalala*, 192 F.3d 1005, 1013 (D.C. Cir. 1999) (the statutory phrase “payments made” could reasonably be read to mean not just “payments that *have been* made,” but also “payments *to be* made”); *Administrators of Tulane Educ. Fund v. Shalala*, 987 F.2d 790, 796 (D.C. Cir. 1993) (the phrase “recognized as reasonable” in the Medicare Act “does not tell us whether Congress means to refer the Secretary to action already taken or to give directions on actions about to be taken”). See generally *Transitional Hospitals Corp. of Louisiana, Inc. v. Shalala*, 222 F.3d 1019, 1027-28 (D.C. Cir. 2000) (citing these cases with approval). The Supreme Court has endorsed the same principle of statutory construction. See *Regions Hospital v. Shalala*, 522 U.S. 448, 458 (1998) (the phrase “recognized as reasonable” in the Medicare Act is ambiguous; it could refer to “costs the Secretary (1) *has* recognized as reasonable for 1984 ... cost-reimbursement purposes, or (2) *will* recognize as reasonable as a base for future ... calculations”).

⁹²⁰ For example, it is not clear whether such a reading of the statute would require the Commission to segregate Universal Service Fund contributions received before and after a rule change, so as to prevent disbursements of pre-reform contributions based on the new rules.

⁹²¹ See 47 U.S.C. § 254(b)(7), (c)(1)-(2).

2. Setting Quarterly Demand to Meet the \$4.5 Billion Budget

557. *Background.* In the *USF-ICC Transformation NPRM*, the Commission sought comment on setting an overall budget for the CAF such that the sum of the CAF and any existing high-cost support mechanisms (however modified in the future) in a given year are equal to current funding levels. The Commission noted its commitment to controlling the size of the federal universal service fund.⁹²²

558. In response, a broad cross-section of interested stakeholders, including consumer groups, state regulators, current recipients of funding, and those that do not currently receive funding, agreed that the Commission should establish a budget for the overall high-cost program, with many urging the Commission to set that budget at \$4.5 billion per year.⁹²³ Some argue that we should adopt a hard cap to ensure that budget is not exceeded.⁹²⁴

559. *Discussion.* As described above, we conclude that for years 2012-2017, contributions to fund high-cost support mechanisms should not exceed \$4.5 billion on an annualized basis.⁹²⁵ Various parties have submitted proposed budgets into the record suggesting that the Commission could maintain an overall \$4.5 billion annual budget by collecting that amount in the near term, projecting that actual demand will be lower than that amount, and using those funds in subsequent quarters to address actual demand that exceeds \$1.125 billion.⁹²⁶ We are persuaded that, on balance, it would be appropriate to provide greater flexibility to USAC to use past contributions to meet future program demand so that we can implement the Connect America Fund in a way that does not cause dramatic swings in the contribution factor. We now set forth our general instructions to USAC on how to implement our \$4.5 billion budget target.

560. First, beginning with the quarterly demand filing for the first quarter of 2012, USAC should forecast total high-cost universal service demand as no less than \$1.125 billion, *i.e.*, one quarter of the annual high-cost budget.⁹²⁷ To the extent that USAC forecasts demand will actually be higher than that

⁹²² *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4679-81, paras. 412-14.

⁹²³ State Members *USF/ICC Transformation NPRM* Comments at 11 (proposing to limit fund size to current amount in 2010); Letter from Walter B. McCormick, Jr., United States Telecom Ass'n, Robert S. Quinn, Jr., Senior Vice President—Federal Regulatory, AT&T, Melissa Newman, Vice President—Federal Regulatory Affairs, CenturyLink, Michael T. Skrivan, Vice President—Regulatory, FairPoint Communications, Kathleen Q. Abernathy, Chief Legal Officer and Executive Vice President—Regulatory and Government Affairs, Frontier, Kathleen Grillo, Senior Vice President—Federal Regulatory Affairs, Verizon, Michael D. Rhoda, Senior Vice President—Government Affairs, Windstream, Shirley Bloomfield, Chief Executive Officer, National Telecommunications Cooperative Association, John Rose, President, OPASTCO, Kelly Worthington, Executive Vice President, Western Telecommunications Alliance, to Chairman Genachowski, Commissioner Copps, Commissioner McDowell, and Commission Clyburn, at 2 (filed Jul. 29, 2011). (Submitted attached to Letter from Jonathan Banks, USTelecom, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92; WC Docket Nos. 05-337, 07-135, 10-90; GN Docket No. 09-51; CC Docket No. 96-45; WC Docket No. 06-122; CC Docket Nos. 99-200, 96-98, 99-68; WC Docket No. 04-36 at 4 (filed July 29, 2011)) (Joint Letter) (proposing \$4.5 billion); ABC Plan, Attach. 1, at 1-2 (proposing \$4.5 billion).

⁹²⁴ NCTA *USF/ICC Transformation NPRM* Comments at 4.

⁹²⁵ See *supra* paras. 121-126. The Commission's budget for contributions includes all contributions that support disbursements to the various high-cost programs. However, actual disbursements may exceed this amount as the Commission disburses funds from the reserve account created in the *Corr Wireless Order*. 25 FCC Rcd at 12862, para. 20. See also *infra* paras. 564-567 (providing direction to USAC relating to the *Corr Wireless Order* reserve account).

⁹²⁶ ABC Plan, Attach. 1, at 1-2.

⁹²⁷ Recognizing that USAC will submit its first quarter 2012 demand filing on October 31, 2011, we direct USAC to file an updated high-cost demand filing upon the effective date of these rules.

amount, USAC should reflect that higher forecast in its quarterly demand filing.⁹²⁸ USAC should no longer forecast total competitive ETC support at the original interim cap amount, as previously instructed,⁹²⁹ but should forecast competitive ETC support subject to the rules we adopt today.⁹³⁰

561. Second, consistent with the newly revised section 54.709(b) of our rules, we instruct USAC not to make prior period adjustments related to high-cost support if actual contributions exceed demand. Excess contributions shall instead be credited to a new Connect America Fund reserve account, to be used as described below.

562. Third, beginning with the second quarter of 2012, we direct USAC to use the balances accrued in the CAF reserve account to reduce high-cost demand to \$1.125 billion in any quarter that would otherwise exceed \$1.125 billion.

563. We expect the reforms we adopt today to keep annual contributions for the CAF and any existing high-cost support mechanisms to no more than \$4.5 billion. And through the use of incentive-based rules and competitive bidding, the fund could require less than \$4.5 billion to achieve its goals in future years. However, if actual program demand, exclusive of funding provided from the CAF or *Corr Wireless* reserve accounts, for CAF and existing high-cost mechanisms exceed an annualized \$4.5 billion over any consecutive four quarters, this situation will automatically trigger a process to bring demand back under budget. Specifically, immediately upon receiving information from USAC regarding actual quarterly demand, the Wireline Competition Bureau will notify each Commissioner and publish a Public Notice indicating that program demand has exceeded \$4.5 billion over the last four quarters. Then, within 75 days of the Public Notice being published, the Bureau will develop options and provide to the Commissioners a recommendation and specific action plan to immediately bring expenditures back to no more than \$4.5 billion.

3. Drawing Down the *Corr Wireless* Reserve Account

564. *Background.* As noted above, pursuant to the *Corr Wireless Order*, the Commission instructed USAC to place certain excess contributions associated primarily with the Verizon Wireless and Sprint phase-down commitments in a broadband reserve account over a period of 18 months, ending in February 2012⁹³¹ We intend to allow the waiver to lapse at that time, without any further extensions or early termination.

565. *Discussion.* In order to wind down the current broadband reserve account, we provide the following instructions to USAC.

566. First, we direct USAC to utilize \$300 million in the *Corr Wireless* reserve account to fund commitments that we anticipate will be made in 2012 to recipients of the Mobility Fund Phase I to accelerate advanced mobile services.⁹³² We also direct USAC to use the remaining funds and any

⁹²⁸ If high-cost demand actually exceeds \$1.125 billion, no additional funds will accumulate in the reserve account for that quarter and, consistent with our third instruction below, the reserve account will be used to constrain the high-cost demand in the contribution factor.

⁹²⁹ See *Corr Wireless Order*, 25 FCC Rcd at 12862 para. 21.

⁹³⁰ Specifically, USAC shall forecast competitive ETC demand as set by the frozen baseline per study area as of year end 2011, as adjusted by the phase-down in the relevant time period. See *supra* paras. 512-532.

⁹³¹ The Commission directed USAC to “reserve any reclaimed funds as a fiscally responsible down payment on proposed broadband universal service reforms, as recommended in the National Broadband Plan.” *Corr Wireless Order*, 25 FCC Rcd at 12862, para. 20.

⁹³² See *supra* paras. 28, 313-314, 493-497.

additional funding necessary for Phase I of the CAF for price cap carriers in 2012.⁹³³ Those actions together should exhaust the *Corr Wireless* reserve account.⁹³⁴

567. Second, we instruct USAC not to use the *Corr Wireless* reserve account to fund inflation adjustments to the e-rate cap for the current 2011 funding year.⁹³⁵ Inflation adjustments to the e-rate cap for Funding Year 2011 and future years shall be included in demand projections for the e-rate program.

VIII. ACCOUNTABILITY AND OVERSIGHT

568. The billions of dollars that the Universal Service Fund disburses each year to support vital communications services come from American consumers and businesses, and recipients must be held accountable for how they spend that money. This requires vigorous ongoing oversight by the Commission, working in partnership with the states, Tribal governments, where appropriate, and U.S. Territories, and the Fund administrator, USAC.⁹³⁶ This section reforms the framework for that ETC oversight.⁹³⁷ We establish a uniform national framework for information that ETCs must report to their respective states and this Commission, while affirming that states will continue to play a critical role overseeing ETCs that they designate. We modify and extend our existing federal reporting requirements to all ETCs, whether designated by a state or this Commission, to reflect the new public interest obligations adopted in this Order. We simplify and consolidate our existing certification requirements and adopt new certifications relating to the public interest obligations adopted in this Order. We address consequences for failure to meet program rules. We also clarify our record retention rules, describe the audit process we have implemented in conjunction with the Fund's administrator, and clarify USAC's and our ability to obtain all data relevant to calculations of support amounts.

A. Uniform Framework for ETC Oversight

569. First, we discuss the need for a uniform national oversight framework, implemented as a partnership between the Commission and the states, U.S. Territories, and Tribal governments, where appropriate. Second, we describe the specific reporting requirements that are part of that uniform framework. Third, we amend our rules relating to the annual certifications ETCs must make to confirm

⁹³³ See *supra* Section VII.C.1.

⁹³⁴ While we expect funding for Mobility Fund Phase I to be committed in 2012, those funds are not likely to be disbursed in 2012; rather, funding will be disbursed over a two or three-year period, as recipients meet deployment milestones.

⁹³⁵ *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, 25 FCC Rcd 18762, 18781-82 para. 38 (2010). The current funding year (2011) runs from July 1, 2011, to June 30, 2012.

⁹³⁶ Because the Connect America Fund, including the Mobility Fund, are part of the Universal Service Fund, we conclude that USAC shall administer these new programs under the terms of its current appointment as Administrator, subject to all existing Commission rules and orders applicable to the Administrator. USAC engages in frequent consultation with the Commission. Today, under the Memorandum of Understanding with USAC, the Commission's Wireline Competition Bureau is the USF Administrator's primary point of contact regarding USF policy questions, including without limitation questions regarding the applicability of rules, orders, and directives, unless otherwise specified. 2008 FCC-USAC MOU at paragraph III.B.3. Personnel from other Bureaus and Offices, including the Office of Managing Director (OMD), the Enforcement Bureau, and the Office of the Inspector General assist with various aspects of management and oversight of the USF and USAC. We hereby designate the Wireless Telecommunications Bureau as a point of contact, in addition to the Wireline Competition Bureau, on policy matters relating to Universal Service Fund administration.

⁹³⁷ For purposes of this section, "ETCs" refers only to those ETCs receiving the types of support provided for in this Order. It does not refer to ETCs receiving disbursements from the low-income program.

that they use “support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁹³⁸

1. Need for Uniform Standards for Accountability and Oversight

570. *Background.* Pursuant to section 214(e), the states designate common carriers over which they have jurisdiction as ETCs, and this Commission designates common carriers as ETCs in those instances where the state lacks jurisdiction.⁹³⁹ An important component of accountability and oversight is the information that companies seeking designation to become ETCs are required to provide in order to obtain designation, and then must file annually thereafter.

571. In 2005, the Commission adopted requirements governing federal ETC designations and encouraged the states to adopt similar requirements.⁹⁴⁰ Since that time, a number of states have amended their state-specific rules for ETCs to more closely conform to the rules for federally-designated ETCs. Nonetheless, variation remains in what information is annually reported to state commissions as well as the oversight processes followed by individual state commissions.⁹⁴¹ Under our current rules, states annually certify to this Commission that support is being used for its intended purpose by state-designated ETCs.⁹⁴² Failure by a state to make such certification for a particular ETC results in a loss of support for that ETC.⁹⁴³

572. In the *USF-ICC Transformation NPRM*, we sought comment generally on the role of the states in preserving and advancing universal service, and whether and how to modify existing ETC requirements to achieve our reform objectives.⁹⁴⁴ Subsequently, in the *August 3rd PN*, we sought more focused comment on “specific illustrative areas where the states could work in partnership with the Commission in advancing universal service, subject to a uniform national framework.”⁹⁴⁵

573. *Discussion.* A uniform national framework for accountability, including unified reporting and certification procedures, is critical to ensure appropriate use of high-cost support and to allow the Commission to determine whether it is achieving its goals efficiently and effectively.⁹⁴⁶ Therefore, we

⁹³⁸ 47 U.S.C. § 254(e)

⁹³⁹ 47 U.S.C. § 214(e)

⁹⁴⁰ *Matter of Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371 (2005) (ETC Designation Order).

⁹⁴¹ United States Government Accountability Office, Report to Congressional Committees, Telecommunications: FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program, at 31-34 (June 2008) (GAO High-Cost Report).

⁹⁴² 47 C.F.R. §§ 54.313 and 54.314. Federally-designated ETCs make such certifications directly to the Commission.

⁹⁴³ 47 C.F.R. §§ 54.313(c) and 54.314(d).

⁹⁴⁴ *USF/ICC Transformation NPRM* at 4585, 4587-88, paras. 84, 88.

⁹⁴⁵ *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket No. 10-90 et al., Public Notice, 26 FCC Rcd 11112, 11115, para. 5 (Wireline Comp. Bur. 2011).

⁹⁴⁶ For purposes of this Section VIII, our references to ETCs include those ETCs that receive high-cost support pursuant to legacy high-cost programs and CAF programs adopted in this Order. It does not generally include ETCs that receive support solely pursuant to Mobility Fund Phase I, which has separate reporting obligations, discussed above in Section VII.E.. Where the requirements discussed in this section also apply to ETCs receiving only Phase I Mobility Fund support, we specifically state so. In the FNPRM, we seek comment on alternative reporting (continued...)

now establish a national framework for oversight that will be implemented as a partnership between the Commission and the states, U.S. Territories, and Tribal governments, where appropriate.⁹⁴⁷ As set forth more fully in the subsections immediately following, this national framework will include annual reporting and certification requirements for all ETCs receiving universal funds—not just federally-designated ETCs—which will provide federal and state regulators the factual basis to determine that all USF recipients are using support for the intended purposes, and are receiving support that is sufficient, but not excessive. We have authority to require all ETCs to comply with these national requirements as a condition of receiving federal high-cost universal service support.

574. We clarify that the specific reporting and certification requirements adopted below are a floor rather than a ceiling for the states. In section 254(f), Congress expressly permitted states to take action to preserve and advance universal service, so long as not inconsistent with the Commission's universal service rules.⁹⁴⁸ The statute permits states to adopt additional regulations to preserve and advance universal service so long as they also adopt state mechanisms to support those additional substantive requirements.⁹⁴⁹ Consistent with this federal framework, state commissions may require the submission of additional information that they believe is necessary to ensure that ETCs are using support consistent with the statute and our implementing regulations, so long as those additional reporting requirements do not create burdens that thwart achievement of the universal service reforms set forth in this Order.

575. We note, however, that one benefit of a uniform reporting and certification framework for ETCs is that it will minimize regulatory compliance costs for those ETCs that operate in multiple states. ETCs should be able to implement uniform policies and procedures in all of their operating companies to track, validate, and report the necessary information. Although we adopt a number of new reporting requirements below, we conclude that the critical benefit of such reporting – to ensure that statutory and regulatory requirements associated with the receipt of USF funds are met – outweighs the imposition of some additional time and cost on individual ETCs to make the necessary reports. Under this uniform framework, ETCs will provide annual reports and certifications regarding specific aspects of their compliance with public interest obligations to the Commission, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate by April 1 of each year. These annual reporting requirements should provide the factual basis underlying the annual

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requirements for Mobility Fund support to reflect basic differences in the nature and purpose of the support provided for mobile services. *See* XVII.H.

⁹⁴⁷ Numerous commenters support a continued state oversight role. *See, e.g.,* Connecticut PURA *USF/ICC Transformation NPRM* Comments at 7-8; DC Commission *August 3 PN* Comments at 3; Delaware Commission *August 3 PN* Comments at 2-3; Virginia Commission *August 3 PN* Comments at 3; South Dakota Commission *August 3 PN Further Comments* at 3-4; Montana Commission *August 3 PN Reply Comments* at 8; North Dakota Commission *August 3 PN Reply Comments* at 2; Kansas Commission *August 3 PN Reply Comments* at 24-25; NARUC *August 3 PN Further Comments* at 4; NASUCA *August 3 PN Comments* at 87-88; Nebraska Companies *August 3 PN Comments* at 33-37; ITTA *August 3 PN Comments* at 5; Greenlining *August 3 PN Comments* at 7. *But see* ABC Plan, Attach. 5 at 60 (proposing exclusive federal designation and oversight of broadband providers).

⁹⁴⁸ *See* 47 U.S.C. § 254(f) (“A state may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service. * * * A state may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.”).

⁹⁴⁹ *Id.*

section 254(e) certification by the state commission (or ETC in the case of federally designated ETCs) by October 1 of every year that support is being used for the intended purposes.

2. Reporting Requirements

576. *Background.* In 2005, the Commission adopted section 54.209, which requires federally-designated ETCs to submit an annual report to the Commission including: a progress report on their five-year build-out plans; data and explanatory text concerning outages, unfulfilled requests for service, complaints received; and certifications of compliance with applicable service quality and consumer protection standards⁹⁵⁰ and of the ability to function in emergency situations.

577. As noted above, since the Commission adopted the annual reporting requirements, a number of states have established similar reporting obligations for ETCs within their jurisdiction.⁹⁵¹ The 2008 GAO High-Cost Report noted, however, that states have different requirements for the information they collect from carriers regarding how they use high-cost program funds.⁹⁵²

578. In the *USF/ICC Transformation NPRM*, we sought comment on how the annual reporting requirements should be modified as we transition to the Connect America Fund.⁹⁵³ We proposed to collect data from recipients on deployment, pricing, and adoption for both voice and broadband services. We also proposed to collect financial information from all recipients.

579. *Discussion.* We take several steps to harmonize and update annual reporting requirements. We extend current reporting requirements for voice service to all ETCs, and we adopt uniform broadband reporting requirements for all ETCs. We also adopt rules requiring the reporting of financial and ownership information to assist our discharge of statutory requirements.

580. First, we extend the current federal annual reporting requirements to all ETCs, including those designated by states.⁹⁵⁴ These requirements will now be located in new section 54.313.⁹⁵⁵ Specifically, we conclude that all ETCs must include in their annual reports the information that is currently required by section 54.209(a)(1)-(a)(6) – specifically, a progress report on their five-year build-out plans; data and explanatory text concerning outages; unfulfilled requests for service; complaints

⁹⁵⁰ 47 C.F.R. § 54.209.

⁹⁵¹ See, e.g., Michigan Commission *USF/ICC Transformation NPRM* Comments at 4 (Michigan Public Service Commission requires ETCs to provide information each year in connection with renewal of their designations; Mississippi Commission *USF/ICC Transformation NPRM* Comments at 5-6; Missouri Commission *USF/ICC Transformation NPRM* Comments at 5 (stating that Missouri's rules regarding, among other things, annual certification filings "were based, to an extent, on the FCC's recommended guidelines" but are more stringent than the federal rules); N.M. Admin. Code § 17.11.27.8; GAO High-Cost Report at 33.

⁹⁵² See *United States Government Accountability Office, Report to Congressional Committees, Telecommunications: FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program*, at 31 (June 2008) (GAO High-Cost Report).

⁹⁵³ *USF/ICC Transformation NPRM* 4692-93, para. 459.

⁹⁵⁴ Most commenters addressing the issue support the extension of reporting requirements to all recipients of high-cost support. See, e.g., IUB *USF/ICC Transformation NPRM* Comments at 8; U.S. Cellular *USF/ICC Transformation NPRM* Comments at 42; NASUCA *USF/ICC Transformation NPRM* Comments at 40.

⁹⁵⁵ As discussed in section VIII.A.3. below, we are eliminating current section 54.313. Recipients of high-cost support, including CAF support, will now report pursuant to new section 54.313 rather than current section 54.209. Section 54.209, which applies to the various universal service mechanisms, sets forth reporting and certification requirements for entities designated as ETCs by the Commission. 47 C.F.R. § 54.209. Lifeline-only ETCs, however, will remain subject to section 54.209.

received; and certifications of compliance with applicable service quality⁹⁵⁶ and consumer protection standards and of the ability to function in emergency situations.⁹⁵⁷ We conclude that it is necessary and appropriate to obtain such information from all ETCs, both federal- and state-designated, to ensure the continued availability of high-quality voice services and monitor progress in achieving our broadband goals and to assist the FCC in determining whether the funds are being used appropriately. As we said at the time we adopted these requirements for federally-designated ETCs, these reporting requirements ensure that ETCs comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes.⁹⁵⁸ They also help prevent carriers from seeking ETC status for purposes unrelated to providing rural and high-cost consumers with access to affordable telecommunications and information services.⁹⁵⁹ Accordingly, we now conclude that these requirements should serve as a baseline requirement for all ETCs.

581. All ETCs that receive high-cost support will file the information required by new section 54.313 with the Commission, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.⁹⁶⁰ Section 54.313 reports will be due annually by April 1, beginning on April 1, 2012.⁹⁶¹ We will also require that an officer of the company certify to the accuracy of the information provided and make the certifications required by new section 54.313, with all certifications subject to the penalties for false statements imposed under 18 U.S.C. § 1001.⁹⁶²

582. Second, we incorporate new reporting requirements described below to ensure that recipients are complying with the new broadband public interest obligations adopted in this Order, including broadband public interest obligations associated with CAF ICC.⁹⁶³ This information must be included in annual section 54.313 reports filed with Commission, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate. However, some of the new elements are tied to new public interest obligations that will be implemented in 2013 or a subsequent year and, therefore, they need not be included until that time, as detailed below.

583. Competitive ETCs whose support is being phased down will not be required to submit any of the new information or certifications below related solely to the new broadband public interest obligations, but must continue to submit information or certifications with respect to their provision of voice service.⁹⁶⁴

⁹⁵⁶ If ETCs are complying with any voluntary code (e.g., the voluntary code of conduct concerning “bill shock” or the CTIA Consumer Code for Wireless Service), they should so indicate in their reports.

⁹⁵⁷ We do, however, modify subparagraph (a)(3), regarding unfulfilled requests for service, to require carriers to provide that information broken out separately for voice and broadband.

⁹⁵⁸ ETC Designation Order, para. 68.

⁹⁵⁹ ETC Designation Order, para. 70.

⁹⁶⁰ USAC will review such information as appropriate to inform its ongoing audit program, in depth data validations, and related activities.

⁹⁶¹ We delegate authority to the Wireline Competition Bureau to modify the initial filing deadline as necessary to comply with the requirements of the Paperwork Reduction Act.

⁹⁶² We already require recipients and beneficiaries of universal service support to make certifications subject to the penalties available under 18 U.S.C. § 1001. *See, e.g.*, FCC Form 470; FCC Form 471; FCC Form 492A; FCC Form 507, FCC Form 508; FCC Form 509; FCC Form 525.

⁹⁶³ Section XIII.

⁹⁶⁴ As discussed in Section VII.E.4., competitive ETCs are required to offer service throughout their designated service areas, even as support provided pursuant to the identical support rule is phased down.

584. We delegate to the Wireline Competition Bureau and Wireless Telecommunication Bureaus the authority to determine the form in which recipients of support must report this information.

585. Speed and latency. Starting in 2013, we will require all ETCs to include the results of network performance tests conducted in accordance with the requirements of this Order and any further requirements adopted after consideration of the record received in response to the FNPRM.⁹⁶⁵ Additionally, in the calendar year no later than three years after implementation of CAF Phase II, price cap recipients must certify that they are meeting all interim speed and latency milestones, including the 4 Mbps/1 Mbps speed standard required by Section VII.C.1. of this Order. In the calendar year no later than five years after implementation of CAF Phase II, those price cap recipients must certify that they are meeting the default speed and latency standards applicable at the time.⁹⁶⁶

586. Capacity. Starting in 2013, we require all ETCs to include a self-certification letter certifying that usage capacity limits (if any) for their services that are subject to the broadband public interest standard associated with the type of funding they are receiving are reasonably comparable to usage capacity limits for comparable terrestrial residential fixed broadband offerings in urban areas, as set forth in the Public Interest Obligations sections above. ETCs will also be required to report on specific capacity requirements (if any) in conjunction with reporting of pricing of their broadband offerings that meet our public interest obligations, as discussed below.

587. Build-out/Service. Recognizing that existing five-year build out plans may need to change to account for new broadband obligations set forth in this Order, we require all ETCs to file a new five-year build-out plan in a manner consistent with 54.202(a)(1)(ii) by April 1, 2013. Under the terms of new section 54.313(a), all ETCs will be required to include in their annual 54.313 reports information regarding their progress on this five-year broadband build-out plan beginning April 1, 2014. This progress report shall include the number, names, and addresses of community anchor institutions to which the ETCs newly offer broadband service.⁹⁶⁷ As discussed above, we expect ETCs to use their support in a manner consistent with achieving universal availability of voice and broadband. Incumbent carriers, both rate-of-return and price cap, should make certifications to that effect beginning April 1, 2013 for the 2012 calendar year.

588. In addition, all ETCs must supply the following information:

(a) Rate-of-Return Territories. We require all rate-of-return ETCs receiving support to include a self-certification letter certifying that they are taking reasonable steps to offer broadband service meeting the requirements established above throughout their service area,⁹⁶⁸ and that requests for such service are met within a reasonable amount of time. As noted above, these carriers must also notify the Commission, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate, of all unfulfilled requests for broadband service meeting the 4 Mbps/1 Mbps standard we establish as our initial CAF requirement, and the status of such requests.

(b) Price Cap Territories. We require all ETCs receiving CAF support in price cap territories based on a forward-looking cost model to include a self-certification letter certifying that they are meeting the interim deployment milestones as set forth in the Public Interest Obligations section above and that they are taking reasonable steps to meet increased speed obligations that will exist for a specified number of supported locations before the expiration of the five-year term for CAF Phase II

⁹⁶⁵ Section VI.B.2.

⁹⁶⁶ Section VI.B.

⁹⁶⁷ “Community anchor institutions” is defined above. *See supra* note 37.

⁹⁶⁸ *See supra* Section VII.D.2.

funding. ETCs that receive CAF support awarded through a competitive process will also be required to file such self-certifications, subject to any modifications adopted pursuant to the FNPRM below.

589. In addition, as discussed above, price cap ETCs will be able to elect to receive CAF Phase I incremental funding under a transitional distribution mechanism prior to adoption and implementation of an updated forward-looking broadband-focused cost model for CAF Phase II. As a condition of receiving such support, those companies will be required to deploy broadband to a certain number of unserved locations within three years, with deployment to no fewer than two-thirds of the required number of locations within two years and to all required locations within three years after filing their notices of acceptance. As of that time, carriers must offer broadband service of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including VoIP, and with usage limits, if any, that are reasonably comparable to those in urban areas. As noted above, no later than 90 days after being informed of its eligible incremental support amount, each price cap ETC must provide notice to the Commission and to the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate, identifying the areas, by wire center and census block, in which the carrier intends to deploy broadband to meet this obligation, or stating that the carrier declines to accept incremental support for that year.

590. The carrier must also certify that (1) deployment funded by CAF Phase I incremental support will occur in areas shown as unserved by fixed broadband on the National Broadband Map that is most current at that time, and that, to the best of the carrier's knowledge, are unserved by fixed broadband with a minimum speed of 768 kbps downstream and 200 kbps upstream, and that, to the best of the carrier's knowledge, are, in fact, unserved by fixed broadband at those speeds; and (2) the carrier's current capital improvement plan did not already include plans to deploy broadband to that area within three years, and that CAF Phase I support will not be used to satisfy any merger commitment or similar regulatory obligation.⁹⁶⁹ In addition, carriers must certify that: (1) within two years after filing a notice of acceptance, they have deployed to no fewer than two-thirds of the required number of locations; and (2) within three years after filing a notice of acceptance, they have deployed to all required locations and that they are offering broadband service of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including VoIP, and with usage limits, if any, that are reasonably comparable to those in urban areas. These certifications must be included in the first annual report due following the year in which the carriers reach the required milestones.

591. In addition, price cap carriers that receive frozen high-cost support will be required to certify that they are using such support in a manner consistent with achieving universal availability of voice and broadband.⁹⁷⁰ Specifically, in the 2013 certification, all price cap carriers receiving frozen high-cost support must certify to the Commission, the relevant state commission, relevant authority in a U.S. Territory, and to any affected Tribal government that they used such support in a manner consistent with achieving the universal availability of voice and broadband. In the 2014 certification, all price cap carriers receiving frozen high-cost support must certify that at least one-third of the frozen-high cost support they received in 2013 was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor.⁹⁷¹ In the 2015 certification, carriers must certify that at least two-thirds of the frozen high-cost support the

⁹⁶⁹ See *supra* Section VII.C.1.

⁹⁷⁰ A carrier must certify that with respect to the frozen high cost support dollars subject to this obligation, a substantial portion went to areas without an unsubsidized competitor.

⁹⁷¹ See Section VI.B.a. above. We note that this obligation applies to carriers, regardless of whether or not they accept CAF Phase I incremental support.

carrier received in 2014 was used in such fashion, and for 2016 and subsequent years, carriers must certify that all frozen high-cost support they received in the previous year was used in such fashion. These certifications must be included in the carriers' annual reports due April 1 of each year. Price cap companies that receive CAF ICC also are obligated to certify that they are using such support for building and operating broadband-capable networks used to offer their own retail service in areas substantially unserved by an unsubsidized competitor.

592. Price. We require all ETCs to submit a self-certification that the pricing of their voice services is no more than two standard deviations above the national average urban rate for voice service, which will be specified annually in a public notice issued by the Wireline Competition Bureau. This certification requirement begins April 1, 2013, to cover 2012.

593. ETCs receiving only Mobility Fund Phase I support will self-certify annually that they offer service in areas with support at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas. ETCs receiving any other support will submit a self-certification that the pricing of their broadband service is within a specified reasonable range. That range will be established and published as more fully described in Section VI.B.3. above for recipients of high-cost and CAF support, other than Mobility Fund Phase I.⁹⁷² This certification requirement begins April 1, 2013, to cover 2012.

594. ETCs must also report pricing information for both voice and broadband offerings. They must submit the price and capacity range (if any) for the broadband offering that meets the relevant speed requirement in their annual reporting. In addition, beginning April 1, 2012, subject to PRA approval, all incumbent local exchange company recipients of HCLS, frozen high-cost support, and CAF also must report their flat rate for residential local service to USAC so that USAC can calculate reductions in support levels for those carriers with R1 rates below the specified rate floor, as established above.⁹⁷³ Carriers may not request confidential treatment for such pricing and rate information.

595. Financial Reporting. We sought comment on requiring all ETCs to provide financial information, including balance sheets, income statements, and statements of cash flow.

596. Upon consideration of the record, we now adopt a less burdensome variation of this proposal.⁹⁷⁴ We conclude that it is not necessary to require submission of such information from publicly traded companies, as we can obtain such information directly for SEC registrants. Likewise, we conclude at this time it is not necessary to require the filing of such information by recipients of funding determined through a forward-looking cost model or through a competitive bidding process, even if those recipients are privately held. We expect that a model developed through a transparent and rigorous process will produce support levels that are sufficient but not excessive, and that support awarded through competitive processes will be disciplined by market forces. The design of those mechanisms should drive support to efficient levels.

⁹⁷² See Section VII.E.1.

⁹⁷³ See Section VII.D.5.

⁹⁷⁴ Several commenters supported requiring financial disclosures. See, e.g., CWA *USF/ICC Transformation NPRM* Comments at 20; NASUCA *USF/ICC Transformation NPRM* Comments at 86; WISPA *USF/ICC Transformation NPRM* Comments at 10. Another party asserts, however, that "it is not clear whether these burdensome requirements would be necessary to serve any public policies related to administration of the universal service fund." Cellular One and Viaero *USF/ICC Transformation NPRM* Comments at 29. Although WISPA supports financial disclosures, it asserts that such disclosures should be limited to financial information related to the recipients' CAF activities. See WISPA *USF/ICC Transformation NPRM* Comments at 10. We disagree, as we conclude that it is appropriate to understand the overall finances of privately-held rate-of-return carriers receiving support, as discussed below, to ensure that universal service subsidies are not subsidizing unregulated operations.

597. We emphasize, however, that we may request additional information on a case-by-case basis from all ETCs, both private and public, as necessary to discharge our universal service oversight responsibilities.⁹⁷⁵

598. For privately-held rate-of-return carriers that continue to receive support based in part on embedded costs, we adopt a more limited reporting requirement, beginning in 2012. We require all privately-held rate-of-return carriers receiving high-cost and/or CAF support to file with the Commission, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate beginning April 1, 2012, subject to PRA approval, a full and complete annual report of their financial condition and operations as of the end of their preceding fiscal year, which is audited and certified by an independent certified public accountant in a form satisfactory to the Commission, and accompanied by a report of such audit. The annual report shall include balance sheets, income statements, and cash flow statements along with necessary notes to clarify the financial statements. The income statements shall itemize revenue by its sources.

599. The ETCs subject to this new requirement are all already subject to the Uniform System of Accounts, which specifies how required financial information shall be maintained in accordance with Part 32 of the Commission's rules. Because Part 32 of our rules already requires incumbent carriers to break down accounting by study area, it should provide an accurate picture of how recipients are using the high-cost support they receive in particular study areas. Additionally, Part 32 provides a uniform system of accounting that allows for an accurate comparison among carriers. ETCs that receive loans from the Rural Utility Service (RUS) are already required to provide RUS with annual financial reports maintained in accordance with Part 32. We will allow these carriers to satisfy their financial reporting obligation by simply providing electronic copies of their annual RUS reports to the Commission, which should not impose any additional burden. All other rate-of-return carriers, in their initial filing after adoption of this Order, shall provide the required financial information as kept in accordance with Part 32 of the Commission's rules.

600. We delegate to the Wireline Competition Bureau the authority to resolve all other questions regarding the appropriate format for carriers' first financial filing following this Order, as well as the authority to set the format for subsequent reports. We may in future years implement a standardized electronic filing system, and we also delegate to the Wireline Competition Bureau the task of establishing an appropriate format for transmission of this information.

601. We do not expect privately held ETCs will face a significant burden in producing the financial disclosures required herein because such financial accounting statements are normally prepared

⁹⁷⁵ We note that a number of states already require carriers to file financial information with state commissions. Most of those states require that telecommunications providers file financial information including, at a minimum, income statements and, in most instances, balance sheets. *See, e.g.*, Georgia Pub. Serv. Comm'n Rule 515-3-1-.04(1); http://www.psc.state.ga.us/telecom/compliance_memo.pdf; Hawaii Public Utilities Commission Rule 6-80-91; <http://psc.mt.gov/Docs/AnnualReports/forms/2009TelephoneAnnualReport.pdf>; Wash. Code 480-120-382 and 480-120-385; <http://www.lpsc.org/teleannualreports.aspx>; Mississippi Code § 77-3-79; <http://www.mpus.ms.gov/utility/telecomm/forms.html>; <http://www.psc.state.ne.us/home/NPSC/forms/Online/Communications.2004.12.31.Annual%20Report%20Compliance%20Form.pdf>; <http://www.bpu.state.nj.us/bpu/pdf/telecopdfs/TelcoAr.pdf>. Montana and Nebraska both require that accounts be kept in accordance with Part 32 of the Commission's rules. *See* <https://psc.mt.gov/Docs/AnnualReports/forms/2009TelephoneUtilityCoversheetandTOC.pdf>; 291 Neb. Code § 002.24B. New Jersey requires its telecommunications carriers to maintain their accounts in accordance with either Part 32 of the Commission's rules or Generally Accepted Accounting Principles. *See* <http://www.bpu.state.nj.us/bpu/pdf/telecopdfs/TelcoAr.pdf>.

in the usual course of business.⁹⁷⁶ In particular, because incumbent LECs are already required to maintain their accounts in accordance with Part 32,⁹⁷⁷ the required disclosures are expected to impose minimal new burdens. Indeed, for the many carriers that already provide Part 32 financial reports to RUS, there will be no additional burden.

602. Finally, we conclude that these carriers' financial disclosures should be made publicly available. The only comment we received on this issue came from NASUCA, which strongly urged the Commission to require public disclosure of all financial reports.⁹⁷⁸ NASUCA rightly observed that recipients of high-cost and/or CAF support receive extensive public funding, and therefore the public has a legitimate interest in being able to verify the efficient use of those funds.⁹⁷⁹ Moreover, by making this information public, the Commission will be assisted in its oversight duties by public interest watchdogs, consumer advocates, and others who seek to ensure that recipients of support receive funding that is sufficient but not excessive.

603. Ownership Information. All recipients of funding today are required to obtain FCC registration numbers to do business with the Commission, and are assigned Study Area Codes by USAC to receive high-cost funding. We now adopt a rule requiring all ETCs to report annually the company's holding company, operating companies, affiliates, and any branding (a "dba," or "doing-business-as company" or brand designation). In addition, filers will be required to report relevant universal service identifiers for each such entity by Study Area Codes. This will help the Commission reduce waste, fraud, and abuse and increase accountability in our universal service programs by simplifying the process of determining the total amount of public support received by each recipient, regardless of corporate structure. Such information is necessary in order for the Commission to ensure compliance with various requirements adopted today that take into account holding company structure.⁹⁸⁰ For purposes of this requirement, affiliated interests shall be reported consistent with section 3(2) of the Communications Act of 1934, as amended.⁹⁸¹

604. Tribal Engagement. ETCs serving Tribal lands must include in their reports documents or information demonstrating that they have meaningfully engaged Tribal governments in their supported areas.⁹⁸² The demonstration must document that they had discussions that, at a minimum, included: (1) a needs assessment and deployment planning with a focus on Tribal community anchor institutions; (2) feasibility and sustainability planning; (3) marketing services in a culturally sensitive manner; (4) rights

⁹⁷⁶ See Comments of John Staurulakis, Inc., GN Docket Nos. 10-90, 09-51, WC Docket No. 05-337 (filed July 12, 2010), at 10 (noting that "independent audit firms review the financial records of virtually all rate-of-return regulated RLECs on an annual basis").

⁹⁷⁷ 47 C.F.R. § 32.11(a).

⁹⁷⁸ See NASUCA *USF/ICC Transformation NPRM* Comments at 86.

⁹⁷⁹ See NASUCA *USF/ICC Transformation NPRM* Comments at 86.

⁹⁸⁰ See Sections VII.C.1. and VII.D.10. above and Section XIII below. We note that on occasion, we receive congressional requests for information regarding receipt of high-cost funding at the holding-company level. Letter from Fred Upton, Chairman, House Committee on Energy and Commerce, Henry A. Waxman, Ranking Member, House Committee on Energy and Commerce, Greg Walden, Chairman, House Subcommittee on Communications and Technology, Anna G. Eshoo, Ranking Member, House Subcommittee on Communications and Technology, to Julius Genachowski, Chairman, FCC, (June 22, 2011)

⁹⁸¹ 47 U.S.C. § 153(2) ("The term 'affiliate' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent.").

⁹⁸² See Section IX.A. below.

of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (5) compliance with Tribal business and licensing requirements.⁹⁸³

605. Elimination of Certain Data Reporting Requirements. Finally, as discussed above,⁹⁸⁴ we are eliminating LSS and IAS as standalone support mechanisms. This obviates the need for reporting requirements specific to 54.301(b) and 54.802 of our rules (and 54.301(e) after December 31, 2012).⁹⁸⁵

606. Overall, we think that the changes to the reporting requirements do not impose an undue burden on ETCs and that the benefits outweigh any burdens. Given the extensive public funding these entities receive, the expanded goals of the program, and the need for greater oversight, as noted by the GAO, it is prudent to impose narrowly tailored reporting requirements focused on the information that will demonstrate compliance with statutory requirements and our implementing rules. These specific reporting requirements are tailored to ensure that ETCs are complying with their public interest obligations and using support for the intended purposes, as required by section 254(e) of the Act. Where possible, we are minimizing burdens by requiring certifications in lieu of collecting data, and by allowing the filing of reports already prepared for other government agencies in lieu of new reports. Moreover, we are eliminating some of the existing requirements, which will reduce burdens for some ETCs. Finally, to the extent ETCs currently provide information either to their state or to the Commission, they will not bear any significant additional burden in now also providing copies of such information to the other regulatory body.⁹⁸⁶

3. Annual Section 254(e) Certifications

607. *Background*. As noted above, section 254(e) requires that a carrier shall use “support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁹⁸⁷ The Commission currently requires states to annually certify with respect to ETCs they designate that this statutory requirement is met in order to receive HCLS, SVS, SNA, HCMS, or LSS.⁹⁸⁸ States take different approaches in how they develop a factual basis to support this certification, however.⁹⁸⁹ Federally-designated ETCs are required to make an annual certification directly to this

⁹⁸³ Tribal business and licensing requirements include business practice licenses that Tribal and non-Tribal business entities, whether located on or off Tribal lands, must obtain upon application to the relevant Tribal government office or division to conduct any business or trade, or deliver any goods or services to the Tribes, Tribal members, or Tribal lands. These include certificates of public convenience and necessity, Tribal business licenses, master licenses, and other related forms of Tribal government licensure.

⁹⁸⁴ See Sections VII.C.1. and VII.D.7. above.

⁹⁸⁵ Section 54.301(b), which applies to LSS, requires an ILEC designated as an ETC and serving a study area with 50,000 or fewer access lines to “provide the Administrator with the projected total unseparated dollar amount assigned to each account listed below for the calendar year following each filing.” 47 C.F.R. § 54.301(b). Section 54.301(e) requires carriers subject to 54.301(b) to submit historical data to the Administrator to allow the Administrator to calculate a true-up adjustment for the preceding year. 47 C.F.R. § 54.301(e). Section 54.802, which applies to IAS, requires ETCs providing service within an area served by a price cap LEC to file quarterly line-count data, as well as certain other information, with the Fund Administrator. 47 C.F.R. § 54.802.

⁹⁸⁶ See Cellular One and Viaero *USF/ICC Transformation NPRM* Comments at 30.

⁹⁸⁷ 47 U.S.C. § 254(e).

⁹⁸⁸ 47 C.F.R. §§ 54.313 (non-rural carriers), 54.314 (rural carriers).

⁹⁸⁹ For example, the Michigan Public Service Commission requires ETCs to provide information each year in connection with renewal of their designations. See Michigan Commission *USF/ICC Transformation NPRM* Comments at 4. And as stated in the GAO High-Cost Report, “[s]tates most frequently require carriers to submit (continued...) ”

Commission in order to receive HCLS, SVS, SNA, HCMS, LSS, IAS, or ICLS,⁹⁹⁰ but the Commission has not specified what factual basis must support such certifications. GAO found inconsistencies in the certification process among states and questioned whether such certifications enabled program administrators to fully assess whether carriers are appropriately using high-cost program support.⁹⁹¹ In the Notice, we sought comment on how to harmonize certifications and ensure that they are meaningful.⁹⁹²

608. *Discussion.* We modify our rules to streamline and improve ETCs' annual certification requirements.

609. First, we require that states – and entities not falling within the states' jurisdiction (i.e., federally-designated ETCs) – certify that all federal high-cost and CAF support was used in the preceding calendar year and will be used in the new calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, regardless of the rule under which that support is provided. This corrects a defect in our current rules, which require only a certification with respect to the coming year.⁹⁹³ The certifications required by new section 54.314 will be due by October 1 of each year, beginning with October 1, 2012. The certification requirement applies to all recipients of high-cost and CAF support, including those that receive only Phase I Mobility Fund support.

610. Second, we maintain states' ongoing role in annual certifications. Several commenters take the position that responsibility for ensuring USF recipients comply with their public interest obligations should remain with the states.⁹⁹⁴ As discussed above, we agree that the states should play an integral role in assisting the Commission in monitoring compliance, consistent with an overarching uniform national framework.⁹⁹⁵ States will continue to certify to the Commission that support is used by state-designated ETCs for the intended purpose, which is modified to include the provision, maintenance, and upgrading of facilities capable of delivering voice and broadband services to homes, businesses and community anchor institutions.⁹⁹⁶

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affidavits that future support will be used for its intended purpose; plans for quality, coverage, or capacity improvements; and evidence that past support was used for its intended purposes.” GAO High-Cost Report at 33.

⁹⁹⁰ 47 C.F.R. §§ 54.313 (non-rural carriers), 54.314 (rural carriers), 54.809 (IAS), 54.904 (ICLS)

⁹⁹¹ GAO High-Cost Report at 38.

⁹⁹² *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4696, para. 475.

⁹⁹³ Current sections 54.313 and 54.314 of our rules provide that states “must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” 47 C.F.R. §§ 54.313(a) and 54.314(a).

⁹⁹⁴ See State Members *USF/ICC Transformation NPRM* Comments at 140; Frontier *USF/ICC Transformation NPRM* Comments at 25; Nebraska Commission *USF/ICC Transformation NPRM* Comments at 16; Kansas Commission *USF/ICC Transformation NPRM* Comments at 24, 27; Missouri Commission *USF/ICC Transformation NPRM* Comments at 5, 9-11; Washington Commission *USF/ICC Transformation NPRM* Comments at 4-6; Greenlining *USF/ICC Transformation NPRM* Comments at 10.

⁹⁹⁵ The State Members noted that the basic model of requiring states to make annual certifications is sound, but should be updated to include the new provider of last resort duties assigned to broadband providers. State Members Comments at 140. Another commenter supported federal standards “so states that exercise authority over ETCs have the ability to gather information from ETCs ensuring USF support is being used appropriately.” Missouri Commission *USF/ICC Transformation NPRM* Comments at 9.

⁹⁹⁶ 47 C.F.R. §§ 54.313 and 54.314.

611. Under our reformed rules, as before, some recipients of support may be designated by the Commission rather than the states. States are not required to file certifications with the Commission with respect to carriers that do not fall within their jurisdiction. However, consistent with the partnership between the Commission and the states to preserve and enhance universal service, and our recognition that states will continue to be the first place that consumers may contact regarding consumer protection issues, we encourage states to bring to our attention issues and concerns about all carriers operating within their boundaries, including information regarding non-compliance with our rules by federally-designated ETCs. We similarly encourage Tribal governments, where appropriate, to report to the Commission any concerns about non-compliance with our rules by all recipients of support operating on Tribal lands. Any such information should be provided to the Wireline Competition Bureau and the Consumer & Governmental Affairs Bureau. Through such collaborative efforts, we will work together to ensure that consumer interests are appropriately protected.

612. Third, we clarify that we expect a rigorous examination of the factual information provided in the annual section 54.313 reports prior to issuance of the annual section 254(e) certifications. Because the underlying reporting requirements for recipients of Mobility Fund Phase I support differ from the reporting requirements for ETCs receiving other high-cost support, Mobility Fund Phase I recipients' certifications will be based on the factual information they provide in the annual reports they file pursuant to section 54.1009 of the Mobility Fund rules.⁹⁹⁷ We expect that states (or the ETC if the state lacks jurisdiction) will use the information reported in April of each year for the prior calendar year in determining whether they can certify that carriers' support has been used and will be used for the intended purposes. In light of the public interest obligations we adopt in this Order, a key component of this certification will now be that support is being used to maintain and extend modern networks capable of providing voice and broadband service. Thus, for example, if a state commission determines, after reviewing the annual section 54.313 report, that an ETC did not meet its speed or build-out requirements for the prior year, a state commission should refuse to certify that support is being used for the intended purposes. In conjunction with such review, to the extent the state has a concern about ETC performance, we welcome a recommendation from the state regarding prospective support adjustments or whether to recover past support amounts.⁹⁹⁸ As discussed more fully below, failure to meet all requirements will not necessarily result in a total loss of support, to the extent we conclude, based on a review of the circumstances, that a lesser reduction is warranted. Likewise, we will look at ETCs' annual 54.313 reports to verify certifications by ETCs (in instances where the state lacks jurisdiction) that support is being used for the intended purposes.⁹⁹⁹

613. Fourth, we streamline existing certifications. Today, we have two different state certification rules, one for rural carriers and one for non-rural carriers. There is no substantive difference between the existing certification rules for the two classes of carriers, and as a matter of administrative

⁹⁹⁷ Because ETCs of Mobility Fund Phase I support that receive support pursuant to other high-cost mechanisms are subject to the reporting requirements of new section 54.313, those companies' certifications will be based on the factual information in the annual reports they file pursuant to both new section 54.313 and section 54.1009 of the Mobility Fund rules.

⁹⁹⁸ This should help address the concern of the State Members of the Federal-State Joint Board on Universal Service that, under the annual certification process as it exists today, "a State has only one remedy, denial of certification." State Members *USF/ICC Transformation NPRM* Comments at 140.

⁹⁹⁹ ETC Designation Order, 20 FCC Rcd at 6402, para. 72 ("If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may suspend support disbursements to that carrier or revoke the carrier's designation as an ETC. Likewise, as the Joint Board noted, state commissions possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state.").

convenience, we consolidate all certifications into a single rule. Moreover, because the net effect of the changes that we are implementing to our high-cost programs is, as a practical matter, to shift the focus from whether a company is classified as “rural” versus “non-rural” to whether a company receives all support through a forward-looking model or competitive process or, instead, based in part on embedded costs,¹⁰⁰⁰ it does not make sense to maintain separate certification rules for “rural” and “non-rural” carriers. We see no substantive difference in the certifications that should be made. Thus, we eliminate the certification requirements currently found in sections 54.313 and 54.314 of our rules¹⁰⁰¹ and implement new rule 54.314.

614. Finally, we also eliminate carriers’ separate certification requirements for IAS and ICLS. As discussed above, we are eliminating IAS as a standalone support mechanism, and this obviates the need for IAS-specific certifications.¹⁰⁰² Although ICLS will remain in place for some carriers, those carriers will certify compliance through new section 54.314. However, to ensure there is no gap in coverage, those carriers will file a final certification under section 54.904 due June 30, 2012, covering the 2012-13 program year. Thus, by this Order, we eliminate section 54.809 and, effective July 2013, section 54.904 of our rules.¹⁰⁰³ And as discussed in section VII.C.1. above, we also eliminate section 54.316 of our rules, relating to rate comparability.¹⁰⁰⁴

B. Consequences for Non-Compliance with Program Rules

615. *Background.* In the *USF/ICC Transformation NPRM*, we sought comment on proposed consequences for a Fund recipient’s failure to fulfill its public interest obligations.¹⁰⁰⁵ We also sought comment on whether we should reduce or suspend universal support payments for non-compliance with the various reporting requirements.¹⁰⁰⁶ Under our existing rules, companies lose support if the state (or the ETC, in the case of federally designated ETCs) fails to file the required certifications or information, such as the annual reports required by current section 54.209.¹⁰⁰⁷

616. *Discussion.* Effective enforcement is necessary to ensure that the reforms we make in this Order achieve their intended goal.¹⁰⁰⁸ Our existing rules already have self-effectuating mechanisms to incent prompt filing of requisite certifications and information necessary to calculate support amounts, as

¹⁰⁰⁰ See Section VII.C.1. above.

¹⁰⁰¹ Current section 54.313 requires certifications with regard to support pursuant to sections 54.309 and 54.311. 47 C.F.R. § 54.313. Current section 54.314’s requirements pertain to support pursuant to sections 54.301, 54.305, and 54.307, as well as part 36, subpart F. 47 C.F.R. § 54.314.

¹⁰⁰² See Section VII.C.1. above.

¹⁰⁰³ Sections 54.809 and 54.904 require carriers receiving IAS and ICLS support, respectively, to file a certification stating that all such support “will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” 47 C.F.R. §§ 54.809 and 54.904.

¹⁰⁰⁴ Section 54.316 requires that states certify as to rate comparability for areas served by non-rural carriers. 47 C.F.R. § 54.316.

¹⁰⁰⁵ *USF/ICC Transformation NPRM* at ¶ 153.

¹⁰⁰⁶ *USF/ICC Transformation NPRM* at ¶ 466.

¹⁰⁰⁷ 47 C.F.R. § 54.209(b).

¹⁰⁰⁸ See Greenlining *USF/ICC Transformation NPRM* Comments at 9. We received almost no comments on this issue. Those we did receive were largely conclusory and provided no specifics as to appropriate penalties or remedies. See, e.g., CWA *USF/ICC Transformation NPRM* Comments at 20; Greenlining *USF/ICC Transformation NPRM* Comments at 10.

companies lose support to the extent such information is not provided in a timely fashion.¹⁰⁰⁹ While we need such information to ensure that support is being used for the intended purposes, consistent with section 254(e) of the Act, we also need to ensure that such certifications, which will be based upon the certifications and information provided in the new section 54.313 annual reports, adequately address all areas of material non-compliance with program obligations.

617. We believe that in the majority of cases involving repeated failures to timely file certifications or data, the Commission's existing enforcement procedures and penalties will adequately deter noncompliance with the Commission's rules, as herein amended, regarding high-cost and CAF support.¹⁰¹⁰ We adopt the provisions of section 54.209(b) in new section 54.313, which provides for reductions in support for failing to file the reports required by section 54.209(a) in a timely fashion, and extend those provisions to all recipients of high-cost support.¹⁰¹¹ We also adopt new section 54.314, which provides for a similar reduction in support for the late filing of annual certifications that the funds received were used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.¹⁰¹² Our rules also provide for debarment of those convicted of or found civilly liable for defrauding the high-cost support program,¹⁰¹³ and we emphasize that those rules apply with equal force to CAF, including the Mobility Fund Phase I.

618. To further ensure that the recipients of existing high-cost and/or CAF support use those funds for the purposes for which they are provided, we create a rule that entities receiving such support will receive reduced support should they fail to fulfill their public interest obligations, such as by failing to meet deployment milestones, to provide broadband at the speeds required by this Order, or to provide service at reasonably comparable rates.¹⁰¹⁴ This is consistent with the suggestions of the State Members

¹⁰⁰⁹ Under current rules, certifications are due by October. If a carrier files late, but on or before January 1, the carrier will receive support for Q2, Q3 and Q4. If a carrier files late, but on or before April 1, the carrier will receive support for Q3 and Q4. If the carrier files late, but on or before July 1, the carrier will receive support for Q4. If a carrier files after July 1, the carrier will not receive any support for that year. See 47 C.F.R. §§ 54.209(b), 54.313(d), 54.314(d).

¹⁰¹⁰ See 47 C.F.R. § 1.80. See also 47 C.F.R. § 1.80, Note to para. (b)(4), "Guidelines for Assessing Forfeitures" (Forfeiture Guidelines). The Forfeiture Guidelines provide base forfeiture amounts for certain specified violations. However, those base amounts are subject to adjustment based on the factors set forth in section 1.80(b)(4) and in Section II of the Forfeiture Guidelines. Thus, the Commission has assessed forfeitures of \$50,000 per violation for a carrier's failure to timely file Forms 499A and 499Q because of the programmatic importance of such filings and the impact a carrier's failure to file has on other carriers' contribution obligations. See, e.g., *ADMA Telecom, Inc.*, Forfeiture Order, 26 FCC Rcd 4152, 4155, paras. 9-10 (2011); *Globalcom, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3479, 3486, para. 17 (2010); *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710, 4720, ¶¶ 26-28 (2006); *InPhonic, Inc.*, Notice of Apparent Liability of Forfeiture and Order, 20 FCC Rcd 13277, 13287, ¶ 26 (2005).

¹⁰¹¹ For each quarter the filing is late, the carrier loses support for an additional quarter. 47 C.F.R. § 54.209(b).

¹⁰¹² Current sections 54.313 and 54.314, both of which are being replaced by new section 54.314, provide for this same reduction in support. See 47 C.F.R. §§ 54.313(d), 54.314(d). As with section 54.209(b), the carrier loses support for one quarter for each quarter the filing is late. *Id.*

¹⁰¹³ 47 C.F.R. § 54.8.

¹⁰¹⁴ See Section XVII.G. below.

of the Federal-State Joint Board on Universal Service,¹⁰¹⁵ who further note that revoking a carrier's ETC designation is too blunt an instrument.¹⁰¹⁶ We agree that revoking a carrier's ETC status is not an appropriate consequence for noncompliance, except in the most egregious circumstances.¹⁰¹⁷ In the FNPRM, we seek comment on appropriate enforcement options for partial non-performance. We do not rule out the option of revoking an ETC's status, but we seek comment on what circumstances would justify such a remedy and what alternatives might be appropriate in other circumstances. We delegate to the Wireline Competition Bureau and Wireless Telecommunications Bureau the task of implementing reductions in support based on the record received in response to the FNPRM.

C. Record Retention

619. *Background.* Without proper documentation, it is impossible to conduct effective audits and assessments of high-cost or CAF recipients. In 2007, the Commission adopted a five-year record retention requirement for recipients of high-cost support.¹⁰¹⁸ In the *USF/ICC Transformation NPRM*, we sought comment on whether those record retention requirements are adequate to facilitate audits of program recipients or whether additional requirements are needed in light of the changed responsibilities and expectations for Fund recipients called for in this Order. No commenters addressed this issue.

620. *Discussion.* We find that the current record retention requirements, although adequate to facilitate audits of program participants, are not adequate for purposes of litigation under the False Claims Act,¹⁰¹⁹ which can involve conduct that relates back substantially more than five years. Thus, we revise our record retention requirements to extend the retention period to ten years.

621. Additionally, we believe our record retention requirements need clarification. The current record retention requirements appear in section 54.202(e) of the Commission's rules.¹⁰²⁰ Section 54.202 is entitled: "Additional requirements for Commission designation of eligible telecommunications carriers."¹⁰²¹ Subsections (a) through (d) of that section apply, by their terms, only to ETCs designated under section 214(e)(6) of the Act – i.e., ETCs designated by the Commission rather than by the states.¹⁰²² Subsection (e), however, is not so limited.¹⁰²³ Indeed, the Commission intended the requirements of section 54.202(e) to apply to all recipients of high-cost support.¹⁰²⁴ To fully support our ongoing oversight, the record retention requirements must apply to all recipients of high-cost and CAF support. Thus, by this Order, we amend our rules by re-designating section 54.202(e) as new section 54.320 to

¹⁰¹⁵ State Members *USF/ICC Transformation NPRM* Comments at 62 (Step 7 of the multi-step penalty framework in the proposed "Provider of Last Resort Fund" would "reduce[] support if the ETC fails to meet specific build-out requirements or to provide adequate service quality").

¹⁰¹⁶ See State Members *USF/ICC Transformation NPRM* Comments at 140.

¹⁰¹⁷ At least one commenter contended that recipients who fail to deploy should face "significant penalties," such as asset seizure. See ACA *USF/ICC Transformation NPRM* Comments at 32.

¹⁰¹⁸ See 47 C.F.R. § 54.202(e).

¹⁰¹⁹ 31 U.S.C. §§ 3729–33. Under the False Claims Act, carriers receiving funds under fraudulent pretenses may be held liable for a civil penalty of between \$5,000 and \$10,000, plus treble damages. 31 U.S.C. § 3729(a)(1).

¹⁰²⁰ See 47 C.F.R. § 54.202(e).

¹⁰²¹ See 47 C.F.R. § 54.202.

¹⁰²² See 47 C.F.R. § 54.202(a)-(d).

¹⁰²³ See 47 C.F.R. § 54.202(e).

¹⁰²⁴ See *Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, Report and Order, 22 FCC Rcd 16372, 16383-84, para. 24 (2007).