

service using at least some of their own facilities and the section 214(e)(5) requirement that the service area of a competitive ETC conform to the service area of any rural telephone company service.<sup>2226</sup> We see no reason why we could not likewise forbear from the section 214(e)(1) requirement that carriers offer service “throughout [their] service area” if the statutory criteria for forbearance are met. In particular, we note that section 10 expressly grants the Commission authority to tailor forbearance relief to “any or some of [telecommunications carriers’] geographic markets,” which we believe would allow the Commission to forbear from enforcing a carrier’s section 214(e)(1) obligations in some parts of its service area, while maintaining those obligations elsewhere. We seek comment on our interpretation of section 10, and on our proposal to use case-by-case forbearance to adjust carriers’ section 214(e)(1) service obligations under our new funding mechanisms as necessary and in the public interest.

1098. We note that some commenters have sought broader modifications to the section 214(e)(1) framework, and we also seek comment on these suggestions as alternatives or supplements to the case-by-case approach we propose. In particular, some commenters suggest that the Commission adopt a rule under section 201 or 254(f) providing that an ETC’s section 214(e)(1) “service area” “should be limited to those specific geographies (e.g., wire centers) where the ETC is receiving universal service support.”<sup>2227</sup>

1099. These commenters also suggest that the Commission grant blanket section 10 forbearance “to the extent [section 214(e)(1) requires ETCs to offer service in areas where they receive no universal service support].”<sup>2228</sup> In the alternative, commenters suggest that the Commission reinterpret section 214(e)(1) to require the provision of service only in areas where those services actually are supported, contending that section 214(e)(1)’s requirement that ETCs offer “the services that *are supported*” suggests that the service obligation only attaches where support actually flows.

1100. We seek comment on each of these proposals. In particular: Do these approaches appropriately balance federal and state roles in the designation and oversight of ETCs? Are they in tension with section 214(e)(4)’s requirement that ETCs may only be allowed to relinquish their designations in “area[s] served by more than one eligible telecommunications carrier,” *i.e.*, areas where service will continue even if relinquishment is permitted? Are they in tension with the statutory language in section 214(e)(5) that the service area of a rural telephone company is its study area, unless the Commission and the states, establish a different definition? Are there ways to address this tension and ensure continued voice service to consumers in all areas of the country, while still taking steps to better align targeted funding with service obligations, as some commenters advocate? Is the above proposed interpretation of section 214(e)(1) consistent with that section’s requirement that carriers offer “the services that are supported” “throughout the service area for which [their ETC] designation is received”?

1101. If the Commission were to establish a general rule that service obligations should only attach in the specific geographies (*e.g.*, wire centers) where the ETC is receiving universal service support, we also seek comment on what would be the appropriate geography to use. Should we use geographies based on the actual network architectures of fund recipients, like wire centers? Or should we pick technology-neutral geographies, such as census blocks, census tracts, or counties? How granular should our definition of the service requirement be? What would be the practical implications of an ETC

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<sup>2226</sup> *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, 20 FCC Rcd 15095 (2005); *Telecommunications Carriers Eligible for Universal Service Support; NTCH, Inc. Petition for Forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b)*; *Cricket Communications, Inc., Petition for Forbearance*, WCB Docket No. 09-197, Order, 26 FCC Rcd 13723 (2011).

<sup>2227</sup> Letter from Heather Zachary, Counsel to AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 3-5 (filed Oct. 19, 2011).

<sup>2228</sup> *Id.* at 5.

having service obligations in certain census blocks and not others within a community (for instance having obligations outside of town, but not within the footprint of an unsubsidized provider that services only the town), and would that variation in obligation result in consumer confusion?

1102. Finally, we also seek comment on how to ensure that low-income consumers across America continue to have access to Lifeline service, both in urbanized areas that will not, going forward, receive support from the new CAF, and in rural areas that will, over time, receive support from the CAF. As a practical matter, how can the Commission ensure that low-income consumers that only wish to subscribe to voice service continue to have the ability to receive Lifeline benefits? We emphasize our ongoing commitment to ensuring that low-income consumers in all regions of the county have “access to telecommunications and information services.”<sup>2229</sup> Some commenters have suggested that we create Lifeline-only ETCs.<sup>2230</sup> As a matter of federal policy, would it thwart achievement of the objectives established by Congress to relieve an existing ETC of the obligation to provide Lifeline if there was no other ETC in that particular area willing to offer Lifeline services?

### G. Ensuring Accountability

1103. In this section, we seek comment on several additional measures to impose greater accountability on recipients of funding.

1104. In the accompanying Order, we create a rule that entities receiving high-cost universal 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 the Order, or to provide service at reasonably comparable rates. In addition, in the Order adopting the first phase of the Mobility Fund, we require recipients to obtain a letter of credit in order to receive funding. A Mobility Fund Phase I recipient that fails to comply with the terms and conditions upon which its support was granted will be required to repay the Mobility Fund all of the support it has received as well as a default payment.<sup>2231</sup> In this FNPRM, we propose various alternative remedies available to the Commission in the event an ETC fails to comply with our rules regarding receipt of high-cost universal service support.

1105. *Financial Guarantees.* The first alternative remedy we propose for non-compliance with our rules is a financial guarantee. We propose that a recipient of high-cost and CAF support should be required to post financial security as a condition to receiving that support to ensure that it has committed sufficient financial resources to complying with the public interest obligations required under the Commission’s rules and that it does in fact comply with the public interest obligations set forth in Section VI of the Order. In particular, we seek comment on whether all ETCs should be required to obtain an irrevocable standby letter of credit (LOC) no later than January 1, 2013.<sup>2232</sup> Our goal in proposing this requirement is to protect the integrity of the USF funds disbursed to the recipient and to secure return of those funds in the event of a default, even in the event of bankruptcy.

1106. In other sections of this FNPRM, we seek comment on applying post-auction procedures, including performance guarantees, to ETCs that apply for funding after a competitive bidding process. In

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<sup>2229</sup> 47 U.S.C. § 254(b)(3).

<sup>2230</sup> See, e.g., ABC Plan Joint Letter, Attach. 1 at 7-9, Sprint *USF/ICC Transformation NPRM* Comments at 42-43, n.91, Comments of AT&T, GN Docket No. 09-51 et al., at 17-18 (filed July 12, 2010).

<sup>2231</sup> See *supra* Section VII.E.1.e.v.

<sup>2232</sup> Our proposal would require ETCs to provide an LOC issued in substantially the same form as set forth in our model Letter of Credit by a bank that is acceptable to the Commission. See Appendix P. We propose that the requirements for a bank to be acceptable to the Commission to issue the LOC would be the same as those we adopt for LOCs obtained by recipients of Mobility Fund support. See 47 C.F.R. § 54.1007.

this section, we seek comment on adopting financial performance guarantee requirements for ETCs that receive funding through processes other than competitive bidding.

1107. Should ETCs that will receive less than a specified amount of support be exempted from any requirement to provide an LOC?<sup>2233</sup> On what basis should we adopt such a blanket exemption? For instance, should it be based on the aggregate amount of support provided on a study area basis, and at what dollar level should we grant such an exemption?

1108. We seek comment on how to determine the amount of the LOC necessary to ensure compliance with the public interest obligations imposed in the Order, as well as the length of time that the LOC should remain in place. For example, the amount of the LOC could be determined on the basis of the ETC's estimated annual funding amount. Should the amount of an initial LOC, or a subsequent LOC, also ensure the continuing maintenance and operation of the network? We also recognize that a recipient's failure to fulfill its obligations may impose significant costs on the Commission and, potentially, on the USF itself if there is a need to provide additional support to another ETC to serve the area. Should the amount of an initial LOC or a subsequent LOC include an additional amount that would serve as a default payment? Under what circumstances should the ETC be required to replenish the LOC? For how long should an ETC be required to keep the LOC in place? Is there a finite time after which the LOC will no longer be necessary to safeguard the Fund?

1109. We propose that under the terms of the LOC, failure to satisfy essential terms and conditions upon which USF support was granted, 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 to recover that support and any default payment. The Commission, for example, would draw upon the LOC when the recipient fails to meet its required deployment milestone(s) or other public interest obligations. Are there any situations in which we should deem non-compliance to be non-material, and therefore not warrant a draw on the letter of credit? Should recipients be provided a period of time to cure non-performance before drawing on the letter of credit? We propose that failure to comply will be evidenced by a letter issued by the Chief of either the Wireless Bureau or Wireline Bureau or their designee, which letter, attached to an LOC draw certificate shall be sufficient for a draw on the LOC.<sup>2234</sup>

1110. *Penalties.* We seek comment on alternatives to the financial guarantees discussed above, including whether revocation of ETC designation, denial of certification resulting in prospective loss of support, or recovery of past support amounts is an appropriate remedy for failure to meet the public interest obligations adopted in the Order.<sup>2235</sup> We also seek comment on the specific circumstances in which these alternatives might apply, if they are different than the specific circumstances in which financial guarantees would apply.

1111. We also seek comment on what specific triggers might lead to support reductions, how much support should be reduced, how best to implement support reductions, and how the review and

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<sup>2233</sup> We note that in Section VII.E.1.e.v of the accompanying Order, we declined to limit the LOC requirement to a subset of bidders that fall under certain criteria, such as a specified bond rating, debt/equity ratio and minimum level of available capital.

<sup>2234</sup> While such letter may not foreclose an appeal or challenge by the recipient, the appeal or challenge will not prevent a draw on the Letter of Credit.

<sup>2235</sup> In the E-rate program, we recover support that has been disbursed to recipients when it is determined there has been non-compliance with statutory or specified regulations. *See Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15813-23, paras. 15-44 (2004). In some circumstances, all support for a given funding year is recovered for a given violation, while in other circumstances, funding is recovered on a pro-rata basis. *See id.*

appeal process should be revised. If we adopt a framework for partial withholding of support, should we establish “levels” of non-performance that would result in the loss of specific percentages of support? For example, should we establish levels one through four of non-compliance, with corresponding loss of support of 25, 50, 75, and 100 percent? If so, what criteria do we use to determine a carrier’s level of non-performance?

1112. USAC today recovers support when recipients have received support to which they are not entitled, typically accomplishing the recovery through adjustments in future disbursements. Should we adopt rules identifying what constitutes a material failure to perform, warranting recovery of past funding? For instance, should price cap companies be subject to a loss of prospective support for failure to meet intermediate build-out requirements? Should they be subject to recovery of past support amounts if they fail to meet the performance requirements at the end of the five-year term? Should there be a sliding scale for recovery of past amounts depending on the degree to which the carrier fails to meet a specified milestone? Should we continue the current practice of offsetting any support adjustments against future disbursements?

1113. Should we adopt rules that create self-executing reductions in support that would be administered by USAC? We note that under our current rules, any party that disputes action by USAC may seek review by the Commission. What additional processes, if any, should we put in place for ETCs to dispute any support adjustments for non-performance?

1114. We recognize that under section 214, ETC designation is a responsibility shared between the states and this Commission. We welcome input from our state colleagues on the circumstances in which ETC designations have been revoked by states in the past, and what circumstances might warrant revocation under our reformed Connect America Fund. Should we adopt a national framework for when ETC revocation is appropriate?

1115. The State Members of the Universal Service Joint Board suggest that denial of certification – which today results in loss of support for the coming year – is a draconian remedy that should be available if necessary, but avoidable if possible.<sup>2236</sup> We seek comment on what circumstances would justify such a result. The State Members also proposed in their comments that carriers should be disqualified from receiving support during periods in which they fail to provide adequate information to verify continuing eligibility to receive support and adequate to perform support calculations.<sup>2237</sup> We seek comment on this proposal. We particularly welcome input from our state partners on how we can ensure there are significant consequences for material non-compliance.

1116. An alternative approach might be to separately count compliance with each public interest obligation established in Section VI of the Order, with non-compliance with each individual obligation resulting in the ETC losing a set percentage of support for each obligation it fails to meet. Must non-compliance with an obligation be material? If so, how do we define “material” for these purposes?

## **H. Annual Reporting Requirements for Mobile Service Providers**

1117. In the Order, we seek to take several steps to harmonize and update our annual reporting requirements for recipients of USF support, including extending the current annual reporting requirements to all ETCs.<sup>2238</sup> All ETCs that receive high-cost support, except ETCs that receive support solely

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<sup>2236</sup> See State Members *USF/UCC Transformation NPRM* Comments at 140.

<sup>2237</sup> See State Members *USF/UCC Transformation NPRM* Comments at 55.

<sup>2238</sup> See *supra* section VIII.A.2.

pursuant to Mobility Fund Phase I, which has separate annual reporting obligations,<sup>2239</sup> will be required to annually file the information required by new section 54.313 with the Commission, USAC, and the relevant state commission, authority in a U.S. Territory, or Tribal government or authority, as appropriate. In the Order, we also establish new reporting requirements for the annual reports that will ensure that recipients are complying with the new broadband public interest obligations we adopt.<sup>2240</sup> Because Mobility Fund support will differ in some respects from support received under other USF high-cost support mechanisms, in the section of the Order adopting the first phase of the Mobility Fund, we require recipients of Mobility Fund support to file annual reports specific to that program.<sup>2241</sup> Mobility Fund recipients that receive support under other high-cost programs may file a separate Mobility Fund annual report or they may include the required information with respect to their Mobility fund support in a separate section of their annual reports filed pursuant to section 54.313.<sup>2242</sup>

1118. We seek comment here on whether there are certain requirements in our new annual reporting rule for ETCs, new section 54.313, that do not reflect basic differences in the nature and purpose of the support provided for mobile services. Specifically, we seek comment on whether we should revise the section 54.313 reporting requirements or adopt new reporting requirements that would apply to support an ETC receives to provide mobile services. For example, new section 54.313 requires ETCs to include in their annual reports, beginning with their April 1, 2014 report, information regarding their progress on their five-year broadband build-out plan.<sup>2243</sup> What type of similar information would be appropriate to require of mobile service providers who receive support from Phase I or Phase II of the Mobility Fund? ETCs are currently required to report annually on the number of requests for service from potential customers within the ETC's service areas that were unfulfilled during the past year.<sup>2244</sup> Should we continue to require this information from mobile service providers in view of the fact that the measure of performance for ETCs receiving Mobility Fund support is coverage of the supported areas, and not the number of subscribers to the supported service?

1119. ETCs must also include in their annual reports detailed information on outages that meet certain minimum criteria described in the rule, including the geographic areas affected and the number of customers affected.<sup>2245</sup> For mobile service providers, how should the number of affected customers be counted? Should the number of affected customers be the number of customer billing addresses within the affected areas, the average number of customers served by the towers that are out-of-service during the outage, or some other measure?

1120. We seek comment on the annual reporting issues raised above and on any other aspects of our annual reporting requirements that commenters believe do not reflect the nature of mobile services being offered and the objectives of the USF support they receive and that require a new annual reporting rule specifically directed to mobile service providers.

### **I. Mobility Fund Phase II**

1121. The Order we adopt today establishes the Mobility Fund, which will help ensure the

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<sup>2239</sup> See *supra* note 946.

<sup>2240</sup> See *supra* VIII.A.2.

<sup>2241</sup> See *supra* paras. 471-474.

<sup>2242</sup> See *id.*.

<sup>2243</sup> 47 C.F.R. § 54.313(a)(1).

<sup>2244</sup> 47 C.F.R. § 54.313(a)(3).

<sup>2245</sup> 47 C.F.R. § 54.313(a)(2).

availability of mobile broadband services across America. This FNPRM addresses specifically the second phase of the Mobility Fund, which provides ongoing support for mobile broadband and high quality voice services.<sup>2246</sup> We anticipate disbursements from the second phase of the Mobility Fund to occur as early as the third quarter of 2013. The Order establishes an annual budget of \$500 million, up to \$100 million of which will be reserved to support Tribal lands, including Alaska. We propose rules to use the Mobility Fund Phase II to ensure 4G mobile wireless services in areas where such service would not otherwise be available, and seek comment on certain alternative approaches.

## 1. Overall Design

1122. We propose to use a reverse auction mechanism to distribute support to providers of mobile broadband services in areas where such services cannot be sustained or extended without ongoing support. We propose that the reverse auction be designed to support the greatest number of unserved road miles (or other units) within the overall Mobility Fund budget. Assigning support in this way would be consistent with our general decision to use market-driven policies to maximize the value of limited USF resources, and should enable us to identify those providers that will make most effective use of the budgeted funds, thereby benefiting consumers as widely as possible. We discuss the proposed framework for the program and the auction mechanism in more detail below, and seek comment on alternatives, including the use of a model to determine both the areas that would receive support and the level of support.

## 2. Framework for Support Under Competitive Bidding Proposal

### a. Identifying Geographic Areas Eligible for Support

1123. We seek to provide funding only in geographic areas where there is no private sector business case to provide mobile broadband and high quality voice-grade service. We propose to identify such areas by excluding all areas where unsubsidized 3G or better services are available. We propose to use census blocks as the minimum size geographic unit for identifying eligible areas.

1124. *Identifying Areas Eligible for Support.* We propose to identify areas eligible for support on a census block basis, which would permit us to target Phase II support more precisely than if we were to use a larger area. As a proxy for identifying areas where private investment is likely to undertake to provide mobile broadband services, and thus, areas not eligible for support, we propose to use areas where an unsubsidized provider offers 3G or better service based upon the most recent available data prior to auction. Under this proposal, any census block where 3G or better service is available from at least one unsubsidized provider would not be eligible for support.<sup>2247</sup> Census blocks with 2G service available from an unsubsidized provider as well as census blocks where 3G service is provided only by subsidized provider(s) would be eligible. Specifically, we would use American Roamer data to identify areas where there are mobile networks that offer service using EV-DO, EV-DO Rev A, UMTS/HSPA and HSPA+, LTE, and any other technologies offering equivalent speeds or better. As discussed below, we may wish to prioritize support to areas that also lack 2G coverage, and American Roamer data could also be used for this purpose. As with Phase I, we propose to use the centroid method to establish whether service using particular technologies is available to a particular census block. Census blocks that do not have such service would be eligible for Phase II support. We seek comment on these proposals. In particular, we seek comment on whether there are other proxies for determining where private investment will deploy mobile broadband, other data sources, other technologies, or methods other than the centroid method that we should consider in determining whether particular census blocks should be excluded from

<sup>2246</sup> See *supra* section VI (Public Interest Obligations).

<sup>2247</sup> We note that any provider that may be offering 3G or better service at the time of a Mobility Fund Phase II auction in an area for which it receives Mobility Fund Phase I support would not be considered unsubsidized.

eligibility for support to promote our objectives.

1125. We also seek comment on how a cost model could be used to identify areas for which providers would be able to seek support in a Phase II auction. We note here that US Cellular and MTPCS have filed analyses based on cost models for the deployment of wireless services. Elsewhere, we seek comment on their submissions. In particular, we discuss at greater length below how a cost model could be used both to identify areas where support should be offered and, as an alternative to competitive bidding, to determine the amount of support to be offered. Here, we invite comment on the possibility of using a mobile wireless cost model only to identify the areas that would be eligible for Phase II support, with the actual award of support through a reverse auction. We also seek comment on using other criteria – such as the availability of unsubsidized services as discussed above – to refine a model-based definition of areas for which providers will be eligible to seek support in the auction. For example, we could make ineligible for Phase II support areas with unsubsidized providers, or areas where any provider has made a public or regulatory commitment to provide unsubsidized service, even if a cost model indicates that costs are high.

1126. *Minimum Size Unit for Bidding and Support.* We propose to identify eligible areas at the census block level, and we also propose that the census block should be the minimum geographic building block for defining areas for which support is provided. Because census blocks are numerous and can be quite small, we believe that the Phase II auction should provide for the aggregation of census blocks for purposes for bidding. That could be done in a number of ways. We could set out by rule a minimum area for bidding comprised of an aggregation of eligible census blocks. In addition, the auction procedures could provide for bidders to be able to make “all-or-nothing” package bids on combinations of bidding areas. Package bidding procedures could specify certain predefined packages,<sup>2248</sup> or could provide bidders greater flexibility in defining their own areas, here comprised of census blocks. We seek comment on two of the possible approaches to aggregating census blocks.

1127. Under the Census Tract Approach, the Commission would define a minimum aggregation of blocks by rule, for example by aggregating eligible census blocks based on the census tract in which they lie, so that bidders would bid for support for all eligible census blocks within that tract.<sup>2249</sup> Under the Bidder-Defined Approach, the Commission would not require a minimum aggregation of census blocks, but would establish package bidding procedures that would allow bidders to group the specific census blocks on which they wanted to bid.

1128. Census Tract Approach. Under this approach we would create a minimum unit for bidding that is larger than an individual block. For example, we could use a census tract, so bidders would bid for support to serve all the eligible blocks within the census tract. We ask for comment on whether tracts would be an appropriate unit here or whether there is some other minimum grouping of census blocks that would be preferable, such as block groups. Should we use a different minimum geographic unit in areas where census blocks and/or census tracts are especially large? For example, if we group blocks into tracts for bidding, should we consider making an exception if the particular tract is especially large, and use individual blocks or block groups for bidding in those cases, as we have done in Alaska for Mobility Fund Phase I? Regardless of the minimum unit, there are a number of different auction designs that could be used. For example, one possibility would be to use a clock auction format with bidding on tracts. Without package bidding, bidders could manage aggregations of tracts through multiple rounds of bidding. For package bidding, we could allow bidders to flexibly aggregate census

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<sup>2248</sup> See *700 MHz Auction Procedures Public Notice*, 22 FCC Rcd at 18,179-81, paras. 138-144.

<sup>2249</sup> Census tracts have between 1,500 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.

tracts (or other units) of their choosing or we could allow bidders to place package bids on pre-defined packages of tracts. We seek comment on bidders' interest in and need for package bidding as it relates to our choice of a minimum unit for bidding and support. Under the Census Tract Approach, as explained below, bidders would be required to serve a specified percentage (*e.g.*, 75 percent) of the units (or road miles, as proposed) in the unserved census blocks.

1129. Bidder-Defined Approach. Under this approach, the Commission would not specify a minimum aggregation of census blocks but would provide bidders with considerable flexibility to aggregate the specific census blocks they propose to serve. Bidders would be able to make bids that specify a set of census blocks to be covered, and a total amount of support needed. We seek comment on whether there should be a boundary on bids under such procedures – for example, would it be useful to have a rule that all the census blocks in a given bid must be within a cellular market area (CMA)?<sup>2250</sup> Under this approach, a bidder could be permitted to submit several bids, up to a limit that would be specified in the auctions procedures. Bids by that bidder that contained some geographic overlap would be treated as mutually exclusive, *i.e.*, only one could be awarded. Bids that do not overlap could win simultaneously. The Commission would use a computer optimization to identify the set of bids that maximizes the number of eligible road miles (or other supported units) covered subject to the budget constraint. Under this general approach, there may be some limited scenarios where eligible road miles may be covered by multiple winners – *i.e.*, whenever the optimization determines that the set of winning bids that would maximize the total road miles (or other units) covered within the budget requires limited duplicative coverage, we would permit that coverage. We seek comment on whether such an approach could be sufficiently contained to ensure that we are truly making the most efficient use of the fund given limited resources. We also note that allowing overlap among providers could reduce the revenues a bidder expects from customers, and therefore could increase the support a bidder would seek. We seek comment on whether this is a significant concern, and whether it could be addressed by allowing bidders to make bids contingent on the overlap being less than some percentage. In addition, as discussed below, providers would be required to serve all the units in the census block.

1130. We seek comment on whether a Bidder-Defined Approach, a Census Tract Approach, or another approach would best meet the needs of bidders to take advantage of geographic economies of scale or scope. In order to bid effectively, presumably bidders would need to match eligible census blocks to their business plans, and know the number of road miles (or other supported units) within each census block. As discussed below, prior to an auction, the Wireless and Wireline Bureaus would provide information on the specific eligible census blocks and the units associated with each under the authority we propose to delegate to them. We could provide information through one or more bidder tools on the Commission website. Those tools, for instance, could allow bidders to readily match up their own information on the geographic areas in which they are interested with the blocks available in the auction. Bidder tools could also make readily accessible to potential bidders various online data, including maps, regarding the unserved blocks in which they are interested -- such as associated road mile or population (or other units) data so that bidders could consider potential per-unit bids for coverage of various possible geographic areas. Providing these tools could facilitate participation by small as well as large providers. We seek comment on whether there is additional information or help that the Commission should provide to bidders would need from the Commission or whether the tools needed for this matching and calculation can be developed by bidders.

1131. We invite comment on any other advantages and disadvantages of the Census Tract and Bidder-Defined approaches from a provider's perspective. Commenters should address the minimum scale at which providers may want to incorporate Phase II support into their existing networks; the

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<sup>2250</sup> See *supra* note 586.

simplicity of the auction mechanism; the ability of providers to capture efficiencies, and to formulate and implement bidding strategies; and ease of administration.

1132. *Prioritizing Areas.* In addition, we seek comment on whether we should target areas currently without any mobile service for priority treatment under Phase II. For instance, should we provide a form of bidding credit that would promote the support of areas with no mobile service at all or only mobile service at lower than current generation or 3G levels? We discuss below in a separate section proposals for targeting Phase II support to Tribal lands, including remote areas of Alaska.

1133. We also seek comment on whether we should prioritize coverage to any areas in which previously provided support is being phased down. To the extent that parties believe there is a risk of meaningful loss of coverage, we welcome comments on how to define the areas at risk, and how to address the risk. Once the areas are defined, they could be prioritized, for example, by making available bidding credits for these areas.

#### **b. Establishing Bidding and Coverage Units**

1134. We propose to base the number of bidding units and the corresponding coverage requirement on the number of road miles in each eligible geographic area. Requiring coverage of road miles directly reflects the Mobility Fund's goals of supporting *mobile* services, and indirectly reflects many other important factors – such as business locations, recreation areas, and work sites – since roads are used to access those areas. And while traffic data might be superior to simple road miles as a measure of actual consumer need for mobile coverage, 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 Phase II, we expect that support will tend to be disbursed to areas where there is greater traffic. We seek comment, however, on the use of other units for bidding and coverage – such as population and workplaces – instead of or in combination with road miles.

1135. We propose to use the TIGER data collected by the Census Bureau to determine the number of road miles associated with each eligible geographic area.<sup>2251</sup> TIGER data is available nationwide on a standardized basis and can be disaggregated to the census block level. We anticipate that the Bureaus would exercise their delegated authority to establish the units associated with each eligible census block and identify the specific road categories within TIGER considered – primary, secondary, local, etc. – to calculate the units associated with a given area.<sup>2252</sup> We seek comment on this proposal.

#### **c. Maximizing Consumer Benefits**

1136. Our goal is to maximize the coverage of mobile broadband services supported with our annual Mobility Fund Phase II budget. In contrast to the former rules, under which multiple providers are entitled to an award of portable, per-subscriber support for the same area, we expect that to maximize coverage within our budget we will generally be supporting a single provider for a given geographic area. As discussed above, we would support more than one provider in an area only if doing so would maximize coverage. In particular, we seek comment on whether allowing overlap among providers would unduly compromise our objective to maximize consumer benefits. And we plan to take into account our experience implementing Mobility Fund Phase I to ascertain whether there are ways to further minimize overlap during the implementation of Mobility Fund Phase II. We are mindful that our

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<sup>2251</sup> See 2010 Census TIGER/Line® Shapefiles at <http://www.census.gov/geo/www/tiger/tgrshp2010/tgrshp2010.html>.

<sup>2252</sup> For TIGER road categories, see Appendix F – MAF/TIGER Feature Class Code (MTFCC) Definitions, pages F-186 and F-187 at <http://www.census.gov/geo/www/tiger/tgrshp2010/documentation.html>.

statutory obligation runs to consumers, rather than carriers, and that we must target limited public funds in a way that expands and sustains the availability of mobile broadband services to maximize consumer benefits. To further protect consumer interests, we also propose to adopt certain terms and conditions, discussed below, to promote leveraging of publicly funded investment by other providers operating in the same areas as a recipient of support under Phase II of the Mobility Fund. We invite comment on this approach, which is consistent with one we have taken elsewhere with respect to universal service support.

1137. We also seek comment on whether and to what extent recipients of Mobility Fund Phase II support should be permitted to partner with other providers to fulfill the public interest obligations associated with Phase II. For example, should we permit eligible providers to seek support together, provided that they disclose any such arrangements when applying for a Mobility Fund auction? In addition, we invite comment on whether we should establish any limit on the number of geographic areas for which any one provider may be awarded Phase II support. If we were to do so, what effect would this have on those mobile providers that focus on serving rural areas? Is there another basis on which we should limit the amount of Phase II support that goes to any one provider?

**d. Term of Support**

1138. We propose a fixed term of support of 10 years and, in the alternative, seek comment on a shorter term. In considering the optimal term for ongoing support, we seek to balance providing adequate certainty to carriers to attract private investment and deploy services while taking into account changing circumstances. How should the timeframes for deployment and private investment be synchronized with the pace of new technology? What is the minimum period for making deployment practicable? In light of possible improvements in technology, would it be more practicable to provide for a longer term and require an increase in performance during the term? Or, would it be more appropriate to provide for a shorter term that reflects the likely life cycle of existing technologies? We seek comment on this proposal and on the option for a shorter term.

1139. We also seek comment on whether it is appropriate to establish any sort of renewal opportunity for support, and on what terms. For instance, should we follow our licensing regime which allows for a renewal expectancy if buildout and service obligations have been met? Alternatively, should we take into account the extent to which a recipient utilizes new technologies to exceed the minimum performance requirements established at the outset of the term of support? To what extent should the unforeseen development of new products and services in unsupported areas be taken into account when assessing a support recipient's performance and qualification for renewal?

**e. Provider Eligibility Requirements**

1140. With a narrow exception, discussed *infra*, we propose to require that parties seeking Mobility Fund Phase II support satisfy the same eligibility requirements that we have adopted with respect to Phase I.<sup>2253</sup> We seek comment on this proposal. Is there any reason to alter the requirements previously adopted in light of the differences between Phase I's one-time support and Phase II's ongoing support? Parties providing suggestions should be specific and explain how the eligibility requirements would serve the ultimate goals of Phase II. While we propose eligibility requirements, we also seek comment on ways the Commission can encourage participation by the widest possible range of qualified parties.

**f. Public Interest Obligations**

1141. *Voice.* Today's Order sets out general requirements applicable to all recipients of support from the Connect America Fund, including recipients of Mobility Fund support. Consistent with

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<sup>2253</sup> See *infra* para. 1166.

those requirements, recipients of Mobility Fund support will have to offer voice service that satisfies the public interest obligations shared by all recipients of Connect America Fund support. Likewise, all recipients of Mobility Fund support must offer a standalone voice service to the public.

1142. **Mobile Broadband Performance Requirements and Measurement.** Unlike requirement for voice service, recipients' public interest obligations with respect to broadband vary depending upon the particular public interest goal being met by the support provided. We propose that, as for Mobility Fund Phase I recipients that elect to offer 4G service, recipients of Mobility Fund Phase II support will be required to provide mobile voice and data services that meet or exceed a minimum bandwidth or data rate of 768 kbps downstream and 200 kbps upstream, consistent with the capabilities offered by representative 4G technologies. We further propose that these data rates should be achievable in both fixed and mobile conditions, at vehicle speeds consistent with typical vehicle speeds on the roads covered. As we noted in our Order on Phase I, the measurement conditions we propose may enable users to receive much better service when accessing the network from a fixed location or close to a base station. These minimum standards must be achieved throughout the cell area, include at the cell edge, at a high probability, and with substantial sector loading. We seek comment on these initial performance metrics. We also seek comment from providers of services used by people with disabilities, such as Internet-based telecommunications relay services, including video relay services (VRS), and point-to-point video communications or videoconferencing services, as to whether these performance metrics will be sufficient to support such services and communications.

1143. In order to assure that recipients offer service that enables the use of real-time applications, we also propose that round trip latencies for communications over the network be low enough for this purpose.

1144. We further seek comment on whether, and if so, in what ways these metrics should be modified during the term of support to reflect anticipated advances in technology. We also seek comment from providers of services used by people with disabilities as to whether or not and how these performance metrics should be modified over time to support such services and communications. In the Order we adopt today we note that we expect obligations applicable to certain Connect America Fund recipients will evolve over time to keep pace with technology. We propose that the performance characteristics required of Mobility Fund Phase II recipients likewise be required to evolve over time, to keep pace with mobile broadband service in urban areas. How exactly should those obligations evolve? Should the term of support provided be synchronized with anticipated changes in obligations?

1145. We further propose that recipients be required to meet certain deployment milestones in order to remain qualified for the ongoing support awarded in Phase II. Specifically, consistent with the approach we are taking for Phase I support used to deploy 4G, we propose that providers be required to construct a network offering the required service in the required area within three years. Commenters are invited to address the feasibility of our proposed three year deployment deadline, given the projected availability of 4G equipment and any other issues that may affect deployment, such as compliance with local, state, or federal laws and requirements, and weather. To the extent we modify recipients' public interest obligations over time, we seek comment on when such metrics must be achieved. Should we also adopt interim deadlines for upgrading service to comply with revised requirements with respect to 50 percent of the covered area?

1146. If we adopt the Census Tract approach, we propose to require Phase II recipients to provide coverage meeting their public service obligations to at least 75 percent of the road miles in all of the unserved census blocks for which they receive support. To the extent that a recipient covers additional road miles or other units beyond the minimum requirement, we propose to provide support based on its bid unit up to 100 percent of the units associated with the specific unserved census blocks

covered by a bid.<sup>2254</sup> If we adopt the Bidder-Defined Area approach, we propose that Phase II recipients should be required to provide coverage meeting their public service obligations to a higher percentage, perhaps to all of the unserved units within the census blocks.

1147. We propose that recipients demonstrate that they have met relevant performance and coverage obligations by submitting drive test data, consistent with the industry norm and the provisions we adopt for Phase I. We seek comment on how frequently such data should be submitted during the term of support.

1148. *Collocation and Voice and Data Roaming Obligations.* We have adopted various conditions with which Phase I Mobility Fund support recipients must comply in order to help assure that they do not use public funds to achieve an unfair competitive advantage. More specifically, we require that Phase I recipients allow the collocation of additional equipment under certain circumstances and condition their receipt of support on compliance with voice and data roaming requirements. We seek comment on adopting similar requirements for Phase II recipients. Are there additional requirements we might consider in order to ensure that publicly funded investment can be leveraged by other providers to the extent they may operate in areas that need universal service support?

1149. *Reasonably Comparable Rates.* We seek comment here on how to implement, in the context of the Mobility Fund Phase II, 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.<sup>2255</sup> We propose that recipients of Phase II support will be subject to the same requirements regarding comparable rates that apply to all recipients of CAF support.

1150. We will consider rural rates for service supported by the Mobility Fund 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 service. We seek additional comment here with respect to the evaluation of reasonably comparable voice and broadband services for purposes of Mobility Fund Phase II specifically.

1151. For purposes of the Mobility Fund, we propose to focus on mobile broadband service that meets the universal service performance characteristics. For instance, we invite further comment as to whether there are additional sources of information or aspects of service to consider in light of the fact that Mobility Fund support is for mobile service over a geographic area. We also seek comment on whether the mobile nature of the service supported by Mobility Fund Phase II, or the pricing of mobile voice and broadband services, present any unique features for purposes of adopting a methodology for evaluating rates under our reasonable comparability standard. We also note in this context that, as described more fully below, we propose to require recipients of funding under Mobility Fund Phase II to provide information regarding their pricing for mobile broadband service offerings.

### 3. Auction Process Framework

1152. In this section, we propose general auction rules governing the auction process itself, including options regarding basic auction design, application process, information and competition, and auction cancellation.<sup>2256</sup>

1153. As we did for Mobility Fund Phase I, we propose to delegate to the Bureaus authority to

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<sup>2254</sup> 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 units in the census blocks.

<sup>2255</sup> 47 U.S.C. § 254(b)(3).

<sup>2256</sup> See Auction Rules included in Appendix A.

establish detailed auction procedures consistent with the auction rules we establish here, take all other actions necessary to conduct a Phase II auction, and conduct program administration and oversight consistent with any rules and policies we establish for this phase. Under this proposal, a public notice would be released announcing an auction date, identifying areas eligible for support through the auction and the road miles associated with each area, and seeking comment on specific detailed auction procedures to be used, consistent with the general auction rules.

**a. Auction Design**

1154. We propose rules outlining various auction design options and parameters, while at the same time proposing that final determination of specific auction procedures to implement a specific design based on these rules be delegated to the Bureaus as part of the subsequent pre-auction notice and comment proceeding.

1155. As a threshold matter, we propose a rule providing that a Phase II auction may be conducted in a single round of bidding or in a multiple round format, or in multiple stages where an additional stage could follow depending upon the results of the previous stage. We also propose that maximum bid amounts, reserve prices, bid withdrawal provisions, bidding activity rules and other terms or conditions of bidding would be established by the Bureaus under the authority we propose to delegate for this purpose. Should reserve prices, for instance, be set using the results of a wireless model for each state, similar to the CAF Phase II auction where price cap carriers decline the state-level commitment? We also propose that the Bureaus may consider various procedures for grouping geographic areas within a bid – package bidding – that could be tailored to the needs of prospective bidders as indicated during the pre-auction notice and comment period.

1156. It appears that some form of package bidding will likely enhance the auction by helping bidders incorporate network-wide efficiencies into their bids. While the Bureaus will establish specific procedures to address this issue later, we invite preliminary comment on whether package bidding may be appropriate for this auction and if so, why. Above, we asked for input on package bidding as it relates to our choice of the Census Tract or Bidder-Defined approaches. Here, we ask for any additional comments on the potential advantages and disadvantages of possible package bidding procedures and formats. In particular, we ask for input on the reasons why certain package bidding procedures would be helpful or harmful to providers bidding in an auction, and what procedures might best meet our goal of maximizing the benefits of Phase II support for consumers. For example, regardless of whether we adopt the Census Tract or Bidder-Defined approach, should we impose some limits on the size or composition of package bids, such as allowing flexible packages of blocks or larger geographic units as long as the geographic units are within the boundaries of a larger unit such as a county or a license area (*e.g.*, a CMA)?<sup>2257</sup> Or, if we adopt the Census Tract approach, should we establish package bidding procedures that allow bidders to place package bids on predetermined groupings of areas that follow a particular hierarchy – such as blocks, tracts, and/or counties, which nest within the census geographic scheme? As noted above, we contemplate that the specific rules to be adopted for this auction would be identified in the public notice process, which will be open to comment.

**b. Potential Bidding Preference for Small Businesses**

1157. We seek comment on whether small businesses should be eligible for a bidding preference in a Phase II auction. If adopted, the preference would act as a “reverse” bidding credit that would effectively reduce the bid amount of a qualifying small business for the purpose of comparing it to other bids. The preference would be available with respect to all census blocks on which a qualified small business bids. We seek comment on this approach. Would a bidding credit be an effective way to

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<sup>2257</sup> See *supra* note 586.

help address concerns regarding smaller carriers' ability to effectively compete at auction for support? Would such a bidding credit be consistent with the objective of the Phase II fund to support the greatest number of unserved road miles within the overall Mobility Fund budget? Should we adopt a preference to assist small businesses even if the bidding credit results in less coverage achieved than would occur without the bidding credit?

1158. We also seek comment on the appropriate size of any small business bidding credit that we decide to adopt. 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.<sup>2258</sup> Should the Commission establish a preference for small businesses, we seek comment on what bidding credit percentage, if any, would be appropriate to increase the likelihood that the small business would have an opportunity to win support in the auction..

1159. We also seek comment on how we should define small businesses if we adopt a small business bidding credit. In the context of our spectrum auctions, we have defined eligibility requirements for small businesses seeking to provide wireless services on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold.

1160. We seek comment on the use of a small business definition in the Mobility Fund Phase II context based on an applicant's gross revenues, as we have done for many wireless services for which we have assigned licenses through competitive bidding.<sup>2259</sup> Specifically, we ask whether a small business should be defined as an entity with average gross revenues not exceeding \$40 million for the preceding three years.<sup>2260</sup> Alternatively, should we consider a larger size definition for this purpose, such as average gross revenues not exceeding \$125 million for the preceding three years?<sup>2261</sup> In determining an applicant's gross revenues under what circumstances should we attribute the gross revenues of the applicant's affiliates? We also invite input on whether alternative bases for size standards should be established in light of the particular circumstances or requirements that may apply to entities bidding for Mobility Fund Phase II support. Commenters advocating alternatives should explain the basis for their proposed alternatives, including whether anything about the characteristics or capital requirements of providing mobile broadband service in unserved areas or other considerations require a different approach.

### c. Application Process

1161. We propose to use a two-stage application process, similar to that used in spectrum license auctions, and as described more completely in the Mobility Fund Phase I Order.<sup>2262</sup> Under this

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<sup>2258</sup> See 47 C.F.R. § 1.2110(f).

<sup>2259</sup> We note that the Small Business Administration's definition of a "small business" for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications" is one that has 1,500 or fewer employees. See 13 C.F.R. § 121.201.

<sup>2260</sup> See e.g., In re Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, GN Docket No. 01-74, 17 FCC Rcd 1022, 1087 ¶ 172 (2002).

<sup>2261</sup> The Commission established a size definition for entrepreneurs eligible for broadband PCS C block spectrum licenses based on gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million. In re Section 309(j) of the Communications Act – Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532, \*36 ¶ 115 (1994); see also 47 C.F.R. § 24.709(a)(1). Although this definition was used more than a decade ago in the context of spectrum auctions, we seek comment on whether it would be appropriate to use the gross revenues standard of the definition in this universal service context as it would encompass more small businesses.

<sup>2262</sup> See *supra* para. 417.

proposal, we would require a pre-auction “short-form” application from entities interested in participating in a Phase II auction.<sup>2263</sup> After the application deadline, Commission staff would review the short-form applications to determine whether applicants had provided the necessary information required at the short-form stage to be eligible to participate in an auction. Once review is complete, Commission staff would release a public notice indicating which short-form applications were deemed acceptable and which were deemed incomplete. Applicants whose short-form applications were deemed incomplete would be given a limited opportunity to cure defects and to resubmit correct applications.<sup>2264</sup> Only minor modifications to an applicant’s short-form application would be permitted.<sup>2265</sup> The Commission would release a second public notice designating the applicants that qualified to participate in the Phase II auction. We seek comment on our proposal, and on any alternative approaches.

**d. Information and Communications**

1162. We do not see circumstances specific to Phase II that warrant departure from our usual auction policies regarding permissible communications during the auction or the public release of certain auction-related information. Hence, as in Phase I and our spectrum auctions, we propose, in the interests of fairness and maximizing competition, to prohibit applicants from communicating with one another regarding the substance of their bids or bidding strategies. We further propose a rule to provide for auction procedures to limit public disclosure of auction-related information, including certain information from applications and/or the bidding.<sup>2266</sup> Specific details regarding the information to be withheld would be identified during the pre-auction procedures process, upon delegated authority to the Bureaus. We invite comment on this proposal.

**e. Auction Cancellation**

1163. We propose that the Commission’s rules 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. We seek comment on this proposal, which is consistent with our approach in spectrum auctions, as well as Phase I of the Mobility Fund.

**f. Post-Auction Long-Form Application Process for Mobility Fund Phase II**

1164. We propose to apply the same post-auction long-form application process adopted with respect to Phase I for Phase II support. Accordingly, applicants for Phase II support would be required to provide the same showing in their long-form applications that they are legally, technically and financially qualified to receive Phase II support as required of applicants for Phase I support. In addition, we propose that a winning bidder for Phase II support will be subject to the same auction default payment adopted for winning bidders of Phase I support, if it defaults on its bid, including if it withdraws a bid after the close of the auction, fails to timely file a long form application, is found ineligible or unqualified to be a recipient of Phase II support, or its long-form application is dismissed for any reason after the close of the auction. In addition, we propose that a recipient of Phase II support will be subject to the same performance default payment adopted for recipients of Phase I support. We seek comment on these

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<sup>2263</sup> “Long-form” application requirements, required of winning bidders post-auction, are discussed *infra* at para. 1164.

<sup>2264</sup> *Cf.* § 1.2105(b)(2). *See* 47 C.F.R. § 1.21001(d)(5).

<sup>2265</sup> *See* 47 C.F.R. § 1.21001(d)(4). Major modifications would include, for example, changes in ownership of the applicant that would constitute an assignment or transfer of control.

<sup>2266</sup> *Cf.* 47 C.F.R. § 1.2105(c).

proposals.

#### 4. Tribal Issues

1165. In view of the relatively low level of telecommunications deployment, and distinct connectivity challenges on Tribal lands, we reaffirm our commitment to address Tribal needs and establish a separate budget to provide ongoing USF support for mobility in such areas.<sup>2267</sup> The Order we adopt today establishes an annual budget of up to \$100 million to provide ongoing support for mobile broadband services to qualifying Tribal lands. In addition, we note that the Connect America Fund will separately support broadband for homes, businesses, and community anchor institutions, including on Tribal lands.

1166. Consistent with the approach we adopt today for the general and Tribal Mobility Fund Phase I, we propose to apply the same Tribal engagement obligation and a 25 percent bidding credit preference for Tribally-owned or controlled providers in Phase II. We seek comment on this approach. For example, to the extent we adopt a cost model, discussed *infra*, are there particular measures we should take to help ensure that the needs of Tribes are met? What modifications might be needed to the proposed Tribal engagement obligations? Are there other alternatives we should consider?

1167. In addition, 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 propose to permit a Tribally-owned or controlled entity to participate at auction even if it has not yet been designated as an ETC. Consistent with the approach we adopted today for the general and Tribal Mobility Fund Phase I, we propose that a Tribally-owned or controlled entity that has an application for ETC designation pending at the relevant short form application deadline, may participate in an auction to seek 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 that has not yet been designated as an ETC. We seek comment on this proposal.

1168. To the extent practicable, we propose to award ongoing support for mobile broadband services on Tribal lands on the same terms and conditions as we propose for the ongoing support mechanism for Phase II in non-Tribal lands.<sup>2268</sup> We recognize, however, that there are several aspects of the challenges facing Tribal lands for which a more tailored approach may be appropriate, as evidenced in the record developed to date in this proceeding. Toward that end, we propose to apply in Phase II for Tribal lands the specific provisions adopted in the context of the Tribal Mobility Fund Phase I.<sup>2269</sup> Are there any differences in our proposals to award ongoing support that would justify an alternative approach here? For example, to the extent that providers in Alaska may be dependent on satellite backhaul for middle mile, should we modify our Mobility Fund II performance obligations for some limited period of time, similar to what we adopt more generally as a performance obligation for ETCs?<sup>2270</sup> Should a similar accommodation be made for areas in which there is no affordable fiber-based terrestrial backhaul capability? If so, how should the Commission define affordability for these purposes? Further, in areas with only satellite backhaul, should we require funded deployments to be able to support continued local connectivity in case of failure in the satellite backhaul? How would such a requirement be structured to ensure continued public safety access?

1169. We seek comment on GCI's proposal that new mobile deployments be given some

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<sup>2267</sup> See *supra* note 197.

<sup>2268</sup> See discussion *supra* Section XVII.I.

<sup>2269</sup> See discussion *supra* at paras. 484-491.

<sup>2270</sup> See *supra* para. 101.

priority in Phase II.<sup>2271</sup> Commenters supporting such an approach should explain how such a priority mechanism could work, which deployments would be eligible for prioritization, and any other implementation issues. Similarly, we seek comment on GCI's proposal that priority be given to areas that do not have access to the National Highway System to account for the lack of roads and highways in many remote parts of Alaska.<sup>2272</sup> Are there alternative means in Phase II to account for remote areas, including those in Alaska, where roads and other infrastructure may be lacking?

1170. In addition, to afford Tribes an opportunity to identify their own priorities, we seek further comment on a possible mechanism that would allocate a specified number of "priority units" to Tribal governments. The priority units for each Tribe would be based upon a percentage of the total population in unserved blocks located within Tribal boundaries. Tribes would have the flexibility to allocate these units in whatever manner they choose. Under this mechanism, Tribes could elect to allocate all of their priority units to one geographic area that is particularly important to them (for instance, because of the presence of a community anchor institution, large number of unserved residents, etc.), or to divide the total number of priority units among multiple geographic units according to their relative priority. By giving Tribes the opportunity to allocate a substantial number of additional units to particular unserved geographic areas within the boundaries of their Tribal lands, we would allow Tribes to reduce the per-unit amount of bids covering those unserved areas, so as to increase the likelihood that these areas would receive funding through the proposed competitive bidding process.

1171. We seek further comment on this proposal for possible application in Phase II for Tribal lands. We are mindful that the record developed to date suggests that the effectiveness of this approach depends, in part, on providing a significant number of priority units for Tribes to allocate.<sup>2273</sup> We propose that an allocation in the range of 20 to 30 percent of the population in unserved areas on the Tribal land would provide Tribes a meaningful opportunity to provide input on where support could be effectively targeted. We seek comment on this proposal. Commenters are requested to address whether this approach should apply to both the general and Tribal Mobility Fund Phase II. We also seek comment on how such priority units should be awarded in Alaska, given the unique Alaska Native government structure and the large number of Alaska Native Villages likely to be clustered in any given geographic area. Should the Commission allocate priority units proportionately, according to the relative size and/or number of unserved units of all Alaska Native Villages in any given geographic area? Would a similar approach be warranted for Hawaiian Home Lands, or are there alternative approaches that best reflect conditions in Hawaii? Alternatively, we seek comment on whether the Tribal engagement obligations adopted for Phase I are sufficient to ensure that Tribal priorities are met with respect to ongoing support under Phase II. To the extent we adopt our proposal for Tribal priority units, we seek comment on whether a Tribally-owned and controlled provider should also be eligible to receive a bidding credit within its Tribal land or if the Tribe must choose between one or the other. If we offer a bidding credit to Tribally-owned and controlled providers seeking Phase II support, would a 25 percent bidding credit, like the one we have adopted for Phase I be sufficient, or does it need to be set at a different level to achieve our objectives?

1172. We also seek comment on whether a different approach is warranted for Tribal lands in Alaska given the unique operating conditions in Alaska. We propose that carriers serving Alaska would be eligible for the same funding opportunities as carriers serving Tribal lands in the rest of that nation. Is this right approach? In the alternative, should an amount of any Tribal funding be set aside only for

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<sup>2271</sup> See Letter from John T. Nakahata, Counsel to GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al.*, at 2 (filed Oct. 23, 2011).

<sup>2272</sup> *Id.*

<sup>2273</sup> See Smith Bagley *April 18 PN* Comments at 5-6; NPM and NCAI *April 18 PN* Comments at 3.

carriers serving Alaska to ensure some minimal level of funding representative of the need in that state? We seek comment on that proposal, the size of any Alaska-specific set aside, and the need to adjust the total Tribal component of Mobility Fund II to account for any Alaska-specific figure. We also seek comment on whether any Alaska-specific funding should be focused on middle mile connectivity, which is one of the core impediments to 3G and 4G service in Alaska. How could such a mechanism be structured to facilitate the construction of microwave and fiber-based middle mile facilities, which are lacking in portions of remote areas of Alaska.

## 5. Accountability and Oversight

1173. We propose to apply to Mobility Fund Phase II the same rules for accountability and oversight that will apply to all recipients of CAF support. Thus all recipients of Phase II support would be subject generally to the same reporting, audit, and record retention requirements. Because Mobility Fund support will differ in some respects from support received under other USF high-cost support mechanisms, we also propose here that recipients of Phase II support be required to include in their annual reports the same types of additional information that is required of recipients of Phase I support. Should any of these requirements be modified or omitted for recipients of Mobility Fund Phase II support? Are there additional types of information that should be required? We seek comment on these proposals.

## 6. Economic Model-Based Process

1174. Instead of determining support for mobile wireless providers through competitive bidding, we could determine support using a model that estimates the costs associated with meeting public interest obligations, as well as a provider's likely revenues from doing so. Regardless of which method is used, the objectives of the Mobility Fund's Phase II remain the same. That is, we seek to maximize the reach of mobile broadband services supported with our established budget in areas where there is no private sector business case for providing such services. Accordingly, commenters advocating for a model should address why a model-based approach would better serve this purpose than our proposal above. Below, we seek more detailed comment on the design of such a model and a framework for support in which a model might be used, as compared with our proposed market-based mechanism for determining the level and distribution of necessary support.

### a. Model Design

1175. In considering this alternative to a market-based mechanism, we seek here to develop a more detailed record than we have received to date regarding the possible design of a forward looking economic model of costs and revenues of mobile wireless services. Generally, we observe that cost structures, revenue sources, and available data all may vary in the mobile service context from other services, such as fixed wireline voice or broadband. Accordingly, issues that have been addressed in some detail when modeling costs for setting support for non-rural carrier wireline networks must be considered specifically in the context of mobile wireless services.<sup>2274</sup> What components of a model for mobile wireless services are critical in accurately forecasting costs and revenues? Is the model more or less sensitive to certain potential errors than others? How does the pace of change in the mobile service industry affect the reliability of a model for projections of greater than five years, or seven years, or ten

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<sup>2274</sup> For example, as discussed above, in the CAF broadband context we have decided to use a combination of a forward-looking cost model and competitive bidding processes to award support in price cap territories. We have adopted a framework that focuses on the cost of meeting broadband public interest obligations and does not consider the additional revenues that a provider might obtain by providing other services over a multi-capability network. In the mobile wireless context, given that the materials submitted thus far assert that at least one model is able to model mobile wireless revenues as well as costs, we consider it an open question as to whether it is possible to make a useful estimate of mobile wireless revenues and whether we should attempt to do so.

years?

1176. Two parties already have offered the results of a model-based analysis in selected states to argue for the benefits of a model-based approach, rather than a competitive bidding approach, for the Mobility Fund. In their proposals, both US Cellular and MTPCS have pointed to a CostQuest Associates model for estimating costs and revenues related to mobile service.<sup>2275</sup> We seek comment generally on the model that US Cellular and MTPCS describe in their submissions.

1177. In their model-based analyses, both US Cellular and MTPCS estimated the costs of expanding their existing networks in order to provide service in unserved areas. Taking existing networks into account when modeling costs is sometimes referred to as a “brownfield” approach. A brownfield approach assumes that providers will make use of existing assets. The results of such an analysis may be unreliable if the provider controlling the relevant assets chooses not to receive support and uses those assets for other purposes. Moreover, the costs for one provider may be very different from the costs for another provider, due to differences in their access to existing assets. We seek comment on how best to construct a “brownfield” model when the goal is not to model the costs of individual mobile wireless provider, but of a generic provider in an area.

1178. According to the description of the CostQuest model included in both parties’ submissions, CostQuest’s model also enables users to determine the cost of offering wireless service without using existing assets. Modeling costs of providing service without pre-existing assets is sometimes referred to as a “greenfield” approach. A greenfield approach runs the risk of overestimating the necessary costs of providing service by failing to make efficient use of existing assets. We seek comment on the relative advantages of a brownfield or greenfield approach in the context of mobile services when determining which areas require support and when determining how much support is required.

1179. Modeling also raises concerns regarding the accuracy of data (inputs) used in the model. For example, for mobile service, how critical is it that the model accurately forecast base station locations? In an efficient network providing mobile service, base station locations are interdependent – the signal from one should overlap with another sufficiently to assure effective coverage but not so much as to create interference. Assumptions regarding any base station location in a network may be significant with respect to the final number and location of all base stations, and therefore the cost of the entire network. This is especially true with respect to pure greenfield models, which make assumptions about the possible locations of cell sites without being able to take account of actual constraints in locating such sites. We seek comment on the ways, if any, to assess the sensitivity of model-based results to potential errors regarding site location when estimating costs for providing mobile service. Would the use of a brownfield approach substantially reduce such sensitivity?

1180. In addition to assessing costs, the CostQuest model employed by US Cellular and MTPCS also assesses incremental revenues from expanded mobile coverage when determining an area’s need for support. If a provider can count on generating revenue from the network expansion that meets or exceeds related costs, even the highest cost area may not require support. How could we take into account revenues in a model used for mobile support? Could we develop non-party-specific estimates of incremental revenues? Should we consider potential revenues from non-supported services that could be offered over the network infrastructure that provides supported voice service, including the mobile broadband service required as a condition of Mobility Fund support, or other services, like subscription video services? What estimates could the Commission use with respect to the potential costs and revenues associated with the provision of such services?

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<sup>2275</sup> Both US Cellular and MTCPS have submitted the results of their attempts to model the need for and extent of support required to provide wireless service in unserved areas in selected states.

1181. Notwithstanding their significance in determining the need for support, estimating revenues may be difficult, particularly over longer periods of time. Given difficulties in estimating consumer interest in particular service offerings at particular prices, errors in estimating revenues may be more likely to occur and, when they occur, more likely to result in larger errors in determining the appropriate level of support. We seek comment on the extent to which we might be able to achieve the appropriate balance between the inclusion of revenue estimates and the likely accuracy of the model's outcomes, and, if so, how we would do so.

1182. As mentioned previously, a model might be used simply to determine what areas require support for the public interest obligations to be met, rather than determine that as well as the amount of support to be provided. We seek further comment on whether a mobile wireless model may be sufficiently reliable for purposes more limited than determining support levels. For instance, could a model offer guidance on the appropriate level of support, such as determining a maximum that might be offered in a competitive bidding process in a particular area, without being sufficiently accurate to rely on for determining the actual level of support in that area?

**b. Framework for Economic Model-Based Process**

1183. If we were to use an economic model to determine support levels, the goals and objectives of the Phase II Mobility Fund would continue to be to support next generation mobile service where support is needed in as many areas as possible, given the limited funds available. For example, the public interest obligations attaching to the receipt of support would remain the same. We seek comment generally, however, on which, if any, elements of our proposed framework would need to change if we decided to use a model-based process for determining support.

1184. We also seek comment specifically on whether the granularity with which an economic model produces reliable cost and/or revenue estimates would have any impact on the geographic areas being made available for mobile services support. If a model is more likely to determine support amounts accurately only over an area larger than a census block, does it mean that we should increase the minimum area for which support is offered? Accordingly, we seek comment on the minimum area for offering model-based support. Similarly, would a model be more accurate in estimating support for areas based on resident population instead of road miles? If so, would we have to use resident population as a metric for offering support and measuring compliance with public interest obligations if we adopt a model-based approach?

1185. As we have discussed, in order to extend our limited budget to reach the widest possible coverage, we generally expect to offer support to only one mobile services provider in an area. We seek comment on how to implement that principle under a model-based approach. In contrast to competitive bidding, we note the model-based approach does not include a mechanism for selecting among multiple parties that might be interested in receiving the support offered. We seek comment on how we should address this issue. Should we determine the party that receives support through a qualitative review of would-be providers? If so, what factors should that review take into account? Should we reserve support for a particular area to the provider currently receiving universal service support that has the most extensive network within a defined area? What other method could we use to select among providers? In addition, as noted above, we could use the results of a wireless model to set reserve prices in the context of competitive bidding.<sup>2276</sup> We seek comment here on how we could use the results of a wireless model to distribute the amounts budgeted for Mobility Fund Phase II, consistent with our use of a wireline cost model in CAF-Phase II to target support to high-cost areas subject to our budget.

1186. We note that US Cellular and MTPCS – in their filings - propose using the mobile

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<sup>2276</sup> See *supra* para.1155.

wireless model to calculate the support required in an area per resident subscriber and permitting multiple providers to receive support for service in the same area. Given the economics of the underlying terrestrial wireless technology, permitting multiple providers to receive support could increase the amount of support required per subscriber, as the number of subscribers per provider will decline. We seek comment on this concern.

1187. We also seek comment on whether using mobile model-based support would change the appropriate length of the term of support. Are there aspects of the model that link its estimates to particular time periods? Is that reason to offer the support for any particular length of time? Is it possible to estimate the cost of meeting the proposed increases in public interest obligations several years in advance? Particularly with respect to a mobile wireless model used to determine ongoing support for a term of years, how should the Commission address potential changes in circumstances or technology over time that would change modeled costs and/or revenues?

1188. Finally, commenters addressing the possible use of a model-based approach in place of competitive bidding for the second phase of the Mobility Fund should discuss whether we would need to make any changes to the management and oversight of the program if we use a model-based approach, as well as any other changes they believe we should make to the framework we propose above for a competitive bidding mechanism.

#### **J. Competitive Process in Price Cap Territories Where the Incumbent Declines to Make a State-Level Commitment**

1189. Today the Commission adopts a framework for USF reform in areas served by price cap carriers where support will be determined using a combination of a forward-looking broadband cost model and competitive bidding to efficiently support deployment of networks providing both voice and broadband service over the next several years. 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 locations served by an unsubsidized competitor, for a model-determined efficient amount of support. In areas where the incumbent declines to make that commitment, we will use a competitive bidding mechanism to distribute support in a way that maximizes the extent of robust, scalable broadband service and minimizes total cost. This FNPRM addresses proposals for this competitive bidding process, which we refer to here as the CAF auction for price cap areas. The FNPRM proposes program and auction rules, consistent with the goals of the CAF and the Commission's broader objectives for USF reform.

##### **1. Overall Design of the Competitive Bidding Process**

1190. Consistent with the Commission's decision to use incentive-driven policies to maximize the value of scarce USF resources, we propose to use a reverse auction mechanism to distribute support to providers of voice and broadband services in price cap areas where the incumbent ETC declines to accept model-determined support. 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, businesses, and community anchor institutions as possible. We propose to use a competitive bidding mechanism to identify those eligible areas – and associated providers – where supported services can be offered at the lowest cost per unit.

##### **2. Framework for Awarding Support Under Competitive Bidding**

###### **a. Identifying Geographic Areas Eligible for Competitive Bidding**

1191. *Identifying Eligible Areas.* In any areas where the price cap ETC declines to make a state-level commitment, we propose to conduct competitive bidding to award support using the same

areas identified by the CAF Phase II model as eligible for support.<sup>2277</sup> We also seek comment on other approaches to defining the areas to be used in this auction. For example, the Commission could exclude areas that, based on the most recent data available, are served – at any speed, at 4 Mbps downstream / 1 Mbps upstream, or at 6 Mbps downstream / 1.5 Mbps upstream. In addition, the Commission could use different cost thresholds for defining service, for example, including all unserved areas regardless of cost in the auction. As we did for Phase I of the Mobility Fund and have proposed for Phase II, we propose to use census blocks as the minimum size geographic unit eligible for competitive bidding. As discussed in these other contexts, using census blocks will allow us to target support based on the smallest census geography available. We seek comment on this proposal, as well as on alternatives that commenters may suggest.

1192. *Minimum Size Unit for Bidding and Support.* We propose that the census block should be the minimum geographic building block for defining areas for which support will be provided. In connection with our Mobility Fund Phase II proposals, we noted that 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 for bidding. We discussed a number of ways to permit such aggregation, including the possibility of adopting a rule regarding a minimum area for bidding comprised of an aggregation of eligible census blocks, such as tracts, and/or the use of auction procedures that provide for bidders to be able to make “all-or-nothing” package bids on combinations of bidding areas. We also explained, in some detail for Mobility Fund Phase II, two of the possible approaches to the issue of census block aggregation, namely a Census Tract-type approach and a Bidder-Defined approach. We seek comment here on whether a Census Tract-type approach, Bidder-Defined approach, or another approach would best meet the needs of bidders in the CAF auction for support in price cap areas.

1193. *Prioritizing Areas.* In addition, we seek comment on whether we should target areas currently without any broadband service for priority treatment in whatever competitive bidding mechanism we adopt. For instance, should we provide a form of bidding credit that would promote the support of such areas?

#### **b. Establishing Bidding and Coverage Units**

1194. In order to compare bids, we propose to assign a number of bidding units to each eligible census block. Consistent with the terms of the public interest obligations undertaken by bidders, we propose to base the number of units in each block on the number of residential and business locations it contains, using the 2010 decennial census data. We seek comment on this proposal, and on any alternatives that commenters may suggest.

#### **c. Maximizing Consumer Benefits**

1195. The Commission’s objective is to distribute the funds it has available for price cap areas where the incumbent ETC declines to make a state-level commitment in such a way as to bring advanced services to as many consumers as possible in areas where there is no economic business case for the private sector to do so. Where the incumbent declines to make a state-level commitment to provide affordable broadband to all high-cost locations in its service territory in return for model-determined support in each state, we propose to use the competitive bidding mechanism described here, which will be open to any provider able to satisfy the public interest obligations associated with support. Thus, we envision that there may be more than one ETC that seeks such support for any given area. In contrast to the former rules, under which multiple providers are entitled to an award of portable, per-subscriber support for the same area, we expect that to maximize coverage within our budget we will generally be supporting a single provider for a given geographic area through this auction. As noted in our discussion

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<sup>2277</sup> See *supra* paras. 167-170.

of approaches for Mobility Fund Phase II, we would support more than one provider in an area only if doing so would maximize coverage. As with Phase II of the Mobility Fund, we are mindful that our statutory obligation runs to consumers, rather than carriers, and that we must target our limited funds for support in a way that expands and sustains the availability of mobile broadband services to maximize consumer benefits. And as with Phase II of the Mobility Fund, we also propose that a competitive ETC would become ineligible to receive support for any area under our phase down of frozen legacy support formerly distributed pursuant to the identical support rule as soon as it began receiving CAF support for that same area. We seek comment on these issues.

1196. We also seek comment on whether and to what extent ETCs that receive such support through a competitive bidding process should be permitted to partner with other providers to fulfill their public interest obligations. In addition, we invite comment on whether we should establish any limit on the geographic extent to which any one provider may be awarded such support. Is there another basis on which we should limit the amount of support that goes to any one provider?

**d. Term of Support**

1197. We propose a term of support for providers that receive support through this auction that is equal to that adopted for providers that accept state-level model-determined support. Accordingly, we propose a term of support of five years, subject to recipients complying with the obligations of the program. We seek comment on this proposal, and whether a longer time-period, *e.g.*, ten years, would better serve our goals. We also seek comment on whether it is appropriate to establish any sort of renewal opportunity, and on what terms, including whether there should be any difference here from universal service support awarded under a state-level-commitment.

**e. Provider Eligibility Requirements**

1198. To be eligible to receive support through this competitive bidding process, we propose that an ETC must certify that it is financially and technically capable of providing service within the specified timeframe. We anticipate that price cap ETCs that decline model-determined support would remain eligible to participate at auction, but seek comment on the advantages and disadvantages of this approach. Below, we discuss these eligibility requirements and their associated timing.

1199. *ETC Designation.* For the same reasons that apply with respect to other CAF programs, we generally propose to require that applicants for support be designated as ETCs covering the relevant geographic area prior to participating in an auction.<sup>2278</sup> 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 competitive bidding process. We seek comment on this proposal.

1200. *Certification of Financial and Technical Capability.* We also propose that each party seeking to receive support determined in this auction be required to certify that it is financially and technically capable of providing the required service within the specified timeframe in the geographic areas for which it seeks support. We seek comment on how best to determine if an entity has sufficient resources to satisfy its obligations. Should the Commission require that any entity finance a fixed percentage of any build-out with non-CAF or private funds? We likewise seek comment on certification regarding an entity's technical capacity. Do we need to be specific as to the minimum showing required to make the certification? Or can we rely on our post-auction review and performance requirements?

1201. *Eligibility of Carriers Declining a State-Level Commitment Covering the Area.* We are not inclined to restrict the eligibility of carriers that could have accepted model-determined support for

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<sup>2278</sup> As discussed *infra*, we propose a narrow exception for Tribally-owned or controlled entity that has an application for ETC designation pending at the time of the relevant short-form application deadline.

the area that will be auctioned, but seek comment on this approach. What effect does the opportunity to seek support in a subsequent auction have on incentives to accept or decline a state-level commitment in exchange for model-determined support? How should the differences in potential service areas be taken into account, given that potential bidders in the auction will not be required to bid on the entire territory of the price cap carrier in that state?

1202. *Other Qualifications.* In addition to the minimum qualifications described above, we seek comment on other eligibility requirements for entities seeking to receive support in an auction after the price cap incumbent declines to make a state-level commitment. Parties providing suggestions should be specific and explain how the eligibility requirements would serve our objectives. At the same time that we establish minimum qualifications consistent with these goals, are there ways the Commission can encourage participation by the widest possible range of qualified parties? For example, are there any steps the Commission should take to encourage smaller eligible parties to participate in the bidding for support?

#### **f. Public Interest Obligations**

1203. *Service Performance Requirements and Measurement.* We propose that recipients of support awarded through this competitive bidding process be obligated to provide service meeting specified performance requirements. Further, we propose that these performance requirements be the same as those required of providers that accept model-determined support. Under this proposal, the Commission would seek to maximize via competitive bidding (both within and across regions) the amount of broadband service being offered at the same full performance levels required above for incumbent providers willing to undertake a state-level broadband commitment. We seek comment on this proposal.

1204. Alternatively, we seek comment on relaxing the minimum performance requirements sufficiently to expand the pool of technologies potentially eligible to compete for support. Under this approach, providers could offer different performance characteristics, such as download and/or upload speeds, latency, and limits on monthly data usage, and the Commission would score such “quality” differences in evaluating bids.<sup>2279</sup> That is, individual providers could propose different prices at which they would be willing to offer services at different performance levels, and the Commission would select the winning bids based on both the prices and the performance scores. To simplify the bidding process, the Commission could limit the set of performance levels that providers could bid to offer – for instance, to a standard broadband offering and a higher quality broadband offering. This general approach would give the Commission the option of making tradeoffs between supporting a higher quality service to fewer locations versus supporting a standard service for more locations. Additionally, such an approach should result in more competitive bidding by allowing more technologies to compete for funding (both within a region and across regions), thereby enabling the Connect America Fund’s budget to yield greater coverage at acceptable broadband performance standards than under the proposal above. We seek comments on how the Commission could best implement this alternative -- including how to score different performance dimensions, and, whether providers should specify as part of their bids the retail prices they would charge consumers and, if so, how to include such prices in scoring the bids. Parties should further address how the Commission should assess the public interest tradeoffs between offering a higher quality to fewer customers and accepting a lower quality for some customers but serving more customers. We also seek comment on whether and how the possibility of obtaining support for a lower quality service would affect the incentives of incumbent providers to accept or decline a state-level broadband commitment. We seek comment from providers of services used by people with disabilities,

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<sup>2279</sup> See ViaSat, Inc. and Wild Blue Communications, Inc., Ex Parte Notice, WC Docket No. 10-90, July 29, 2011, Attach. at 11-12 (“The CAF Auction: Design Proposal,” paras. 33-38).

such as Internet-based telecommunications relay services, including VRS, and point-to-point video communications or video conferencing services, as to the minimum performance requirements needed to support such services and communications.

1205. *Requesting Locations.* We propose that support recipients be required to provide subsidized service to as many locations as request service in their areas during the term of support. Alternatively, we seek comment on whether we should limit the number of locations that must be served in any area based on the number of locations identified at the time of the auction. Such a limit would be consistent with limiting the total amount of support available. However, it would not take into account changes in the number of eligible locations during the term for which support will be provided. In order to take growth into account while maintaining a limit on the total amount of support, should we provide for a presumed growth rate in the number of locations during the term of support? Or should we simply require providers to serve whatever number of future locations there may be, effectively requiring providers to take into account their own estimates of such growth when bidding for support?

1206. *Reasonably Comparable Rates.* We propose that recipients of support through CAF auctions for price cap areas will be subject to the same requirements regarding comparable rates that apply to all recipients of CAF support.<sup>2280</sup>

1207. *Deployment Deadlines.* We propose that recipients be required to meet certain deployment milestones in order to remain qualified for the full amount of any award. Further, we propose that deployment milestones that apply to ETCs through a competitive process be the same as those that apply to price cap ETCs that accept a state-level commitment. We seek comment on whether recipients of CAF auction support should instead be subject to different deployment deadlines.

### 3. Auction Process Framework

1208. In this section, we propose general auction rules governing the competitive bidding process itself, including options regarding basic auction design, application process, information and competition, and auction cancellation.<sup>2281</sup>

1209. Consistent with the rules we have established for the Mobility Fund Phase I and proposed for Mobility Fund Phase II, we propose to delegate to the Bureaus authority to establish detailed auction procedures, take all other actions to conduct this competitive bidding process, and conduct program administration and oversight consistent with any rules and policies we establish in light of the record we receive based on the proposals made for this CAF auction process for support. We seek comment on this proposal.

#### a. Auction Design

1210. Consistent with the rules established for the Mobility Fund Phase I and proposed for the Mobility Fund Phase II, we are proposing certain general rules outlining various auction design options and parameters, while at the same time proposing that final determination of specific auction procedures to implement a specific design based on these rules be delegated to the Bureaus as part of the subsequent pre-auction notice and comment proceeding. Among other issues, we propose to give the Bureaus discretion to consider various procedures for grouping eligible areas to be covered with one bid – package bidding – that could be tailored to the needs of prospective bidders as indicated during the pre-auction notice and comment period.

1211. We are inclined to believe that some form of package bidding may enhance the auction by helping bidders to incorporate efficiencies into their bids. While the Bureaus will establish specific

<sup>2280</sup> 47 U.S.C. § 254(b)(3). See *supra* paras. 113-114.

<sup>2281</sup> See Auction Rules included in Appendix A.

procedures to address this issue later, we invite preliminary comment on whether package bidding may be appropriate for this auction, and if so, why. Above, we asked for input on package bidding as it relates to our choice of a Census Tract-type or Bidder-Defined approach for the Mobility Fund Phase II. Here, we ask for any additional comments on the potential advantages and disadvantages of possible package bidding procedures and formats in the context of awarding support to ensure the universal availability of modern networks capable of delivering broadband and voice service to homes, businesses, and community anchor institutions. In particular, we ask for input on the reasons why certain package bidding procedures would be helpful or harmful to providers bidding in an auction, and what procedures might best meet our goal of maximizing such universal availability. For example, regardless of whether we adopt the Census Tract-type or Bidder-Defined approach, should we impose some limits on the size or composition of package bids, such as allowing flexible packages of blocks or larger geographic units as long as the geographic units are within the boundaries of a larger unit such as a county or a state? Or, if we adopt the Census Tract-type approach, we could establish package bidding procedures that allow bidders to place package bids on predetermined groupings of eligible areas that follow a particular hierarchy – such as blocks, tracts, counties, and/or states, which nest within the census geographic scheme.

1212. We seek preliminary comment, as well, on determining reserve prices for the auction based on the support amounts estimated by a forward looking broadband cost model that we direct the Bureau to develop and adopt in the coming year, *i.e.*, the model used to determine the amount offered in exchange for state-level commitments.

#### **b. Potential Bidding Preference for Small Businesses**

1213. We also seek comment on whether small businesses should be eligible for a bidding preference in a CAF auction for support in price cap areas and whether such a bidding preference would be consistent with the objective of providing such support. The preference would be similar to the small business preference on which we seek comment for auctions of Mobility Fund Phase II support, and would act as a “reverse” bidding credit that would effectively reduce the bid amount of a qualifying small business for the purpose of comparing it to other bids.<sup>2282</sup> We also seek comment on the size of any small business bidding credit, should the Commission adopt one, that would be appropriate to increase the likelihood that the small business would have an opportunity to win support in the auction. We also seek comment on how we should define small businesses if we adopt a small business bidding credit for auctions to award support in price cap areas. Specifically, for the reasons provided in our discussion of Mobility Fund Phase II, we seek comment on whether a small business should be defined as an entity with average gross revenues not exceeding \$40 million for the preceding three years.<sup>2283</sup> Alternatively, should we consider a larger size definition for this purpose, such as average gross revenues not exceeding \$125 million for the preceding three years?<sup>2284</sup> In determining an applicant’s gross revenues under what circumstances should we attribute the gross revenues of the applicant’s affiliates? We seek comment on

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<sup>2282</sup> Similar to the proposal made for Mobility Fund Phase II, the preference would be available with respect to all census blocks on which a qualified small business bids.

<sup>2283</sup> See *e.g.*, In re Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, GN Docket No. 01-74, 17 FCC Rcd 1022, 1087 ¶ 172 (2002).

<sup>2284</sup> The Commission established a size definition for entrepreneurs eligible for broadband PCS C block spectrum licenses based on gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million. In re Section 309(j) of the Communications Act – Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532, \*36 ¶ 115 (1994); see also 47 C.F.R. § 24.709(a)(1). Although this definition was used more than a decade ago in the context of spectrum auctions, we seek comment on whether it would be appropriate to use the gross revenues standard of the definition in this universal service context as it would encompass more small businesses.

these definitions and invite input on whether an alternative basis for a size standard should be established.

**c. Auction and Post-Auction Process**

1214. *Short-Form Application Process.* We propose to use the same two-stage application process described in the Mobility Fund Phase I Order and proposed for Mobility Fund Phase II. We seek comment on this proposal and on whether there are any reasons to deviate from the process already adopted for the Mobility Fund.

1215. *Information and Communications.* We do not expect there to be circumstances specific to this auction that would indicate to us that we should deviate from our usual auction policies with respect to permissible communications during the auction or the public release of certain auction-related information. Hence, we propose to use the same rules and procedures regarding permissible communications and public disclosure of auction-related information adopted in the Mobility Fund Phase I Order and proposed for Mobility Fund Phase II. We seek comment on this proposal.

1216. *Auction Cancellation.* We propose to adopt for price cap CAF auctions the same rule adopted for Mobility Fund Phase I and proposed for Mobility Fund Phase II, which would provide the Bureaus with discretion to delay, suspend, or cancel bidding before or after a reverse auction begins under a variety of circumstances. We seek comment on this proposal.

1217. *Post-Auction Long-Form Application Process.* We propose to apply the post-auction long-form application process for Mobility Fund Phase I to participants in auctions for price cap CAF. Accordingly, applicants that win competitive bidding in such auctions would be required to demonstrate in their long-form applications that they are legally, technically and financially qualified to receive the support. We seek comment on this approach.

1218. In addition, we propose that a winning bidder will be subject to an auction default payment, if it defaults on its bid, including if it withdraws a bid after the close of the auction, fails to timely file a long form application, is found ineligible or unqualified to be a recipient of support, or its long-form application is dismissed for any reason after the close of the auction. In addition, we propose that recipients of support will be subject to a performance default payment. We propose the same rules for both of these default payments as we have adopted for Mobility Fund Phase I. We seek comment on these proposals.

**4. Tribal Issues**

1219. We seek comment on whether to establish special provisions to help ensure service to Tribal lands. To the extent practicable, we anticipate that support is best awarded using the same framework, and on the same terms and conditions, as we propose for other areas where the price cap carrier declines to make a state-level commitment to provide services. We recognize, however, that there are several aspects of the challenges facing Tribal lands for which a more tailored approach may be appropriate, as evidenced in the record developed to date with regard to the Tribal Mobility Fund Phase I and as proposed elsewhere. For example, we seek comment on whether to adopt revisions to identify eligible geographic areas and appropriate coverage units, consistent with the approach we took in the Tribal Mobility Fund Phase I. We also propose Tribal engagement requirements, preferences that reflect our unique relationship with Tribes, including a bidding credit of 25 percent for Tribally-owned and controlled recipients, and ETC designation provisions to allow a Tribally-owned or controlled entity to participate at auction provided that it has an application for ETC designation pending at the short-form application stage. We seek comment on these issues. In addition, we seek comment on establishing a Tribal priority along the lines we proposed for the Tribal Mobility Fund Phase II. We believe that these measures would help to ensure service in a way that acknowledges the unique characteristics of Tribal lands and reflects and respects Tribal sovereignty. To the extent we adopt our proposal for Tribal priority units, we seek comment on whether a Tribally-owned and controlled provider should also be eligible to receive a bidding credit within its Tribal land or if the Tribe must choose between one or the other. If we

offer a bidding credit to Tribally-owned and controlled providers, would a 25 percent bidding credit, like the one we have adopted for Phase I and proposed for Phase II of the Mobility Fund be sufficient, or does it need to be set at a different level to achieve our objectives? Finally, we seek comment on whether to adopt an alternative backstop support mechanism for any Tribal land in which the auction fails to attract a bidder.

### 5. Accountability and Oversight

1220. We propose that all recipients of CAF support awarded through a competitive process would be subject generally to the same reporting, audit, and record retention requirements adopted in the Order. We seek comment on this proposal.

1221. In structuring support, we are mindful that we must comply with the Anti-Deficiency Act, which prohibits any officer or employee of the U.S. Government from involving the “government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.”<sup>2285</sup> Commenters are invited to address how to structure an award of support for a period of years to provide recipients with the requisite level of funding and certainty, while ensuring that the Commission’s Anti-Deficiency Act obligations are met.

### 6. Areas that Do Not Receive Support

1222. Any areas that do not receive support either via a price cap carrier accepting a state-level commitment or via the subsequent auction would be eligible for support from the Remote Areas Fund budget.

### K. Remote Areas Fund

1223. Today’s Order adopts a number of reforms aimed at ensuring universal availability of robust and affordable voice and broadband services to all Americans. A key element of these reforms is our dedication of an annual budget of at least \$100 million to ensure that the less than one percent of Americans living in remote areas where the cost of deploying traditional terrestrial broadband networks is extremely high can obtain affordable broadband.<sup>2286</sup> We seek comment on how best to implement the Connect America Fund for remote areas (“Remote Areas Fund”).

1224. The obstacles to ensuring that affordable voice and broadband service are available in extremely high-cost areas differ somewhat from the obstacles to ensuring that such services are available in other areas supported by the Connect America Fund. As discussed above, with respect to those latter areas our focus has been on how best to facilitate the deployment of robust fixed and mobile broadband technologies where our universal service fund budget can support such deployment. In contrast, in extremely high-cost areas, available universal service support is unlikely to be sufficient for the deployment of traditional terrestrial networks supporting robust voice and broadband services. The Connect America Fund can help fulfill our universal service goals in these areas by taking advantage of services such as next-generation broadband satellite service or wireless internet service provider (WISP) service, which may already be deployed (or may be deployable with modest upfront investments) but may

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<sup>2285</sup> 31 U.S.C. § 1341(a)(1)(B).

<sup>2286</sup> See *supra* paras. 533-534. We acknowledge that many, but not all, extremely high cost areas are remote, in terms of distance from areas that are not high cost, and that some remote areas are not necessarily extremely high cost. We seek comment throughout this FNPRM on how to ensure that support from the Remote Areas Fund is targeted at areas that would be extremely high cost to serve with traditional terrestrial networks; we refer to these areas throughout this Section as “remote” or “extremely high cost.”

be priced in a way that makes service unaffordable for many consumers.<sup>2287</sup> In addition, we recognize that some of the most likely providers of service to these remote areas have cost structures, price structures, and networks that differ significantly from those of other broadband providers. For instance, the cost of terminal equipment and installation for satellite broadband often is greater than for other broadband offerings. As commenters address the issues raised in this section, we ask them to focus in particular on these characteristics and explain what, if any, impact they should have on the structure of the Remote Areas Fund.

## 1. Program Structure

1225. We seek comment on how to structure the Remote Areas Fund. We propose that support for remote areas be structured as a portable consumer subsidy. Specifically, we seek comment on CAF support being used to make available discounted voice and broadband service to qualifying residences/households in remote areas,<sup>2288</sup> in a manner similar to our Lifeline and Link Up programs (together, Lifeline). As with Lifeline and Link Up, ETCs providing service in remote areas would receive subsidies only when they actually provide supported service to an eligible customer. Such a program structure would have the effect of making voice and broadband more affordable for qualifying consumers, thus promoting consumer choice and competition in remote areas. We seek further comment on how to implement such a proposal in sections XVII.K.2 and XVII.K.3 below.

1226. We also seek comment on an alternative structure for the Remote Areas Fund, which would use a competitive bidding process. Such a process could be conducted in one of three ways: (a) a per-subscribed-location auction, (b) a coverage auction, or (c) an auction of support that would include not only remote areas but also areas where the incumbent LEC declines to undertake a state-level commitment. We seek further comment on how the Commission could implement such a proposal in sections XVII.K.2 and XVII.K.4 below.

1227. Another alternative would be to structure CAF support for remote areas as a competitive proposal evaluation process, or Request for Proposal (RFP) process. We seek comment on this approach in section XVII.K.5 below.

1228. We also seek comment generally on whether there are other ways to structure CAF support for remote areas. Are there other alternatives that we should consider? Commenters should address considerations of timeliness, ease of administration, and cost effectiveness relative to the proposed portable consumer subsidy and auction approaches. For any proposed alternative, we also seek comment on whether our approach to management and oversight of this program, as described below, should differ.

## 2. General Implementation Issues

### a. Definition of Remote Areas

1229. As discussed above, we intend to use a forward-looking cost model – once finalized – to identify a small number of extremely high-cost areas in both rate-of-return and price cap areas that should

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<sup>2287</sup> Because the Remote Areas Fund is likely to provide support on a per-subscribed location basis to make affordable to consumers service that is likely deployed or relatively easily deployed, we are less concerned that selecting more than one provider will deplete the fund by providing duplicative support than we are in the context of the Mobility Fund, where support is aimed at sustaining and expanding coverage in areas where coverage would be lacking absent support.

<sup>2288</sup> We seek comment on whether support to non-business locations should be made available on a per-residence or a per-household basis. See *infra* section VII.K.3.a. Pending resolution of that issue, we refer to non-business locations as “residences/households.”

receive support from the Remote Areas Fund.<sup>2289</sup> However, given our goal of implementing the program by the end of 2012,<sup>2290</sup> we will not be able to use the model to identify, at least in the first instance, remote areas eligible for CAF support.<sup>2291</sup>

1230. We therefore seek comment on how to identify the areas eligible for the Remote Areas Fund while the model is unavailable. We propose to provide support to those census blocks in price cap territories that are identified by National Broadband Map data as having no wireline or terrestrial wireless broadband service available, subsidized or unsubsidized.<sup>2292</sup> We seek comment on this proposal. Could this test be used as a proxy for identifying extremely high-cost areas? Is the National Broadband Map data sufficiently granular? Given that it is reported voluntarily by broadband providers, may the data be considered reliable enough for this purpose? Is there a risk that use of that metric would result in overlap with areas that likely would be supported by Mobility Fund monies or by funding made available post-state-level commitment? Could any overlap be addressed by making areas ineligible to the extent they are supported by other CAF funds? Given the goal of increasing broadband availability quickly, might the benefits of permitting overlaps for some time period outweigh the costs? Are there other data sources that could be used in conjunction with National Broadband Map data to improve our identification of remote areas? Are there alternative methods to using National Broadband Map data that the Commission could use to identify those remote areas in which CAF support should be available? What would be the advantages and disadvantages of such methods?

1231. Should the Commission switch from its initial method of identifying remote areas eligible for support (*e.g.*, by using National Broadband Map data) to the forward-looking cost model once the model is available? Regardless of the method used, how frequently should the Commission reexamine whether an area is appropriately classified as “remote” for the purposes of Remote Area Fund support? The National Broadband Map is updated approximately every six months – would that be an appropriate interval?<sup>2293</sup> Is a periodic reexamination of the classification of remote areas sufficient to ensure that Remote Areas Fund support is not provided in areas where other carriers are providing broadband supported by other CAF elements? Likewise, is it sufficient to ensure eligibility for the Remote Areas Fund for consumers in areas where a carrier that currently receives USF support ceases to provide broadband service because that support is no longer available in whole or in part?

1232. We note that whether the Remote Area Fund is distributed as one-time awards or as ongoing support may affect the impact of any reexamination of the classification of remote areas. If one-time awards were distributed, up to \$100 million for a given year, additional money would be available in subsequent years. If ongoing support were awarded, and \$100 million were committed for a term of years, it would foreclose the possibility of support for additional areas later identified as “remote” by the model. Therefore, regardless of the distribution mechanism (portable consumer subsidy, auction, or

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<sup>2289</sup> We also propose in the FNPRM that any eligible areas that do not receive CAF Phase II support, either through a state-level commitment or through the subsequent competitive bidding process, would be eligible for support from the Remote Areas Fund. *See supra* para. 1222.

<sup>2290</sup> *See supra* para. 30.

<sup>2291</sup> We expect the CAF Phase II model to be available at the end of 2012. *See supra* para. 25.

<sup>2292</sup> As set forth in the CAF Order, rate-of-return carriers are required to extend broadband on reasonable request, and in the near term, pending fuller development of the record and resolution of these issues, we expect they will follow pre-existing state requirements, if any, regarding service line extensions in their highest-cost areas.

<sup>2293</sup> National Broadband Map, About National Broadband Map, <http://www.broadbandmap.gov/about> (last visited Oct. 17, 2011).

RFP), we propose to use one-time support until the model is complete. Thereafter, the Commission may decide to use one-time support, ongoing support, or a combination of the two.

**b. Provider Qualifications**

1233. To be eligible to receive CAF support for remote areas, we propose that a provider (i) must be an ETC, and (ii) must certify that it is financially and technically capable of providing service within the specified timeframe.

1234. *ETC Designation.* For the same reasons that apply with respect to other components of CAF, we generally propose to require that applicants for CAF support for remote areas be designated as ETCs covering the relevant geographic area as a condition of their eligibility for such support.<sup>2294</sup> We seek comment on this proposal.

1235. We also seek comment on the Commission's authority to designate satellite or other providers as ETCs pursuant to section 214(e)(6). Section 214(e)(6) authorizes the Commission to designate ETCs in the limited cases where a common carrier is not subject to the jurisdiction of a state commission.<sup>2295</sup> Under current procedures, when a carrier seeks ETC designation by the Commission, it must obtain from the relevant state an affirmative statement that the state lacks authority to designate that provider as an ETC.<sup>2296</sup> In order to streamline the implementation of CAF support for remote areas, should the Commission change its determination that carriers seeking non-Tribal land ETC designation must first seek it from the state commissions? Likewise, to the extent that providers may seek to serve remote areas in multiple states, can and should the Commission establish a streamlined process whereby the Commission could grant providers a multi-state or nationwide ETC designation? What modifications, if any, should be made to our ETC regulations in light of the particular characteristics of CAF support for remote areas? Would forbearance from any of the existing obligations be appropriate and necessary?

1236. *Certification of Financial and Technical Capability.* We also propose that each party seeking to receive CAF support for remote areas be required to certify that it is financially and technically capable of providing the required service within the specified timeframe in the geographic areas for which it seeks support. We seek comment on what specific showings should accompany any such certification.

1237. *Other Qualifications.* In addition to the minimum qualifications described above, we seek comment on other eligibility requirements for entities seeking to receive support for remote areas and how such requirements would advance our objectives. At the same time that we establish minimum qualifications consistent with these goals, are there ways the Commission can encourage participation by the widest possible range of qualified parties, including smaller entities?

**c. Term of Support**

1238. We seek comment on whether to establish a term of support in conjunction with the Remote Areas Fund. To the extent we adopt a structure that requires a term of support, we propose a five-year term, and seek comment on alternative terms. We also seek comment on whether it is appropriate to establish any sort of renewal opportunity, and on what terms.

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<sup>2294</sup> See *supra* para. 19, section VI (Public Interest Obligations).

<sup>2295</sup> 47 U.S.C. § 214(e)(6).

<sup>2296</sup> *USF Twelfth Report and Order*, 15 FCC Rcd at 12255, para. 93. This is true even for CMRS, for which the states clearly lack authority to regulate entry or rates. *Id.* at 12,262-63, para. 110. Because of the complex interrelationships among Tribal, state, and federal authority, providers may seek designation directly from the Commission to provide service in Tribal lands without an affirmative statement from the relevant state that it lacks jurisdiction. *Id.* at 12,265-69, paras. 115-27.

**d. Public Interest Obligations**  
**(i) Service Performance Criteria**  
**(a) Voice**

1239. As discussed in the CAF Order, we require all recipients of federal high-cost universal service support (whether designated as ETCs by a state commission or this Commission), as a condition of receiving federal high-cost universal service support, to offer voice telephony service throughout their supported area, and fund recipients must offer voice telephony as a standalone service.<sup>2297</sup> As indicated above, ETCs may use any technology in the provision of voice telephony service. 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,”<sup>2298</sup> ETCs must offer voice telephony service, including voice telephony service offered on a standalone basis, at rates that are reasonably comparable to urban rates.<sup>2299</sup> We find that these requirements are appropriate to help ensure that consumers have access to voice telephony service that best fits their particular needs.<sup>2300</sup>

**(b) Broadband**

1240. Because different technologies, which may provide lower speeds and/or higher latencies, are likely to be used to serve locations in extremely high-cost areas than in other areas, and because it is not reasonably feasible to overcome this difference with the limited resources available through the Connect America Fund, we propose to tailor broadband performance requirements to the economic and technical characteristics of networks likely to exist in those remote areas. We therefore propose to modestly relax the broadband performance obligations for fixed voice and broadband providers to facilitate participation in the Remote Areas Fund by providers of technologies like next-generation satellite broadband and unlicensed localized fixed wireless networks, which may be significantly less costly to deploy in these remote areas. We seek comment on the appropriate performance requirements for broadband service to remote areas.

1241. *Speed Requirement.* We note that satellite broadband providers and WISPs are capable of offering service at speeds of at least 4 Mbps downstream and 1 Mbps upstream or intend to do so in the near future.<sup>2301</sup> We propose that broadband services eligible for CAF support for remote areas must,

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<sup>2297</sup> 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 PUC Comments at 10; Greenlining Institute Comments at 8; Missouri PSC Comments at 7; NASUCA Comments at 38.

<sup>2298</sup> 47 U.S.C. § 254(b)(3).

<sup>2299</sup> See *Qwest I*, 258 F.3d at 1199-1200.

<sup>2300</sup> See AT&T Comments at 103 (indicating that competition will ensure that customers have multiple options for voice service). But see Frontier 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).

<sup>2301</sup> See ViaSat, Inc. Comments Exhibit B, Jonathan Orszag and Bryan Keating, An Analysis of the Benefits of Allowing Satellite Broadband Providers to Participate Directly in the Proposed CAF Reverse Auctions (Apr. 18, 2011) at 14 (“ViaSat-1 is designed to provide subscribers with a broadband experience that is very comparable to terrestrial services. It will enable ViaSat to offer a variety of service offerings that meet or exceed the Commission’s proposed 4 Mbps download/1 Mbps upload standard.”) (footnotes omitted); Letter from Stephen D. Baruch, Attorney for Hughes Network Systems, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, attach. at 11 (filed Sept. 17, 2011) (stating that Hughes satellite broadband will be “[c]apable of serving 3 million subscribers at National Broadband Plan (NBP) targeted speeds in next 18 months” and that “[s]peeds will meet or exceed NBP targets (4 Mbps down/1 Mbps up)”); Wireless Internet Service Providers Association, (continued...)

consistent with other CAF requirements, offer actual speeds of at least 4 Mbps downstream and 1 Mbps upstream.<sup>2302</sup> We seek comment on this proposal. Are adjustments to those speeds appropriate given the nature of satellite service, WISP service, or other services? Is the availability of sufficient backhaul capacity a limiting factor that must be taken into account in some circumstances?

1242. *Latency.* Consistent with other CAF requirements, we propose to require ETCs to offer service of sufficiently low latency to enable use of real-time applications, including VoIP.<sup>2303</sup> We recognize that providers that operate satellites in geosynchronous orbits will, as a matter of physics, have higher latency than most terrestrial networks, and seek comment on how to operationalize that requirement. Would it be appropriate to set a latency standard, measured in milliseconds, for satellite services delivered in remote areas? If so, what should that standard be?

1243. *Capacity.* We seek comment on whether services supported by CAF for remote areas should have a minimum capacity requirement, and if so what that requirement should be. We note that both WildBlue and HughesNet currently limit daily or monthly usage by their residential subscribers.<sup>2304</sup> Upon launch of their new satellites, both providers may be able to adjust their usage limits.<sup>2305</sup>

1244. Other elements of CAF require that usage limits for broadband services “must be reasonably comparable to usage limits for comparable residential broadband offerings in urban areas.”<sup>2306</sup> Is this standard appropriate for satellite, WISP, and other broadband services in remote areas? Could the Commission establish a different capacity standard for services supported by CAF in remote areas that still enable consumers to utilize distance learning, remote medical diagnostics, video conferencing, and other critical applications, while allowing network operators the flexibility necessary to manage their networks? How would such a standard be operationalized?

#### (ii) Pricing

1245. We seek comment on the pricing obligations of ETCs that receive Remote Areas Fund support.

1246. *Reasonably Comparable Rates.* The fourth performance goal adopted in the CAF Order is to ensure that rates are reasonably comparable for voice as well as broadband service, between urban

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America’s Broadband Heroes: Fixed Wireless Broadband Providers (2011) at 10, attach. to Letter from Elizabeth Bowles, President, and Jack Unger, FCC Chair, Wireless Internet Service Providers Association, to Sharon Gillett, Chief, Wireline Competition Bureau, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (filed Oct. 20, 2011) (“By 2007, WISP operators were commonly offering 1 meg to 4 meg speeds to subscribers using the newer platforms.”).

<sup>2302</sup> See *supra* para. 94.

<sup>2303</sup> See *supra* para. 96.

<sup>2304</sup> See HughesNet, Fair Access Policy, <http://web.hughesnet.com/sites/legal/Pages/FairAccessPolicy.aspx> (last visited Oct. 18, 2011); WildBlue, Fair Access Policy Information, <http://www.wildblue.com/fap/> (last visited Oct. 18, 2011).

<sup>2305</sup> See ViaSat Comments at 5 (“ViaSat-1 will feature an innovative spacecraft design yielding capacity that is approximately 50-100 times greater than traditional Ku-band FSS satellites, and approximately 10-15 times greater than the highest capacity Ka-band satellites that serve the United States today.”); Letter from Stephen D. Baruch, Attorney for Hughes Network Systems, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, attach. at 11 (“More than 200 Gbps of capacity coming online in next 18 months.”).

<sup>2306</sup> See *supra* para. 98.

and rural, insular, and high-cost areas.<sup>2307</sup> Rates must be reasonably comparable so that consumers in rural, insular, and high-cost areas have meaningful access to these services.<sup>2308</sup> We propose to utilize the standards discussed in the CAF Order to determine whether rates for voice and broadband service in remote areas are reasonably comparable to those in urban areas.<sup>2309</sup> We seek comment on this proposal.

1247. Specifically, we propose to consider rates for voice service in remote areas to be “reasonably comparable” to urban voice rates under section 254(b)(3) if rates in remote areas fall within a reasonable range of urban rates for reasonably comparable voice service. Consistent with our existing precedent, we propose to presume that a voice rate is within a reasonable range if it falls within two standard deviations above the national average.<sup>2310</sup>

1248. As with voice services, for broadband services, we propose to consider rates in remote areas to be “reasonably comparable” to urban rates under section 254(b)(3) if rates in remote areas fall within a reasonable range of urban rates for reasonably comparable broadband service.<sup>2311</sup> We expect that the specific methodology to define that reasonable range for purposes of section 254(b)(3) the Bureaus have been directed to develop will be of equal use here.

1249. We are committed to achieving our goal of ensuring that voice and broadband are available at reasonably comparable rates for all Americans. It is unlikely, however, that we will be able to ensure that every residence/household in extremely high-cost, remote areas has access to subsidized voice and broadband service given the overall budget for the Connect America Fund. The Remote Areas Fund is, therefore, focused primarily on making voice and broadband affordable for consumers who would not otherwise have the resources to obtain it. Specifically, we seek comment in the following sections on whether to implement a means test to ensure that those residences/households in remote areas that are most in need of support to make voice and broadband affordable are able to obtain it.

1250. We recognize that this approach would be different from the current Commission approach for advancing universal service in high-cost areas, which does not look at the income levels of individual consumers that are served by carriers that receive funding from the high-cost program. These past decisions, however, were made in the context of a high-cost fund that lacked a strict budget. The Commission has now established an annual budget of no more than \$4.5 billion for the high-cost fund. In the context of this budget, the Commission has considered how best to achieve our goals with respect to the relatively small number of extremely costly to serve locations. Supporting robust fixed terrestrial networks in these remote areas would be so expensive that it would impose an excessive burden on contributors to the fund, even recognizing the section 254(b)(3) comparability principle, which the courts and the Commission have held must be balanced against the other principles.<sup>2312</sup> Imposing such a burden

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<sup>2307</sup> See *supra* paras. 55-56.

<sup>2308</sup> See 47 U.S.C. § 254(b)(3); *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4584, para. 80.

<sup>2309</sup> See *supra* para. 113.

<sup>2310</sup> 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.

<sup>2311</sup> See *supra* para. 113.

<sup>2312</sup> *Id.*; see, e.g., *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 434 (5th Cir. 1999); *Qwest Corp. v. FCC*, 258 F.3d 1191, 1199-1200 (10th Cir. 2001) *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005); *Federal* (continued...)

on consumers that contribute to the universal service fund would undermine our universal service goals by raising the cost of communications services.

1251. We seek to ensure that consumers in extremely high-cost areas have an meaningful opportunity to obtain both voice and broadband connectivity, and have concluded that we should support the provision of some service to those who might otherwise have no service at all. We believe this is a reasonable balancing of the section 254(b) principles in the context of remote areas that would be unreasonably expensive to serve by the means contemplated in the other CAF programs. As discussed above in the Order,<sup>2313</sup> we believe we can achieve this goal for these remote customers for approximately \$100 million per year. It is appropriate to revisit, in this narrow context, the question of whether we should direct the limited available funds to support residences/households with limited means, rather than offering discounted rates to residences/households for which a somewhat higher price is unlikely to be a barrier to adoption.

1252. *Subsidy Pass Through.* To the extent the Remote Areas Fund is structured in a way that support is provided to ETCs on a per-subscriber basis (e.g., as a portable consumer subsidy or as a per-subscribed-location auction), we propose that ETCs be required to pass the subsidy it receives for a subscriber on to that subscriber – in its entirety – in the form of a discount. This requirement is consistent with Lifeline, and will help to ensure that consumers in remote areas have access to services at reasonably comparable rates. We seek comment on this proposal.

1253. *Price Guarantees.* We seek comment on how to ensure that providers do not raise their prices in response to the availability of the Remote Areas Fund subsidy. One proposal would be to require each ETC to establish an “anchor price” for its basic service offering – including installation and equipment charges – as a condition of eligibility to receive Remote Areas Fund support. Such an approach would provide ETCs with pricing flexibility for all but their basic service offerings, while ensuring that low-income consumers have access to at least one product that is affordable. We seek comment on how to establish appropriate anchor prices. Would it be enough to require that the lowest discounted rate be reasonably comparable to rates in urban areas?

1254. *Consumer Flexibility.* We propose that consumers that receive discounts by virtue of Remote Areas Fund support should be permitted to apply that discount to any service package that includes voice telephony service offered by their ETC – not just to a basic package that is available at an anchor price or to other limited service offerings. Consumers in urban areas generally have the ability to purchase multiple service packages with varying levels of service quality at varying prices. It seems reasonable to afford a consumer in a remote area the same opportunity. We seek comment on this proposal.

### 3. Portable Consumer Subsidy Issues

#### a. Subscriber Qualifications

1255. As discussed above, we propose that CAF support for remote areas be used to make available discounted voice and broadband service to qualifying residences/households in remote areas, in a manner similar to our Lifeline program. In this section, we propose to limit CAF support for remote areas to one subsidy per residence/household. We further propose that in order for an ETC to receive a subsidy for a residence/household (which subsidy will be used to provide that service to that residence/household at a discounted rate), the residence/household be located in a remote area, as  
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*State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Proposed Rulemaking, 20 FCC Rcd 19,731, 19,735-36, para 8 (2005).

<sup>2313</sup> See *supra* para. 534.

identified by the metric discussed in section XVII.K.2.a above. Finally, we seek comment on whether to require that residences/households meet a means test.

1256. *Eligibility Limited to One Per Residence/Household.* We propose to limit support to a single subsidy per residence/household in order to facilitate our statutory universal service obligations while preventing unnecessary expenditures for duplicative connections.<sup>2314</sup> A single fixed broadband connection should be sufficient for a single residence/household. We seek comment on this proposal.

1257. We also seek comment on how to implement this proposal in the context of CAF support for remote areas. First, we propose to adopt the use and definition of “residence” or “household” ultimately adopted by the Commission in connection with the Lifeline and Link Up Reform and Modernization NPRM.<sup>2315</sup> We seek comment on this proposal. We also seek comment on how best to interpret the one per residence/household restriction in light of current service offerings and in the context of situations that may pose unique circumstances.<sup>2316</sup> How should the Commission or Administrator determine that CAF support for remote areas is being provided in a manner consistent with any definitions of “household” or “residence” ultimately adopted? Should providers be able to rely on the representation of the person signing up for the discounted service?

1258. We seek comment on the relationship between CAF support for remote areas and the Lifeline program. Should a consumer’s decision to obtain services supported by the Remote Areas Fund affect or preclude their eligibility for Lifeline, or vice versa? What other issues must the Commission address in order to ensure that these programs are structured in a complementary fashion?

1259. *Remote Area.* We propose that CAF support for remote areas should be available only for service provided to residences/households located in extremely high-cost areas, consistent with the discussion in section XVII.K.2.a above. We seek comment on this proposal.

1260. *Limiting Support to New Subscribers.* It is likely that there are residences/households located in remote areas that are capable of and willing to pay for satellite voice and broadband services at current prices. These residences/households do not, by definition, require assistance in overcoming the barrier to affordability in remote areas. We therefore seek comment on whether it is appropriate to limit Remote Areas Fund support to new subscribers only. If so, how would such a restriction be implemented? Can an ETC determine whether a potential new subscriber is a current or past subscriber to itself or to another ETC? Should residences/households be considered “new customers” some period of time after cancelling service with an ETC? If so, how long a period is appropriate?

1261. *Means Test.* We seek comment on whether to use a means test to identify qualifying locations for which support can be collected in each eligible remote area. It would appear that using a means test for determining qualifying residences/households is particularly appropriate in supporting

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<sup>2314</sup> *Lifeline and Link Up Reform and Modernization NPRM*, 26 FCC Rcd at 2805-10, paras. 106-125.

<sup>2315</sup> *Lifeline and Link Up Reform and Modernization NPRM*, 26 FCC Rcd at 2872-3, Appendix A (proposed 47 C.F.R. § 54.408); *Further Inquiry Into Four Issues in the Universal Service Lifeline/Link Up Reform and Modernization Proceeding*, WC Docket Nos. 03-109, 11-42, CC Docket No. 96-45, Public Notice, 26 FCC Rcd 11,098, 11,100-03 (Wireline Comp. Bureau 2011).

<sup>2316</sup> *Lifeline and Link Up Reform and Modernization NPRM*, 26 FCC Rcd at 2805-6, para. 109. In October 2009, the Wireline Bureau sought comment on how to apply the one-per-household rule to Lifeline support in the context of group living facilities, such as assisted-living centers, Tribal residences, and apartment buildings. *See Comment Sought on TracFone Request for Clarification of Universal Service Lifeline Program “One-Per- Household” Rule As Applied to Group Living Facilities*, WC Docket No. 03-109, Public Notice, 24 FCC Rcd 12788 (Wireline Comp. Bur. 2009); Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 03-109 (filed July 17, 2009).

services in extremely high-cost, remote areas that may be most cost-effectively served by satellite technology. This is because such service is readily available over broad areas, but often at higher prices to the end user than common terrestrial broadband services. In addition, by limiting our support to locations that meet a means test we assure that we stretch the available funds as far as possible to support service to those that would not otherwise be able to afford it. We seek comment on whether an approach that provides a portable subsidy to only a subset of consumers in remote areas is consistent with the statutory principle that “[c]onsumers in all regions of the Nation, including low-income consumers . . . should have access to . . . advanced telecommunications and information services . . . at rates that are reasonably comparable to rates charged for similar services in urban areas.”<sup>2317</sup> We seek comment on these proposals, and on any alternatives that commenters may suggest.

1262. We seek comment on what standard we would use for such a means test. For instance, would it be appropriate to set a threshold means test for residences/households of 200 percent of the poverty level as established annually, based on residence/household size?<sup>2318</sup> That would, for example, provide support for a family of four that has income of \$44,700 or lower.<sup>2319</sup> What would be the relative advantages and disadvantages of setting a higher or lower level? Would it be appropriate to also specify other governmental programs that could serve as models or as proxies for a means test, as is done with the Commission’s low-income program?

1263. *Community Anchor Institutions and Small Businesses.* We seek comment on whether small businesses and/or community anchor institutions also should be eligible for the Remote Areas Fund. How would the proposals set forth in this Further Notice need to be modified to administer a Remote Areas Fund that includes small businesses? How should small businesses be defined? Would small businesses receive the same subsidy as residences/households, or a different subsidy? As we observed in the CAF Order, 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 and therefore may not require support.<sup>2320</sup> If we are to provide support to community anchor institutions, how should that term be defined?

#### **b. Setting the Amount of the Subsidy**

1264. We seek comment on how to set the CAF support amount for remote areas for ETCs for voice and broadband services.

##### **(i) Stand-alone Voice Service**

1265. We seek comment on how to set the CAF support amount for remote areas for stand-alone voice service. One proposal would be to adopt rules consistent with those that establish the tiered Lifeline support amounts for voice telephony service.<sup>2321</sup> Would these support amounts be sufficient to

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<sup>2317</sup> See 47 U.S.C. §254(b)(3).

<sup>2318</sup> For the Lifeline and Link Up programs, consumers in states without their own low-income programs must comply with eligibility criteria to qualify for low-income support. The Commission’s eligibility criteria include income at or below 135 percent of the federal poverty guidelines, or participation in one of the various income-based public-assistance programs, such as Medicaid, Food Stamps, Supplemental Security Income, Federal Public Housing Assistance, and the National School Lunch Program’s free lunch program. See 54 C.F.R. § 409(b), (c).

<sup>2319</sup> See Annual Update of the HHS Poverty Guidelines, 76 Fed. Reg. 3637-38 (Jan. 20, 2011).

<sup>2320</sup> See *supra* para. 102.

<sup>2321</sup> 47 C.F.R. § 54.403. We note that the Commission has sought comment on whether there is a more appropriate framework for reimbursement than the current four-tier system. See *Lifeline and Link Up Reform and Modernization NPRM*, 26 FCC Rcd at 2845-49, paras. 245-51.

overcome the barrier to affordability for voice service faced by individuals in remote areas? Would a greater or lesser amount be more appropriate? If so, how would such an amount be calculated?

**(ii) Voice and Broadband Service**

1266. We seek comment on how to set the CAF support amount for remote areas for a bundle of voice and broadband (“voice-broadband”) service. We note that current satellite services tend to have significantly higher monthly prices to end-users than many terrestrial fixed broadband services, and frequently include substantial up-front equipment and installation costs.

1267. *Monthly Payments.* We seek comment on the appropriate support amount for monthly satellite voice-broadband service charges. One proposal would be to provide a monthly amount equal to the difference between the retail price of a “basic” satellite voice-broadband service and an appropriate reference price for reasonably comparable service in urban areas. We seek comment on this proposal. How would the appropriate reference price for satellite voice-broadband be calculated? How would the appropriate reference price for a “reasonably comparable” voice-broadband service in urban areas be calculated? What performance criteria should be applied when selecting a service or services from which to derive the price? Should a discount be applied to the price of services which are of lower quality (*e.g.*, have higher latency or stricter capacity limits)? Could the survey of urban broadband rates the Bureaus have been authorized to conduct provide the necessary data?<sup>2322</sup> How should the presence or absence of mandatory contract terms or other terms and conditions that may differ be taken into account? Are there other data sources available that could be relied upon to determine one or both reference prices?

1268. What other methods could be used to establish the appropriate support amount? Proposals should be detailed and specific, and commenters should be mindful of the need to balance the goal of ensuring access to affordable broadband in remote areas with the need to operate within the budget established for CAF for remote areas and minimize opportunities for waste, fraud and abuse.

1269. *Installation and Equipment.* The cost of purchasing or leasing terminal equipment and installation necessary for satellite service to be initiated often are greater than for other services. We seek comment on how and whether Remote Areas Fund support should be allocated to defray these startup costs.

1270. We propose that subscribers be required to pay, or provide a deposit of, a meaningful amount to help ensure that subscribers have the means to pay for the services to which they subscribe and to provide an incentive to comply with any terms of their service agreements regarding use and return of equipment. What would be an appropriate payment or deposit amount?

1271. By extension, we propose that the subsidy for installation services and equipment sale or lease be the difference between the payment or deposit amount described in the preceding paragraph and the ETC’s routine charges for initiating service. We seek comment on whether this would result in an appropriate subsidy level. Should the Commission instead establish a fixed subsidy amount? If so, how should that subsidy amount be calculated? Should the subsidy be paid at the time service is initiated, or should smaller payments be made during the duration of the subscription? What other factors must be taken into account so as to ensure that the costs of installation and equipment do not serve as a barrier to affordable broadband service in remote areas while minimizing incentives for customer churn and opportunities for waste, fraud and abuse?

1272. *Satellite Service Availability.* As discussed above, we recognize that some of the most likely providers of service to remote areas are satellite providers. Are there issues relating to the nature of satellite service that could prevent potential subscribers from obtaining service? For example, WildBlue

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<sup>2322</sup> See *supra* para. 114.

and HughesNet both require that subscribers have a clear view of the southern sky in order to obtain a signal.<sup>2323</sup> How many potential subscribers in remote areas may not be able to obtain a signal due to the nature of their dwelling unit (*e.g.*, a multi-unit dwelling), terrain surrounding their dwelling unit (*e.g.*, proximity to mountains), heavy foliage, or other obstructions? To what extent can such issues be resolved by antenna masts or other solutions? Should the cost of resolving such issues be subsidized by CAF support for remote areas? If so, how would the amount of such subsidy be calculated?

### c. Terms and Conditions of Service

1273. We note that both WildBlue and HughesNet require subscribers to enter into a 24-month contract as a condition of service, and impose an early termination fee (ETF) if service is terminated prior to the end of the contract term.<sup>2324</sup> Should ETCs be permitted to impose such contract terms when consumers subscribe to services supported by CAF for remote areas? Are there other terms or conditions that should be prohibited or restricted in connection with the provision of supported services? For example, should an ETC be permitted to require subscribers to pay by credit card, or to pass a credit check before service is initiated?

### d. Budget

1274. We seek comment on how to ensure that we stay within the annual Remote Areas Fund budget under a portable consumer subsidy structure. Should support be available on a “first come, first served” basis, or should some other method be used to identify which applicants receive support? If, in a given funding year, support expenditures begin to approach the budgeted amount, should the Commission tighten the eligibility criteria to reduce demand (*e.g.*, by lowering the threshold established for a means test, if adopted)? If so, how? What other tools or techniques can the Commission use to ensure that demand for CAF for remote areas support does not outstrip the budgeted supply?

1275. We also seek comment on what the Commission should do if requests for reimbursement from the Remote Areas Fund are lower than the budget. If, in a given funding year, support expenditures do not reach the budgeted amount, should the Commission modify its eligibility criteria to allow additional residences/households in remote areas to obtain service supported by the Remote Areas Fund? If so, how?

## 4. Auction Approaches

1276. As alternatives to our proposals above, we could use one of several competitive bidding approaches to target the provision of CAF funding in extremely high-cost areas. Using an auction in which providers compete across areas for support from the Remote Areas Fund could enable us to identify those providers that would offer the services at least cost to the fund, so as to maximize the number of locations that could be served within the budget. More specifically, we seek comment on three auction-related alternatives. In the first, a per-subscribed location auction, bidders would compete for the opportunity to receive payments in exchange for providing services that meet the technical requirements described above, at a set discounted price, to qualifying locations in an area.<sup>2325</sup> In the second, a coverage auction, rather than competing for a per-subscribed location subsidy based on specified performance and

<sup>2323</sup> See WildBlue, Frequently Asked Questions, [http://www.wildblue.com/aboutWildblue/qaa.jsp#4\\_4](http://www.wildblue.com/aboutWildblue/qaa.jsp#4_4) (last visited Oct. 18, 2011); HughesNet, Frequently Asked Questions, Installation, <http://consumer.hughesnet.com/faqs.cfm> (last visited Oct. 18, 2011).

<sup>2324</sup> See WildBlue, Legal – Customer Agreement, [http://www.wildblue.com/legal/customer\\_agreement.jsp](http://www.wildblue.com/legal/customer_agreement.jsp) (last visited Oct. 18, 2011); HughesNet, Plans and Pricing, [http://consumer.hughesnet.com/plans.cfm?WT.mc\\_id=05141PPChncom3](http://consumer.hughesnet.com/plans.cfm?WT.mc_id=05141PPChncom3) (last visited Oct. 18, 2011).

<sup>2325</sup> Such qualifications might include, for example, a means test.

pricing requirements, bidders would compete for support in exchange for making service available at reasonably comparable rates to any requesting location within a geographic area. The third auction alternative, a combined auction, would take place in combination with the competitive bidding process in areas in which the incumbent LEC declines the state-level commitment. We would combine the budgets available for these purposes into a single competitive bidding process, relaxing the performance requirements applicable to supported providers of fixed service in order to increase the number of technologies service providers could use, and thereby increase competition in the auction.<sup>2326</sup> If we use an auction framework, we would have to consider some additional questions regarding how to address aspects of the program that would be different under an auction approach than for our voucher proposal. Below we discuss each auction option in more detail and seek comment on relevant issues. Commenters advocating for auction options should discuss to what extent the choice of a particular auction approach should affect decisions about the general implementation issues discussed above in Section XVII.K.2, including definition of remote areas, provider qualifications, and public interest obligations.

1277. *Per-Subscribed Location Auction.* This competitive bidding alternative would have much in common with the portable consumer subsidy proposal we describe above, in that it would offer a subsidy based on service provided to qualifying locations.<sup>2327</sup> In contrast, however, under an auction approach, the subsidies would not necessarily be available in all the areas identified as extremely high-cost, but only in those areas for which winning bids were accepted. Further, in an auction for per-location support, only the providers submitting the winning bids would be eligible to collect the subsidy payments to serve qualifying locations in the area. And under an auction approach, the subsidy amount would be determined based on bids in the auction, and would not be set by the Commission.

1278. In a per-subscriber location auction, the Commission would establish a benchmark price level for services meeting the performance criteria defined for voice and broadband in extremely high-cost areas. Bidders would then indicate in the auction a subsidy amount at which they would be willing to offer services meeting our specifications while charging consumers no more than the benchmark price, which would represent a discount off the otherwise available price. We seek comment on how we should establish this price, and how to adjust it over time. Many of the same considerations discussed above in Section XVII.K.3.b with respect to the portable consumer subsidy would apply to the per-subscriber-location auction, and we ask commenters to address these issues.

1279. With respect to the choice of areas for competitive bidding under this option, we seek comment on whether we should use a geographic area other than census blocks as a minimum geographic unit for bidding, and how that choice relates to whether and how we might provide for bidding on packages of areas.<sup>2328</sup> In order to evaluate the effect of bids with respect to available funds, we would determine the number of qualifying locations in each eligible census block based on 2010 decennial census data (*e.g.*, those locations meeting a required means test).

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<sup>2326</sup> In the discussion of the competitive bidding process in areas where incumbent LECs have declined a state-level commitment, we seek comment on an approach in which providers could offer different performance characteristics such as download and/or upload speeds, latency, and limits on monthly data usage, and the Commission would score such “quality” differences in evaluating bids. *See supra* para. 1204 and note 2279.

<sup>2327</sup> Our second auction option does not involve per-location support, and so is significantly different from our voucher approach.

<sup>2328</sup> Compare WildBlue et al., *Ex Parte* Notice, July 18, 2011 (satellite representatives “urged that support be distributed on the basis of small geographic units, such as census blocks”), with Rural Utilities Service, Satellite Awards, Broadband Initiatives Program, Fact Sheet at 2 (illustrating large regions with respect to which BIP satellite funding was granted) (*available at* <http://www.rurdev.usda.gov/supportdocuments/BIPSatelliteFactSheet10-20-10.pdf>).

1280. Under this auction option, we could design the auction to select one or possibly more than one provider that would be eligible to receive a subsidy amount to provide services in a given area, and we seek comment on these possible approaches. Enabling more than one provider to receive support could provide qualifying customers with the benefits of a choice of service providers. Selecting a single provider per area, however, could give the providers more certainty regarding potential customers, which may permit lower bids. We also ask commenters to consider whether picking one provider or two or more would have an effect on auction competition and the auction's ability to drive subsidy prices to efficient levels. In this regard, we ask commenters to indicate the likely impact on subsidy levels of picking one provider or two or more through an auction, as well as the concomitant effect on the number of locations that could be served within the budget.

1281. *Coverage Auction.* This competitive bidding option could be appropriate if we find that we need to spur significant new deployment (*e.g.*, launching a new satellite or directing a dedicated spot beam to a particular area) to make voice and broadband services available in extremely high-cost areas. Thus, a coverage auction would have much in common with our proposals for competitive bidding for Mobility Fund Phase II and price cap areas in which a state-level commitment was not made in that it would offer support to service providers in exchange for making service available at reasonably comparable rates to any requesting location within a particular geographic area. Similar to the other proposed CAF auctions, requesting locations would not be subject to a means test, and support would not be tied to the number of subscribers a provider serves. As a threshold matter, we seek comment on whether a coverage auction would displace private investment, given existing and planned capacity and coverage that may be achieved without support. If adequate capacity and coverage is unlikely to be achieved absent support, we seek input on how to structure a competitive auction, given the nature of competition among satellite broadband providers and the possibility of competition from providers using other technological platforms, such as WISPs.

1282. As with our other competitive bidding proposals we seek comment on the appropriate geographic area to use as a minimum geographic unit for bidding, and how that choice relates to whether and how we might provide for bidding on packages of areas.<sup>2329</sup> In order to evaluate the impact on available funds of bids made for different geographic areas we would determine the number of potential locations in each eligible census block based on 2010 decennial census data. We would anticipate that, in order to maximize the consumer benefits in such an auction, we would generally be supporting a single provider for a given geographic area. As discussed above, we would support more than one provider in an area only if doing so would maximize coverage.

1283. *Combined Auction.* This auction option would combine the budgets available for the post-state-level commitment competitive bidding process and for remote areas, relaxing the performance requirements applicable to providers of fixed services receiving CAF support in order to increase the number of technologies service providers could use. In such an auction, providers could offer different performance characteristics, such as download and/or upload speeds, latency, and limits on monthly data use, and the Commission would score such "quality" differences in evaluating bids. This would give the Commission the ability to make trade-offs between subsidizing a higher quality service to fewer customers versus subsidizing a lower quality for more customers. Additionally, such an approach should result in more competitive bidding and lower prices, by allowing more technologies to compete for funding (both for an area and across areas), thereby permitting the CAF budget to yield greater quality for a given coverage, expanded coverage, or some combination thereof. This could allow the auction to determine a more cost effective distribution of budgets for services that meet potentially different performance obligations, rather than having the Commission decide in advance how to distribute the

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<sup>2329</sup> This approach is similar to what we have done for Mobility Fund Phase I and proposed for other competitive bidding processes in this FNPRM.

budgets across different auctions.

1284. Under this option, as with our other competitive bidding proposals, we seek comment on the appropriate geographic area to use as a minimum geographic unit for bidding, and how that choice relates to whether and how we might provide for bidding on packages of areas.<sup>2330</sup> We also seek comment on how to establish the number of units in eligible geographic areas. For instance, should we apply a means test to determine the number of qualifying locations that must be served? Further, we seek comment on whether and how to score different performance dimensions, and, whether providers should specify as part of their bids the retail prices they would charge consumers and, if so, how to include such prices in evaluating the bids.<sup>2331</sup> We also ask whether we should prioritize areas currently lacking availability of any terrestrial broadband service at any speed by, for example, providing a form of bidding credit that would give an advantage to such areas in across-area bidding.

1285. *Competitive Bidding Procedures.* Should we use any of our competitive bidding alternatives, we would generally structure the procedures as we have done for Mobility Fund Phase I and proposed for Phase II and for the CAF auction for price cap areas. We propose to use the same general auction rules as adopted or proposed for other contexts, including rules on potential auction designs, and rules on governing an auction application phase, a bidding phase, and a post-auction process whereby selected providers would show they are legally, technically and financially qualified to receive the support. As with other adopted and proposed auctions for CAF components, we propose to delegate to the Bureaus authority to establish, consistent with the general rules, detailed auction procedures and take all other actions to implement a competitive bidding process and other program aspects of the subsidies for remote areas to be determined through competitive bidding. We describe the elements of our proposed auction framework briefly below, beginning with an outline of how we would approach the competitive bidding phase.

1286. *Auction Design.* We propose to use the same general rules established for the Mobility Fund Phase I and proposed for the Mobility Fund Phase II, regarding various auction design options and parameters, which would form the basis on which the Bureaus would establish auction procedures to implement a specific design as part of the pre-auction notice and comment proceeding. We contemplate that the specific procedures to be adopted for this auction would be identified in a public notice. Among other issues, we propose to give the Bureaus discretion to consider various procedures for grouping eligible areas to be covered with one bid – package bidding – that could be tailored to the needs of prospective bidders as indicated during the pre-auction notice and comment period. We seek comment on these proposals and invite commenters to identify any alternatives or changes to these general rules that would be appropriate for this competitive bidding process.

1287. *Potential Bidding Preference for Small Businesses.* We also seek comment on whether small businesses should be eligible for a bidding preference if we use any of our competitive bidding alternatives to provide support from the Remote Areas Fund, and whether such a bidding preference would be consistent with the objective of providing such support. The preference would be similar to the small business preference on which we seek comment for auctions of Mobility Fund Phase II support, and would act as a “reverse” bidding credit that would effectively reduce the bid amount of a qualifying small

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<sup>2330</sup> This approach is similar to what we have done for Mobility Fund Phase I and proposed for other competitive bidding processes in this FNPRM.

<sup>2331</sup> In the discussion of the competitive bidding process in areas where incumbent LECs have declined a state-level commitment, we seek comment on an approach that would allow individual providers to propose different prices at which they would be willing to offer services at different performance levels, with selection of the winning bids based on both prices and performance scores. See *supra* para. 1204.

business for the purpose of comparing it to other bids.<sup>2332</sup> We also seek comment on the size of any small business bidding credit, should the Commission adopt one, that would be appropriate to increase the likelihood that the small business would have an opportunity to win support in the auction. We also seek comment on how we should define small businesses if we adopt a small business bidding credit for auctions to award support in remote areas. Specifically, for the reasons provided in our discussion of Mobility Fund Phase II, we seek comment on whether a small business should be defined as an entity with average gross revenues not exceeding \$40 million for the preceding three years.<sup>2333</sup> Alternatively, should we consider a larger size definition for this purpose, such as average gross revenues not exceeding \$125 million for the preceding three years?<sup>2334</sup> In determining an applicant's gross revenues under what circumstances should we attribute the gross revenues of the applicant's affiliates? We seek comment on these definitions and invite input on whether an alternative basis for a size standard should be established.

1288. *Application, Auction and Post-Auction Process.* We propose to use the same two-stage application process described more completely in the Mobility Fund Phase I Order and proposed for Mobility Fund Phase II.<sup>2335</sup> Similarly we propose to use the same rules and procedures regarding permissible communications and public disclosure of auction-related information, and regarding delay, suspension, or cancellation of bidding as adopted in the Mobility Fund Phase I Order and proposed for Mobility Fund Phase II. We also propose to use the same rules regarding the post-auction long-form application process and the same rules regarding auction defaults and performance defaults.

1289. We seek comment on all of these proposals. Specifically, we ask whether there are reasons related to the specific circumstances we seek to address in remote areas that should cause us to deviate from the process established for the Mobility Fund.

## 5. Competitive Evaluation Approach

1290. We seek comment on structuring CAF for remote areas as a competitive proposal evaluation process, or RFP process. With this option we would solicit proposals to provide broadband service in eligible areas, consistent with our technical requirements, and award support for a fixed term to those proposals that offered the best value in terms of meeting our stated criteria. Using such an RFP process, perhaps modeled after the RUS-BIP program,<sup>2336</sup> might permit us more flexibility than an auction in balancing evaluation criteria – for example, with respect to quality standards such as capacity and latency, or quality and price.

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<sup>2332</sup> Similar to the proposal made for Mobility Fund Phase II, the preference would be available with respect to all census blocks on which a qualified small business bids.

<sup>2333</sup> See e.g., In re Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, GN Docket No. 01-74, 17 FCC Rcd 1022, 1087 ¶ 172 (2002).

<sup>2334</sup> The Commission established a size definition for entrepreneurs eligible for broadband PCS C block spectrum licenses based on gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million. In re Section 309(j) of the Communications Act – Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532, \*36 ¶ 115 (1994); see also 47 C.F.R. § 24.709(a)(1). Although this definition was used more than a decade ago in the context of spectrum auctions, we seek comment on whether it would be appropriate to use the gross revenues standard of the definition in this universal service context as it would encompass more small businesses.

<sup>2335</sup> See *supra* paras. 416, 417 and 1161.

<sup>2336</sup> See United States Department of Agriculture, About the Recovery Act Broadband Initiatives Program, [http://www.rurdev.usda.gov/utp\\_bip.html](http://www.rurdev.usda.gov/utp_bip.html) (last visited Oct. 17, 2011). We note that the RUS-BIP program is a grant program, not a procurement as contemplated here

**6. Other Issues****a. Certification and Verification of Eligibility**

1291. Our obligation to minimize waste, fraud and abuse in Commission programs suggests that we should require individuals who are eligible for CAF support for remote areas be required to certify as to their eligibility and periodically verify their continued eligibility.<sup>2337</sup> Given the Commission's experience in administering the Lifeline program, we propose to adopt the Lifeline certification and verification procedures proposed by the Commission in connection with the Lifeline and Link Up Reform and Modernization NPRM. We seek comment on this proposal and on whether any modifications would be necessary to reflect the differences between the Lifeline and Link Up programs and the Remote Areas Fund.<sup>2338</sup> Would other, Remote Areas Fund specific rules be more appropriate? For instance, to the extent that the proposals for Lifeline contemplate that states be permitted to implement additional verification procedures, should we consider permitting similar state-specific procedures here? Should we consider the same uniform sampling methodology proposed for Lifeline? What other modifications to the Lifeline and Link Up rules might be necessary to reflect the differences between the Lifeline program and the proposed CAF support for remote areas?

**b. Accountability and Oversight**

1292. Except for disbursing support, we propose to apply to our program of support for remote areas the same rules for accountability and oversight as we do for CAF. Thus, recipients of this support would be subject generally to the same reporting, audit, and record retention requirements that apply to recipients of CAF support. We propose to disburse support for the remote areas budget on a quarterly, per-location served basis, beginning upon notification that a qualifying location has contracted with the designated support recipient for service consistent with the program technical requirements described above.

1293. We propose that providers notify us quarterly of newly served locations by submitting a certification specifying the number of signed contracts for qualifying locations, along with a certification that each location meets the qualifying criteria (*e.g.*, a means test) established in this proceeding. Signed contracts would be covered by the record retention requirements applicable to all recipients of CAF support.

1294. We propose that payments for newly acquired customers be submitted and paid quarterly. We seek comment on how often support for continuing qualifying customers should be paid out, *e.g.*, in quarterly installments.

1295. In structuring an appropriate payment plan, we are mindful that we must comply with the Anti-Deficiency Act, which prohibits any officer or employee of the U.S. Government from involving the "government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law."<sup>2339</sup> Commenters are invited to address how to structure an award of support that provides recipients with the requisite level of funding and certainty, while ensuring that the Commission's Anti-Deficiency Act obligations are met.

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<sup>2337</sup> "Certification" refers to the initial determination of eligibility for the program; "verification" refers to subsequent determinations of ongoing eligibility. *See, e.g., Lifeline and Link Up Reform and Modernization NPRM*, 26 FCC Rcd at 2822-24, paras. 158-66; *see also, e.g., 2010 Recommended Decision*, 25 FCC Rcd at 15,606-11, paras. 23-34.

<sup>2338</sup> *See Lifeline and Link Up Reform and Modernization NPRM*, 26 FCC Rcd at 2822-31, paras. 158-98.

<sup>2339</sup> 31 U.S.C. § 1341(a)(1)(B).

## L. Introduction to Intercarrier Compensation

1296. In this portion of the FNPRM, we seek comment on additional topics that will guide the next steps to comprehensive reform of the intercarrier compensation system initiated in the Order. First, we seek comment on the transition to bill-and-keep for rate elements that are not specifically addressed in the Order, including origination and transport. Next, in section N we seek comment on interconnection and related issues that must be addressed to implement bill-and-keep. Then, in section O, we seek comment on the reform of end user charges and the future elimination of the ARC adopted in the Order. In section P we invite comment on IP-to-IP interconnection, including scope, incentives, and statutory issues that will help guide the development of an IP-to-IP policy framework. In section Q, we seek comment on the development of additional call signaling rules for one-way VoIP service providers. Finally, in section R we seek comment on the adequacy of the new and revised rules to reflect the reform adopted in this Order.

## M. Transitioning All Rate Elements to Bill-and-Keep

1297. Today, we adopt a bill-and-keep pricing methodology as the default methodology that will apply to all telecommunications traffic at the end of the complete transition period.<sup>2340</sup> As discussed in the Order, we find that a bill-and-keep methodology has numerous consumer benefits, best addresses access charge arbitrage, and will promote the transition from TDM to all-IP networks. Although we specify the implementation of the transition for certain terminating access rates in the Order, we did not do the same for other rate elements, including originating switched access, dedicated transport, tandem switching and tandem transport in some circumstances, and other charges including dedicated transport signaling, and signaling for tandem switching. In this section, we seek further comment to complete our reform effort, and establish the proper transition and recovery mechanism for the remaining elements. Commenters warn that failure to take action promptly on these elements could perpetuate inefficiencies, delay the deployment of IP networks and IP-to-IP interconnection, and maintain opportunities for arbitrage.<sup>2341</sup> We agree, and seek to reach the end state for all rate elements as soon as practicable, but with a sensible transition path that ensures that the industry has sufficient time to adapt to changed circumstances.<sup>2342</sup> As a result, we seek comment on transitioning the remaining rate elements consistent with our bill-and-keep framework, and adopting a new recovery mechanism to provide for a gradual transition away from the current system.

1298. *Origination.* Other than capping interstate originating access rates and bringing dedicated switched access transport to interstate levels, the Order does not fully address the complete transition for originating access charges.<sup>2343</sup> Instead, it provides on an interim basis that interstate originating switched access rates for all carriers are to be capped at current levels as of the effective date of the rules adopted pursuant to this Order.<sup>2344</sup> As we acknowledge in the Order, section 251(b)(5) does not explicitly address originating charges.<sup>2345</sup> We determine, therefore, that such charges should be

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<sup>2340</sup> See *supra* Section XII.A.

<sup>2341</sup> See *supra* Section XII.A.1; see *infra* para. 1307.

<sup>2342</sup> See, e.g., iBasis *August 3 PN Comments* at 2 (“Prepaid Calling Card Providers also emphasize[] the need to establish a uniform rule on a going-forward basis to create certainty in the industry and establish a level playing field among all prepaid card providers.”).

<sup>2343</sup> For price cap carriers, intrastate originating access charges are also capped at current levels as of January 1, 2012. See *supra* para. 805; see also *USF/ICC Transformation NPRM* at para. 554 n.832.

<sup>2344</sup> See *supra* Section XII.C.

<sup>2345</sup> See *supra* paras. 777-778.

eliminated at the conclusion of the ultimate transition to the new intercarrier compensation regime.<sup>2346</sup> Below, we seek comment on that final transition for *all* originating access charges.

1299. Beyond the interim steps set forth in the Order, we seek comment on the need for an additional multi-year transition for originating access as part of the final transition to bill-and-keep. Commenters warn that establishing separate transitions for different intercarrier charges invites opportunities for arbitrage.<sup>2347</sup> Should any final transition of originating access be made to coincide with the final transition for terminating access adopted today? Should a separate transition schedule be established for originating access only after the transition we adopt today for terminating access is complete? If a separate transition schedule is established after the transition above is complete, would a two-year<sup>2348</sup> transition beginning in year 2018 for price cap carriers and 2020 for rate of return carriers be an appropriate time period? If not, what other time period should be considered and when should it commence? Should rate of return carriers be given additional time to transition such rates? If so, how much? How should reductions of originating access rates be structured? Should rates be reduced in equal increments over a period of years? Should the timing of rate reductions vary by type of carrier? We seek comment on an appropriate schedule, and the timing of any necessary interim steps.

1300. In the *August 3 Public Notice* the Wireline Competition Bureau asked whether the Commission should treat originating access revenue differently from terminating access revenues for recovery purposes.<sup>2349</sup> The *August 3 Public Notice* acknowledged that, in many cases, incumbent LECs provide retail long distance through affiliates. For this reason, at least one commenter stated that for many calls, originating access is simply “an imputation, not a real payment,” but that originating access remains problematic for independent long distance carriers and competitive LECs and should be “phased out rapidly.”<sup>2350</sup> The Bureau’s *August 3 Public Notice* also asked about the possibility of flat-rated per-customer charges for the recovery of originating access revenues, though several commenters opposed this approach.<sup>2351</sup>

1301. Although parties commented on the *August 3 Public Notice*’s questions regarding possible recovery for originating access,<sup>2352</sup> the comments do not provide a sufficient basis for us to

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<sup>2346</sup> See *id.*; see also *Local Competition First Report and Order*, 11 FCC Rcd at 16016, para. 1042 (“Section 251(b)(5) specifies that LECs and interconnecting carriers shall compensate one another for termination of traffic on a reciprocal basis. This section does not address charges payable to a carrier that originates traffic. We therefore conclude that section 251(b)(5) prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic.”).

<sup>2347</sup> See Vonage *August 3 PN* Comments at 8; Google *August 3 PN* Comments at 18; iBasis *August 3 PN* Comments at 3.

<sup>2348</sup> We note the Order adopts a similar two-year timeframe to transition intrastate access charges to interstate levels. See *supra* para. 801.

<sup>2349</sup> See *August 3 Public Notice*, 26 FCC Rcd at 11126.

<sup>2350</sup> Compare CRUSIR *August 3 PN* Comments at 11-12; Missouri Commission *August 3 PN* Comments at 13 (“MoPSC supports efforts to limit any recovery mechanism from recovering reduced access revenues of an incumbent’s long distance affiliate.”), with Rural Broadband Alliance *August 3 PN* Comments, Attach. 1 at 32, 36-37 (stating that it would be “inequitable” to deprive recovery where a portion of originating access had been assessed against a carrier’s affiliate).

<sup>2351</sup> See *August 3 Public Notice*, 26 FCC Rcd at 11126; CRUSIR *August 3 PN* Comments at 12-13 (disfavoring a flat-rated approach to recovery); Rural Broadband Alliance *August 3 PN* Comments Attach. 1 at 37 (same); Texas Statewide Tel. Coop. *August 3 PN* Comments at 7 (same); AT&T et al. *August 3 PN* Comments at 27-28 (same).

<sup>2352</sup> See, e.g., COMPTTEL *August 3 PN* Comments at 15 (suggesting that there is no need for the Commission to address originating access charge rate levels); Cincinnati Bell *August 3 PN* Comments at 3 (same); Cox *August 3 PN* (continued...)

proceed at this time. Thus, we seek further comment as to what, if any, recovery would be appropriate for originating access charges and how such recovery should be implemented. For instance, should any recovery be limited to those incumbent LECs that do not provide retail long distance through affiliates? In addition, we ask for comment on the legal basis for the Commission to provide or deny recovery for originating access. We seek comment on how to minimize any additional consumer burden associated with the transition of originated access traffic, and how best to promote IP-to-IP interconnection in this transition.

1302. We also seek the input of the states on how to transition to bill-and-keep for originating access charges. Although the Commission can exercise its authority to implement a transition, as it does in the Order today, the Commission could also defer to the states to create a transition to bill-and-keep for originating access. Since originating intrastate access rates are not capped for rate of return carriers, we ask whether we should initially defer the transition to bill-and-keep for originating access to the states to implement. If so, how much guidance should we provide states? Should we provide the date that the transition must be complete? Should states also be responsible for determining any appropriate recovery mechanism?

1303. Relatedly, we also seek comment on the appropriate treatment of 8YY originated minutes. In the case of 8YY traffic, the role of the originating LEC is more akin to the traditional role of the terminating LEC in that the IXC carrying the 8YY traffic must use the access service of the LEC subscribed to by the calling party. Stated differently, in the case of 8YY traffic, because the calling party chooses the access provider but does not pay for the toll call, it has no incentive to select a provider with lower originating access rates. For this reason, we ask parties to address whether we should distinguish between originating access reform for 8YY traffic and originating access reform more generally.

1304. The Bureaus' *August 3 Public Notice* sought data and comment on the relative proportion of 8YY originated minutes to traditional originated minutes.<sup>2353</sup> In its response, the Nebraska Companies estimated that approximately 20-30 percent of originating traffic is to an 8YY number, while Texas Statewide Telephone Cooperative suggested that this figure could be as much as 50 percent.<sup>2354</sup> Are these figures commensurate with the average number of minutes that customers originate to 8YY numbers on other networks? We again invite carriers to provide us with this data to help evaluate originating access reform, and the need for a distinct 8YY resolution.<sup>2355</sup> The Nebraska Companies further contend that a 251(b)(5) regime "in which originating compensation does not exist, is unworkable

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Comments at 16 (same); AT&T et al. *August 3 PN* Comments at 22, 26 (urging the Commission not to undermine support for the ABC Plan by ordering reductions to originating access charges); *compare* Consolidated *August 3 PN* Comments at 20-21 (leaving originating access charges unaddressed could invite arbitrage), *with* CRUSIR *August 3 PN* Comments at 12 (urging action on originating access charges and disfavoring a flat-rated approach to recovery); Nebraska Companies *August 3 PN* Comments at 69-72 (urging that recovery for originating access be made available, but not on a flat rate basis); Rural Broadband Alliance *August 3 PN* Comments, Attach. 1 at 32, 36-37 (stating that it is "essential" that the Commission address originating access); Texas Statewide Tel. Coop. *August 3 PN* Comments at 7-8 (urging the Commission to treat originating and terminating access reform in the same manner); *see also* SureWest *August 3 PN* Comments at 14 (urging the Commission to address originating access in a subsequent proceeding); ITTA *August 3 PN* Comments at 28 (same).

<sup>2353</sup> See *August 3 Public Notice*, 26 FCC Rcd at 11127.

<sup>2354</sup> See Nebraska Companies *August 3 PN* Comments at 71; Texas Statewide Tel. Coop. *August 3 PN* Comments at 8.

<sup>2355</sup> See *August 3 Public Notice*, 26 FCC Rcd at 11126-27.

in an environment of originating 8YY traffic and equal access obligations.<sup>2356</sup> We seek comment on this conclusion and any alternatives.

1305. Finally, we seek comment on other possible approaches to originating access reform, including implementation issues and our legal authority to adopt any such reforms.<sup>2357</sup>

1306. *Transport and Termination.* The initial transition described in section XII.C above does not fully address tandem switching and transport charges. For rate-of-return carriers, these charges are capped at interstate levels. For price cap carriers, where the terminating carrier owns the tandem in the serving area, these charges are subject to the transition established in the Order but we do not address the transition for tandem switching and transport charges if the price cap carrier does not own the tandem in the serving area.<sup>2358</sup> The following figure provides an illustration of how these elements may be structured in a carrier's network:

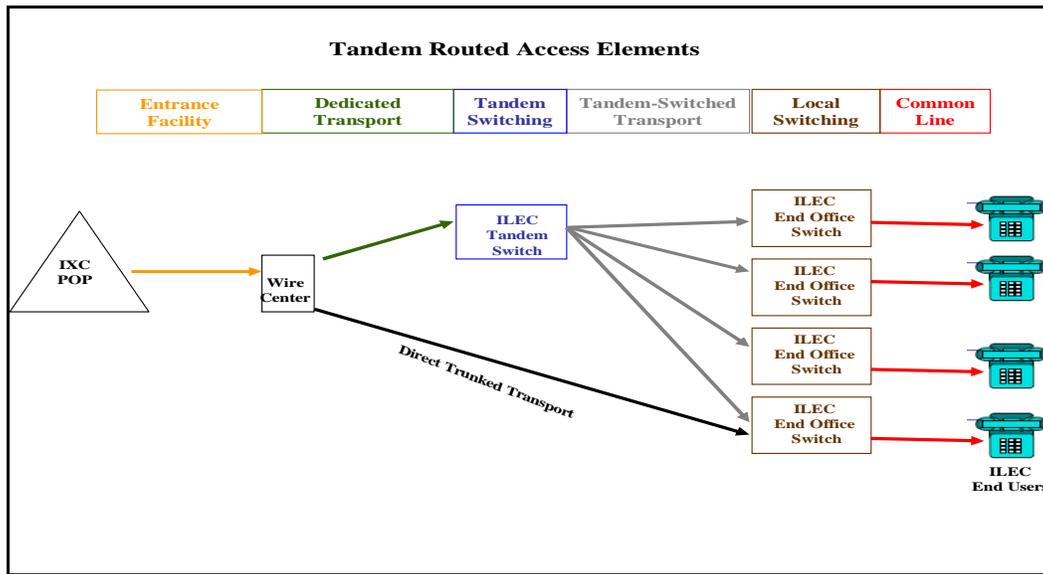


Figure 13

Because our Order does not address the transition for all transport charges and the relationship between these charges and interconnection obligations more generally, we seek further comment on the proper transition for these charges. We seek comment on the proper scope of our reform and on the transition for these elements.

<sup>2356</sup> Nebraska Companies August 3 PN Comments at 71.

<sup>2357</sup> For example, the New York Commission highlighted that one possibility for originating access charge reform would be to modify requirements relating to equal access obligations. See New York Commission August 3 PN Comments at 15-16. According to the New York Commission, “[i]t is possible that this action will cause the industry to self-remedy the originating access issue by migrating to exclusively bundled local/toll service for its subscribers, similar to the packages offered by wireless and cable telephony providers.” *Id.* at 15. Meanwhile, Cox argues that precisely because of equal access obligations, there is no need to address originating access. Cox August 3 PN Comments at 16. According to Cox, the equal access rules “give customers the ability to choose their long distance carriers, and therefore create opportunities for market pressures to affect originating access rates.” *Id.* at 16.

<sup>2358</sup> With regard to tandem switching and tandem transport, at the end of the transition specified in the Order, rates will be bill-and-keep in the following cases: (1) for transport and termination within the tandem serving area where the terminating carrier owns the tandem serving switch; and (2) for termination at the end office where the terminating carrier does not own the tandem serving switch. See *infra* Section XII.C.

1307. Several commenters express concern about the treatment of transport and tandem services under the ABC Plan and Joint Letter. T-Mobile asserts that as rates are reduced, “ILECs will have powerful incentives to shift costs from end office functions to transport and tandem switching functions, requiring the Commission to devote additional time and effort to its scrutiny of ILEC tariff filings.”<sup>2359</sup> Sprint raises concern that “transport rate elements bear no relationship to the miniscule incremental cost of performing the traffic termination functions” and that these rates serve as a disincentive for efficient interconnection and may have potential to extend arbitrage behavior.<sup>2360</sup> Competitive LECs argue that, even at interstate levels between the years 2013 to 2017, transport rates “create significant opportunities for price cap ILECs to raise rivals’ costs” and, at the end state, “[p]rice-cap ILECs would have the incentive to charge as high a price for [] that transport as possible.”<sup>2361</sup> Commenters further argue that there are definitional ambiguities about the scope of transport that deserve clarification.<sup>2362</sup> We agree that such elements must be transitioned to bill-and-keep at the end state, as required by the Order, and seek comment on the final transition to bill-and-keep for these charges.

1308. We invite comment regarding the appropriate transition for tandem switching and transport charges, and the need for any additional recovery mechanisms. At what point in time should tandem switching and transport charges be transitioned? Some commenters suggest that transport rates be reduced at a pace that coincides with our current transition for end office switching.<sup>2363</sup> Alternatively, tandem switching and transport rates could be reduced after the conclusion of the transition for end office switching. We seek comment on these proposals as well as other possible transition timeframes. Should the transition for these rate elements differ based upon the type of carrier? We ask parties to comment on what, if any, unintended consequences may arise in connection with a longer transition for these charges, and whether any delay would impede the transition to IP-to-IP interconnection.

1309. We also seek comment on possible recovery for tandem switching and transport as part of our recovery mechanism. Should recovery be made available for these charges? If a tandem switching and transport provider renegotiates an agreement for these services in anticipation of reform, should any increased revenue it receives be offset against eligible recovery? Should any recovery for these rate elements differ based upon the type of carrier?

1310. We note that some of these issues are closely related to the discussion in section N of the network edge for purposes of delivering traffic.<sup>2364</sup> In the traditional access charge system, tandem switching and transport charges were typically assessed against interexchange carriers. Meanwhile, in the traditional reciprocal compensation system, the originating carrier was typically responsible for transport to the point of interconnection, which may be located at the end office of the called party’s carrier. As we move to a new intercarrier compensation system governed by a section 251(b)(5) bill-and-keep methodology, we invite parties to comment on the existing and future payment and market structures for dedicated transport, tandem switching, and tandem switched transport. EarthLink has suggested that

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<sup>2359</sup> T-Mobile *August 3 PN* Comments at 8.

<sup>2360</sup> Sprint *August 3 PN* Comments at 11-16.

<sup>2361</sup> CBeyond et al. *August 3 PN* Comments at 15-18.

<sup>2362</sup> *Id.* at 16-17 (“It is... unclear whether, and in what circumstances, the cost-based prices for transport applicable to reciprocal compensation apply and in what circumstances the much higher interstate access prices for transport apply.”); Comptel *August 3 PN* Comments at 17 n. 51 (“The ABC Plan’s recommendations regarding transport are not a model of clarity.”).

<sup>2363</sup> CBeyond et al. *August 3 PN* Comments at 18.

<sup>2364</sup> *See infra* para. 1320.

charges such as tandem switching and transport charges could become “obsolete” in an all-IP world.<sup>2365</sup> Is this correct? If so, how should it impact possible reform?

1311. *Transit.* Currently, transiting occurs when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediary carrier’s network.<sup>2366</sup> Thus, although transit is the functional equivalent of tandem switching and transport, today transit refers to non-access traffic, whereas tandem switching and transport apply to access traffic. As all traffic is unified under section 251(b)(5), the tandem switching and transport components of switched access charges will come to resemble transit services in the reciprocal compensation context where the terminating carrier does not own the tandem switch. In the Order, we adopt a bill-and-keep methodology for tandem switched transport in the access context and for transport in the reciprocal compensation context. The Commission has not addressed whether transit services must be provided pursuant to section 251 of the Act; however, some state commissions and courts have addressed this issue.<sup>2367</sup>

1312. Commenters also express concern that, as a result of the reforms adopted in the Order, transit providers will have the ability and incentive to raise transit service rates both during the transition and at the end state of reform.<sup>2368</sup> Specifically, one commenter alleges that without regulation of transit, ILECs would have opportunities to “exploit their termination dominance.”<sup>2369</sup> Commenters also express concern with the end state for tandem switching and transport for price cap carriers when the tandem

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<sup>2365</sup> EarthLink *USF/ICC Transformation NPRM* Comments at 9 (“EarthLink anticipates that IP interconnections will make tandem/end office connections obsolete and carriers may prefer to interconnect at one point per state for the exchange of all traffic, without establishing separate trunk groups for previously distinct categories of traffic such as interstate access and local.”).

<sup>2366</sup> *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4776-77, para. 683; *see also Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4737-44, paras. 120-33; *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6650, App. A., para. 347; *id.* at 6849, App. C, para. 344. The term transport is often used interchangeably with transit service. These are two different services. Transport service is a tariffed exchanged access service. *See, e.g.*, 47 C.F.R. § 69.4. Transit service is typically offered via commercially-negotiated interconnection agreements rather than tariffs.

<sup>2367</sup> *See, e.g., Qwest Corp. v. Cox Nebraska Telcom, LLC*, 2008 WL 5273687 (D. Neb. 2008) (finding that an ILEC must provide transit pursuant to its interconnection obligations under section 251); *Brandenburg Tel. Co. v. Windstream Kentucky East, Inc.*, Case No. 2007-0004, Order, 2010 WL 3283776 (Ky PSC Aug. 16, 2010) (cancelling a transit tariff and requiring the parties to negotiate an interconnection agreement for transit pursuant to sections 251 and 252); *compare* Letter from J.G. Harrington, Counsel to Cox Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 1-2, 4 (filed Oct. 19, 2011) (Cox October 19, 2011 *Ex Parte* Letter), and Letter from J.G. Harrington, Counsel to Cox Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 1-3 (filed Oct. 21, 2011), *with* Letter from John R. Harrington, Senior Vice President, Regulatory & Litigation, Neutral Tandem, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket No. 01-92, at 2-3 (filed Oct. 20, 2011) (Neutral Tandem Oct. 20, 2011 *Ex Parte* Letter).

As noted in Section XII.C, our Order does not intend to affect existing agreements not addressed by its reforms, including for transit services. *See* Letter from Mary McManus, Senior Director FCC and Regulatory Policy, Comcast, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket No. 01-92, 96-45, at 1-2 (filed Sept. 22, 2011).

<sup>2368</sup> *See, e.g., Comcast August 3 PN* Comments at 8-10; *Cox August 3 PN* Comments at 13-15; *NCTA August 3 PN* Comments at 19-20.

<sup>2369</sup> *T-Mobile August 3 PN* Comments at 8.

owner does not own the end office,<sup>2370</sup> which, under section 251 framework is typically considered a transit service. As part of the transition for price cap carriers, the Order provides that bill-and-keep will be the pricing methodology for all traffic and includes the transition for transport and termination within the tandem serving area where the terminating carrier owns the serving tandem switch. However, the Order does not address the transition in situations where the tandem owner does not own the end office. NCTA states that in this regard the “ABC Plan is unclear” and may “attempt[] to significantly undermine competition by suggesting that such services would fall outside of the regulatory regime.”<sup>2371</sup> As a result, commenters suggest that these services are transit services and should be provided pursuant to section 251 at “cost-based and reasonable rates.”<sup>2372</sup>

1313. We seek comment on the need for regulatory involvement and the appropriate end state for transit service.<sup>2373</sup> Given that transit service includes the same functionality as the tandem switching and transport services subject to a default bill-and-keep methodology, should the Commission adopt any different approach for transit traffic given that providers pay for transit for IP services and transit may apply to get traffic to a network “edge” in a bill-and-keep framework? We invite parties to comment on the current market for these services.<sup>2374</sup> Does the transit market demonstrate the hallmarks of a competitive market? If transit services are not being offered competitively, how prevalent is this? How might the market evolve in light of the reforms adopted in the Order? If the Commission were to regulate these charges, what legal framework is appropriate and what pricing methodology would apply during the transition?

1314. *Other Charges.* Our transition to a bill-and-keep framework may implicate other charges. For example, commenters have highlighted that the ABC Plan and Joint Letter fail to specify what transition applies to dedicated transport or to other flat-rated charges.<sup>2375</sup> We invite parties to comment on any rate elements or charges that require additional reform. What transition should apply to these charges?

## N. Bill-and-Keep Implementation

1315. In the *USF/ICC Transformation NPRM* the Commission also sought comment on issues related to the implementation of a bill-and-keep pricing methodology.<sup>2376</sup> Now that the end point to comprehensive intercarrier compensation reform has been determined, we seek comment on any interconnection and related issues that must be addressed to implement bill-and-keep in an efficient and equitable manner. As discussed in the Order, we expect that the reforms adopted today will not upset existing interconnection arrangements or obligations during the transition.

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<sup>2370</sup> NCTA August 3 PN Comments at 19-20.

<sup>2371</sup> *Id.* at 20.

<sup>2372</sup> *Id.*; Cox August 3 PN Comments at 15.

<sup>2373</sup> We note that commenters have previously suggested a range of regulatory outcomes. *See* Charter USF/ICC Transformation NPRM Comments at 13 (proposing a cost-based pricing standard); Level 3 USF/ICC Transformation NPRM Comments at 19 (proposing a just and reasonable pricing standard); MetroPCS August 3 PN Comments at 21-22 (proposing a default rate).

<sup>2374</sup> Compare Cox October 19, 2011 *Ex Parte* Letter at 3-4, with Neutral Tandem October 20, 2011 *Ex Parte* Letter at 1.

<sup>2375</sup> *See* Level 3 August 3 PN Comments at 11-12; COMPTTEL August 3 PN Comments at 18-20.

<sup>2376</sup> *See* USF/ICC Transformation NPRM, 26 FCC Rcd at 4774-76, paras. 680-82.

1316. *Points of Interconnection.* Currently, under section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point.<sup>2377</sup> The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA.<sup>2378</sup> As a threshold matter, does the Commission need to provide new or revised POI rules at some later stage of the transition to bill-and-keep or provide one set of rules to be effective at the end of the six-year transition for price cap carriers and nine-year transition for rate-of-return carriers described above and maintain the current regime until that time?<sup>2379</sup> For instance, do commenters anticipate potential arbitrage schemes<sup>2380</sup> emerging as a result of maintaining the current POI rules until the transition is complete, or will the defined transition path and accompanying rate reductions we adopt in this Order prevent such practices?

1317. Also, section 251(c) does not currently apply to all rural LECs or non-incumbent LECs.<sup>2381</sup> How do commenters envision POIs functioning for these carriers? We seek to better understand the nature of interconnection arrangements with rural carriers today. For example, is interconnection typically pursuant to negotiated agreements, rules, or another type of framework? Is indirect interconnection the primary means of interconnection with small, rural carriers? If the Commission needs to mandate the use of POIs for rural LECs and non-incumbent LECs, should this requirement begin during or after the transition to the stated end point?

1318. We seek comment on whether the Commission needs to prescribe POIs under a bill-and-keep methodology. One possible approach could be to permit interconnection at “any technically feasible point” on the other providers’ network with a default POI being used for compensation purposes when there is no negotiated agreement between the parties.<sup>2382</sup> What are the pros and cons of such an approach? To what extent does the Commission’s regulatory authority over interconnection allow it to prescribe POIs as described above? Alternatively, CenturyLink proposes the use of traffic volumes to “dictate the number of POI locations for traffic exchanged with an ILEC (including traffic flowing in both

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<sup>2377</sup> 47 U.S.C. § 251(c)(2)(B). IP-to-IP interconnection is addressed later in this FNPRM section. *See infra* Section XVII.P.

<sup>2378</sup> *Application of SBC Communications Inc., Southwestern Bell Tel. Co, and Southwestern Bell Communications Service, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18390, para. 78, n.174 (2000).

<sup>2379</sup> *See CenturyLink USF/ICC Transformation NPRM Comments at 74* (the Commission “should clarify now the rules for POIs and network edges for purposes of any transitional TDM ICC rate reform”). As discussed in the *USF/ICC Transformation NPRM*, and noted by commenters, flexible proposals to accommodate evolving network architectures and IP networks are the preferred approach. *See e.g., USF/ICC Transformation NPRM*, 26 FCC Rcd at 4775, para. 681.

<sup>2380</sup> “If the Commission fails to adequately address POI and network edge issues in connection with TDM-ICC plans, carriers will be prevented from having adequate cost recovery and new forms of arbitrage will arise. For example, bad actors will no doubt seek to free ride on transport and transit networks.” *CenturyLink USF/ICC Transformation NPRM Comments at 74*.

<sup>2381</sup> *See* 47 U.S.C. § 251(c) “Additional Obligations of Incumbent Local Exchange Carriers.” Section 251(f)(1) of the Act details the exemption to interconnection obligations for rural telephone companies. *See* 47 U.S.C. § 251(f)(1).

<sup>2382</sup> *See, e.g., U.S. West v. Jennings*, 304 F.3d 950, 961 (9<sup>th</sup> Cir. 2002); *MCI Telecomm. Corp. v. Bell Atl.-PA*, 271 F.3d 491, 517-18 (3d Cir. 2001).

directions).<sup>2383</sup> We seek comment on this proposal and any other alternatives concerning POI obligations under a bill-and-keep regime.

1319. We seek comment below on how to promote IP-to-IP interconnection and facilitate the transition to all-IP networks.<sup>2384</sup> Some of these questions may affect the POI issues raised here. For instance, if the Commission were to adopt its proposal to require a carrier that desires TDM interconnection to pay the costs of any IP-TDM conversion, how would that affect commenters' opinions or responses to the POI questions herein? How would they be affected if the Commission adopted other IP-to-IP interconnection obligations?

1320. *The Network Edge*. A critical aspect to bill-and-keep is defining the network "edge" for purposes of delivering traffic. The "edge" is the point where bill-and-keep applies, a carrier is responsible for carrying, directly or indirectly by paying another provider, its traffic to that edge. Past "proposals to treat traffic under a bill-and-keep methodology typically assume the existence of a network edge, beyond which terminating carriers cannot charge other carriers to transport and terminate their traffic."<sup>2385</sup> In the *USF/ICC Transformation NPRM* we recognized that there are numerous options for defining an appropriate network edge.<sup>2386</sup> For example, the edge could be "the location of the called party's end office, mobile switching center (MSC), point of presence, media gateway, or trunking media gateway."<sup>2387</sup> We have not received significant comment on the network edge issue up to this point.

1321. As discussed in the Order, we believe states should establish the network edge pursuant to Commission guidance. We seek comment on this and other options for defining the network edge. Assuming that defining the network edge remains a critical aspect of the transition to bill-and-keep, we seek comment on the appropriate network edge and related issues. For instance, should the Commission adopt a "competitively neutral" location for the network edge, such as "where interconnecting carriers have competitive alternatives—other than services or facilities provided by the terminating carrier—to transport traffic to the terminating carrier's network"?<sup>2388</sup> In its comments, CTIA describes a Mutually

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<sup>2383</sup> CenturyLink *USF/ICC Transformation NPRM* Comments at 75. CenturyLink includes four additional rule clarifications to facilitate proper traffic exchange. *See id.*

<sup>2384</sup> *See infra* Section XVII.P.

<sup>2385</sup> *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4774, para. 680.

<sup>2386</sup> *See USF/ICC Transformation NPRM*, 26 FCC Rcd at 4775, para. 681. The Commission has previously sought comment on alternative schemes for intercarrier compensation premised on bill-and-keep approaches underpinned by default interconnection rules. *See, e.g., Intercarrier Compensation NPRM*, 16 FCC Rcd at 9620-22, paras. 22-30. First, Patrick DeGraba's "Central Office Bill and Keep" (COBAK) proposal relied on two principal rules: (1) no carrier may recover any costs of its customer's local access facilities from an interconnecting carrier; and (2) the calling party's network is responsible for the cost of transporting the call to the called party's central office. For interexchange calls, the second rule would be modified to make the calling party's LEC responsible for delivering the call to the IXC's point of presence and the IXC responsible for delivering the call to the called party's central office. *Id.* at 9620-21, para. 23 & n. 41 (citing Patrick DeGraba, *Bill and Keep at the Central Office as the Efficient Interconnection Regime* (FCC, OPP Working Paper No. 33, Dec. 2000)). Second, Jay Atkinson and Christopher C. Barnekov's "Bill Access to Subscribers-Interconnection Cost Split" (BASICS) proposal was also premised on two rules: (1) networks should recover all intra-network costs from their end-user customers; and (2) networks should divide equally the costs that result purely from interconnection. *See id.* at 9621, para. 25 (citing Jay M. Atkinson & Christopher Barnekov, *A Competitively Neutral Approach to Network Interconnection* (FCC, OPP Working Paper No. 34, Dec. 2000)).

<sup>2387</sup> *See USF/ICC Transformation NPRM*, 26 FCC Rcd at 4774, para. 680 (citing *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6619-20, App. A, para. 275; *id.* at 6818-19, App. C, para. 270).

<sup>2388</sup> *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4775-76, para. 682.

Efficient Traffic Exchange (“METE”) proposal “pursuant to which carriers would bear their own costs to deliver traffic to each other at specified network ‘edges.’”<sup>2389</sup> Is this an appropriate way to define the network edge under a bill-and-keep approach? Do commenters have alternative suggestions on how best to define carrier obligations under a bill-and-keep approach? We seek comment on these questions and on any alternative proposals regarding the network edge.<sup>2390</sup>

1322. *Role of Tariffs and Interconnection Agreements.* We believe that generally continuing to rely on tariffs while also allowing carriers to negotiate alternatives during the transition is in the public interest<sup>2391</sup> because it provides the certainty of a tariffing option, which historically has been used for access charges, while still allowing carriers to better tailor their arrangements to their particular circumstances and the evolving marketplace than would be accommodated by exclusively relying on “one size fits all” tariffs.<sup>2392</sup> We seek comment on whether the Commission needs to forbear from tariffing requirements in section 203 of the Act and Part 61 of our rules<sup>2393</sup> to enable carriers to negotiate alternative arrangements pursuant to this Order.<sup>2394</sup>

1323. As carriers transition from the existing access charge regime to the section 251(b)(5) framework and bill-and-keep methodology adopted in this Order, we believe they will rely primarily on negotiated interconnection agreements rather than tariffs to set the terms on which traffic is exchanged. Specifically, section 251(b)(5) imposes on all LECs the duty to enter reciprocal compensation arrangements, and section 252 outlines the responsibility of incumbent LECs to negotiate interconnection agreements upon receipt of a request for interconnection pursuant to section 251.<sup>2395</sup> Although we maintain a role for tariffing as part of the transition, we believe the reliance on interconnection agreements is most consistent with this Order’s application of reciprocal compensation duties to all carriers. We seek comment on this view. If so, do commenters believe we need to modify or eliminate any of our interconnection rules?

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<sup>2389</sup> CTIA *USF/ICC Transformation NPRM* Comments at 39. CTIA continues that “[u]nder the METE proposal, the originating carrier would be responsible for assuming the costs of delivering a call, including securing any necessary transport services, to the terminating carrier’s network edge, and could determine how to do so. Each carrier, including wireless carriers, would be required to designate at least one edge to receive traffic in every LATA it serves. For the direct exchange of traffic, originating and transiting carriers could select a delivery point from among the terminating carrier’s designated edges in the LATA, but would be required to use different trunk groups for each of the terminating carrier’s terminating switching facilities in the LATA.” *Id.*

<sup>2390</sup> In Section XV above we establish an interim default rule allocating responsibility for transport costs applicable to non-access traffic exchanged between rural, rate-of-return LECs and CMRS providers. We found that such an interim rule was necessary because we establish bill-and-keep as an immediate default methodology for this category of traffic. We make clear however that with the adoption of this rule we do not intend to prejudice any outcome or otherwise affect the ability of states to define the network edge for intercarrier compensation under bill-and-keep as a general matter. *See supra* Section XV.

<sup>2391</sup> *See* 47 U.S.C. § 160(a)(3).

<sup>2392</sup> *See, e.g.,* paras. 963-967; *see also* para. 1362.

<sup>2393</sup> *See* 47 U.S.C. § 203; 47 C.F.R. §§ 61.31-.59.

<sup>2394</sup> *See* Letter from Heather Zachary, Counsel to AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, 04-36, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 at 8 (filed Oct. 19, 2011) (suggesting that the Commission grant forbearance from tariffing requirements insofar as necessary to allow carriers to negotiate alternatives to a default rate).

<sup>2395</sup> *See* 47 U.S.C. §§ 251(b)(5), 252.

1324. Given the potential primary reliance on interconnection agreements, we seek comment on the possibility of extending our interconnection rules to all telecommunications carriers to ensure a more competitively neutral set of interconnection rights and obligations. As discussed in Section XII.C.5, the *T-Mobile Order* extended to CMRS providers the duty to negotiate interconnection agreements with incumbent LECs under the section 252 framework to address interconnection and mutual compensation for non-access traffic.<sup>2396</sup> We seek comment on whether we should extend the interconnection agreement process adopted in the *T-Mobile Order* to all telecommunications carriers, including competitive LECs or other interconnecting service providers such as interexchange carriers. Competitive LECs have requested that the Commission expand the scope of the *T-Mobile Order* and require CMRS providers to negotiate agreements with competitive LECs under the section 251/252 framework.<sup>2397</sup> In addition, rural incumbent LECs urged the Commission to “extend the T-Mobile Order to give ILECs the right”<sup>2398</sup> to require all carriers to negotiate interconnection agreements under the section 252 framework. These requests stem largely from concerns about payment of intercarrier compensation charges.<sup>2399</sup> Thus, we seek comment on whether, in light of the reforms adopted herein, any further modification to our interconnection rules is still warranted for the end of the transition period, and the legal basis of any such modifications.

1325. *Possible Arbitrage Under a Bill-and-Keep Methodology.* We note that several commenters to the *USF/ICC Transformation NPRM* suggest that a bill-and-keep approach may promote arbitrage opportunities in the industry. For example, some commenters suggest that a bill-and-keep framework may promote traffic dumping on terminating carriers’ networks.<sup>2400</sup> Based on the current record, we disagree with these concerns, which we find speculative.<sup>2401</sup> Nonetheless, to the extent our predictive judgment is incorrect, we take this opportunity to establish a record to ensure that the Commission is prepared to act swiftly to address any potential arbitrage situations. We ask parties to provide more detail on traffic dumping and its negative effects. Have there been incidents of traffic dumping in the wireless industry that operates largely under bill-and-keep today? How should we define traffic dumping for purposes of analyzing its effect on the network. Are there concerns of traffic congestion or other harm to the network?<sup>2402</sup> If so, we note in the Order that carriers may include traffic grooming language in their tariffs to address such concerns.<sup>2403</sup> Are there any additional measures the Commission can and should take to prevent such practices? Other commenters suggest that this practice

<sup>2396</sup> See *supra* Section XII.C.5.

<sup>2397</sup> See, e.g., Pac-West *USF/ICC Transformation NPRM* Comments at 3; Letter from Michael B. Hazzard, Counsel for Xspedius Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attach. at 7 (filed Aug. 10, 2005); *Supra* Telecommunications and Information Systems *Ex Parte* Comments and Cross-Petition for Limited Clarification, CC Docket No. 01-92 at 10 (filed July 14, 2005).

<sup>2398</sup> Rural Associations Section XV Comments at 29 n.67, 30.

<sup>2399</sup> See *id.* at 30 (“Small carriers often have difficulty convincing other carriers to negotiate interconnection agreements with them, particularly where those other carriers can easily terminate their traffic via a transit or tandem provider and thus have no direct contact with the terminating rural carrier at all. In such circumstances, sending carriers are increasingly arguing that because there is no interconnection agreement, they can pay the terminating rural carrier whatever rate they deem appropriate, if anything at all.”).

<sup>2400</sup> See Verizon *USF/ICC Transformation NPRM* Comments at 13-14; Level 3 *USF/ICC Transformation NPRM* Comments at 9.

<sup>2401</sup> See *supra* Section XII.A.1.

<sup>2402</sup> See Verizon *USF/ICC Transformation NPRM* Comments at 13.

<sup>2403</sup> See *supra* para. 754.

could result in carriers having “every incentive to keep traffic from terminating on their networks.”<sup>2404</sup> Do commenters agree?

**O. Reform of End User Charges and CAF ICC Support**

1326. We seek comment below on a number of questions related both to the recovery mechanism adopted in this Order as well as the pre-existing rules regarding subscriber line charges (SLCs). In particular, with respect to the recovery adopted in this Order, we seek comment on the long-term elimination of that transitional recovery mechanism beyond the provisions for reduction and elimination of elements of that recovery already adopted in the Order. In addition, some commenters question whether existing SLCs—which we do not modify in this Order—are set at appropriate levels under pre-existing Commission rules<sup>2405</sup> or whether they should be reduced, particularly for price cap carriers where the Commission has not evaluated the costs of such carriers in nearly ten years. We therefore seek comment on the appropriate level and, longer-term, the appropriate regulatory approach to such charges, as carriers increasingly transition to broadband networks.

1327. *ARC Phase-Out.* As part of our recovery mechanism, we allow incumbent LECs to impose a limited access replacement charge (ARC).<sup>2406</sup> Because the ARC is, among other constraints, limited to the recovery of Eligible Recovery, and because we define Eligible Recovery to decline over time, the ARC will phase down and approach \$0 under the terms of the Order.<sup>2407</sup> This will take some time, however, under the ten percent annual reductions in Price Cap Eligible Recovery, and smaller annual percentage reductions in Rate-of-Return Eligible Recovery. We note, by contrast, that intercarrier compensation-replacement CAF support for price cap carriers is subject to a defined sunset date.<sup>2408</sup> Should we likewise adopt a defined sunset date for ARC charges? Should those charges sunset at the same time price cap carriers’ intercarrier compensation-replacement CAF support sunsets,<sup>2409</sup> or at some other time? Similarly, as with intercarrier compensation-replacement CAF support for price cap carriers, should the ARC be phased out after the end of intercarrier compensation rate reforms or, given that it already is subject to an independent phase-down, should it simply be eliminated? Would other modifications be appropriate for the ARC charges adopted in this Order, given carriers’ transition to broadband networks and associated business plans relying more heavily on revenues from broadband services?

1328. *CAF ICC Support Phase-Out.* Although the intercarrier compensation-replacement CAF support for price cap carriers is already subject to a defined phase-out under the Order, should we modify the phase-out period based on a price cap carrier’s receipt of state-wide CAF Phase II support?<sup>2410</sup> If so,

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<sup>2404</sup> NASUCA contends that if the Commission adopts bill-and-keep “carriers will have every incentive to dump traffic on to other carriers’ networks, and likewise, carriers will have every incentive to keep traffic from terminating on their networks.” NASUCA *USF/ICC Transformation NPRM* Comments at 101. We note that the Commission has a clear prohibition on call blocking practices. *See generally Call Blocking Declaratory Ruling*, 22 FCC Rcd 11629 (issued to remove any uncertainty surrounding the Commission’s prohibition on call blocking).

<sup>2405</sup> *See, e.g.,* NASUCA *USF/ICC Transformation NPRM* Comments at 98; Free Press *August 3 PN* Comments at 12-13.

<sup>2406</sup> *See supra* XIII.F.1.

<sup>2407</sup> *See supra* XIII.E.

<sup>2408</sup> *See supra* para. 920.

<sup>2409</sup> *Id.*

<sup>2410</sup> *See supra* Section VII.C.2.

how and why? Should intercarrier compensation-replacement CAF support for rate-of-return carriers be subject to a defined phase-out? If so, should it be modeled after the approach used for price cap carriers, or based on a different approach? Would other modifications be appropriate for the intercarrier compensation-replacement CAF support adopted in this Order, given carriers' transition to broadband networks and associated business plans relying more heavily on revenues from broadband services?

1329. *Treatment of Demand in Determining Eligible Recovery for Rate of Return Carriers.* In years one through five, Rate-of-Return Eligible Recovery will decrease at five percent annually, with both ARC and ICC-replacement CAF provided based on a true-up process.<sup>2411</sup> We did so to enable such carriers time to adjust and transition away from the current system. But, we believe that five years is a sufficient time to adjust and, for years six and beyond, we seek comment on how to modify the recovery baseline. We seek comment on decreasing Rate-of-Return Eligible Recovery by an additional percent each year for a maximum of five years, up to a maximum decrease of 10 percent. In addition, we seek comment on an alternative approach to the use of true-ups for determining recovery after five years. For example, in place of annual true-ups, should the Commission use the average MOU loss based on data reported by rate of return carriers in years one through five? If we do so, should it be instead of or in addition to changing the baseline, should the Commission use the same 10 percent decline it uses for price cap carriers, or would commenters recommend another mechanism to replace the true-up process?

1330. *Magnitude and Long-Term Role of SLCs.* Some commenters contend that SLCs are not set appropriately today, particularly for price cap carriers whose costs are no longer evaluated. Moreover, given carriers' transition to business plans relying more heavily on broadband services, it is not clear what the appropriate role is for regulated end-user charges for voice service over the longer term. We thus seek comment on whether SLCs are set at appropriate levels today and whether, longer term, the Commission should retain such regulated charges under existing or modified rules, or if those charges should be eliminated.

1331. When the Commission increased the residential and single-line business SLC cap above \$5.00 it first sought comment on "whether an increase in the SLC cap above \$5.00 is warranted and, if not, whether a decrease in common line charges is warranted."<sup>2412</sup> In light of the evolution of network technology over time and any other marketplace developments raised by commenters,<sup>2413</sup> we seek comment on whether the magnitude of carriers' revenues currently associated with the common line are appropriate, or too high (or low). In particular, as in the past, we seek "forward-looking cost information associated with the provision of retail voice grade access to the public switched telephone network."<sup>2414</sup> In addition to other data or information that commenters wish to provide in this respect. We further seek comment on how the costs of the local loop have been allocated between its use for regulated voice telephone service and its use for other services, such as broadband Internet access, video, or other

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<sup>2411</sup> See *supra* Section XIII.E.

<sup>2412</sup> See *Initiation of Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps*, CC Docket Nos. 96-262, 94-1, Public Notice, 16 FCC Rcd 16705 at 16706 (2001) (quoting *CALLS Order*, 15 FCC Rcd at 12994, para. 83).

<sup>2413</sup> See, e.g., Free Press *August 3 PN* Comments at 12-14; Consumer Federation of America and Consumers Union *August 3 PN Reply* at 3-4; Letter from S. Derek Turner, Research Director, Free Press, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51 at 2 (filed Aug. 2, 2011) (Free Press Aug. 2, 2011 *Ex Parte* Letter).

<sup>2414</sup> See *Initiation of Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps*, CC Docket Nos. 96-262, 94-1, Public Notice, 16 FCC Rcd 16705 (2001) (quoting *CALLS Order*, 15 FCC Rcd at 12994, para. 83).

nonregulated services.<sup>2415</sup> Are carriers' regulated common line recovery bearing an appropriate share of the cost of the local loop, or too much (or too little)?

1332. More broadly, if carriers increasingly are moving to IP networks, to what extent is voice telephone service simply one of many applications on that network, such that regulated charges specific to voice might no longer be appropriate?<sup>2416</sup> In particular, should the Commission eliminate SLCs? If so, when should they be eliminated, and through what process? Should the Commission eliminate SLCs as of a date certain absent a showing by a carrier that such revenue is justified?<sup>2417</sup> If so, should the Commission require a showing comparable to that required under the Total Cost and Earnings Review,<sup>2418</sup> or some other showing? Likewise, to the extent that some carriers continue to receive revenue from a universal service mechanism specifically designed to address common line recovery, such as ICLS, as a supplement to SLC revenues, should that be eliminated or modified, as well? If so, when, and how, should that support be eliminated? If not, how would that continuing support mechanism operate in the absence of SLCs?

1333. Even if the overall magnitude of common line revenues are justified and SLCs are retained, we seek further comment on the operation of the SLCs and the specific levels of the SLC caps, including whether they should be modified in any respect. For example, should the Commission require greater disaggregation or deaveraging of SLCs, either in terms of classes of customers or services or in terms of geographic areas? If so, what is the appropriate scope of customers, services, or geography? Would new cap(s) be appropriate for the new categories of SLCs, and if so, at what level? Conversely, as part of our intercarrier compensation reform, we allow the ARC to be set at the holding-company level. Would that, or another more aggregated or averaged approach be warranted, and if so, what?

1334. *Advertising SLCs.* As described in the Order, although the ARC is distinct from the SLC for regulatory purposes, we expect incumbent LECs to include the new ARC charges as part of the SLC charge for billing purposes.<sup>2419</sup> However, commenters observe that SLC charges frequently are not included in the advertised price for incumbent LECs' services, making it more difficult for customers to evaluate and compare the price of service among different providers.<sup>2420</sup> Thus, we seek comment on requiring incumbent LECs (and other carriers, if they charge a SLC or its equivalent) to include such charges in their advertised price for services subject to SLC charges. Could the Commission require that carriers include SLC charges (including ARCs) in their advertised price for services, or condition their ability to impose SLCs or ARCs or to receive CAF support on their doing so? Are there alternative approaches the Commission should take to ensure greater disclosure of such charges to customers in a way that advances price comparison and evaluation?<sup>2421</sup> Could the Commission adopt such requirements pursuant to its authority under section 201(b) of the Act<sup>2422</sup> or on another basis?

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<sup>2415</sup> See, e.g., NASUCA *USF/ICC Transformation NPRM* Reply at 157-158.

<sup>2416</sup> See, e.g., NASUCA *USF/ICC Transformation NPRM* Comments at 98 n. 281; NASUCA *USF/ICC Transformation NPRM* Reply at 158 (citing AT&T *USF/ICC Transformation NPRM* Comments at 24).

<sup>2417</sup> Cf. NASUCA *August 3 PN* Comments at 57-60; AARP *August 3 PN* Comments at 2.

<sup>2418</sup> See *supra* Section XIII.G.

<sup>2419</sup> See *supra* Section XIII.F.1.

<sup>2420</sup> See, e.g., CRUSIR *August 3 PN* Comments at 17; NASUCA *August 3 PN* Comments at 24 n.54, 72; Illinois AG Oct. 25, 2006 Missoula Plan Comments, CC Docket No. 01-92 at 7.

<sup>2421</sup> See, e.g., *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, Notice of Inquiry, 24 FCC Rcd 11380, 11389- (continued...)

## P. IP-to-IP Interconnection Issues

1335. As recommended by the National Broadband Plan, the Commission has set an express goal of facilitating industry progression to all-IP networks,<sup>2423</sup> and ensuring the transition to IP-to-IP interconnection is an important part of achieving that goal. As stated in recommendation 4.10 of the National Broadband Plan, “[t]he FCC should clarify interconnection rights and obligations and encourage the shift to IP-to-IP interconnection.”<sup>2424</sup> Likewise, in the *USF/ICC Transformation NPRM* the Commission sought comment on “steps we can take to promote IP-to-IP interconnection.”<sup>2425</sup> We received some comment on the issue but hope to develop a more complete record on IP-to-IP interconnection issues, in light of the reforms undertaken in the Order.<sup>2426</sup> As we state in the Order above, the duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise.<sup>2427</sup> Commission requirements implementing the duty to negotiate IP-to-IP interconnection in good faith could take their primary guidance from one or more of various provisions of the Communications law—Sections 4, 201, 251(a), or 251(c) of the Communications Act, or 706 of the 1996 Act. We seek comment on which of the available approaches is most consistent with our statutes as a whole and sound policy. We therefore seek comment on the implementation of the good faith negotiation requirement, and also seek comment on any additional actions the Commission should “take to encourage transitions to IP-to-IP interconnection where that is the most efficient approach.”<sup>2428</sup>

### 1. Background and Overview

1336. Interconnection among communications networks is critical given the role of network effects. Network effects arise when the value of a product increases with the number of consumers who

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92, 11395 paras. 25-34, 45 (2009) (seeking comment on information needed by consumers to make purchasing decisions); *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, CG Docket No. 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448, 6476-77, paras. 55-56 (2005) (seeking comment on disclosures at the point of sale and “tentatively conclude that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale”).

<sup>2422</sup> See, e.g., *NOS Communications, Inc. and Affinity Network Inc.*, File No. EB-00-TC-005, Apparent Liability for Forfeiture, 16 FCC Rcd 8133, 8140, para. 15 (2001) (finding that certain long distance carriers “have apparently engaged in unjust or unreasonable marketing practices in violation of section 201(b) of the Act”).

<sup>2423</sup> National Broadband Plan at 49.

<sup>2424</sup> *Id.*

<sup>2425</sup> *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4773, para. 678.

<sup>2426</sup> We note that the Commission’s Technical Advisory Council (TAC) is also evaluating issues relating to the transition of networks to IP, and seeking comment on these issues at this time avoids prejudging the issues they are considering. See, e.g., Technical Advisory Council Chairman’s Report (Apr. 22, 2011) available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-306065A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-306065A1.pdf); Technology Advisory Council, Status of Recommendations, June 29, 2011 available at <http://transition.fcc.gov/oet/tac/TACJune2011mtgfullpresentation.pdf>.

<sup>2427</sup> See *supra* Section XIV.

<sup>2428</sup> National Broadband Plan at 49.

purchase it.<sup>2429</sup> For example, telephone service to an individual subscriber becomes more valuable to that subscriber as the number of other people he or she can reach using the telephone increases. Because telecommunications carriers interconnect their individually-owned networks, their subscribers may complete a call to subscribers on all other carriers' networks. This likewise advances the Act's directive to "make available, so far as possible, to all people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service."<sup>2430</sup>

1337. In some circumstances, network owners may have incentives to refuse reasonable interconnection to other network operators.<sup>2431</sup> For example, the Commission previously has found "that incumbent LECs have no economic incentive . . . to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services."<sup>2432</sup> Consequently, "[n]egotiations between incumbent LECs and new entrants are not analogous to traditional commercial negotiations in which each party owns or controls something the other party desires."<sup>2433</sup> In principle, similar incentives can arise between other types of carriers with disparate negotiating leverage.<sup>2434</sup>

1338. Given these considerations, both the Act and Commission rules have required interconnection among carriers under different policy frameworks, which varied both in scope and specificity based on the particular circumstances. For example, all carriers are subject to a general duty to interconnect directly or indirectly,<sup>2435</sup> with LECs also subject to certain rate regulations,<sup>2436</sup> and

<sup>2429</sup> See, e.g., *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket Nos. 04-70, 04-254, 04-323, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21578, para. 143 (2004) (citing Carl Shapiro and Hal Varian, *Information Rules*, Harvard Business School Press, Boston, 1999, at 13).

<sup>2430</sup> 47 U.S.C. § 151.

<sup>2431</sup> See, e.g., *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, Second Notice of Proposed Rule Making, 10 FCC Rcd 10666, 10682-83, paras. 31-32 (1995) (*CMRS Interconnection Second NPRM*); see also *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended, et al.*, WC Docket No. 10-143, CC Docket No. 01-92, GN Docket No. 09-51, Declaratory Ruling, 26 FCC Rcd 8259, 8266-67, paras. 13-14 (2011) (*Interconnection Clarification Order*).

<sup>2432</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15528, para. 55. See also *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14818, para. 238 (1999).

<sup>2433</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15528, para. 55. See also *id.* ("The inequality of bargaining power between incumbents and new entrants militates in favor of rules that have the effect of equalizing bargaining power in part because many new entrants seek to enter national or regional markets.").

<sup>2434</sup> See, e.g., *CMRS Interconnection Second NPRM*, 10 FCC Rcd at 10682-83, paras. 31-32 (describing CMRS providers' possible incentives to deny reasonable interconnection to competitors under certain circumstances).

<sup>2435</sup> 47 U.S.C. § 251(a)(1) ("[e]ach telecommunications carrier has the duty . . . to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers"). Even prior to the 1996 Act, the Commission required interconnection pursuant to section 201 and, in the context of CMRS providers, section 332. See, e.g., *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108, 9137-38, paras. 59-61 (2004); *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1497-98, para. 230 (1994) (*CMRS Second Report and Order*).

<sup>2436</sup> Compare, e.g., *Investigation of Access and Divestiture Related Tariffs; MTS and WATS Market Structure*, CC Docket No. 83-1145 Phase I, CC Docket No. 78-72 Phase I, Memorandum Opinion and Order, 98 FCC 2d 730 (continued...)

incumbent LECs subject to a more detailed framework.<sup>2437</sup> In other contexts—notably, interconnection among Internet backbone providers—the Commission historically has chosen not to “monitor or exercise authority over” such interconnection on the grounds “that premature regulation ‘might impose structural impediments to the natural evolution and growth process which has made the Internet so successful.’”<sup>2438</sup>

1339. The voice communications marketplace is currently transitioning from traditional circuit-switched telephone service to the use of IP services. There are conflicting views regarding what role interconnection requirements should play in an increasingly IP-centric voice communications market. Some competitive providers seek to ensure that existing interconnection protections continue to apply as voice traffic migrates from TDM to IP.<sup>2439</sup> Other providers see various shortcomings in existing interconnection regimes, and advocate a modified regulatory approach for IP-to-IP interconnection that they believe would result in improvements over the existing regimes.<sup>2440</sup> Similarly, other providers seek to have interconnection requirements imposed more broadly than just for voice services.<sup>2441</sup> Even some smaller incumbent LECs cite concerns about a lack of negotiating leverage relative to other providers in the absence of a right to IP-to-IP interconnection.<sup>2442</sup> At the same time, other incumbent LECs contend that, whatever their historical marketplace position with respect to voice telephone services, their position with respect to IP services does not position them to use interconnection to disadvantage other providers, and does not warrant singling out incumbent LECs for application of legacy interconnection requirements.<sup>2443</sup> They also suggest caution regarding overly-prescriptive approaches based on the

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(1984) (holding that “the Commission is authorized to establish charges for carrier interconnections”) *with, e.g., Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers*, CC Docket No. 94-54, 95-185, Notice of Proposed Rulemaking, 11 FCC Rcd 5020, 5025, para. 11 (1996) (“In the absence of market power or other distortions, efficient forms of interconnection may develop through private negotiation. For example, small interexchange carriers interconnect with one another, and purchase and resell one another’s services, with little or no outside involvement.”).

<sup>2437</sup> 47 U.S.C. § 251(c)(2) (requiring incumbent LECs to provide for direct, physical interconnection between the incumbent’s network and the competing provider’s network). *See also* 47 U.S.C. § 251(c)(1) (requiring incumbent LECs to negotiate in good faith to implement the requirements of section 251(b) and (c)); 47 U.S.C. § 252 (providing for arbitration of interconnection agreements involving incumbent LECs).

<sup>2438</sup> *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*, CC Docket No. 98-146, Report, 14 FCC Rcd 2398, 2451-52, para. 105 (1999); *see also Applications filed by Global Crossing Limited and Level 3 Communications, Inc. for Consent to Transfer Control*, IB Docket No. 11-78, Memorandum Opinion and Order and Declaratory Ruling, DA 11-1643, paras. 18-19 (WCB, IB rel. Sept. 29, 2011).

<sup>2439</sup> *See, e.g., COMPTEL USF/ICC Transformation NPRM Comments* at 4-9.

<sup>2440</sup> *See, e.g., Sprint USF/ICC Transformation NPRM Comments* at 16-18.

<sup>2441</sup> *See, e.g., Google USF/ICC Transformation NPRM Comments* at 10-11. *See also AT&T USF/ICC Transformation NPRM Reply* at 9 (“[S]ome commenters ask the Commission to regulate Internet peering and transit relationships: the arrangements that allow *broadband ISPs* to exchange packets containing data from various applications, including voice, between their respective subscribers.”).

<sup>2442</sup> *See, e.g., Nebraska Rural Companies August 3 PN Comments* at 60.

<sup>2443</sup> *See, e.g., CenturyLink USF/ICC Transformation NPRM Comments* at 54-55.

potential for carrier-by-carrier variations in determining the timing of an efficient transition to IP-to-IP interconnection and complexities in the implementation of such requirements.<sup>2444</sup>

1340. The comprehensive reforms we adopt today takes initial steps to eliminate barriers to IP-to-IP interconnection. In this regard, we note that the intercarrier compensation transition we adopt in the Order specifies default rates but leaves carriers free to negotiate alternative arrangements.<sup>2445</sup> We conclude that the preexisting intercarrier compensation regime did not advance technology neutral interconnection policies because it provided LECs a more certain ability to collect intercarrier compensation under TDM-based interconnection, with less certain compensation for IP-to-IP interconnection. Under our new framework, even if a carrier historically has relied on intercarrier compensation revenue streams, it need not wait until intercarrier compensation reform is complete to enter IP-to-IP interconnection arrangements. Rather, to the extent that certainty regarding intercarrier compensation is important to a particular carrier during the transition, it is free to negotiate appropriate compensation as part of an arrangement for IP-to-IP interconnection under our transitional framework.

1341. Some commenters express concern that additional protections are needed to ensure IP-to-IP interconnection, however.<sup>2446</sup> As discussed above, we expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic, and that such good faith negotiations will result in interconnection arrangements between IP networks,<sup>2447</sup> and we seek comment below on which of the various possible statutory provisions as well as standards and enforcement mechanisms we should adopt to implement our expectation that carriers negotiate in good faith. We also seek comment on actions the Commission could take to, at a minimum, encourage the transition to IP-to-IP interconnection where efficient. In particular, we propose that if a carrier that has deployed an IP network receives a request to interconnect in IP, but instead requires TDM interconnection, the costs of the IP-to-TDM conversion would be borne by the carrier that elected TDM interconnection. We seek comment on this proposal. We also seek comment on other measures that Commission might adopt to encourage efficient IP-to-IP interconnection.

1342. We also seek comment on proposals to require IP-to-IP interconnection in particular circumstances under different policy frameworks. In this regard, we observe that section 251 of the Act is one of the key provisions specifying interconnection requirements, and that its interconnection requirements are technology neutral—they do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks. The specific application of the interconnection requirements of section 251 depend upon factual circumstances and other considerations, and we seek comment below on the resulting implications in the context of IP-to-IP interconnection, along with other legal authority that might bear on the Commission's ability to adopt any particular IP-to-IP interconnection policy framework. Moreover, we seek comment on how to carefully circumscribe the scope of traffic or services subject to any such framework to leave issues to the marketplace that appropriately can be resolved there.

1343. Finally, we seek comment on proposals that the Commission leave IP-to-IP interconnection to unregulated commercial agreements. Although the Commission has relied on such an approach in some contexts in the past, we seek comment on the factual basis for whether, and when, to adopt such an approach here.

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<sup>2444</sup> See, e.g., Verizon *USF/ICC Transformation NPRM* Reply at 36-37.

<sup>2445</sup> See *supra* Section XII.C.

<sup>2446</sup> See *generally infra* Section XVII.P.4.

<sup>2447</sup> See *supra* Section XVI.

## 2. Scope of Traffic Exchange Covered By an IP-to-IP Interconnection Policy Framework

1344. It is important that any IP-to-IP interconnection policy framework adopted by the Commission be narrowly tailored to avoid intervention in areas where the marketplace will operate efficiently. We thus seek comment on the scope of traffic exchange that should be encompassed by any IP-to-IP interconnection policy framework for purposes of this proceeding. We stated in the Order that we expect carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic. But, we note that various types of services can be transmitted in IP format, and commenters recognize that many pairs of providers are exchanging both VoIP traffic and other IP traffic with each other.<sup>2448</sup> Further, different commenters appear to envision IP-to-IP interconnection policy frameworks encompassing different categories of services provided using IP transmission. We seek comment on those issues below, along with any other recommendations commenters have for defining the scope of an IP-to-IP interconnection policy framework in this context. For any proposed scope of IP-to-IP interconnection, we also seek comment on whether it is necessary, or appropriate, to address classification issues associated with particular IP services.

1345. Some comments proposed that an IP-to-IP interconnection framework address the exchange of voice traffic. For some commenters, this would broadly encompass all VoIP traffic, whether referred to as “packetized voice” traffic, “IP voice” traffic, or simply “VoIP.”<sup>2449</sup> Is it technologically possible to adopt such an approach? Does it make sense as a policy matter to adopt an IP-to-IP interconnection framework focused specifically on voice service, and how would such an approach be implemented? For example, would this approach have the result of compelling providers to exchange VoIP traffic under a different technological or legal arrangement from what those providers use to exchange other IP traffic? Could the interconnection framework be structured to provide certain interconnection rights with respect to the exchange of VoIP traffic, while giving those providers the freedom to exchange other IP traffic in a consistent manner? What impact, if any, would such an approach have on any preexisting arrangements for the exchange of non-voice IP traffic?

1346. Other comments propose IP-to-IP interconnection frameworks that would encompass narrower categories of VoIP services, such as “managed” or “facilities-based” VoIP, as distinct from “over the top” VoIP.<sup>2450</sup> Are there advantages or disadvantages to focusing on this narrower universe of voice traffic as a technological, policy, or legal matter? For example, are there different costs or service quality requirements associated with such services such that those services would warrant distinct treatment? How would such traffic or services be defined? Would interconnection for other VoIP services be left unaddressed at this time? Or would they be subject to a different policy framework, and if so, what framework would be appropriate?

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<sup>2448</sup> See, e.g., *id.* at 24; AT&T *USF/ICC Transformation NPRM* Reply at 15.

<sup>2449</sup> See, e.g., Sprint *USF/ICC Transformation NPRM* Comments at 16-28; T-Mobile *USF/ICC Transformation NPRM* Comments at 17, 20-21; XO *USF/ICC Transformation NPRM* Comments at 17; Cablevision *USF/ICC Transformation NPRM* Reply at 3; Cox *USF/ICC Transformation NPRM* Reply at 2-3; Letter from Tamar E. Finn, Counsel for PAETEC, 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 at 1 (filed July 19, 2011).

<sup>2450</sup> See, e.g., Cbeyond et al. Section XV Comments at 10 & n.28; Cbeyond et al. *USF/ICC Transformation NPRM* Reply at 7-8 & nn.12, 13; COMPTTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 2-3 & n.2.

1347. Alternatively, other comments seem to anticipate that IP interconnection policies could encompass IP traffic other than voice.<sup>2451</sup> Would it be appropriate to encompass any non-voice IP traffic or services in such a framework, and how would they be defined? We note, for example, that the Commission historically has not regulated interconnection among Internet backbone providers. If a different interconnection policy framework were adopted in this context, how would it be distinguishable? To what extent would an IP-to-IP interconnection policy framework address interconnection rights for both voice and non-voice traffic, or to what extent would providers simply have the freedom to use otherwise-available interconnection arrangements to exchange particular IP traffic or services?

### 3. Good Faith Negotiations for IP-to-IP Interconnection

#### a. Standards and Enforcement for Good Faith Negotiations

1348. Building upon our statement in the Order that the duty to negotiate in good faith under the Act does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise, we seek comment below on the particular statutory authority that provides the strongest basis for the right to good faith negotiations for IP-to-IP interconnection. As a threshold matter, however, we seek comment on the appropriate scope and nature of requirements for good faith negotiations generally that should apply, as well as the associated implementation and enforcement.<sup>2452</sup> For example, should the Commission focus on all carriers generally, or adopt differing standards for particular subsets of carriers such as terminating carriers, incumbent LECs, or carriers that may have market power in the provision of voice services, or should we focus on some other scope of providers? Should the right to good faith negotiations for IP-to-IP interconnection be limited to traffic associated with particular types of services?<sup>2453</sup> How would the Commission determine whether or not a particular provider negotiated in good faith under such an approach? For example, should such claims be evaluated in the same manner as claims that a carrier failed to negotiate in good faith as required by section 251(c)(1) of the Act,<sup>2454</sup> or regulatory frameworks from other contexts?<sup>2455</sup> Are there other criteria that commenters believe the

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<sup>2451</sup> See, e.g., Google *USF/ICC Transformation NPRM* Comments at 10-11 (“As part of its reform, the FCC also should affirm that broadband service providers have a duty pursuant to Section 251(a)(1) of the Communications Act to interconnect with other network providers for the exchange of telecommunications traffic, including local traffic encoded in IP.”); AT&T *USF/ICC Transformation NPRM* Reply at 9 (“[S]ome commenters ask the Commission to regulate Internet peering and transit relationships: the arrangements that allow *broadband ISPs* to exchange packets containing data from various applications, including voice, between their respective subscribers.”); Google June 16, 2011 *Ex Parte* Letter at 3 (“While many IP-based services (including VoIP) may be properly classified as information services, telecommunications carriers remain subject to the requirements of § 251(a) insofar as they are engaging in transport of telecommunications.”). Cf. Cox *USF/ICC Transformation NPRM* Reply at 4 (“Cox encourages the Commission to recognize that there should be continuing review of the regulatory framework for IP-based interconnection of voice and other interconnected services.”).

<sup>2452</sup> See, e.g., Sprint July 29, 2011 *Ex Parte* Letter at 10-11 (advocating a requirement to negotiate in good faith); Letter from Ad Hoc *et al.* to Hon. Julius Genachowski, Chairman, FCC, *et al.*, WC Docket Nos. 10-90, 07-135, 06-122, 05-337, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51 at 10 (filed Aug. 18, 2011) (Ad Hoc Aug. 18, 2011 *Ex Parte* Letter) (same).

<sup>2453</sup> See *supra* Section XVII.P.2.

<sup>2454</sup> See, e.g., 47 C.F.R. § 51.301(c) (setting forth a non-exhaustive list of eight specific actions that, if proven, would violate the duty to negotiate in good faith under section 251(c)(1)).

<sup>2455</sup> See, e.g., *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, ET Docket Nos. 00-258, 95-18, RM-9498, RM-10024, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, 15076-15077, para. 201 & n.524 (2004) (requiring good faith in rebanding negotiations); *CMRS Interconnection Second NPRM*, 10 FCC Rcd at 10682-83, paras. 31-32. See also, e.g., 2011 (continued...)

Commission should address with respect to the standards and enforcement for good faith negotiations? For example, should enforcement occur at the Commission, state commissions, courts, or other forums?

1349. Would the Commission need to address or provide guidance regarding the contours of a range of reasonableness for IP-to-IP interconnection rates, terms, and conditions themselves to assess whether a party's negotiating positions are reasonable and in good faith? For example, would the Commission need to specify whether direct physical interconnection is required, or whether indirect interconnection could be sufficient in order to judge whether particular negotiations are in good faith? Are there other criteria or guidance regarding the substance of the underlying IP-to-IP interconnection that the Commission would need to specify to make enforcement of a good faith negotiation requirement more administrable?

1350. We observe that certain statutory provisions may give the Commission either broader or narrower leeway to define the scope of entities covered by the requirement, the standards for evaluating whether negotiations are in good faith, and the associated enforcement mechanisms. Thus, in addition to seeking comment on the particular statutory authority we should adopt for good faith negotiation requirements below, commenters should discuss any limitations on the substance and enforcement of the good faith negotiation requirements arising from the particular statutory provision at issue, or what particular approaches to defining and enforcing good faith negotiations are appropriate in the context of the Commission's exercise of particular legal authority. In addition, we seek comment not only on any rules the Commission would need to adopt or revise, but also any forbearance from statutory requirements that would be needed to implement a particular framework for good faith negotiations for IP-to-IP interconnection.<sup>2456</sup>

#### **b. Statutory Authority To Require Good Faith Negotiations**

1351. In this section, we note that there are various sections of the Act upon which the right to good faith negotiations for IP-to-IP interconnection could be grounded, and seek comment on the policy implications of selecting particular provisions of the Act. In the subsequent section, we seek comment on the possible legal authority commenters have cited in support of substantive IP-to-IP interconnection obligations, including sections 251(a)(1), 251(c)(2), and other provisions of the Act; section 706 of the 1996 Act; as well as the Commission's ancillary authority under Title I. We thus likewise seek comment on those and other provisions as a basis for the right to good faith negotiations regarding IP-to-IP interconnection, as well as resulting implications for the scope and enforcement of that right.

1352. We seek comment on whether we should utilize section 251(a)(1) as the basis for the requirement that all carriers must negotiate in good faith in response to a request for IP-to-IP interconnection. Section 251(a)(1) requires all telecommunications carriers to interconnect directly or indirectly.<sup>2457</sup> The requirements of this provision thus extend broadly to all telecommunications carriers, and are technology neutral on their face with respect to the transmission protocol used for purposes of interconnection. We thus seek comment on whether the Commission should rely upon section 251(a)(1) as the primary source of a right to good faith negotiations for IP-to-IP interconnection. Should the Commission create a specific enforcement mechanism and, if so, should the remedy be at the state level (Continued from previous page) \_\_\_\_\_

*Pole Attachment Order*, 26 FCC Rcd at 5286, para. 100 (revising the Commission's rules to require executive-level negotiations for pole attachments to demonstrate good faith); 47 C.F.R. § 1.721(a)(8) (requiring that complaints include "certification that the complainant has, in good faith, discussed or attempted to discuss the possibility of settlement"); 47 C.F.R. § 76.65 (requiring good faith in retransmission consent negotiations).

<sup>2456</sup> 47 U.S.C. § 160.

<sup>2457</sup> 47 U.S.C. § 251(a)(1). See also *infra* paras. 1381-1383.

or with the Commission? We note that section 251(c)(1) of the Act expressly adopts a requirement for incumbent LECs, and requesting carriers seeking interconnection with them, to “negotiate in good faith in accordance with section 252” to implement the requirements of sections 251(b) and (c).<sup>2458</sup> Although the requirements of section 251(a)(1), standing alone, are not encompassed by that provision, we do not believe that would preclude the Commission from concluding that a separate good faith negotiation requirement is required under section 251(a)(1). What is the appropriate mechanism for enforcing a right to good faith negotiations for IP-to-IP interconnection under 251(a)(1)? Similarly, to the extent that the good faith negotiation requirement adopted for section 251(a)(1) interconnection must be distinct from that imposed by section 251(c)(1), would the Commission need to adopt a different approach to evaluating claimed breaches of good faith from the framework used under section 251(c)(1)?<sup>2459</sup> If so, what framework for evaluating such claims should the Commission adopt?

1353. We also seek comment on whether the requirement of good faith negotiations for IP-to-IP interconnection should be based on section 251(c)(2). Section 251(c)(2) requires incumbent LECs to provide direct physical interconnection to requesting carriers when the criteria of sections 251(c)(2)(A)-(D) are met.<sup>2460</sup> As noted above, when section 251(c)(2) applies, it is subject to a statutory requirement of good faith negotiations under section 251(c)(1), with enforcement available through state arbitrations under section 252.<sup>2461</sup> Further, the Commission already has adopted guidance for evaluating claimed breaches of good faith negotiations under section 251(c)(1). Would that guidance remain appropriate for evaluating alleged failure to negotiate IP-to-IP interconnection in good faith under this provision? Under the terms of section 251(c), we believe that the obligations of section 251(c)(2) apply only to incumbent LECs, and thus under the terms of the statute the associated duty to negotiate interconnection in good faith under section 251(c)(1) only would extend to incumbent LECs and requesting carriers seeking interconnection with them. We note, however, that good faith negotiations under the Order are expected of all carriers, not just incumbent LECs. As a result, would the Commission need to rely on additional statutory provisions for the basis of good faith negotiation requirements for IP-to-IP interconnection among other types of carriers?

1354. Alternatively, we seek comment on whether the obligation to negotiate in good faith for IP-to-IP interconnection arrangements should be grounded in section 201, particularly in conjunction with other provisions of the Act and the Clayton Act.<sup>2462</sup> The Commission previously interpreted section 2(a), 201 and 202 collectively “as requiring common carriers to negotiate the provision of their services in good faith” and thus requiring LECs to negotiate interconnection in good faith with CMRS providers.<sup>2463</sup> It found it appropriate to extend the requirement of good faith negotiations not only to interconnection for the exchange of interstate services, but for intrastate services as well, reasoning that “departures from our good faith requirement [in the context of intrastate services] could severely affect interstate communications by preventing cellular carriers from obtaining interconnection agreements and consequently excluding them from the nationwide public telephone network.”<sup>2464</sup> The Commission

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<sup>2458</sup> 47 U.S.C. § 251(c)(1).

<sup>2459</sup> See 47 C.F.R. § 51.301(c).

<sup>2460</sup> 47 U.S.C. § 251(c)(2)(A)-(D). See also *infra* paras. 1384-1393.

<sup>2461</sup> 47 U.S.C. §§ 251(c)(1); 252.

<sup>2462</sup> See *infra* para. 1393.

<sup>2463</sup> *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Declaratory Ruling, 2 FCC Rcd 2910, 2912-13, para. 21 (1987) (*CMRS Interconnection Declaratory Ruling*).

<sup>2464</sup> *Id.*

further concluded that its “authority to mandate good faith negotiations is also derived from Sections 309(a) and 314 of the Act and Section 11 of the Clayton Act, which require the Commission to remedy anticompetitive conduct,” given that delays in the negotiating process could place a carrier at a competitive disadvantage.<sup>2465</sup> We seek comment on whether we should adopt these provisions as the legal basis for a requirement of good faith negotiations among carriers regarding IP-to-IP interconnection. Would the considerations cited by the Commission in the context of LEC-CMRS interconnection likewise justify a right to good faith negotiations in this context? If so, what standards and processes should apply in evaluating and enforcing good faith negotiations under this provision? We note that interconnection with LECs for access traffic historically—and as preserved by 251(g)—was addressed through exchange access and related interconnection regulations, including through the purchase of tariffed access services. How should any right to good faith negotiation of IP-to-IP interconnection for the exchange of access traffic be reconciled with those historical regulatory frameworks? Does the Commission’s action in the accompanying Order to supersede the preexisting access charge regime and adopt a transition to a new regulatory framework affect this evaluation?

1355. In addition, we seek comment on the relative merits of section 706 of the 1996 Act as the statutory basis for carriers’ duty to negotiate IP-to-IP interconnection in good faith. As discussed below, some commenters suggest that section 706 would provide the Commission authority to regulate IP-to-IP interconnection.<sup>2466</sup> Would the statutory mandate in section 706 justify a requirement that carriers negotiate in good faith regarding IP-to-IP interconnection? If so, what standards and enforcement processes would be appropriate? If the Commission were to rely on section 706 of the 1996 Act to impose a good faith negotiation requirement, would it also need to adopt associated complaint procedures, or could the existing informal and formal complaint processes, which derive from section 208, nonetheless be interpreted to extend more broadly than alleged violations of Title II duties? Could the Commission, relying on section 706, extend the obligation to negotiate in good faith beyond carriers to include all providers of telecommunications? If so, should the Commission do so?

1356. We also seek comment on whether section 256 provides a basis for the good faith negotiation requirement for IP-to-IP interconnection. Although section 256(a)(2) says that the purpose of the section is “to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks,”<sup>2467</sup> section 256(c) provides that “[n]othing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before February 8, 1996.”<sup>2468</sup> Particularly in light of section 256(c), is it reasonable to interpret section 256 as a basis for the good faith negotiation requirement? If so, what are the appropriate details and enforcement mechanism? Even if it is not a direct source of authority in that regard, should it inform the Commission’s interpretation and application of other statutory provisions to require carriers to negotiate IP-to-IP interconnection in good faith?

1357. Alternatively, should the Commission rely upon ancillary authority as a basis for requiring that carriers negotiate in good faith in response to requests for IP-to-IP interconnection? Because it is “communications by wire or radio,” the Commission clearly has subject matter jurisdiction

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<sup>2465</sup> *Id.* at 2913, para. 22.

<sup>2466</sup> *See infra* para. 1394.

<sup>2467</sup> 47 U.S.C. § 256(a)(2).

<sup>2468</sup> 47 U.S.C. § 256(c); *see also Comcast*, 600 F.3d at 659 (acknowledging section 256’s objective, while adding that section 256 does not “‘expand[] . . . any authority that the Commission’ otherwise has under law”) (quoting 47 U.S.C. § 256(c)).

over IP traffic such as packetized voice traffic.<sup>2469</sup> Is the requirement that carriers negotiate in good faith in response to requests for IP-to-IP interconnection reasonably ancillary to the Commission's exercise of its authority under a statutory provision, such as the provisions identified above?<sup>2470</sup> If so, what standards and enforcement mechanisms should apply? If the Commission were to rely on ancillary authority to impose a good faith negotiation requirement, would it also need to adopt associated complaint procedures, or could the existing informal and formal complaint processes, which derive from section 208, nonetheless be interpreted to extend more broadly than alleged violations of Title II duties? Similarly, if the Commission relies on ancillary authority, could it extend the obligation to negotiate in good faith beyond carriers to include all providers of telecommunications? If so, should the Commission do so?

1358. Finally, we seek comment on whether the obligation for carriers to negotiate IP-to-IP interconnection in good faith should be grounded in other statutory provisions identified by commenters. If so, what statutory provisions, and what are the appropriate standards and enforcement mechanisms? Alternatively, should the Commission rely on multiple statutory provisions? If so, which provisions, and how would they operate in conjunction?

#### **4. IP-to-IP Interconnection Policy Frameworks**

##### **a. Alternative Policy Frameworks**

1359. We seek comment on the appropriate role for the Commission regarding IP-to-IP interconnection. In particular, we seek specific comment on certain proposed policy frameworks described below. With respect to each such framework, we seek comment not only on the policy merits of the approach, but also the associated implementation issues. These include not only any rules the Commission would need to adopt or revise, but also any forbearance from statutory requirements that would be needed to implement the particular framework for IP-to-IP interconnection.<sup>2471</sup>

##### **(i) Measures To Encourage Efficient IP-to-IP Interconnection**

1360. At a minimum, we believe that any action the Commission adopts in response to this FNPRM should affirmatively encourage the transition to IP-to-IP interconnection where it increases overall efficiency for providers to interconnect in this manner. We seek comment below on possible elements of such a framework, as well as alternative approaches for encouraging efficient IP-to-IP interconnection.

1361. *Responsibility for the Costs of IP-to-TDM Conversions.* Some commenters have proposed that carriers electing TDM interconnection be responsible for the costs associated with the IP-TDM conversion.<sup>2472</sup> In particular, these commenters contend that carriers that require such conversion,

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<sup>2469</sup> 47 U.S.C. § 152(a).

<sup>2470</sup> As discussed below, Sprint asserts that the Commission has authority under Title I to adopt requirements for IP-to-IP interconnection as ancillary to its execution of sections 251 and 252, and consistent with the policies specified in various other provisions of the Act. *See infra* para. 1396.

<sup>2471</sup> 47 U.S.C. § 160.

<sup>2472</sup> *See, e.g.,* Charter *USF/ICC Transformation NPRM* Reply at 5-6 & n.14; NCTA *August 3 PN* Comments at 18 n.42. *See also* Letter from Karen Reidy, Vice President of Regulatory Affairs for COMPTTEL, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-119, 10-90, 07-135, 06-122, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51 at 2 (filed Aug. 11, 2011) (COMPTTEL Aug. 11, 2011 *Ex Parte* Letter) (asserting that competitive LECs currently incur unnecessary costs “associated with converting IP calls to TDM format, including the costs of purchasing, operating, and maintaining numerous gateways”).

sometimes despite the fact that they have deployed IP networks themselves, effectively raise the costs of their competitors that have migrated to IP networks.<sup>2473</sup> If a carrier that has deployed an IP network receives a request to interconnect in IP, but, chooses to require TDM interconnection, we propose to require that the costs of the conversion from IP to TDM be borne by the carrier that elected TDM interconnection (whether direct or indirect).<sup>2474</sup> We seek comment on how to define the scope of carriers with IP networks that should be subject to such a requirement. We further seek comment on what specific functions the carrier electing TDM interconnection should be financially responsible for under such a requirement. Should the financial responsibility be limited to the electronics or equipment required to perform the conversion? Or should the financial responsibility extend to other costs, such as any potentially increased costs from interconnecting in many locations with smaller-capacity connections rather than (potentially) less expensive interconnection in a smaller number of locations with higher-capacity connections? If there are disputes regarding payments, should the losing party bear the cost of those disputes?

1362. Would the Commission need to take steps to ensure the rates associated with those functionalities remain reasonable, and under what regulatory framework? For example, would *ex ante* rules or *ex post* adjudication in the case of disputes be preferable? Would the costs of the relevant functions need to be measured, and if so how? In the case of rates for such functionalities charged by incumbent LECs, should the otherwise-applicable rate regulations apply to such offerings? In the case of carriers other than incumbent LECs, how, if at all, would such rates be regulated? Would the ability of the carrier electing TDM interconnection to self-deploy the IP-to-TDM conversion technology or purchase it from a third party<sup>2475</sup> rather than paying the other provider constrain the rate the other provider could charge for such functionality? Would the Commission also need to regulate the terms and conditions of such services? If so, what is the appropriate regulatory approach?

1363. Would some pairs of carriers with IP networks that interconnect directly or indirectly in TDM today both choose to continue interconnecting in TDM? If so, how would the commission ensure that any requirements it adopted addressing financial responsibility for IP-to-TDM conversions did not alter the *status quo* in such circumstances? For example, could the obligation to pay these charges be triggered through a formal process by which one interconnected carrier requests IP-to-IP interconnection and, if the second interconnected carrier refuses (or fails to respond), the second carrier then would be required to bear financial responsibility for the IP-to-TDM conversion? Would the Commission need to specify a timeline for the process, including the time by which a carrier receiving a request for IP-to-IP interconnection either must respond or be deemed to have refused the request (and thus become subject to the financial responsibility for the IP-to-TDM conversion)? If so, what time periods are reasonable?

1364. What mechanism would be used to implement any such charges? Should carriers rely solely on agreements? Or should carriers tariff these rates, perhaps as default rates that apply in the absence of an agreement to the contrary? Should the carrier seeking to retain TDM interconnection be permitted to choose to purchase the conversion service from any available third party providers of IP-to-TDM conversions, rather than from the carrier seeking IP-to-IP interconnection? If so, how would that be implemented as part of the implementation framework?

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<sup>2473</sup> See, e.g., Cablevision *USF/ICC Transformation NPRM* Comments at 3-5; COMPTEL *USF/ICC Transformation NPRM* Comments at 35; Google *USF/ICC Transformation NPRM* Comments at 5.

<sup>2474</sup> See *supra* para. 1340.

<sup>2475</sup> See, e.g., Letter from Edward Kirsch, counsel for Hypercube, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92; WC Docket Nos. 03-109, 05-337, 07-135, 10-90; GN Docket No. 09-51, Attach. at 2 (filed Sept. 1, 2011) (describing “commercial network bridge providers . . . facilitat[ing] indirect IP interconnection wherever direct IP interconnection is not available or is less efficient”).

**(ii) Specific Mechanisms To Require IP-to-IP Interconnection**

1365. We seek comment on certain other approaches for requiring IP-to-IP interconnection raised in the record.

1366. *Scope of Issues To Address Under Different Policy Frameworks Requiring IP-to-IP Interconnection.* We seek comment on the general scope of the Commission's appropriate role concerning IP-to-IP interconnection, subject to certain baseline requirements. For example, if the baseline only extended to certain terms and conditions,<sup>2476</sup> would providers have adequate incentives to negotiate reasonable IP-to-IP interconnection rates? What specific terms and conditions would need to be subject to the policy framework, and which could be left entirely to marketplace negotiations?<sup>2477</sup> Should any oversight of terms and conditions take the form of general guidelines, perhaps subject to case-by-case enforcement, rather than more detailed *ex ante* rules? Where in a provider's network would IP need to be deployed for it to be subject to such requirements? To inform our analysis of these issues, we seek comment on the physical location of IP POIs, with concrete examples of traffic and revenue flows, as well as who bears the underlying costs of any facilities used, whether in the original installation, or in maintenance and network management. What are the implementation costs of the provision of Session Initiation Protocol (SIP) at the point of interconnection, and the extent to which voice quality would be compromised without such provision?<sup>2478</sup> How would current policies, if maintained, provide efficient or inefficient incentives for point-of-interconnection consolidation, and/or the provision of efficient interconnection protocols, such as SIP? Would adopting a timetable for all-IP interconnection be necessary or appropriate, or would carriers have incentives to elect IP-to-IP (rather than TDM) interconnection whenever it is efficient to do so?

1367. In addition, would it be necessary or appropriate to address providers' physical POIs in the context of IP-to-IP interconnection? What factors should the Commission consider in evaluating possible policy frameworks for physical POIs, such as the appropriate burden each provider bears regarding the cost of transporting traffic? If the Commission were to address POIs, would we need to mandate the number and/or location of physical POIs, or would general encouragement to transition to one POI per geographic area larger than a LATA be appropriate?<sup>2479</sup> If so, what should that larger area

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<sup>2476</sup> See, e.g., Ad Hoc Aug. 18, 2011 *Ex Parte* Letter at 9 ("as an initial matter, the FCC could leave to the market IP-to-IP rates between carriers, including taking a hands-off approach to whether rates should be capacity-based or based on another measure").

<sup>2477</sup> See, e.g., COMPTTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 2 ("the basic elements of interconnection – i.e., the physical link, interface, signaling and database access – will be just as important to Managed Packet networks as they have been to traditional circuit-switched facilities").

<sup>2478</sup> See, e.g., *id.* at 4-5 (discussing SIP and other protocols used to establish and manage IP voice calls); *id.* at 6 (discussing the capability for voice QoS in the exchange of traffic).

<sup>2479</sup> See Level 3 *USF/ICC Transformation NPRM* Comments at 12-13; COMPTTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 9.

be?<sup>2480</sup> How, if at all, would any regulations of physical POIs impact the relative financial responsibilities of the interconnected carriers for transporting the traffic?<sup>2481</sup>

1368. We also seek comment on providers' incentives under a policy framework that involves some Commission oversight of IP-to-IP interconnection rates, as well as terms and conditions. If an IP-to-IP interconnection policy framework addresses interconnection rates, how should it do so? For example, would it be sufficient to require that all VoIP traffic be treated identically, including in terms of price? Would it be appropriate to require that interconnection for the exchange of VoIP traffic be priced the same as interconnection for the exchange of all other IP traffic? If the price for the interconnection arrangement itself is distinct from the compensation for the exchange of traffic, how should each be regulated? Would a differential between the costs/revenues in the pricing of IP-to-IP interconnection and traffic exchange relative to TDM interconnection and traffic exchange create inefficient incentives to elect one form of interconnection rather than the other? If so, should any charges for both the interconnection arrangement and traffic exchange under an IP-to-IP interconnection framework mirror those that apply when carriers interconnect in TDM? Or should the Commission adopt an alternative approach? For example, should the Commission provide for different rate levels or rate structures than otherwise apply in the TDM context? What is the appropriate mechanism for implementing any such framework? Should the regulated rates, terms, and conditions be defaults that allow providers to negotiate alternatives?

1369. *Specific Proposals For IP-to-IP Interconnection.* Some commenters contend that the Commission should require incumbent LECs to directly interconnect on an IP-to-IP basis under section 251(c)(2) of the Act.<sup>2482</sup> In addition to the section 251(c)(2) legal analysis upon which we seek comment below, we seek comment on the policy merits of such an approach.<sup>2483</sup> What requirements would the Commission need to specify under such an approach? In addition, by its terms, section 251(c)(2) only imposes obligations on incumbent LECs. Is that focus appropriate, or would the Commission need to address the requirements applicable to other carriers, as well?<sup>2484</sup> If so, how could that be done under such an approach?

1370. Alternatively, should we adopt a case-by-case adjudicatory framework somewhat analogous to the approach of section 251(c)(2) and 252, where we require IP-to-IP interconnection as a

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<sup>2480</sup> See, e.g., EarthLink *USF/ICC Transformation NPRM* Comments at 9 (suggesting one POI per state); XO *USF/ICC Transformation NPRM* Comments at 31 (suggesting a default of no more than one POI per state but the Commission should encourage regional POIs). But see, e.g., CenturyLink *USF/ICC Transformation NPRM* Comments at 73 ("the Commission is a long way from being in a position to dictate the details of the ideal POI rules for such networks - even if [it] determined that it had the authority to do so").

<sup>2481</sup> We seek comment above on the possible need for rules governing the "edge" that defines the scope of functions encompassed by bill-and-keep under the reforms adopted in this Order. See *supra* Section XVII.N.

<sup>2482</sup> See, e.g., Cablevision *USF/ICC Transformation NPRM* Comments at 8-9; COMPTTEL *USF/ICC Transformation NPRM* Comments at 8; EarthLink *USF/ICC Transformation NPRM* Comments at 4-6; PAETEC *et al.* *USF/ICC Transformation NPRM* Comments at 5-8; Cbeyond *et al.* *USF/ICC Transformation NPRM* Reply at 5-12. Cf. NCTA *August 3 PN* Comments at 18 n.43 ("As set out in our comments filed in response to tw telecom's petition for declaratory ruling, section 251(c)(2) of the Act requires incumbent LECs to provide direct IP-to-IP interconnection for the transmission and routing of facilities-based VoIP services. . . . Although it is important for the Commission quickly to address the refusal of incumbent LECs to directly interconnect in IP format for the provision of VoIP services, the Commission need not address those issues in this proceeding.").

<sup>2483</sup> See *supra* Section XVII.P.3.b.

<sup>2484</sup> Cf. Nebraska Rural Companies *August 3 PN* Comments at 60 (expressing concern that small incumbent LECs might be at a negotiating disadvantage relative to larger providers).

matter of principle, but leave particular disputes for case-by-case arbitration or adjudication? Under such an approach, would the Commission need to establish some general principles or guidelines regarding how arbitrations or adjudications will be resolved, and if so, with respect to what issues? Which providers should be subject to any such obligations—incumbent LECs, all carriers that terminate traffic, or a broader scope of providers? Should the states and/or the Commission provide arbitration or dispute resolution when providers fail to reach agreement, and what processes should apply? Does the Commission have legal authority to adopt such an approach?

1371. Other commenters propose that we require IP-to-IP interconnection under section 251(a)(1).<sup>2485</sup> We seek comment below on the possibility of designating one of the carriers as entitled to insist upon direct (rather than indirect) interconnection under section 251(a)(1).<sup>2486</sup> However, if the Commission required IP-to-IP interconnection under 251(a)(1) but permitted either carrier to insist upon indirect interconnection, could the Commission require the carrier making that election bear certain costs associated with indirect interconnection, such as payment to the third party for the indirect interconnection arrangement, bearing the cost of transporting the traffic back to its own network and customers from the point where the carriers are indirectly interconnected, or other costs?

1372. As another alternative, T-Mobile and Sprint proposed that each service provider establish no more than one POI in each state using Session Initiation Protocol (SIP) to receive incoming packetized voice traffic and be required to provide at its own cost any necessary packet-to-TDM conversion for a short-term transition period.<sup>2487</sup> Then, in the longer term, the parties suggest that the Commission use the Technical Advisory Committee (TAC) “to develop recommendations for the protocol for receiving packet-based traffic and to propose efficient regional packet-based interconnection points.”<sup>2488</sup> T-Mobile and Sprint suggest acting on the TAC’s recommendations after public notice and the opportunity for comment.<sup>2489</sup> We seek comment on T-Mobile and Sprint’s proposal. If the Commission moves forward with an approach like T-Mobile/Sprint’s, how much time should the Commission allow for each of the two time periods proposed?<sup>2490</sup> Based on the transition periods adopted in this Order, how would this two-step approach work?

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<sup>2485</sup> See, e.g., Letter from Teresa K. Gaugler, Federal Regulatory Counsel, XO, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-119, 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Attach. at 5 (filed Sept. 6, 2011); Letter from Helen E. Disenhaus, counsel for Hypercube, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, at 1-2 & Attach. at 2-3 (filed Sept. 30, 2011).

<sup>2486</sup> See *infra* paras. 1381-1383.

<sup>2487</sup> See Letter from Kathleen O’Brien Ham, VP – Federal Regulatory Affairs, T-Mobile, and Charles W. McKee, VP – Government Affairs, Sprint, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Jan. 21, 2011) (T-Mobile/Sprint Jan. 21, 2011 *Ex Parte* Letter). In its comments Level 3 suggests that the Commission allow for a market-determined number of POIs rather than mandating a specific number of POIs, i.e. one per state. See Level 3 *USF/ICC Transformation NPRM* Comments at 12.

<sup>2488</sup> T-Mobile/Sprint Jan. 21, 2011 *Ex Parte* Letter at 3. Specifically, Sprint suggests that the Commission refer to the TAC as soon as possible “(1) the locations where packetized voice traffic should be exchanged; and (2) a set of minimum (and default only) technical requirements pertaining to the transport of voice traffic that all IP networks would support.” Sprint Nextel *USF/ICC Transformation NPRM* Comments at 22.

<sup>2489</sup> See T-Mobile/Sprint Jan. 21, 2011 *Ex Parte* Letter at 3.

<sup>2490</sup> For example, in its comments Level 3 suggests a nine-year transition plan for comprehensive intercarrier compensation reform and suggests that Commission involvement in the transition to IP-to-IP interconnection also follow the nine-year timeframe. See Level 3 *USF/ICC Transformation NPRM* Comments at 3, 13.

1373. We also seek comment on XO's proposal to facilitate the move to IP-to-IP interconnection.<sup>2491</sup> XO recommends that the Commission "require every telecommunications carrier to provide IP-based carrier-to-carrier interconnection (directly or indirectly) within [five] years, regardless of the technology the carrier uses to provide services to its end users."<sup>2492</sup> During the transition period parties could continue to negotiate an agreement with a third party to fulfill its interconnection obligations.<sup>2493</sup> XO suggests that "[i]f a carrier chose to continue delivering traffic to the TDM POI, it would continue to pay higher intercarrier compensation rates"<sup>2494</sup> while the IP termination rate would be set lower to incentivize carriers to deliver traffic in an IP format and therefore deploy IP networks to avoid the costs of converting from TDM to IP.<sup>2495</sup> After the proposed five-year transition, XO recommends that terminating carriers would be able "to refuse to accept traffic via TDM interconnection where IP interconnection is available."<sup>2496</sup> We note that the Commission has adopted a different approach to intercarrier compensation for VoIP traffic in this Order than that recommended by XO. What impact would that have on XO's IP-to-IP interconnection proposal?<sup>2497</sup> In addition, is a five-year transition period to IP interconnection sufficient? Should the Commission allow providers to refuse TDM traffic as XO proposes? Are there any potential negative consequences for having different pricing for TDM and IP interconnection?

1374. We also observe that many providers interconnect indirectly today, and some commenters anticipate that indirect interconnection will remain important in an IP environment, as well.<sup>2498</sup> If an IP-to-IP interconnection policy framework granted providers the right to direct IP-to-IP interconnection, would this reduce or eliminate providers' incentives to interconnect indirectly? Alternatively, if the policy framework gave providers flexibility to interconnect either directly or indirectly, would this result in demand for indirect IP-to-IP interconnection that gives some providers incentives to offer services that enable third parties to interconnect on an IP-to-IP basis?

**(iii) Commercial Agreements Not Regulated by the Commission**

1375. We also seek comment on proposals to adopt a policy framework that would leave IP-to-IP interconnection largely unregulated by the Commission.

1376. *Incentives Under Unregulated Commercial Agreements.* Has the Commission, through its actions in this Order, sufficiently eliminated disincentives to IP-to-IP interconnection arising from

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<sup>2491</sup> See XO *USF/ICC Transformation NPRM* Comments at 31. See also Letter from Tiki Gaugler, Senior Manager & Counsel, XO to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, at Attach. (filed Sept. 10, 2010) (Sept. 10, 2010 XO *Ex Parte* Letter).

<sup>2492</sup> XO *USF/ICC Transformation NPRM* Comments at 31. XO also suggests that the Commission eliminate LATA and other jurisdictional boundaries for traffic exchanged in IP. See *id.*

<sup>2493</sup> See *id.*

<sup>2494</sup> *Id.* at 32.

<sup>2495</sup> See *id.*

<sup>2496</sup> *Id.* at 33.

<sup>2497</sup> See, e.g., COMPTTEL *USF/ICC Transformation NPRM* Comments at 5 ("Individual carriers' business plans will dictate the timing of network upgrades").

<sup>2498</sup> See, e.g., Sprint July 29, 2011 *Ex Parte* Letter at 9 ("It is not realistic to believe that all 1,800 to 2,000 networks will connect directly with each other. Rather, as is the case today with PSTN interconnection, in many circumstances it will be more efficient for two networks to interconnect indirectly with each other, using an IP network operated by a third party.").

intercarrier compensation rules?<sup>2499</sup> Even if there were no disincentive arising from the intercarrier compensation rules, would some competitors seek to deny IP-to-IP interconnection on reasonable rates, terms, and conditions to raise their rivals' costs?<sup>2500</sup> Are there circumstances where a refusal to interconnect on an IP-to-IP basis would result in service disruptions?<sup>2501</sup>

1377. *Specific Proposals for Unregulated Commercial Agreements.* Verizon contends that “[t]he efficient way to allow IP interconnection arrangements to develop would be to follow . . . the tremendously successful example of the Internet, which relies upon voluntarily negotiated commercial agreements developed over time and fueled by providers’ strong incentives to interconnect their networks.”<sup>2502</sup> As AT&T argues, “the interdependence of IP networks, along with the multiplicity of indirect paths into any broadband ISP’s network—for the transmission of a VoIP call or any other type of IP application—deprive any such ISP of any conceivable terminating access ‘monopoly’ over traffic bound for its subscribers.”<sup>2503</sup> Thus, commenters contend that the “government should avoid prescribing the terms that will govern complex and evolving relationships among private sector actors.”<sup>2504</sup> In other contexts, the Commission has recognized that a provider might not always voluntarily grant another provider access to its network on just and reasonable rates, terms, and conditions and that, in certain circumstances, some regulatory protections might be warranted.<sup>2505</sup> Is interconnection in this context distinguishable, and if so, how? If not, how could the Commission identify the circumstances where a less regulated (or unregulated) approach might be warranted from those where some regulation is needed?

#### (iv) Other Proposals and Related Issues

1378. In addition to the specific proposals described above, we seek comment on any alternative approaches that commenters would suggest. In addition to the policy merits of the approach, we seek comment on the Commission’s legal authority to adopt the approach, and how that approach would be implemented, including any new rules or rule changes.

1379. We also observe that there is a growing problem of calls to rural customers that are being delayed or that fail to connect.<sup>2506</sup> We seek comment on whether any issues related to those concerns are

<sup>2499</sup> We note that the Order does not fully reform all intercarrier compensation elements, and we seek comment in the FNPRM regarding how to complete the reform of those elements. *See supra* Section XVII.M.

<sup>2500</sup> *See, e.g.,* COMPTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 8 n.15 (“Early in the adoption of [Managed Packet transport] arrangements, however, incumbents have the incentive to impose additional costs on rivals that have deployed more efficient Managed Packet technology by requiring that competitive entrants interconnect through the incumbent’s obsolete circuit-switched technology, even where a more efficient Managed Packet transport facility is available.”).

<sup>2501</sup> *See, e.g.,* COMPTEL Nov. 1, 2010 *Ex Parte* Letter, Attach. at 5-6 (describing a position taken by AT&T).

<sup>2502</sup> Verizon *USF/ICC Transformation NPRM* Comments at 16.

<sup>2503</sup> AT&T *USF/ICC Transformation NPRM* Reply at 11.

<sup>2504</sup> Verizon *USF/ICC Transformation NPRM* Comments at 16-17. *See also* CenturyLink *USF/ICC Transformation NPRM* Comments at 71; AT&T *USF/ICC Transformation NPRM* Reply at 13-14.

<sup>2505</sup> *CMRS Interconnection Second NPRM*, 10 FCC Rcd at 10682-83, paras. 31-32. *See also, e.g.,* 2011 *Pole Attachment Order*, 26 FCC Rcd at 5327, para. 199 (discussing incumbent LEC concerns about the ability to negotiate access to electric utilities’ pole networks on just and reasonable rates, terms, and conditions, notwithstanding the fact that the incumbent LEC itself owns a pole network).

<sup>2506</sup> *See, e.g.,* *FCC Launches Rural Call Completion Task Force to Address Call Routing and Termination Problems In Rural America*, News Release, (rel. Sept. 26, 2011). The task force recently held a workshop “to identify specific (continued...) ”

affected by carriers' interconnection on an IP-to-IP basis, or to any interconnection policy framework the Commission might adopt in that context. Are there components of, or modifications to, any such framework that the Commission should consider in light of concerns about calls being delayed or failing to connect?

**b. Statutory Interconnection Frameworks**

1380. We anticipate that the Commission may need to take some steps to enable the efficient transition to IP-to-IP interconnection, and we seek comment on the contours of our statutory authority in this regard. Just as there are varied positions regarding the appropriate policy framework for IP-to-IP interconnection, so too are there varied positions on the application of various statutory provisions in this regard. We therefore seek comment on the appropriate interpretation of statutory interconnection requirements and other possible regulatory authority for the Commission to adopt a policy framework governing IP-to-IP interconnection. In addition, insofar as the Commission addresses IP-to-IP interconnection through a statutory framework historically applied to TDM traffic, we seek comment on whether any resulting changes will be required to the application of those historical TDM interconnection requirements, either through rule changes or forbearance.

1381. *Section 251.* We agree with commenters that “nothing in the language of [s]ection 251 limits the applicability of a carrier’s statutory interconnection obligations to circuit-switched voice traffic”<sup>2507</sup> and that the language is in fact technology neutral.<sup>2508</sup> In addition, we seek comment on whether the provisions of section 251 interconnection are also service neutral, or do they vary with the particular services (e.g., voice vs. data, telecommunications services vs. information services) being exchanged? If so, on what basis, and in what ways, do they vary? A number of commenters go on to contend that the Commission can regulate IP-to-IP interconnection pursuant to section 251 of the Act.<sup>2509</sup> If the Commission were to adopt IP-to-IP interconnection regulations under the section 251 framework, would those regulations serve as a default in the absence of a negotiated IP-to-IP interconnection agreement between parties?<sup>2510</sup> In addition to those overarching considerations regarding the application of section 251 generally, we recognize that the scope of the interconnection requirements of sections

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causes of the problem and to discuss potential solutions with key stakeholders.” *See FCC Announces Agenda for October 18 Rural Call Completion Workshop*, Public Notice, DA 11-1715 (rel. Oct. 14, 2011).

<sup>2507</sup> COMPTTEL *USF/ICC Transformation NPRM* Comments at 5. “The Commission has already determined that Section 251 entitles telecommunications carriers to interconnect for the purpose of exchanging VoIP traffic with incumbent LECs and that a contrary decision would impede the development of VoIP competition and broadband deployment.” *Id.* at 6 (citing *Time-Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, As Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513, 3517, 3519-20, paras. 8, 13 (2007) (*Time Warner Cable Order*)).

<sup>2508</sup> *See, e.g., XO USF/ICC Transformation NPRM* Reply at 5-6 (“Despite protestations of the ILECs, the interconnection obligations of sections 251 and 252 are technology neutral and not targeted to apply only to legacy TDM networks that existed at the time the Telecommunications Act was passed.”).

<sup>2509</sup> *See, e.g., COMPTTEL USF/ICC Transformation NPRM* Comments at 4-9; *XO USF/ICC Transformation NPRM* Section XV Comments at 15-17; *Cablevision USF/ICC Transformation NPRM* Reply at 2-11; Letter from Donna N. Lampert, Counsel to Google Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 at 2-3 (filed June 16, 2011) (Google June 16, 2011 *Ex Parte* Letter).

<sup>2510</sup> *See XO USF/ICC Transformation NPRM* Comments at 31.

251(a)(1) and 251(c)(2) are tied to factual circumstances or otherwise circumscribed in various ways, and we seek comment below on the resulting implications in the context of IP-to-IP interconnection.

1382. *Section 251(a)(1)*. Section 251(a)(1) of the Act requires each telecommunications carrier “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”<sup>2511</sup> The Commission previously has recognized that this provision gives carriers the right to interconnect for purposes of exchanging VoIP traffic.<sup>2512</sup> However, could a carrier satisfy its obligation under section 251(a)(1) by agreeing to interconnect directly or indirectly only in TDM, or could the Commission require IP-to-IP interconnection in some circumstances?

1383. Section 251(a)(1) does not expressly specify how a particular pair of interconnecting carriers will decide whether to interconnect directly or indirectly.<sup>2513</sup> How should the Commission interpret section 251(a)(1) in this regard? If the Commission were to require IP-to-IP interconnection under section 251(a)(1), would this effectively require direct interconnection in situations where there was no third party that could facilitate indirect IP-to-IP interconnection? Would this be consistent with the Commission’s prior interpretation of section 251(a)(1) that “telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices”?<sup>2514</sup> Should the Commission interpret section 251(a)(1) to allow the carrier requesting interconnection to decide whether interconnection will be direct or indirect or should we otherwise formally designate one of the carriers as entitled to insist upon direct (rather than indirect) interconnection? If so, which carrier should be entitled to make that choice, and how would such a framework be implemented?

1384. In general, how would IP-to-IP interconnection be implemented under section 251(a)(1)?<sup>2515</sup> To what extent should the Commission specify *ex ante* rules governing the rates, terms, and conditions of IP-to-IP interconnection under section 251(a)(1), or could those issues be left to case-by-case evaluation in state arbitrations or disputes brought before the Commission? If the Commission did not address these issues through *ex ante* rules, what standards or guidelines would apply in resolving disputes?

1385. *Section 251(c)(2)*. Section 251(c)(2) requires incumbent LECs to “provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network,” subject to certain conditions and criteria.<sup>2516</sup> Such interconnection is “for the transmission and routing of telephone exchange service and exchange access.”<sup>2517</sup> Interconnection must be direct, and at any “technically feasible point within the carrier’s network”<sup>2518</sup> that is “at least

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<sup>2511</sup> 47 U.S.C. § 251(a)(1).

<sup>2512</sup> *Interconnection Clarification Order*, 26 FCC Rcd at 8273-74 paras. 26-27.

<sup>2513</sup> See, e.g., PAETEC *USF/ICC Transformation NPRM Reply* at 11, 12 (“Although section 251(a)(1) requires all telecommunications carriers to interconnect, it permits direct or indirect interconnection.”).

<sup>2514</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15991, para. 997 (finding further that “indirect connection (e.g., two non-incumbent LECs interconnecting with an incumbent LEC’s network) satisfies a telecommunications carrier’s duty to interconnect pursuant to section 251(a)”).

<sup>2515</sup> See, e.g., PAETEC *USF/ICC Transformation NPRM Reply* at 13 (“[S]ection 251(a)(1) lacks the detail and standards necessary to establish the framework for IP-IP interconnection.”).

<sup>2516</sup> 47 U.S.C. § 251(c)(2).

<sup>2517</sup> 47 U.S.C. § 251(c)(2)(A).

<sup>2518</sup> 47 U.S.C. § 251(c)(2)(B).

equal in quality to that provided by the [incumbent LEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.”<sup>2519</sup> Finally, incumbent LECs must provide interconnection under section 251(c)(2) “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”<sup>2520</sup> We seek comment on whether the Commission should set a policy framework for IP-to-IP interconnection under section 251(c)(2), including on the specific issues below.

1386. We seek comment on the scope of an “incumbent local exchange carrier” for purposes of section 251(c)(2).<sup>2521</sup> The Commission has recognized that an entity that meets the definition of “incumbent local exchange carrier” in section 251(h) is treated as an incumbent LEC for purposes of the obligations imposed by section 251 even if it also provides services other than pure “telephone exchange service” and “exchange access.”<sup>2522</sup> Thus, under the statute, an incumbent LEC retains its status as an incumbent LEC<sup>2523</sup> as long as it remains a “local exchange carrier.”<sup>2524</sup>

1387. To the extent that, at some point in the future, an entity that historically was classified as an incumbent LEC ceased offering circuit-switched voice telephone service,<sup>2525</sup> and instead offered only VoIP service, we seek comment on whether that entity would remain a “local exchange carrier” (to the extent that it did not otherwise offer services that were “telephone exchange service” or “exchange access”).<sup>2526</sup> We note that the Commission has not broadly determined whether VoIP services are

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<sup>2519</sup> 47 U.S.C. § 251(c)(2)(C).

<sup>2520</sup> 47 U.S.C. § 251(c)(2)(D).

<sup>2521</sup> 47 U.S.C. § 251(c)(2).

<sup>2522</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91, Order on Remand, 15 FCC Rcd 385, 388-91, paras. 7-14 (1999), *aff’d in pertinent part WorldCom v. FCC.*, 246 F.3d 690 (D.C. Cir. 2001).

<sup>2523</sup> It is nonetheless possible that an incumbent LEC’s marketplace status could change such that forbearance from certain incumbent LEC regulations might be warranted. *See, e.g., Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Resale, Unbundling and Other Incumbent Local Exchange Requirements Contained in Sections 251 and 271 of the Telecommunications Act of 1996 in the Terry, Montana Exchange*, WC Docket No. 07-9, Memorandum Opinion and Order, 23 FCC Rcd 7257 (2008).

<sup>2524</sup> The definition of “incumbent local exchange carrier” in section 251(h) requires that the entity be a “local exchange carrier.” 47 U.S.C. § 251(h)(1) (“For purposes of this section, the term ‘incumbent local exchange carrier’ means, with respect to an area, *the local exchange carrier that*” meets certain criteria) (emphasis added). *See also* 47 U.S.C. § 251(h)(2) (allowing the treatment of other local exchange carriers as incumbent LECs if certain conditions are met); *WorldCom v. FCC*, 246 F.3d at 694 (citing the Commission’s brief and statements at oral argument “acknowledging that a carrier must still be a ‘live LEC’ to be an incumbent LEC”). A “local exchange carrier” is defined as “any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c) of this title, except to the extent that the Commission finds that such service should be included in the definition of such term.” 47 U.S.C. § 153(26).

<sup>2525</sup> We note that an existing incumbent LEC’s ability to discontinue such services would be contingent upon Commission approval based on, among other things, a “[s]tatement of the factors showing that neither present nor future public convenience and necessity would be adversely affected by the granting of the application.” 47 C.F.R. § 63.505(i).

<sup>2526</sup> The provider might continue to offer special access services, for example, and thus remain a local exchange carrier (and thus an incumbent LEC) on that basis. *See, e.g., Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al.*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14860-61, para. 9 & n.15 (2005) (*Wireline Broadband Order*) (noting various high capacity access services, including Frame Relay and ATM, being offered on a common carrier basis).

“telecommunications services” or “information services,” or whether such VoIP services constitute “telephone exchange service” or “exchange access.” To what extent would the Commission need to classify VoIP services as “telecommunications services” or “information services” to resolve whether the provider remained a LEC?<sup>2527</sup> Under the reasoning of prior Commission decisions, we do not believe that a retail service must be classified as a “telecommunications service” for the provider carrying that traffic (whether the provider of the retail service or a third party) to be offering “telephone exchange service” or “exchange access.”<sup>2528</sup> With specific respect to VoIP, we note that some providers contend that the classification of their retail VoIP service is irrelevant to determining whether “telephone exchange service” and/or “exchange access” is being provided as an input to that service.<sup>2529</sup> We seek comment on these issues.

1388. In addition, the record reveals that today, some incumbent LECs are offering IP services through affiliates. Some commenters contend that incumbent LECs are doing so simply in an effort to evade the application of incumbent LEC-specific legal requirements on those facilities and services,<sup>2530</sup> and we would be concerned if that were the case. We note that the D.C. Circuit has held that “the Commission may not permit an ILEC to avoid § 251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services.”<sup>2531</sup> In reaching that conclusion, the court relied on the fact that the affiliate at issue was providing “services with equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent, marketed under the name of its ILEC parent.”<sup>2532</sup> That holding remains applicable here, but we also seek comment more broadly on when an

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<sup>2527</sup> Some commenters suggest that the Commission classified exchange access as a telecommunications service in the *Time Warner Cable Order* and/or *Universal Service First Report and Order*. See Cablevision-Charter Section XV Comments at 8 n.10 (citing *Time Warner Cable Order*, 22 FCC Rcd at 3517-19, paras. 9-12; *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9177-78, para. 785 (1997) (*Universal Service First Report and Order*)). Although those decisions recognize that exchange access can be offered on a common carrier basis, they do not address the question whether a service must be offered on a common carrier basis to constitute “exchange access.”

<sup>2528</sup> See, e.g., *ESP Exemption Order*, 3 FCC Rcd at 2631, 2635, para. 2 n.8; *GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148*, CC Docket No. 98-79, 13 FCC Rcd 22466, 22469-70, para. 7 (1998) (*GTE DSL Order*). See also *supra* Section XIV.C.1.

<sup>2529</sup> See, e.g., Cablevision-Charter Section XV Comments at 8-9 & n.14; Time Warner Cable Section XV Comments at 6-7; Bright House Section XV Reply at 3-4 n.6 See also, e.g., COMPTTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 4 (“the continuing need for a regulatory backstop to negotiations for *wholesale* voice traffic exchange has no bearing on whether or how *retail* voice services offered to end users are regulated”) (emphasis in original).

<sup>2530</sup> See, e.g., COMPTTEL *USF/ICC Transformation NPRM* Comments at 7 (“In an apparent effort to shield their IP networks and SIP termination services from negotiated or arbitrated interconnection agreements with other carriers, AT&T, Verizon and CenturyLink/Qwest offer their Internet/IP services through various affiliates (AT&T Internet Services, Verizon Business, Qwest Long Distance) rather than through their regulated local exchange carrier operating companies that provide service predominantly over the public switched telephone network (‘PSTN’).”); PAETEC, *et al. USF/ICC Transformation NPRM* Reply at 4 (“AT&T has deployed soft switches in its unregulated affiliates, instead of its ILECs, and used this corporate shell game in an attempt to avoid any obligation to offer IP interconnection to requesting carriers.”). See also Amicus Brief of tw telecom of texas *et al.*, PUC Docket No. 26381 at 3-5 in Letter from Mary C. Albert, COMPTTEL, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket No. 10-143 (filed Nov. 1, 2010) (COMPTTEL Nov. 1, 2010 *Ex Parte* Letter).

<sup>2531</sup> *Ass’n of Commc’ns Enterprises v. FCC*, 235 F.3d 662, 668 (D.C. Cir. 2001), *amended by Ass’n of Commc’ns Enterprises v. FCC* (D.C. Cir. Jan. 18, 2001) (*ASCENT*).

<sup>2532</sup> *Id.* In the *ASCENT* decision, the D.C. Circuit concluded that the Commission’s interpretation of the Act, in seeking to allow SBC to avoid section 251(c) obligations through the use of an affiliate, was unreasonable “[w]hether one concludes that the Commission has actually forborne” from obligations imposed on the incumbent (continued...)

affiliate should be treated as an incumbent LEC under circumstances beyond those squarely addressed in that decision. What factors or considerations should be weighed in making that evaluation? Alternatively, to what extent would those same, or similar, considerations be necessary to a finding that the affiliate is a “successor or assign” of the incumbent LEC within the meaning of section 251(h)(1)?<sup>2533</sup> Could the affiliate be a “successor or assign” if it satisfies only a subset of those considerations or different considerations? As another alternative, even if an affiliate is not a “successor or assign” of the incumbent LEC under section 251(h)(1), would the Commission nevertheless be warranted to treat it as an incumbent LEC under section 251(h)(2)?<sup>2534</sup> To treat the affiliate as an incumbent LEC would require finding that it is a LEC, potentially implicating many of the same issues raised above regarding the classification of a retail VoIP provider or its carrier partner as a LEC.<sup>2535</sup> Would such affiliates be classified as LECs under the considerations raised above or based on other factors? If an affiliate is treated as an incumbent LEC in its own right under section 251(h)(1) or (h)(2), what are the implications for how section 251(c) applies? For example, if a requesting carrier were entitled to IP-to-IP interconnection with that affiliate under section 251(c)(2), could it use that interconnection arrangement to exchange traffic only with the customers of the affiliate, or could it use that arrangement to exchange traffic with the original incumbent LEC?

1389. Section 251(c)(2)(A) requires that interconnection obtained under 251(c)(2) be “for the transmission and routing of telephone exchange service and exchange access.”<sup>2536</sup> We seek comment on whether traffic exchanged via IP-to-IP interconnection would meet those criteria. We note in this regard that some providers of facilities-based retail VoIP services state that they are providing those services on a common carrier basis,<sup>2537</sup> and expect that those services would include the provision of “telephone exchange service” and/or “exchange access” to the same extent as comparable services provided using TDM or other transmission protocols. Other providers of retail VoIP services assert that, regardless of the classification of the retail VoIP service, their carrier partners are providing “telephone exchange service” (Continued from previous page) \_\_\_\_\_

LEC (suggesting that the affiliate potentially could, in some sense, be viewed as part of the incumbent LEC, “or whether [the Commission’s] interpretation of ‘successor or assign’ is unreasonable.” *Id.* We seek comment on each of these scenarios (among others) below.

<sup>2533</sup> See, e.g., Letter from Howard J. Symons, counsel for Cablevision, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket No. 01-92, 96-45, GN Docket No. 09-51, at 3-5 (filed Oct. 20, 2011) (Cablevision Oct. 20, 2011 *Ex Parte* Letter) (discussing the “successor or assign” analysis under Commission and court precedent).

<sup>2534</sup> 47 U.S.C. § 251(h)(2) provides that “The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if—

- (A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);
- (B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and
- (C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.”

<sup>2535</sup> See *supra* para. 1386.

<sup>2536</sup> 47 U.S.C. § 251(c)(2)(A).

<sup>2537</sup> See, e.g., Petition for Declaratory Ruling That tw telecom inc. Has the Right to Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as Amended, for the Transmission and Routing of tw telecom’s Facilities-Based VoIP Services and IP-in-the-Middle Voice Services, WC Docket No. 11-119 (filed June 30, 2011).

and/or “exchange access.”<sup>2538</sup> Although the record reveals that these carriers typically provide these services at least in part in TDM today,<sup>2539</sup> we do not believe that their regulatory status should change if they simply performed the same or comparable functions using a different protocol, such as IP. We seek comment on these views, as well as on the need to address this question given our holdings that carriers that otherwise have section 251(c)(2) interconnection arrangements for the exchange of telephone exchange service and/or exchange access traffic are free to use those arrangements to exchange other traffic—including toll traffic and/or information services traffic—with the incumbent LEC, as well.<sup>2540</sup>

1390. In the *Local Competition First Report and Order*, the Commission held “that an IXC that requests interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others” is not entitled to interconnection under the language of section 251(c)(2)(A) because the IXC “is not seeking interconnection for the purpose of providing telephone exchange service,” nor is it “offering access, but rather is only obtaining access for its own traffic.”<sup>2541</sup> By contrast, some commenters assert that, in applying section 251(c)(2)(A), it is sufficient for the incumbent LEC to be providing “telephone exchange service” or “exchange access,” regardless of whether the requesting carrier is doing so.<sup>2542</sup> We seek comment on this view. Under this interpretation, are there any circumstances when a requesting carrier would not be entitled to interconnection under section 251(c)(2) because the incumbent LEC is not providing telephone exchange service or exchange access? For example, might Congress have anticipated that incumbent LECs eventually would offer interexchange services on an integrated basis?<sup>2543</sup> To what extent was the Commission’s prior interpretation the *Local Competition First Report and Order* motivated by commenters’ concerns that an alternative outcome would permit IXCs to evade the pre-1996 Act exchange access rules, including the payment of access charges, which were preserved under section 251(g)?<sup>2544</sup> Would those concerns be mitigated insofar as the Commission is superseding the pre-existing access charge regime in the Order above? Are there other reasons why the new interpretation of section 251(c)(2)(A) is warranted?

1391. Section 251(c)(2)(B) requires interconnection at any “technically feasible point within the carrier’s network.”<sup>2545</sup> We observe that IP-to-IP interconnection arrangements exist in the marketplace today, and seek comment on whether they demonstrate that IP-to-IP interconnection is

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<sup>2538</sup> See, e.g., Time Warner Cable Section XV Comments at 7; Cablevision-Charter Section XV Reply at 12; ; Bright House Section XV Reply at 3-4 n.6.

<sup>2539</sup> See, e.g., Cablevision-Charter Section XV Comments at 4; Cbeyond *et al.* Section XV Comments at 12 n.35; TCA Section XV Comments at 2.

<sup>2540</sup> See *supra* Section XIV.C.2.d(i). As described above with respect to the broader use of section 251(c)(2) interconnection arrangements, it will be necessary for the interconnection agreement to specifically address such usage to, for example, address the associated compensation. See *supra id.*

<sup>2541</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15598-99, para. 191.

<sup>2542</sup> See, e.g., Cablevision Oct. 20, 2011 *Ex Parte* Letter at 6-7.

<sup>2543</sup> See, e.g., 47 U.S.C. § 272(f)(1) (providing for the sunset of, among other things, separate affiliate requirements for the BOCs’ provision of in-region interLATA telecommunications services).

<sup>2544</sup> See, e.g., *Local Competition First Report and Order*, 11 FCC Rcd at 15595-96, para. 188 & n.385 (summarizing commenters expressing concern that permitting the use of section 251(c)(2) interconnection purely for the provision of interexchange service would allow evasion of the access charge regime, which was preserved under section 251(g)). But see *id.* at 15598-99, para. 191 (interpreting section 251(c)(2)(A) without expressly referencing those concerns).

<sup>2545</sup> 47 U.S.C. § 251(c)(2)(B).

technically feasible at particular points within a carrier's network.<sup>2546</sup> To what extent does the requirement that incumbent LECs modify their "facilities to the extent necessary to accommodate interconnection or access to network elements"<sup>2547</sup> inform the evaluation whether IP-to-IP interconnection is technically feasible at particular points in the network?

1392. Section 251(c)(2)(C) requires that the interconnection provided by an incumbent LEC be "at least equal in quality to that provided by the [incumbent LEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."<sup>2548</sup> To what extent are incumbent LECs interconnecting on an IP-to-IP basis with a "subsidiary, affiliate, or any other party" today, and at what quality? The Commission previously has interpreted this language to "require[] incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks."<sup>2549</sup> Consistent with this interpretation, to what extent must an incumbent LEC be using IP transmission in its own network before it could be required to provide IP-to-IP interconnection pursuant to this language, and to what extent is that occurring today?<sup>2550</sup> If the incumbent LEC is not otherwise interconnecting on an IP-to-IP basis with a "subsidiary, affiliate, or any other party," could the Commission require it to provide IP-to-IP interconnection as long as the other criteria of section 251(c)(2) are met? Should such interconnection be understood to be equal in quality to what the incumbent LEC provides others—albeit in a different protocol<sup>2551</sup>—or should it be understood to be requiring a "superior network"?<sup>2552</sup>

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<sup>2546</sup> See, e.g., Neutral Tandem *USF/ICC Transformation NPRM* Comments at 1-2; PAETEC *August 3 PN* Comments at 22-24. See also COMPTTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 11-12 ("In comparing networks [for evaluating technical feasibility], the substantial similarity of network facilities may evidenced, for example, by their adherence to the same interface or protocol standards.") (quoting *Local Competition First Report and Order*, 11 FCC Rcd at 15606, para. 204 (emphasis added)). Under Commission rules, the burden is on the "incumbent LEC that denies a request for a particular method of interconnection . . . [to] prove to the state commission that the requested method of interconnection . . . is not technically feasible." 47 C.F.R. § 51.323(d). Nonetheless, the Commission previously has elected to clarify certain methods of interconnection as technically feasible, and also to identify other categories as presumptively technically feasible. 47 C.F.R. §§ 51.323(b), (c).

<sup>2547</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15602, para. 198. As the Commission further concluded, "the 1996 Act bars consideration of costs in determining 'technically feasible' points of interconnection or access," although "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit." *Id.* at 15603, para. 199. But see, e.g., COMPTTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 7 n.13 ("Obviously, this paper does not suggest that an incumbent should be required to deploy a Managed Packet transport network to accommodate competitive entrants where it has not done so.").

<sup>2548</sup> 47 U.S.C. § 251(c)(2)(C).

<sup>2549</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15614-15, para. 224.

<sup>2550</sup> See, e.g., COMPTTEL Aug. 11, 2011 *Ex Parte* Letter, Attach. at 1 (contending that incumbent LECs "are actively deploying Managed Packet transport networks themselves").

<sup>2551</sup> In the *Non-Accounting Safeguards Order*, the Commission distinguished the requirements of section 272(c)(1) from those in section 251(c)(2) because the "equal in quality" language in section 251(c)(2) permitted "requesting entities [to] require [an incumbent LEC] to provide goods, facilities, services, or information that are different from those that the [incumbent LEC] provides to itself or to its affiliates." *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act Of 1934, As Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 22001, paras. 203-04 (1998) *remanded Bell Atlantic Telephone Companies v. FCC*, 1997 WL 307161 (D.C. Cir. Mar 31, 1997). But see, e.g., *Verizon MD, DC, WV Section 271 Order*, 18 FCC Rcd 5212 at 5275-76, para. 107 (2003) (holding that Verizon's failure to pass ANI through MF signaling did not violate the "equal in quality" requirement because, "[a]lthough (continued...)

1393. Section 251(c)(2)(D) requires that incumbent LECs provide interconnection “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”<sup>2553</sup> In the *Local Competition First Report and Order*, the Commission found that “minimum national standards for just, reasonable, and nondiscriminatory terms and conditions of interconnection will be in the public interest and will provide guidance to the parties and the states in the arbitration process and thereafter.”<sup>2554</sup> If the Commission concludes that IP-to-IP interconnection is required under section 251(c)(2), should it follow a similar approach and adopt minimum national standards? If so, what should those standards be? If not, what standards would be used to resolve arbitrations regarding the implementation of section 251(c)(2)?

1394. *Sections 201 and 332*. Historically, the Commission has imposed interconnection obligations pursuant to section 201 of the Act.<sup>2555</sup> Section 201 applies to interstate services, as well as to interconnection involving CMRS providers under section 332(c)(1)(B).<sup>2556</sup> Do sections 201 (and 332 in the case of CMRS providers) provide the Commission authority to mandate IP-to-IP interconnection, including for intrastate traffic either alone, or in conjunction with other provisions of the Act and the Clayton Act?<sup>2557</sup> If so, what standards or requirements would be appropriate, and how would those obligations be implemented? How should any IP-to-IP interconnection requirements regarding the exchange of access traffic be reconciled with the historical regulatory framework governing the exchange of such traffic with LECs, as well as with the Commission’s action in the accompanying Order to supersede the preexisting access charge regime and adopt a transition to a new regulatory framework for intercarrier compensation for access traffic?

1395. *Section 706 of the 1996 Act*. Some commenters suggest that section 706 would provide the Commission authority to regulate IP-to-IP interconnection.<sup>2558</sup> We seek comment on the relationship between the Commission’s statutory mandate in section 706 and regulation of IP-to-IP interconnection. If section 706 provides Commission authority to regulate IP-to-IP interconnection, what standards or requirements would be appropriate, and how would those obligations be implemented? If the Commission were to rely on section 706 of the 1996 Act to require IP-to-IP interconnection, would it also need to adopt associated complaint procedures, or could the existing informal and formal complaint processes, which derive from section 208, nonetheless be interpreted to extend more broadly than alleged violations of Title II duties?

(Continued from previous page) \_\_\_\_\_

Verizon does pass the ANI to interexchange carriers for long distance calls, it does not pass the ANI to any carriers for *local calls*.”).

<sup>2552</sup> See, e.g., *Iowa Utilities Board v. FCC*, 219 F.3d 744, 757-58 (2000) (“Subsection 251(c)(2)(C) requires the ILECs to provide interconnection ‘that is at least equal in quality to that provided by the local exchange carrier to itself....’ Nothing in the statute requires the ILECs to provide superior quality interconnection to its competitors.”).

<sup>2553</sup> 47 U.S.C. § 251(c)(2)(D).

<sup>2554</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15611, para. 216.

<sup>2555</sup> See, e.g., *Eighth Report and Order*, 19 FCC Rcd at 9137-38, paras. 60-61; 47 U.S.C. § 201(a).

<sup>2556</sup> See, e.g., *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1497-98, para. 230 (1994) (*CMRS Second Report and Order*); 47 U.S.C. § 332(c)(1)(B).

<sup>2557</sup> See *supra* para. 1352.

<sup>2558</sup> See, e.g., *Sprint USF/ICC Transformation NPRM Reply*, App. D at 9-12; COMPTTEL Aug. 11, 2011 *Ex Parte Letter*, Attach. at 13.

1396. *Section 256.* There also is some record support for imposing IP-to-IP interconnection requirements under section 256 of the Act.<sup>2559</sup> Section 256(a)(2) says that the purpose of the section is “to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.”<sup>2560</sup> Do commenters agree that section 256 authorizes Commission regulation of IP-to-IP interconnection? In particular, to what extent could section 256 provide a source of authority for such regulation given the statement in section 256(c) that “[n]othing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before February 8, 1996”?<sup>2561</sup> Even if it is not a direct source of authority in that regard, should it inform the Commission’s interpretation and application of other statutory provisions to require IP-to-IP interconnection?

1397. *Title I Authority over IP-to-IP Interconnection.* Does the Commission have ancillary authority to regulate IP-to-IP interconnection? For example, Sprint notes that the Commission has subject matter jurisdiction over traffic such as packetized voice traffic,<sup>2562</sup> and asserts that regulation of IP-to-IP interconnection is reasonably ancillary to the Commission’s authority under the Act.<sup>2563</sup> Sprint also asserts that its IP-to-IP interconnection proposals for the exchange of packetized voice traffic “are incidental to, and would affirmatively promote, specifically delegated powers under §§ 251-52” regarding network interconnection, intercarrier compensation, and dispute resolution.<sup>2564</sup> Sprint further argues that its proposed rules would advance other statutory policies regarding the promotion of competition, and the promotion of communications services, including advanced telecommunications services and the Internet, among other things.<sup>2565</sup> Thus, Sprint contends that “[even] if packetized voice services are . . . classified as information services, the Commission still possesses the authority to adopt these rule proposals under its Title I ‘ancillary’ authority.”<sup>2566</sup> We seek comment on Sprint’s analysis and other evaluations of whether the Commission has ancillary authority to regulate IP-to-IP interconnection in particular ways.<sup>2567</sup>

1398. *Other Sources of Authority.* We also seek comment on any other sources of Commission authority for adopting a policy framework for IP-to-IP interconnection. What is the scope and substance of the Commission’s authority to address IP-to-IP interconnection under that authority?

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<sup>2559</sup> See Google June 16, 2011 *Ex Parte* Letter at 2-3.

<sup>2560</sup> 47 U.S.C. § 256(a)(2).

<sup>2561</sup> 47 U.S.C. § 256(c); see also *Comcast*, 600 F.3d at 659 (acknowledging section 256’s objective, while adding that section 256 does not “‘expand[] . . . any authority that the Commission’ otherwise has under law”) (quoting 47 U.S.C. § 256(c)).

<sup>2562</sup> Sprint *USF/ICC Transformation NPRM* Reply, App. D at 3-4.

<sup>2563</sup> Sprint *USF/ICC Transformation NPRM* Reply, App. D at 4-9. See also, e.g., T-Mobile *USF/ICC Transformation NPRM* Comments at 21-22 (arguing that the Commission has ancillary authority to regulate IP-to-IP interconnection).

<sup>2564</sup> Sprint *USF/ICC Transformation NPRM* Reply, App. D at 5-7.

<sup>2565</sup> Sprint *USF/ICC Transformation NPRM* Reply, App. D at 7-9.

<sup>2566</sup> Sprint *USF/ICC Transformation NPRM* Reply, App. D at 1.

<sup>2567</sup> See, e.g., AT&T *USF/ICC Transformation NPRM* Reply at 20-21 (arguing that the Commission could not rely on ancillary authority to regulate IP-to-IP interconnection).

**Q. Further Call Signaling Rules for VoIP**

1399. In the Order accompanying this FNPRM, we adopt revised call signaling rules to address intercarrier compensation arbitrage practices that led to unbillable or “phantom” traffic. These rules apply to providers of interconnected VoIP service as that term is defined in the Commission’s rules.<sup>2568</sup> We also adopt a framework of intercarrier compensation obligations that applies to all VoIP-PSTN traffic, which is defined as “traffic exchanged over PSTN facilities that originates and/or terminates in IP format”<sup>2569</sup> and includes voice traffic from interconnected VoIP service providers as well as providers of one-way VoIP service that allow end users to place calls to, or receive calls from the PSTN, but not both (referred to herein as “one-way VoIP service”).<sup>2570</sup>

1400. We recognize that the scope of the intercarrier compensation obligations for VoIP providers adopted in the Order is broader than the definition of interconnected VoIP in our rules to which the call signaling obligations will apply. And, as with any instance where similar entities are treated differently under our rules, we are concerned about creating additional arbitrage opportunities. But, we also recognize that there may be technical difficulties associated with applying our revised call signaling rules to one-way VoIP service providers.<sup>2571</sup> The *August 3 Public Notice* sought comment on the application of call signaling rules to one-way VoIP service providers.<sup>2572</sup> There was relatively little comment on this issue, with some commenters suggesting that the Commission should not delay adoption of other intercarrier compensation reforms pending resolution of this issue.<sup>2573</sup> Now that the rules applicable to VoIP service providers adopted in the Order provide additional context, we seek comment again on the need for signaling rules for one-way VoIP service providers.<sup>2574</sup>

1401. If call signaling rules apply to one-way VoIP service providers, how could these requirements be implemented? Would one-way VoIP service providers have to obtain and use numbering resources? If call signaling rules were to apply signaling obligations to one-way VoIP service providers, at what point in a call path should the required signaling originate, i.e. at the gateway or elsewhere? Are there alternative approaches for how signaling rules could operate for originating callers that do not have a telephone number? In addition, would signaling rules be needed for all one-way VoIP service providers? Or, given the terminating carrier’s need for the information provided under our signaling rules, is it sufficient to focus only on providers of one-way VoIP service services that allow users to terminate voice calls to the PSTN (but not those that only allow users to receive calls from the PSTN)?

1402. If one-way VoIP service providers were permitted to use a number other than an actual North American Numbering Plan (NANP) telephone number associated with an originating caller in

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<sup>2568</sup> See 47 C.F.R § 9.3. Interconnected VoIP providers as defined in our rules include, for example, a service similar to the service offered by Vonage, where customers are able to make calls to the PSTN and are able to receive calls from it.

<sup>2569</sup> See *supra* para. 940.

<sup>2570</sup> An example of a one-way interconnected VoIP service is Skype’s “Call Phones or Mobile” service which allows users to make VoIP call from a computer to a PSTN telephone number. See <http://www.skype.com/intl/en-us/features/allfeatures/call-phones-and-mobiles/>.

<sup>2571</sup> See, e.g., Level 3 Section XV Comments at 10-11 (seeking clarification that compliance would not require one-way interconnected VoIP providers to obtain numbering resources).

<sup>2572</sup> See *August 3 Public Notice*, 26 FCC Rcd at 11128-29.

<sup>2573</sup> NECA *et al.* *August 3 PN* Comments at 50-51.

<sup>2574</sup> We initially sought comment on several of these questions in a public notice released August 3, 2001. See generally *August 3 Public Notice*.

required signaling, would such use lead to unintended or undesirable consequences? If so, should other types of carriers or entities also be entitled to use alternate numbering? Would there need to be numbering resources specifically assigned in the context of one-way VoIP services? Are there other signaling issues that we should consider with regard to one-way VoIP calls?

### **R. New Intercarrier Compensation Rules**

1403. Finally, we seek comment on whether the new rules adopted in the Order may result in any conflicts or inconsistencies.<sup>2575</sup> This could include conflicts or inconsistencies within the newly adopted rules or conflicts or inconsistencies between the new rules and the Commission's existing rules. If commenters believe conflicts or inconsistencies are present, we ask that they identify the specific rule or rules that may be affected, explain the perceived conflict or inconsistency, and propose language to address the conflict or inconsistency. Also, we seek comment on whether the new and revised rules we adopt today reflect all of the modifications to the intercarrier compensation regimes made in the Order. If not, we ask that parties identify in their comments the potential problem areas and propose specific language to address the possible oversight.

## **XVIII. DELEGATION TO REVISE RULES**

1404. Given the complexities associated with modifying existing rules as well as other reforms adopted in this Order, we delegate authority to the Wireline Competition Bureau and Wireless Telecommunications Bureau, as appropriate, to make any further rule revisions as necessary to ensure that the reforms adopted in this Order are properly reflected in the rules. This includes correcting any conflicts between the new or revised rules and existing rules as well as addressing any omissions or oversights. If any such rule changes are warranted, the Wireline Competition Bureau or Wireless Telecommunications Bureau, as appropriate, shall be responsible for such changes. We note that any entity that disagrees with a rule changed made on delegated authority will have the opportunity to file an Application for Review by the full Commission.<sup>2576</sup>

## **XIX. SEVERABILITY**

1405. All of the universal service and intercarrier compensation rules that are adopted in this Order are designed to work in unison to ensure the ubiquitous deployment of voice and broadband-capable networks to all Americans. However, each of the separate universal service and intercarrier compensation reforms we undertake in this Order serve a particular function toward the goal of ubiquitous voice and broadband service. Therefore, it is our intent that each of the rules adopted herein shall be severable. If any of the rules is declared invalid or unenforceable for any reason, it is our intent that the remaining rules shall remain in full force and effect.

## **XX. PROCEDURAL MATTERS**

### **A. Filing Requirements**

1406. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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<sup>2575</sup> See *infra* Appendix A.

<sup>2576</sup> See 47 U.S.C. § 155(c)(1).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

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## B. Paperwork Reduction Act Analysis

1407. The Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It has been or will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. We note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”<sup>2577</sup> We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix O, *infra*.

1408. The Further Notice of Proposed Rulemaking (FNPRM) contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,<sup>2578</sup> we seek specific comment on how we might “further reduce

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<sup>2577</sup> *Connect America Fund, Developing a Unified Intercarrier Compensation*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; FCC 11-13, Proposed Rule, 76 FR 11632, 11633 (Mar. 2, 2011).

<sup>2578</sup> Pub. L. No. 107-198.

the information collection burden for small business concerns with fewer than 25 employees.”<sup>2579</sup>

### C. Congressional Review Act

1409. The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

### D. Final Regulatory Flexibility Analysis

1410. The Regulatory Flexibility Act (RFA)<sup>2580</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>2581</sup> Accordingly, we have prepared a Final Regulatory Flexibility Analysis concerning the possible impact of the rule changes contained in the *Report and Order* on small entities. The Final Regulatory Flexibility Analysis is set forth in Appendix O.

### E. Initial Regulatory Flexibility Analysis

1411. As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>2582</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *Further Notice of Proposed Rulemaking*. The analysis is found in Appendix P. We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the FNPRM and must have a separate and distinct heading designating them as responses to the IRFA. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

## XXI. ORDERING CLAUSES

1412. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 1302, and sections 1.1 and 1.1421 of the Commission’s rules, 47 C.F.R. §§ 1.1, 1.421, this [[Report and Order]] and Further Notice of Proposed Rulemaking ARE ADOPTED, effective [[thirty (30) days]] after publication of the text or summary thereof in the Federal Register, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective [[immediately upon]] announcement in the Federal Register of OMB approval. It is our intention in adopting these rules that, if any of the rules that we retain, modify or adopt today, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

1413. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403 of the Communications Act of 1934, as

<sup>2579</sup> 44 U.S.C. § 3506(c)(4).

<sup>2580</sup> *See* 5 U.S.C. § 601–612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2581</sup> 5 U.S.C. § 605(b).

<sup>2582</sup> *See* 5 U.S.C. § 603.

amended, and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256 303(r), 332, 403, and 1302, and sections 1.1 and 1.1421 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.421, this *Further Notice of Proposed Rulemaking* IS hereby ADOPTED.

1414. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on Sections XVII.A-K of the *Further Notice of Proposed Rulemaking* on or before January 18, 2012, and reply comments on or before February 17, 2012, and comments on section XVII.L-R of this *Further Notice of Proposed Rulemaking* on or before February 24, 2012, and reply comments on or before March 30, 2012.

1415. IT IS FURTHER ORDERED, that the Petition of All American Telephone Co., Inc., e.Pinnacle Communications, Inc., and ChaseCom Regarding Agreements between Local Exchange Carriers and Service Providers filed on May 20, 2009 is DISMISSED.

1416. IT IS FURTHER ORDERED, that the Petition of AT&T For Interim Declaratory Ruling and Limited Waivers filed on July 17, 2008 is DENIED in part and DISMISSED as moot and WC Docket No. 08-152 is terminated.

1417. IT IS FURTHER ORDERED, that the Petition of Embarq Local Operating Companies for Waiver of Sections 61.3 and 61.44-61.48 of the Commission's Rules, and any Associated Rules Necessary to Permit it to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions filed on August 1, 2008 is DISMISSED as moot and WC Docket No. 08-160 is terminated.

1418. IT IS FURTHER ORDERED, that the Joint Michigan CLEC Petition for Declaratory Ruling that the State of Michigan's Statute 2009 PA 182 is Preempted Under Sections 253 and 254 of the Communications Act and Motion for Temporary Relief filed on February 12, 2010, is DISMISSED as moot and WC Docket No. 10-45 is terminated.

1419. IT IS FURTHER ORDERED, that the Petition of Global NAPS for Declaratory Ruling and for Preemption of the PA, NH and MD State Commissions filed on March 5, 2010 is GRANTED in part and DENIED in part and WC Docket No. 10-60 is terminated.

1420. IT IS FURTHER ORDERED, that the Petition of Vaya Telecom, Inc. Regarding LEC-to-LEC VoIP Traffic Exchanges filed on August 26, 2011 is GRANTED in part and DENIED in part.

1421. IT IS FURTHER ORDERED, that the Petition of Grande for Declaratory Ruling Regarding Compensation for IP-Originated Calls filed on October 3, 2005 is DENIED and WC Docket No. 05-283 is terminated.

1422. IT IS FURTHER ORDERED, that the Petition for Reconsideration of the American Association of Paging Carriers filed on April 29, 2005 is DENIED.

1423. IT IS FURTHER ORDERED, that the Rural Cellular Association Petition for Clarification or in the Alternative, Petition for Reconsideration, filed on April 29, 2005 is DENIED.

1424. IT IS FURTHER ORDERED, that pursuant to sections 201 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 254, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Petition for Waiver of Sections 54.309 and 54.313(d)(vi) of the Commission's Rules of Hawaiian Telcom, Inc. filed on December 31, 2007 is DENIED.

1425. IT IS FURTHER ORDERED that pursuant to sections 201 and 254 of the

**Federal Communications Commission**

**FCC 11-161**

Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 254, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration of Verizon Wireless filed on May 2, 2011 is DENIED

1426. IT IS FURTHER ORDERED that pursuant to sections 201 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 254, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration of Allied Wireless Communications Corp., et al., filed on October 4, 2010 is DENIED.

1427. IT IS FURTHER ORDERED that pursuant to sections 201 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 254, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Partial Reconsideration of SouthernLINC Wireless and the Universal Service for America Coalition filed on September 29, 2010 is DENIED.

1428. IT IS FURTHER ORDERED, that Parts 0, 1, 36, 51, 54, 61, 64, and 69 of the Commission's rules, 47 C.F.R. Parts 0, 1, 36, 51, 54, 61, 64 and 69, are AMENDED as set forth in Appendices [[XX]], and such rule amendments shall be effective [[30 days]] after the date of publication of the rule amendments in the Federal Register, except to the extent they contain information collections subject to PRA review. The rules that contain information collections subject to PRA review WILL BECOME EFFECTIVE following approval by the Office of Management and Budget.

1429. IT IS FURTHER ORDERED, that the Commission SHALL SEND a copy of this [[Report and Order and Further Notice of Proposed Rulemaking]] to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

1430. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this [[Report and Order and Further Notice of Proposed Rulemaking]], including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

### Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, 20, 36, 51, 54, 61, 64, 69 to read as follows:

#### **PART 0 – COMMISSION ORGANIZATION**

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended, 47 U.S.C. 155, 225, unless otherwise noted.

2. Amend § 0.91 by adding paragraph (p) as follows:

#### **§ 0.91 Functions of the Bureau.**

\* \* \* \* \*

(p) In coordination with the Wireless Telecommunications Bureau, serves as the Commission's principal policy and administrative staff resource with respect to the use of market-based mechanisms, including competitive bidding, to distribute universal service support. Develops, recommends and administers policies, programs, rules and procedures concerning the use of market-based mechanisms, including competitive bidding, to distribute universal service support.

3. Amend § 0.131 by adding paragraph (r) to read as follows:

#### **§ 0.131 Functions of the Bureau.**

\* \* \* \* \*

(r) In coordination with the Wireline Competition Bureau, serves as the Commission's principal policy and administrative staff resource with respect to the use of market-based mechanisms, including competitive bidding, to distribute universal service support. Develops, recommends and administers policies, programs, rules and procedures concerning the use of market-based mechanisms, including competitive bidding, to distribute universal service support.

#### **PART 1 – PRACTICE AND PROCEDURE**

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(j), 160, 201, 225, 303, and 309.

5. Add new subpart AA to part 1 to read as follows:

#### **Subpart AA – Competitive Bidding for Universal Service Support**

**Sec.**

1.21000 Purpose.

1.21001 Participation in Competitive Bidding for Support.

1.21002 Communications Prohibited During the Competitive Bidding Process.

1.21003 Competitive Bidding Process.

1.21004 Winning Bidder's Obligation to Apply for Support.

**§ 1.21000 Purpose.**

This subpart sets forth procedures for competitive bidding to determine the recipients of universal service support pursuant to part 54 and the amount(s) of support that each recipient respectively may receive, subject to post-auction procedures, when the Commission directs that such support shall be determined through competitive bidding.

**§ 1.21001 Participation in Competitive Bidding for Support.**

(a) Public Notice of the Application Process. The dates and procedures for submitting applications to participate in competitive bidding pursuant to this subpart shall be announced by public notice.

(b) Application Contents. An applicant to participate in competitive bidding pursuant to this subpart shall provide the following information in an acceptable form:

- (1) The identity of the applicant, *i.e.*, the party that seeks support, including any required information regarding parties that have an ownership or other interest in the applicant;
- (2) The identities of up to three individuals authorized to make or withdraw a bid on behalf of the applicant;
- (3) The identities of all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding;
- (4) Certification that the application discloses all real parties in interest to any agreements involving the applicant's participation in the competitive bidding;
- (5) Certification that the applicant and all applicable parties have complied with and will continue to comply with § 1.21002;
- (6) Certification that the applicant is in compliance with all statutory and regulatory requirements for receiving the universal service support that the applicant seeks;
- (7) Certification that the applicant will make any payment that may be required pursuant to § 1.21004;

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

(9) Such additional information as may be required.

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

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

(2) An applicant will not be permitted to participate in competitive bidding if the application does not identify the applicant as required by the public notice announcing application procedures or does not include all required certifications, as of the deadline for submitting applications.

(3) An applicant will not be permitted to participate in competitive bidding if the applicant has not provided any bond or deposit of funds required pursuant to § 1.21001(c), as of the applicable deadline.

(4) An applicant may not make major modifications to its application after the deadline for submitting the application. An applicant will not be permitted to participate in competitive bidding if Commission staff determines that the application requires major modifications to be made after that deadline. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or transfer of control, or any changes in the identity of the applicant, or any changes in the required certifications.

(5) An applicant may be permitted to make minor modifications to its application after the deadline for submitting applications. Minor modifications may be subject to a deadline specified by public notice. Minor modifications include correcting typographical errors and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(6) After receipt and review of the applications, an applicant that will be permitted participate in competitive bidding shall be identified in a public notice.

**§ 1.21002 Prohibition of Certain Communications During the Competitive Bidding Process.**

(a) Definition of Applicant. For purposes of this paragraph, the term "applicant" shall include any applicant, each party capable of controlling the applicant, and each party that may be controlled by the applicant or by a party capable of controlling the applicant.

(b) Certain Communications Prohibited. After the deadline for submitting applications to participate, an applicant is prohibited from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and is prohibited from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support, unless such applicants are members of a joint bidding arrangement identified on the application pursuant to § 1.21001(b)(4).

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

(d) Procedures for Reporting Potentially Prohibited Communications. Particular procedures for parties to report communications that may be prohibited under this rule may be established by public notice. If no such procedures are established by public notice, the party making the report shall do so in writing to the Chief of the Auctions and Spectrum Access Division by the most expeditious means available, including electronic transmission such as email.

**§ 1.21003 Competitive Bidding Process.**

(a) Public Notice of Competitive Bidding Procedures. Detailed competitive bidding procedures shall be established by public notice prior to the commencement of competitive bidding any time competitive bidding is conducted pursuant to this subpart.

(b) Competitive Bidding Procedures. The public notice detailing competitive bidding procedures may establish any of the following:

(1) Limits on the public availability of information regarding applicants, applications, and bids during a period of time covering the competitive bidding process, as well as procedures for parties to report the receipt of such non-public information during such periods;

(2) The way in which support may be made available for multiple identified areas by competitive bidding, *e.g.*, simultaneously or sequentially, and if the latter, in what grouping, if any, and order;

(3) The acceptable form for bids, including whether and how bids will be accepted on individual items and/or for combinations or packages of items;

(4) Reserve prices, either for discrete items or combinations or packages of items, as well as whether the reserve prices will be public or non-public during the competitive bidding process;

(5) The methods and times for submission of bids, whether remotely, by telephonic or electronic transmission, or in person;

- (6) The number of rounds during which bids may be submitted, e.g., one or more, and procedures for ending the bidding;
  - (7) Measurements of bidding activity in the aggregate or by individual applicants, together with requirements for minimum levels of bidding activity;
  - (8) Acceptable bid amounts at the opening of and over the course of bidding;
  - (9) Consistent with the public interest objectives of the competitive bidding, the process for reviewing bids and determining the winning bidders and the amount(s) of universal service support that each winning bidder may apply for, pursuant to applicable post-auction procedures;
  - (10) Procedures, if any, by which bidders may withdraw bids; and
  - (11) Procedures by which bidding may be delayed, suspended, or canceled before or after bidding begins for any reason that affects the fair and efficient conduct of the bidding, including natural disasters, technical failures, administrative necessity, or any other reason.
- (c) Apportioning Package Bids. If the public notice establishing detailed competitive bidding procedures adopts procedures for bidding for support on combinations or packages of geographic areas, the public notice also shall establish a methodology for apportioning such bids among the geographic areas within the combination or package for purposes of implementing any Commission rule or procedure that requires a discrete bid for support in relation to a specific geographic area.
- (d) Public Notice of Competitive Bidding Results. After the conclusion of competitive bidding, a public notice shall identify the winning bidders that may apply for the offered universal service support and the amount(s) of support for which they may apply, and shall detail the application procedures.

**§ 1.21004 Winning Bidder's Obligation To Apply for Support**

- (a) Timely and Sufficient Application. A winning bidder has a binding obligation to apply for support by the applicable deadline. A winning bidder that fails to file an application by the applicable deadline or that for any reason is not subsequently authorized to receive support has defaulted on its bid.
- (b) Liability for Default Payment. A winning bidder that defaults is liable for a default payment, which will be calculated by a method that will be established as provided in a public notice prior to competitive bidding. If the default payment is determined as a percentage of the defaulted bid amount, the default payment will not exceed twenty percent of the amount of the defaulted bid amount.
- (c) Additional Liabilities. A winning bidder that defaults, in addition to being liable for a default payment, shall be subject to such measures as the Commission may provide, including

but not limited to disqualification from future competitive bidding pursuant to this subpart AA, competitive bidding for universal service support.

**PART 20-Commercial Mobile Radio Services**

6. The authority citation for Part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 301, 303, 316, and 332 unless otherwise noted. Section 20.12 is also issued under 47 U.S.C. 1302.

7. Section 20.11 is amended by revising paragraph (b) to read as follows:

§20.11 Interconnection to facilities of local exchange carriers.

\* \* \* \* \*

(b) Local exchange carriers and commercial mobile radio service providers shall exchange Non-Access Telecommunications Traffic, as defined in § 51.701 of this chapter, under a bill-and-keep arrangement, as defined in § 51.713 of this chapter, unless they mutually agree otherwise.

\* \* \* \* \*

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

8. The authority citation for part 36 is revised to read as follows:

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

**Subpart A—General**

9. Add § 36.4 to subpart A to read as follows:

**§ 36.4 Streamlining procedures for processing petitions for waiver of study area boundaries.**

Effective January 1, 2012, local exchange carriers seeking a change in study area boundaries shall be subject to the following procedure:

(a) Public Notice and Review Period. Upon determination by the Wireline Competition Bureau that a petitioner has filed a complete petition for study area waiver and that the petition is appropriate for streamlined treatment, the Wireline Competition Bureau will issue a public notice seeking comment on the petition. Unless otherwise notified by the Wireline Competition Bureau, the petitioner is permitted to alter its study area boundaries on the 60th day after the

reply comment due date, but only in accordance with the boundary changes proposed in its application.

(b) Comment Cycle. Comments on petitions for waiver may be filed during the first 30 days following public notice, and reply comments may be filed during the first 45 days following public notice, unless the public notice specifies a different pleading cycle. All comments on petitions for waiver shall be filed electronically, and shall satisfy such other filing requirements as may be specified in the public notice.

10. Revise subpart F heading to read as follows:

Subpart F—High-Cost Loop Support

11. Amend § 36.601 by adding the following two sentences at the end of paragraph (a) and removing paragraph (c) to read as follows:

**§ 36.601 General**

(a) \*\*\*Effective January 1, 2012, this subpart will only apply to incumbent local exchange carriers that are rate-of-return carriers not affiliated, as “affiliated companies” are defined in § 32.9000 of this chapter, with price cap local exchange carriers. Rate-of-return carriers and price cap local exchange carriers are defined pursuant to § 54.5 and § 61.3(aa) of this chapter, respectively.

\*\*\*\*\*

**§ 36.602 [Removed]**

12. Section 36.602 is removed.

13. Section 36.603 is amended by revising the section heading, and paragraph (a) to read as follows:

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

(a) Beginning January 1, 2003, the annual amount of the rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment calculated pursuant to this subpart F shall not exceed the amount of the total rural incumbent local exchange carrier loop cost expense adjustment for the immediately preceding calendar year, multiplied times one plus the Rural Growth Factor calculated pursuant to §36.604. Beginning January 1, 2012, the total annual amount of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall not exceed the expense adjustment calculated for rate-of-return regulated carriers pursuant to this paragraph. Beginning January 1, 2012, rate-of-return local exchange carriers shall not include rate-of-return carriers affiliated with price cap local exchange carriers as set forth in § 36.601(a) of this subpart. Beginning January 1, 2013, and each calendar year thereafter, the total annual amount of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall not exceed the amount for the immediately

preceding calendar year, multiplied times one plus the Rural Growth Factor calculated pursuant to § 36.604.

\*\*\*\*\*

14. Revise § 36.604 to read as follows:

**§ 36.604 Calculation of the rural growth factor.**

(a) Until July 30, 2012, the Rural Growth Factor (RGF) is equal to the sum of the annual percentage change in the United States Department of Commerce's Gross Domestic Product—Chained Price Index (GPD-CPI) plus the percentage change in the total number of rural incumbent local exchange carrier working loops during the calendar year preceding the July 31st filing submitted pursuant to § 36.611. The percentage change in total rural incumbent local exchange carrier working loops shall be based upon the difference between the total number of rural incumbent local exchange carrier working loops on December 31 of the calendar year preceding the July 31st filing and the total number of rural incumbent local exchange carrier working loops on December 31 of the second calendar year preceding that filing, both determined by the company's submissions pursuant to §36.611. Loops acquired by rural incumbent local exchange carriers shall not be included in the RGF calculation.

(b) Effective July 31, 2012, pursuant to §36.601(a) of this subpart, the calculation of the Rural Growth Factor shall not include price cap carrier working loops and rate-of-return local exchange carrier working loops of companies that were affiliated with price cap carriers during the calendar year preceding the July 31<sup>st</sup> filing submitted pursuant to § 36.611.

15. Amend §36.605 by revising paragraphs (a), (b) and (c) and (c)(1) as follows:

**§ 36.605 Calculation of safety net additive.**

(a) “Safety net additive support.” Beginning January 1, 2012, only those local exchange carriers that qualified in 2010 or earlier, based on 2009 or prior year costs, shall be eligible to receive safety net additive pursuant to paragraph (c) of this section. Local exchange carriers shall not receive safety net additive for growth of Telecommunications Plant in Service in 2011, as compared to 2010. A local exchange carrier qualifying for safety net additive shall no longer receive safety net additive after January 1, 2012 unless the carrier’s realized total growth in Telecommunications Plant in Service was more than 14 percent during the qualifying period, defined as 2010 or earlier, pursuant to paragraph (c) of this section. A local exchange carrier qualifying for safety net additive that fails to meet the requirements set forth in the preceding sentence will receive 50 percent of the safety net additive that it otherwise would have received pursuant to this rule in 2012 and will cease to receive safety net additive in 2013 and thereafter.

(b) Calculation of safety net additive support for companies that qualified prior to 2011: Safety net additive support is equal to the amount of capped support calculated pursuant to this subpart F in the qualifying year minus the amount of support in the year prior to qualifying for support subtracted from the difference between the uncapped expense adjustment for the study area in the qualifying year minus the uncapped expense adjustment in the year prior to qualifying for support as shown in the following equation: Safety net additive support = (Uncapped support in

the qualifying year – Uncapped support in the base year) – (Capped support in the qualifying year – Amount of support received in the base year).

(c) Operation of safety net additive support for companies that qualified prior to 2011: (1) In any year in which the total carrier loop cost expense adjustment is limited by the provisions of § 36.603 a rate-of-return incumbent local exchange carrier, as set forth in §36.601(a) of this subpart, shall receive safety net additive support as calculated in paragraph (b) of this section, if in any study area, the rural incumbent local exchange carrier realizes growth in end of period Telecommunications Plant in Service (TPIS), as prescribed in § 32.2001 of this chapter, on a per loop basis, of at least 14 percent more than the study area's TPIS per loop investment at the end of the prior period.

\*\*\*\*\*

16. Amend § 36.611 by revising the first sentence of paragraph (h) to read as follows:

**§ 36.611 Submission of information to the National Exchange Carrier Association (NECA).**

\*\*\*\*\*

(h) For incumbent local exchange carriers subject to § 36.601(a) this subpart, the number of working loops for each study area. \*\*\*

17. Amend §36.612 by revising the first sentence of paragraph (a) to read as follows:

**§ 36.612 Updating information submitted to the National Exchange Carrier Association.**

(a) Any incumbent local exchange carrier subject to §36.601(a) of this subpart may update the information submitted to the National Exchange Carrier Association (NECA) on July 31st pursuant to §36.611 one or more times annually on a rolling year basis according to the schedule. \*\*\*

\*\*\*\*\*

18. Amend §36.621 by revising paragraph (a)(4) and adding paragraphs (a)(4)(iii), and (a)(5) to read as follows:

**§ 36.621 Study area total unseparated loop cost.**

(a) \*\*\*

(4) Corporate Operations Expenses, Operating Taxes and the benefits and rent portions of operating expenses, as reported in §36.611(e) attributable to investment in C&WF Category 1.3 and COE Category 4.13. This amount is calculated by multiplying the total amount of these expenses and taxes by the ratio of the unseparated gross exchange plant investment in C&WF Category 1.3 and COE Category 4.13, as reported in §36.611(a), to the unseparated gross telecommunications plant investment, as reported in §36.611(f). Total Corporate Operations Expense, for purposes of calculating universal service support payments beginning July 1, 2001

and ending December 31, 2011, shall be limited to the lesser of § 36.621(a)(4)(i) or (ii). Total Corporate Operations Expense for purposes of calculating universal service support payments beginning January 1, 2012 shall be limited to the lesser of § 36.621(a)(4)(i) or (iii).

\* \* \* \* \*

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

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

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

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

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

(5) Study area unseparated loop cost may be limited annually pursuant to a schedule announced by the Wireline Competition Bureau.

19. Amend §36.631 by revising the introductory text of paragraphs (c) and (d) to read as follows:

**§ 36.631 Expense adjustment.**

\*\*\*\*\*

(c) Beginning January 1, 1988, for study areas reporting 200,000 or fewer working loops pursuant to §36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (c)(1) through (2) of this section.

\* \* \* \* \*

(d) Beginning January 1, 1998, for study areas reporting more than 200,000 working loops pursuant to §36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (d)(1) through (4) of this section.

\*\*\*\*\*

**PART 51-INTERCONNECTION**

20. The authority citation for part 51 is amended to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 706 of the Telecommunication Act of 1996, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302, 47 U.S.C. 157 *note*, unless otherwise noted.

**Subpart H-Reciprocal Compensation for Transport and Termination of Telecommunications Traffic**

21. Add § 51.700 to subpart H to read as follows:

**§ 51.700 Purpose of this subpart.**

The purpose of this subpart, as revised in 2011 by FCC 11-161 is to establish rules governing the transition of intercarrier compensation from a calling-party's-network pays system to a default bill-and-keep methodology. Following the transition, the exchange of telecommunications traffic between and among service providers will, by default, be governed by bill-and-keep arrangements.

Note to 51.700 See FCC 11-161, figure 9 (chart identifying steps in the transition).

22. Revise § 51.701 paragraphs (a) and (b) introductory text, add paragraph (b)(3) and revised paragraphs (c), (d), and (e) to read as follows:

**§ 51.701 Scope of transport and termination pricing rules.**

(a) Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], compensation for telecommunications traffic exchanged between two telecommunications carriers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access, is specified in subpart J of this part. The provisions of this subpart apply to Non-Access Reciprocal Compensation for transport and termination of Non-Access Telecommunications Traffic between LECs and other telecommunications carriers.

(b) Non-Access Telecommunications Traffic. For purposes of this subpart, Non-Access Telecommunications Traffic means:

\* \* \* \* \*

(3) This definition includes telecommunications traffic exchanged between a LEC and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format and that otherwise meets the definitions in paragraphs (b)(1) or (b)(2) of this section. Telecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment.

(c) Transport. For purposes of this subpart, transport is the transmission and any necessary tandem switching of Non-Access Telecommunications Traffic subject to section 251(b)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 251(b)(5), from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

(d) Termination. For purposes of this subpart, termination is the switching of Non-Access Telecommunications Traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

(e) Non-Access Reciprocal Compensation. For purposes of this subpart, a Non-Access Reciprocal Compensation arrangement between two carriers is either a bill-and-keep arrangement, per §51.713, or an arrangement in which each carrier receives intercarrier compensation for the transport and termination of Non-Access Telecommunications Traffic.

23. Revise § 51.703 to read as follows:

**§ 51.703 Non-Access reciprocal compensation obligation of LECs.**

(a) Each LEC shall establish Non-Access Reciprocal Compensation arrangements for transport and termination of Non-Access Telecommunications Traffic with any requesting telecommunications carrier.

(b) A LEC may not assess charges on any other telecommunications carrier for Non-Access Telecommunications Traffic that originates on the LEC's network.

(c) Notwithstanding any other provision of the Commission's rules, a LEC shall be entitled to assess and collect the full charges for the transport and termination of Non-Access Telecommunications Traffic, regardless of whether the local exchange carrier assessing the applicable charges itself delivers such traffic to the called party's premises or delivers the call to the called party's premises via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. § 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. § 153(36), that does not itself seek to collect Non-Access Reciprocal Compensation charges for the transport and termination of that Non-Access Telecommunications Traffic. In no event may the total charges that a LEC may assess for such service to the called location exceed the applicable transport and termination rate. For purposes of this section, the facilities used by the LEC and affiliated or unaffiliated provider of interconnected VoIP service or a non-interconnected VoIP service for the transport and termination of such traffic shall be deemed an equivalent facility under §51.701.

24. Revise §51.705 to read as follows:

**§ 51.705 LECs' rates for transport and termination.**

(a) Notwithstanding any other provision of the Commission's rules, by default, transport and termination for Non-Access Telecommunications Traffic exchanged between a local exchange carrier and a CMRS provider within the scope of §51.701(b)(2) shall be pursuant to a bill-and-keep arrangement, as provided in §51.713.

(b) Establishment of incumbent LECs' rates for transport and termination

(1) This provision applies when, in the absence of a negotiated agreement between parties, state commissions establish Non-Access Reciprocal Compensation rates for the exchange of Non-Access Telecommunications Traffic between a local exchange carrier and a telecommunications carrier other than a CMRS provider where the incumbent local exchange carriers did not have any such rates as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Any rates established pursuant to this provision apply between [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and the date at which they are superseded by the transition specified in paragraphs (c)(2) through (c)(5) of this section.

(2) An incumbent LEC's rates for transport and termination of telecommunications traffic shall be established, at the election of the state commission, on the basis of:

(i) The forward-looking economic costs of such offerings, using a cost study pursuant to §§51.505 and 51.511; or

(ii) A bill-and-keep arrangement, as provided in §51.713.

(3) In cases where both carriers in a Non-Access Reciprocal Compensation arrangement are incumbent LECs, state commissions shall establish the rates of the smaller carrier on the basis of the larger carrier's forward-looking costs, pursuant to §51.711.

(c) Except as provided by paragraph (a) of this section, and notwithstanding any other provision of the Commission's rules, default transitional Non-Access Reciprocal Compensation rates shall be determined as follows:

(1) Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], no telecommunications carrier may increase a Non-Access Reciprocal Compensation for transport or termination above the level in effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. All Bill-and-Keep Arrangements in effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] shall remain in place unless both parties mutually agree to an alternative arrangement.

(2) Effective July 1, 2012, if any telecommunications carrier's Non-Access Reciprocal Compensation rates in effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] or established pursuant paragraph (b) of this section subsequent to [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], exceed that carrier's interstate access rates for functionally equivalent services in effect in the same state on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], that carrier shall reduce its reciprocal compensation rate by one half of the difference between the Non-Access Reciprocal Compensation rate and the corresponding functionally equivalent interstate access rate.

(3) Effective July 1, 2013, no telecommunications carrier's Non-Access Reciprocal Compensation rates shall exceed that carrier's tariffed interstate access rate in effect in the same state on January 1 of that same year, for equivalent functionality

(4) After July 1, 2018, all Price-Cap Local Exchange Carrier's Non-Access Reciprocal Compensation rates and all non-incumbent LECs that benchmark access rates to Price Cap Carrier shall be set pursuant to Bill-and-Keep arrangements for Non-Access Reciprocal Compensation as defined in this subpart.

(5) After July 1, 2020, all Rate-of-Return Local Exchange Carrier's Non-Access Reciprocal Compensation rates and all non-incumbent LECs that benchmark access rates to Rate-of-Return Carriers shall be set pursuant to Bill-and-Keep arrangements for Non-Access Reciprocal Compensation as defined in this subpart.

**§ 51.707 [Removed and Reserved]**

25. Remove and reserve §51.707.

26. Revise §51.709 to read as follows:

**§ 51.709 Rate structure for transport and termination.**

(a) In state proceedings, where a rate for Non-Access Reciprocal Compensation does not exist of as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], a state commission shall establish initial rates for the transport and termination of Non-Access Telecommunications Traffic that are structured consistently with the manner that carriers incur those costs, and consistently with the principles in this section.

(b) The rate of a carrier providing transmission facilities dedicated to the transmission of non-access traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send non-access traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.

(c) For Non-Access Telecommunications Traffic exchanged between a rate-of-return regulated rural telephone company as defined in §51.5 and a CMRS provider, the rural rate-of-return incumbent local exchange carrier will be responsible for transport to the CMRS provider's interconnection point when it is located within the rural rate-of-return incumbent local exchange carrier's service area. When the CMRS provider's interconnection point is located outside the rural rate-of-return incumbent local exchange carrier's service area, the rural rate-of-return incumbent local exchange carrier's transport and provisioning obligation stops at its meet point and the CMRS provider is responsible for the remaining transport to its interconnection point. This paragraph (c) is a default provision and applicable in the absence of an existing agreement or arrangement otherwise.

27. Revise §51.711(d) paragraphs (a) introductory text, (a)(1) and (b) to read as follows:

**§ 51.711 Symmetrical non-access reciprocal compensation.**

(a) Rates for transport and termination of Non-Access Telecommunications Traffic shall be symmetrical, unless carriers mutually agree otherwise, except as provided in paragraphs (b) and (c) of this section.

(1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of Non-Access Telecommunications Traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

\* \* \* \* \*

(b) Except as provided in § 51.705, a state commission may establish asymmetrical rates for transport and termination of Non-Access Telecommunications Traffic only if the carrier other than the incumbent LEC (or the smaller of two incumbent LECs) proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology described in §§51.505 and 51.511, that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC (or the larger incumbent LEC), and, consequently, that such that a higher rate is justified.

\* \* \* \* \*

28. Revise §51.713 to read as follows:

**§ 51.713 Bill-and-keep arrangements.**

Bill-and-keep arrangements are those in which carriers exchanging telecommunications traffic do not charge each other for specific transport and/or termination functions or services.

29. Revise §51.715 paragraphs (a) introductory text, (a)(1), (b) introductory text, (b)(2), and revise the first sentence in paragraph (d) to read as follows:

**§ 51.715 Interim transport and termination pricing.**

(a) Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of Non-Access Telecommunications Traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.

(1) This requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of Non-Access Telecommunications Traffic by the incumbent LEC.

\* \* \* \* \*

(b) Upon receipt of a request as described in paragraph (a) of this section, an incumbent LEC must, without unreasonable delay, establish an interim arrangement for transport and termination of Non-Access Telecommunications Traffic at symmetrical rates.

\* \* \* \* \*

(2) In a state in which the state commission has not established transport and termination rates based on forward-looking economic cost studies, an incumbent LEC shall set interim transport and termination rates either at the default ceilings specified in §51.705(c) or in accordance with a bill-and-keep methodology as defined in §51.713.

\* \* \* \* \*

(d) If the rates for transport and termination of Non-Access Telecommunications Traffic in an interim arrangement differ from the rates established by a state commission pursuant to §51.705, the state commission shall require carriers to make adjustments to past compensation.

\* \* \*

**§51.717 [Removed and Reserved]**

30. Remove and reserve §51.717.

31. Add new subpart J to part 51 to read as follows:

**Subpart J—Transitional Access Service Pricing**

Sec.

51.901 Purpose and Scope of transitional access service pricing rules.

51.903 Definitions.

51.905 Implementation.

51.907 Transition of Price Cap Carrier access charges.

51.909 Transition of Rate-of-Return carrier access charges.

51.911 Reciprocal compensation rates for CLECs.

51.913 Transition for VoIP-PSTN traffic.

51.915 Revenue recovery for Price Cap carriers

51.917 Revenue recovery for Rate of Return carriers

51.919 Reporting and Monitoring

**§ 51.901 Purpose and scope of transitional access service pricing rules.**

(a) The purpose of this section is to establish rules governing the transition of intercarrier compensation from a calling-party's-network pays system to a default bill-and-keep methodology. Following the transition, the exchange of traffic between and among service providers will, by default, be governed by bill-and-keep arrangements.

(b) Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] , the provisions of this subpart apply to reciprocal compensation for telecommunications traffic exchanged between telecommunications providers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access.

Note to § 51.901 See FCC 11-161, figure 9 (chart identifying steps in the transition).

**§ 51.903 Definitions.**

(a) Competitive Local Exchange Carrier. A Competitive Local Exchange Carrier is any local exchange carrier, as defined in §51.5, that is not an incumbent local exchange carrier .

(b) Composite Terminating End Office Access Rate. Composite Terminating End Office Access Rate means terminating End Office Access Service revenue, calculated using demand for a given time period, divided by end office switching minutes for the same time period.

(c) Dedicated Transport Access Service. Dedicated Transport Access Service means originating and terminating transport on circuits dedicated to the use of a single carrier or other customer provided by an incumbent local exchange carrier or any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier. Dedicated Transport Access Service rate elements for an incumbent local exchange carrier include the entrance facility rate elements specified in §69.110 of this chapter, the dedicated transport rate elements specified in §69.111 of this chapter, the direct-trunked transport rate elements specified in §69.112 of this chapter, and the intrastate rate elements for functionally equivalent access services. Dedicated Transport Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access services.

(d) End Office Access Service. End Office Access Service means: (1) The switching of access traffic at the carrier's end office switch and the delivery to or from of such traffic to the called party's premises;

(2) The routing of interexchange telecommunications traffic to or from the called party's premises, either directly or via contractual or other arrangements with an affiliated or unaffiliated entity, regardless of the specific functions provided or facilities used; or

(3) Any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier. End Office Access Service rate elements for an incumbent local exchange carrier include the local switching rate elements specified in §69.106 of this chapter, the carrier common line rate elements specified in §69.154 of this chapter, and the intrastate rate elements for functionally equivalent access services. End Office Access Service rate elements for an incumbent local exchange carrier also include any rate elements assessed on local switching access minutes, including the

information surcharge and residual rate elements. End office Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.

Note to paragraph (d): For incumbent local exchange carriers, residual rate elements may include, for example, state Transport Interconnection Charges, Residual Interconnection Charges, and PICCs. For non-incumbent local exchange carriers, residual rate elements may include any functionally equivalent access service.

(e) Fiscal Year 2011. Fiscal Year 2011 means October 1, 2010 through September 30, 2011.

(f) Price Cap Carrier. Price Cap Carrier has the same meaning as that term is defined in §61.3(aa) of this chapter.

(g) Rate-of-Return Carrier. A Rate-of-Return Carrier is any incumbent local exchange carrier not subject to price cap regulation as that term is defined in §61.3(aa) of this chapter, but only with respect to the territory in which it operates as an incumbent local exchange carrier.

(h) Access Reciprocal Compensation. For the purposes of this subpart, Access Reciprocal Compensation means telecommunications traffic exchanged between telecommunications service providers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access.

(i) Tandem-Switched Transport Access Service. Tandem-Switched Transport Access Service means:

(1) Tandem switching and common transport between the tandem switch and end office; or

(2) Any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier via other facilities. Tandem-Switched Transport rate elements for an incumbent local exchange carrier include the rate elements specified in §69.111 of this chapter, except for the dedicated transport rate elements specified in that section, and intrastate rate elements for functionally equivalent service. Tandem Switched Transport Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.

(j) Transitional Intrastate Access Service. A Transitional Intrastate Access Service means terminating End Office Access Service that was subject to intrastate access rates as of December 31, 2011; terminating Tandem-Switched Transport Access Service that was subject to intrastate access rates as of December 31, 2011; and originating and terminating Dedicated Transport Access Service that was subject to intrastate access rates as of December 31, 2011.

**§ 51.905 Implementation.**

(a) The rates set forth in this section are default rates. Notwithstanding any other provision of the Commission's rules, telecommunications carriers may agree to rates different from the default rates.

(b) LECs who are otherwise required to file tariffs are required to tariff rates no higher than the default transitional rates specified by this subpart.

(1) With respect to interstate switched access services governed by this subpart, LECs shall tariff rates for those services in their federal tariffs. Except as expressly superseded below, LECs shall follow the procedures specified in part 61 of this chapter when filing such tariffs.

(2) With respect to Transitional Intrastate Access Services governed by this subpart, LECs shall follow the procedures specified by relevant state law when filing such tariffs, price lists or other instrument (referred to collectively as “tariffs”).

(c) Nothing in this section shall be construed to require a carrier to file or maintain a tariff or to amend an existing tariff if it is not otherwise required to do so under applicable law.

**§ 51.907 Transition of price cap carrier access charges.**

(a) Notwithstanding any other provision of the Commission’s rules, on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], a Price Cap Carrier shall cap the rates for all interstate and intrastate rate elements for services contained in the definitions of Interstate End Office Access Services, Tandem Switched Transport Access Services, and Dedicated Transport Access Services. In addition, a Price Cap Carrier shall also cap the rates for any interstate and intrastate rate elements in the “traffic sensitive basket” and the “trunking basket” as described in 47 CFR 61.42(d)(2) and (3) to the extent that such rate elements are not contained in the definitions of Interstate End Office Access Services, Tandem Switched Transport Access Services, and Dedicated Transport Access Services. Carriers will remove these services from price cap regulation in their July 1, 2012 annual tariff filing.

(b) Step 1. Effective July 1, 2012, notwithstanding any other provision of the Commission’s rules:

(1) Each Price Cap Carrier shall file tariffs, in accordance with §51.905(b)(2), with the appropriate state regulatory authority, that set forth the rates applicable to Transitional Intrastate Access Service in each state in which it provides Transitional Intrastate Access Service.

(2) Each Price Cap Carrier shall establish the rates for Transitional Intrastate Access Service using the following methodology:

(i) Calculate total revenue from Transitional Intrastate Access Service at the carrier’s interstate access rates in effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], using Fiscal Year 2011 intrastate switched access demand for each rate element.

(ii) Calculate total revenue from Transitional Intrastate Access Service at the carrier’s intrastate access rates in effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], using Fiscal Year 2011 intrastate switched access demand for each rate element.

(iii) Calculate the Step 1 Access Revenue Reduction. The Step 1 Access Revenue Reduction is equal to one-half of the difference between the amount calculated in paragraph (b)(2)(i) of this section and the amount calculated in paragraph (b)(2)(ii) of this section.

(iv) A Price Cap Carrier may elect to establish rates for Transitional Intrastate Access Service using its intrastate access rate structure. Carriers using this option shall establish rates for Transitional Intrastate Access Service such that Transitional Intrastate Access Service revenue at the proposed rates is no greater than Transitional Intrastate Access Service revenue at the intrastate rates in effect as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] less the Step 1 Access Revenue Reduction, using Fiscal Year 2011 demand. Carriers electing to establish rates

for Transitional Intrastate Access Service in this manner shall notify the appropriate state regulatory authority of their election in the filing required by §51.907(b)(1).

(v) In the alternative, a Price Cap Carrier may elect to apply its interstate access rate structure and interstate rates to Transitional Intrastate Access Service. In addition to applicable interstate access rates, the carrier may, between July 1, 2012 and July 1, 2013, assess a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes (previously billed as intrastate access). The transitional per-minute charge shall be no greater than the Step 1 Access Revenue Reduction divided by Fiscal Year 2011 Transitional Intrastate Access Service end office switching minutes. Carriers electing to establish rates for Transitional Intrastate Access Service in this manner shall notify the appropriate state regulatory authority of their election in the filing required by §51.907(b)(1).

(vi) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions to increase such rates.

(c) Step 2. Effective July 1, 2013, notwithstanding any other provision of the Commission's rules:

(1) Transitional Intrastate Access Service rates shall be no higher than the Price Cap Carrier's interstate access rates. Once the Price Cap Carrier's Transitional Intrastate Access Service rates are equal to its functionally equivalent interstate access rates, they shall be subject to the same rate structure and all subsequent rate and rate structure modifications. Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions to increase such rates.

(2) In cases where a Price Cap Carrier does not have intrastate rates that permit it to determine composite intrastate End Office Access Service rates, the carrier shall establish End Office Access Service rates such that the ratio between its composite intrastate End Office Access Service revenues and its total intrastate switched access revenues may not exceed the ratio between its composite interstate End Office Access Service revenues and its total interstate switched access revenues.

(3) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions to increase such rates.

(d) Step 3. Effective July 1, 2014, notwithstanding any other provision of the Commission's rules:

(1) A Price Cap Carrier shall establish separate originating and terminating rate elements for all per-minute components within interstate and intrastate End Office Access Service. For fixed charges, the Price Cap Carrier shall divide the rate between originating and terminating rate elements based on relative originating and terminating end office switching minutes. If sufficient originating and terminating end office switching minute data is not available, the carrier shall divide such charges equally between originating and terminating elements.

(2) Each Price Cap Carrier shall establish rates for interstate or intrastate terminating End Office Access Service using the following methodology:

(i) Each Price Cap Carrier shall calculate the 2011 Baseline Composite Terminating End Office Access Rate. The 2011 Baseline Composite Terminating End Office Access Rate means the Composite Terminating End Office Access Rate calculated using Fiscal Year 2011 demand and the End Office Access Service rates at the levels in effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(ii) Each Price Cap Carrier shall calculate its 2014 Target Composite Terminating End Office Access Rate. The 2014 Target Composite Terminating End Office Access Rate means \$0.0007 per minute plus two-thirds of any difference between the 2011 Baseline Composite Terminating End Office Access Rate and \$0.0007 per minute.

(iii) Effective July 1, 2014, no Price Cap Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2014 Target Composite Terminating End Office Access Rate. In the alternative, any Price Cap Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2014 Target Composite Terminating End Office Access Rate.

(iv) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions increasing such rates.

(e) Step 4. Effective July 1, 2015, notwithstanding any other provision of the Commission's rules:

(1) Each Price Cap Carrier shall establish interstate or intrastate rates for terminating End Office Access Service using the following methodology:

(i) Each Price Cap Carrier shall calculate its 2015 Target Composite Terminating End Office Access Rate. The 2015 Target Composite Terminating End Office Access Rate means \$0.0007 per minute plus one-third of any difference between the 2011 Composite Terminating End Office Access Rate and \$0.0007 per minute.

(ii) Effective July 1, 2015, no Price Cap Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2015 Target Composite Terminating End Office Access Rate. In the alternative, any Price Cap Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2015 Target Composite Terminating End Office Access Rate.

(2) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(f) Step 5. Effective July 1, 2016, notwithstanding any other provision of the Commission's rules, each Price Cap Carrier shall establish interstate and intrastate per minute terminating End Office Access Service rates such that its Composite Terminating End Office Access Service rate does not exceed \$0.0007 per minute. Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(g) Step 6. Effective July 1, 2017, notwithstanding any other provision of the Commission's rules:

(1) Each Price Cap Carrier shall, in accordance with a bill-and-keep methodology, refile its interstate access tariffs and any state tariffs, in accordance with § 51.905(b)(2), removing any intercarrier charges for terminating End Office Access Service.

(2) Each Price Cap Carrier shall establish, for interstate and intrastate terminating traffic traversing a tandem switch that the terminating carrier or its affiliates owns, Tandem-Switched Transport Access Service rates no greater than \$0.0007 per minute.

(3) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(h) Step 7. Effective July 1, 2018, notwithstanding any other provision of the Commission's rules, each Price Cap carrier shall, in accordance with bill-and-keep, as defined in §51.713, revise and refile its interstate switched access tariffs and any state tariffs to remove any intercarrier charges applicable to terminating tandem-switched access service traversing a tandem switch that the terminating carrier or its affiliate owns.

**§ 51.909 Transition of rate-of-return carrier access charges.**

(a) Notwithstanding any other provision of the Commission's rules, on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], a Rate-of-Return Carrier shall:

(1) Cap the rates for all rate elements for services contained in the definitions of End Office Access Service, Tandem Switched Transport Access Service, and Dedicated Transport Access Service, as well as all other interstate switched access rate elements, in its interstate switched access tariffs at the rate that was in effect on the [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]; and

(2) Cap, in accordance with §51.505(b)(2), the rates for rate all elements in its intrastate switched access tariffs associated with the provision of terminating End Office Access Service and terminating Tandem-Switched Transport Access Service at the rates that were in effect on the [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER],

(i.) Using the terminating rates if specifically identified; or

(ii.) Using the rate for the applicable rate element if the tariff does not distinguish between originating and terminating.

(3) Nothing in this section obligates or allows a Rate-of-Return Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(b) Step 1. Effective July 1, 2012, notwithstanding any other provision of the Commission's rules:

(1) Each Rate-of-Return Carrier shall file intrastate access tariff provisions, in accordance with §51.505(b)(2), that set forth the rates applicable to Transitional Intrastate Access Service in each state in which it provides Transitional Intrastate Access Service.

(2) Each Rate-of-Return Carrier shall establish the rates for Transitional Intrastate Access Service using the following methodology:

(i) Calculate total revenue from Transitional Intrastate Access Service at the carrier's interstate access rates in effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], using Fiscal Year 2011 intrastate switched access demand for each rate element.

(ii) Calculate total revenue from Transitional Intrastate Access Service at the carrier's intrastate access rates in effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], using Fiscal Year 2011 intrastate switched access demand for each rate element.

(iii) Calculate the Step 1 Access Revenue Reduction. The Step 1 Access Revenue Reduction is equal to one-half of the difference between the amount calculated in (b)(2)(i) of this section and the amount calculated in (b)(2)(ii) of this section.

(iv) A Rate-of-Return Carrier may elect to establish rates for Transitional Intrastate Access Service using its intrastate access rate structure. Carriers using this option shall establish rates for Transitional Intrastate Access Service such that Transitional Intrastate Access Service revenue at the proposed rates is no greater than Transitional Intrastate Access Service revenue at the intrastate rates in effect as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] less the Step 1 Access Revenue Reduction, using Fiscal Year 2011 intrastate switched access demand. Carriers electing to establish rates for Transitional Intrastate Access Service in this manner shall notify the appropriate state regulatory authority of their election in the filing required by §51.907(b)(1).

(v) In the alternative, a Rate-of-Return Carrier may elect to apply its interstate access rate structure and interstate rates to Transitional Intrastate Access Service. In addition to applicable interstate access rates, the carrier may, between July 1, 2012 and July 1, 2013, assess a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes (previously billed as intrastate access). The transitional per-minute charge shall be no greater than the Step 1 Access Revenue Reduction divided by Fiscal Year 2011 Transitional Intrastate Access Service end office switching minutes. Carriers electing to establish rates for Transitional Intrastate Access Service in this manner shall notify the appropriate state regulatory authority of their election in the filing required by §51.907(b)(1).

(3) Nothing in this section obligates or allows a Rate-of-Return carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(c) Step 2. Effective July 1, 2013, notwithstanding any other provision of the Commission's rules, Transitional Intrastate Access Service rates shall be no higher than the Rate-of-Return Carrier's interstate Terminating End Office Access Service and Terminating Tandem-Switched Transport Access Service rates and subject to the same rate structure and all subsequent rate and rate structure modifications.

(d) Step 3. Effective July 1, 2014, notwithstanding any other provision of the Commission's rules:

(1) Notwithstanding the rate structure rules set forth in §69.106 of this chapter or anything else in the Commission's rules, a Rate-of-Return Carrier shall establish separate originating and terminating interstate and intrastate rate elements for all components within interstate End Office Access Service. For fixed charges, the Rate-of-Return Carrier shall divide the amount based on relative originating and terminating end office switching minutes. If sufficient originating and terminating end office switching minute data is not available, the carrier shall divide such charges equally between originating and terminating elements.

(2) Nothing in this Step shall affect Tandem-Switched Transport Access Service or Dedicated Transport Access Service.

(3) Each Rate-of-Return Carrier shall establish rates for interstate and intrastate terminating End Office Access Service using the following methodology:

(i) Each Rate-of-Return Carrier shall calculate the 2011 Baseline Composite Terminating End Office Access Rate. The 2011 Baseline Composite Terminating End Office Access Rate means the Composite Terminating End Office Access Rate calculated using Fiscal Year 2011 interstate demand and the interstate End Office Access Service rates at the levels in effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(ii) Each Rate-of-Return Carrier shall calculate its 2014 interstate Target Composite Terminating End Office Access Rate. The 2014 interstate Target Composite Terminating End Office Access Rate means \$0.005 per minute plus two-thirds of any difference between the 2011 Baseline Composite Terminating End Office Access Rate, and \$0.005 per minute.

(iii) Effective July 1, 2014, no Rate-of-Return Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2014 interstate Target Composite Terminating End Office Access Rate. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2014 interstate Target Composite Terminating End Office Access Rate.

(4) Nothing in this section obligates or allows a Rate-of-Return Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(e) Step 4. Effective July 1, 2015, notwithstanding any other provision of the Commission's rules:

(1) Each Rate-of-Return Carrier shall establish rates for interstate and intrastate terminating End Office Access Service using the following methodology:

(i) Each Rate-of-Return Carrier shall calculate its 2015 interstate Target Composite Terminating End Office Access Rate. The 2015 interstate Target Composite Terminating End Office Access Rate means \$0.005 per minute plus one-third of any difference between the 2011 Baseline Composite Terminating End Office Access Rate and \$0.005 per minute.

(ii) Effective July 1, 2015, no Rate-of-Return Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2015 Target Composite Terminating End Office Access Rate. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2015 interstate Target Composite Terminating End Office Access Rate.

(2) Reserved.

(f) Step 5. Effective July 1, 2016, notwithstanding any other provision of the Commission's rules, each Rate-of-Return Carrier shall establish interstate and intrastate per minute terminating End Office Access Service rates such that its Composite Terminating End Office Access Service rate does not exceed \$0.005 per minute. Nothing in this section obligates or allows a Rate-of-Return Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(g) Step 6. Effective July 1, 2017, notwithstanding any other provision of the Commission's rules:

(1) Each Rate-of-Return Carrier shall establish rates for terminating End Office Access Service using the following methodology:

(i) Each Rate-of-Return Carrier shall calculate its 2017 interstate Target Composite Terminating End Office Access Rate. The 2017 interstate Target Composite Terminating End Office Access Rate means \$0.0007 per minute plus two-thirds of any difference between that carrier's Terminating End Office Access Service Rate as of July 1, 2016 and \$0.0007 per minute.

(ii) Effective July 1, 2017, no Rate-of-Return Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2017 interstate Target Composite Terminating End Office Access Rate. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2017 interstate Target Composite Terminating End Office Access Rate.

(2) Reserved.

(h) Step 7. Effective July 1, 2018, notwithstanding any other provision of the Commission's rules:

(1) Each Rate-of-Return Carrier shall establish rates for terminating End Office Access Service using the following methodology:

(i) Each Rate-of-Return Carrier shall calculate its 2018 interstate Target Composite Terminating End Office Access Rate. The 2018 interstate Target Composite Terminating End Office Access Rate means \$0.0007 per minute plus

one-third of any difference between that carrier's Terminating End Office Access Service Rate as of July 1, 2016 and \$0.0007 per minute.

(ii) Effective July 1, 2018, no Rate-of-Return Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2018 interstate Target Composite Terminating End Office Access Rate. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2018 interstate Target Composite Terminating End Office Access Rate.

(2) Reserved.

(i) Step 8. Effective July 1, 2019, notwithstanding any other provision of the Commission's rules, each Rate-of-Return Carrier shall establish interstate and intrastate rates for terminating End Office Access Service that do not exceed \$0.0007 per minute.

(j) Step 9. Effective July 1, 2020, notwithstanding any other provision of the Commission's rules, each Rate-of-Return Carrier shall, in accordance with a bill-and-keep methodology, revise and refile its federal access tariffs and any state tariffs to remove any intercarrier charges for terminating End Office Access Service.

(k) As set forth in FCC 11-161, states will facilitate implementation of changes to intrastate access rates to ensure compliance with the Order. Nothing in this section shall alter the authority of a state to monitor and oversee filing of intrastate tariffs.

**§51.911 Access reciprocal compensation rates for competitive LECs.**

(a) Caps on Access Reciprocal Compensation and switched access rates. Notwithstanding any other provision of the Commission's rules:

(1) In the case of Competitive LECs operating in an area served by a Price Cap Carrier, no such Competitive LEC may increase the rate for any originating or terminating intrastate switched access service above the rate for such service in effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(2) In the case of Competitive LEC operating in an area served by an incumbent local exchange carrier that is a Rate-of-Return Carrier or Competitive LECs that are subject to the rural exemption in §61.26(e) of this chapter, no such Competitive LEC may increase the rate for any originating or terminating intrastate switched access service above the rate for such service in effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], with the exception of intrastate originating access service. For such Competitive LECs, intrastate originating access service subject to this subpart shall remain subject to the same state rate regulation in effect December 31, 2011, as may be modified by the state thereafter.

(b) Effective July 1, 2012, notwithstanding any other provision of the Commission's rules, each Competitive LEC that has tariffs on file with state regulatory authorities shall file intrastate access tariff provisions, in accordance with §51.505(b)(2), that set forth the rates applicable to Transitional Intrastate Access Service in each state in which it provides Transitional Intrastate Access Service. Each

Competitive Local Exchange Carrier shall establish the rates for Transitional Intrastate Access Service using the following methodology:

(1) Calculate total revenue from Transitional Intrastate Access Service at the carrier's interstate access rates in effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], using Fiscal Year 2011 intrastate switched access demand for each rate element.

(2) Calculate total revenue from Transitional Intrastate Access Service at the carrier's intrastate access rates in effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], using Fiscal Year 2011 intrastate switched access demand for each rate element.

(3) Calculate the Step 1 Access Revenue Reduction. The Step 1 Access Revenue Reduction is equal to one-half of the difference between the amount calculated in (b) (1) of this section and the amount calculated in (b)(2) of this section.

(4) A Competitive Local Exchange Carrier may elect to establish rates for Transitional Intrastate Access Service using its intrastate access rate structure. Carriers using this option shall establish rates for Transitional Intrastate Access Service such that Transitional Intrastate Access Service revenue at the proposed rates is no greater than Transitional Intrastate Access Service revenue at the intrastate rates in effect as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] less the Step 1 Access Revenue Reduction, using Fiscal year 2011 intrastate switched access demand.

(5) In the alternative, a Competitive Local Exchange Carrier may elect to apply its interstate access rate structure and interstate rates to Transitional Intrastate Access Service. In addition to applicable interstate access rates, the carrier may assess a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes (previously billed as intrastate access). The transitional charge shall be no greater than the Step 1 Access Revenue Reduction divided by Fiscal year 2011 intrastate switched access demand

(6) Nothing in this subsection obligates or allows a Competitive LEC that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(c) Effective July 1, 2013, notwithstanding any other provision of the Commission's rules, all Competitive Local Exchange Carrier Access Reciprocal Compensation rates for switched exchange access services subject to this subpart shall be no higher than the Access Reciprocal Compensation rates charged by the competing incumbent local exchange carrier, in accordance with the same procedures specified in §61.26 of this chapter.

**§ 51.913 Transition for VoIP-PSTN traffic.**

(a) Access Reciprocal Compensation subject to this subpart exchanged between a local exchange carrier and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format shall be subject to a rate equal to the relevant interstate access charges specified by this subpart. Telecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment.

(b) Notwithstanding any other provision of the Commission's rules, a local exchange carrier shall be entitled to assess and collect the full Access Reciprocal Compensation charges prescribed by this subpart that are set forth in a local exchange carrier's interstate or intrastate tariff for the access services defined in § 51.903 regardless of whether the local exchange carrier itself delivers such traffic to the called party's premises or delivers the call to the called party's premises via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. 153(36), that does not itself seek to collect Access Reciprocal Compensation charges prescribed by this subpart for that traffic. This rule does not permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service. For purposes of this provision, functions provided by a LEC as part of transmitting telecommunications between designated points using, in whole or in part, technology other than TDM transmission in a manner that is comparable to a service offered by a local exchange carrier constitutes the functional equivalent of the incumbent local exchange carrier access service.

**§ 51.915 Recovery Mechanism For Price Cap Carriers.**

- (a) Scope. This section sets forth the extent to which Price Cap Carriers may recover certain revenues, through the recovery mechanism outlined below, to implement reforms adopted in FCC 11-161 and as required by § 20.11(b) of this chapter, and §§51.705 and 51.907.
- (b) Definitions. As used in this section and § 51.917, the following terms mean:
- (1) CALLS Study Area. A CALLS Study Area means a Price Cap Carrier study area that participated in the CALLS plan at its inception. See 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).
  - (2) CALLS Study Area Base Factor. The CALLS Study Area Base Factor is equal to ninety (90) percent.
  - (3) CMRS Net Reciprocal Compensation Revenues. CMRS Net Reciprocal Compensation Revenues means the reduction in net reciprocal compensation revenues required by § 20.11 of this chapter associated with CMRS traffic as described in § 51.701(b)(2), which is equal to its Fiscal Year 2011 net reciprocal compensation revenues from CMRS carriers.
  - (4) Expected Revenues for Access Recovery Charges. Expected Revenues for Access Recovery Charges are calculated using the tariffed Access Recovery Charge rate for each class of service and the forecast demand for each class of service.
  - (5) Initial Composite Terminating End Office Access Rate. Initial Composite Terminating End Office Access Rate means Fiscal Year 2011 terminating interstate End Office Access

Service revenue divided by Fiscal Year 2011 terminating interstate end office switching minutes.

- (6) Lifeline Customer. A Lifeline Customer is a residential lifeline subscriber as defined by § 54.400(a) of this chapter that does not pay a Residential and/or Single-Line Business End User Common Line Charge.
- (7) Net Reciprocal Compensation. Net Reciprocal Compensation means the difference between a carrier's reciprocal compensation revenues from non-access traffic less its reciprocal compensation payments for non-access traffic during a stated period of time. For purposes of the calculations made under §§ 51.915 and 51.917, the term does not include reciprocal compensation revenues for non-access traffic exchanged between Local Exchange Carriers and CMRS providers; recovery for such traffic is addressed separately in these sections.
- (8) Non-CALLS Study Area. Non-CALLS Study Area means a Price Cap Carrier study area that did not participate in the CALLS plan at its inception.
- (9) Non-CALLS Study Area Base Factor. The Non-CALLS Study Area Base Factor is equal to one hundred (100) percent for five (5) years beginning July 1, 2012. Beginning July 1, 2017, the Non-CALLS Price Cap Carrier Base Factor will be equal to ninety (90) percent.
- (10) Price Cap Carrier Traffic Demand Factor. The Price Cap Carrier Traffic Demand Factor, as used in calculating eligible recovery, is equal to ninety (90) percent for the one-year period beginning July 1, 2012. It is reduced by ten (10) percent of its previous value in each subsequent annual tariff filing.
- (11) Rate Ceiling Component Charges. The Rate Ceiling Component Charges consists of the federal end user common line charge and the Access Recovery Charge; the flat rate for residential local service (sometimes know as the "1FR" or "R1" rate), mandatory extended area service charges, and state subscriber line charges; per-line state high cost and/or state access replacement universal service contributions, state E911 charges, and state TRS charges.
- (12) Residential Rate Ceiling. The Residential Rate Ceiling, which consists of the total of the Rate Ceiling Component Charges, is set at \$30 per month. The Residential Rate Ceiling will be the higher of the rate in effect on January 1, 2012, or the rate in effect on January 1 in any subsequent year.
- (13) True-up Revenues for Access Recovery Charge. True-up revenues for Access Recovery Charge are equal to Expected Access Recovery Charge Revenues minus ((projected demand minus actual realized demand for Access Recovery Charges) times the tariffed Access Recovery Charge). This calculation shall be made separately for each class of service and shall be adjusted to reflect any changes in tariffed rates for the Access Recovery Charge. Realized demand is the demand for which payment has been received, or has been made, as appropriate, by the time the true-up is made.

- (c) 2011 Price Cap Carrier Base Period Revenue. 2011 Price Cap Carrier Base Period Revenue is equal to the sum of the following three components:
- (1) Terminating interstate end office switched access revenues and interstate Tandem-Switched Transport Access Service revenues for Fiscal Year 2011 received by March 31, 2012;
  - (2) Fiscal Year 2011 revenues from Transitional Intrastate Access Service received by March 31, 2012; and
  - (3) Fiscal Year 2011 reciprocal compensation revenues received by March 31, 2012, less fiscal year 2011 reciprocal compensation payments made by March 31, 2012.
- (d) Eligible recovery for Price Cap Carriers.
- (1) Notwithstanding any other provision of the Commission's rules, a Price Cap Carrier may recover the amounts specified in this paragraph through the mechanisms described in paragraphs (e) and (f) of this section.
    - (i) Beginning July 1, 2012, a Price Cap Carrier's eligible recovery will be equal to the CALLS Study Area Base Factor and/or the Non-CALLS Study Area Base Factor, as applicable, multiplied by the sum of the following three components:
      - A. The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) multiplied by the Price Cap Carrier Traffic Demand Factor;
      - B. CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor; and
      - C. A Price Cap Carrier's reductions in Fiscal Year 2011 net reciprocal compensation revenues resulting from rate reductions required by § 51.705, other than those associated with CMRS traffic as described in § 51.701(b)(2), which may be calculated in one of the following ways:
        1. Calculate the reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;
        2. By using a composite reciprocal compensation rate as follows:
          - (i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

- (ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2012 multiply by the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or
  3. For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.
- (ii) Beginning July 1, 2013, a Price Cap Carrier's eligible recovery will be equal to the CALLS Study Area Base Factor and/or the Non-CALLS Study Area Base Factor, as applicable, multiplied by the sum of the following three components:
  - A. The cumulative amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor; and
  - B. CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor; and
  - C. A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:
    1. Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand and then multiply by the Price Cap Carrier Traffic Demand Factor;
    2. By using a composite reciprocal compensation rate as follows:
      - (i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;
      - (ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2013, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or
  3. For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for

reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

- (iii) Beginning July 1, 2014, a Price Cap Carrier's eligible recovery will be equal to the CALLS Study Area Base Factor and/or the Non-CALLS Study Area Base Factor, as applicable, multiplied by the sum of the amounts in paragraphs (d)(1)(iii)A-(d)(1)(iii)E, and then adding the amount in paragraph(d)(1)(iii)F to that amount:
- A. The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor; and
  - B. The reduction in interstate switched access revenues equal to the difference between the Initial Composite Terminating End Office Access Rate and the 2014 Target Composite Terminating End Office Access Rate determined pursuant to § 51.907(d) using 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;
  - C. If the 2014 Intrastate Composite Terminating End Office Access Rate is higher than the 2014 Target Composite Terminating End Office Access Rate, the reduction in revenues equal to the difference between the intrastate 2014 Composite Terminating End Office Access Rate and the intrastate 2014 Target Composite Terminating End Office Access Rate determined pursuant to § 51.907(d) using Fiscal Year 2011 terminating intrastate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;
  - D. CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor; and
  - E. A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:
    - 1. Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;
    - 2. By using a composite reciprocal compensation rate as follows:
      - (i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

- (ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2014, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or
- 3. For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.
- F. An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2012.
- (iv) Beginning July 1, 2015, a Price Cap Carrier's eligible recovery will be equal to the CALLS Study Area Base Factor and/or the Non-CALLS Study Area Base Factor, as applicable, multiplied by the sum of the amounts in paragraphs (d)(1)(iv)A-(d)(1)(iv)E, and then adding the amount in paragraph(d)(1)(iv)F to that amount:
  - A. The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor;
  - B. The reduction in interstate switched access revenues equal to the difference between the Initial Composite Terminating End Office Access Rate and the 2015 Target Composite Terminating End Office Access Rate determined pursuant to § 51.907(e) using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;
  - C. If the 2014 Intrastate Composite Terminating End Office Access Rate is higher than the 2015 Target Composite Terminating End Office Access Rate, the reduction in intrastate switched access revenues equal to the difference between the intrastate 2014 Composite Terminating End Office Access Rate and the 2015 Target Composite Terminating End Office Access Rate determined pursuant to § 51.907(e) using Fiscal Year 2011 terminating intrastate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor; and
  - D. CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor;
  - E. A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:
    - 1. Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705

- using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;
2. By using a composite reciprocal compensation rate as follows:
    - (i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;
    - (ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2015, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or
  3. For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.
- F. An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2013.
- (v) Beginning July 1, 2016, a Price Cap Carrier's eligible recovery will be equal to the CALLS Study Area Base Factor and/or the Non-CALLS Study Area Base Factor, as applicable, multiplied by the sum of the amounts in paragraphs (d)(1)(v)A-(d)(1)(v)E, and then adding the amount in paragraph (d)(1)(v)F to that amount:
- A. The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor;
  - B. The reduction in interstate switched access revenues equal to the difference between the Initial Composite Terminating End Office Access Rate and \$0.0007 determined pursuant to § 51.907(f) using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;
  - C. If the 2014 Intrastate Composite Terminating End Office Access Rate is higher than \$0.0007, the reduction in revenues equal to the difference between the intrastate 2014 Composite Terminating End Office Access Rate and \$0.0007 determined pursuant to § 51.907(f) using Fiscal Year 2011 terminating intrastate end office minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

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- D. CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor;
- E. A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:
1. Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;
  2. By using a composite reciprocal compensation rate as follows:
    - (i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;
    - (ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2016, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or
  3. For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.
- F. An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2014.
- (vi) Beginning July 1, 2017, a Price Cap Carrier's eligible recovery will be equal to ninety (90) percent of the sum of the amounts in paragraphs (d)(1)(vi)A-(d)(1)(vi)F, and then adding the amount in paragraph(d)(1)(vi)G to that amount:
- A. The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor; and
  - B. The reduction in interstate switched access revenues equal to the Initial Composite terminating End Office Access Rate using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

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- C. The reduction in revenues equal to the intrastate 2014 Composite terminating End Office Access Rate using Fiscal Year 2011 terminating intrastate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;
- D. The reduction in revenues resulting from reducing the terminating Tandem-Switched Transport Access Service rate to \$0.0007 pursuant to § 51.907(g)(2) using Fiscal Year 2011 terminating tandem-switched minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;
- E. CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor; and
- F. A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:
1. Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;
  2. By using a composite reciprocal compensation rate as follows:
    - (i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;
    - (ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2017, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or
  3. For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.
- G. An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2015.

- (vii) Beginning July 1, 2018, a Price Cap Carrier's eligible recovery will be equal to ninety (90) percent of the sum of the amounts in paragraphs (d)(1)(vii)A-(d)(1)(vii)G, and then adding the amount in paragraph(d)(1)(vii)H to that amount:
- A. The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor; and:
  - B. The reduction in interstate switched access revenues equal to the Initial Composite terminating End Office Access Rate using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;
  - C. The reduction in revenues equal to the intrastate 2014 Composite terminating End Office Access Rate using Fiscal Year 2011 terminating intrastate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;
  - D. The reduction in revenues resulting from reducing the terminating Tandem-Switched Transport Access Service rate to \$0.0007 pursuant to § 51.907(g)(2) using Fiscal Year 2011 terminating tandem-switched minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;
  - E. The reduction in revenues resulting from moving from a terminating Tandem-Switched Transport Access Service rate tariffed at a maximum of \$0.0007 to removal of intercarrier charges pursuant to § 51.907(h), if applicable, using Fiscal Year 2011 terminating tandem-switched minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;
  - F. CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor; and
  - G. A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:
    - 1. Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;
    - 2. By using a composite reciprocal compensation rate as follows:
      - (i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal

compensation receipts and payments by their respective Fiscal Year 2011 demand;

- (ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2018, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or

- 3. For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

H. An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2016.

- (viii) Beginning July 1, 2019, and in subsequent years, a Price Cap Carrier's eligible recovery will be equal to the amount calculated in paragraph (d)(1)(vii)A-(d)(1)(vii)H before the application of the Price Cap Carrier Traffic Demand Factor applicable in 2018 multiplied by the appropriate Price Cap Carrier Traffic Demand Factor for the year in question, and then adding an amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1 two years earlier

- (2) If a Price Cap Carrier recovers any costs or revenues that are already being recovered as Eligible Recovery through Access Recovery Charges or the Connect America Fund from another source, that carrier's ability to recover reduced switched access revenue from Access Recovery Charges or the Connect America Fund shall be reduced to the extent it receives duplicative recovery.

- (3) A Price Cap Carrier seeking revenue recovery must annually certify as part of its tariff filings to the Commission and to the relevant state commission that the carrier is not seeking duplicative recovery in the state jurisdiction for any Eligible Recovery subject to the recovery mechanism.

- (e) Access Recovery Charge. (1) A charge that is expressed in dollars and cents per line per month may be assessed upon end users that may be assessed an end user common line charge pursuant to § 69.152 of this chapter, to the extent necessary to allow the Price Cap Carrier to recover some or all of its eligible recovery determined pursuant to paragraph (d), subject to the caps described in paragraph (e)(5) below. A Price Cap Carrier may elect to forgo charging some or all of the Access Recovery Charge.

- (2) Total Access Recovery Charges calculated by multiplying the tariffed Access Recovery Charge by the projected demand for the year in question may not recover more than the amount of eligible recovery calculated pursuant to paragraph (d) for the year beginning on July 1.

- (3) For the purposes of this section, a Price Cap Carrier holding company includes all of its wholly-owned operating companies that are price cap incumbent local exchange carriers. A Price Cap Carrier Holding Company may recover the eligible recovery attributable to any price cap study areas operated by its wholly-owned operating companies through assessments of the Access Recovery Charge on end users in any price cap study areas operated by its wholly owned operating companies that are price cap incumbent local exchange carriers.
- (4) Distribution of Access Recovery Charges among lines of different types. (i) A Price Cap Carrier holding company that does not receive ICC-replacement CAF support (whether because it elects not to or because it does not have sufficient eligible recovery after the Access Recovery Charge is assessed or imputed) may not recover a higher fraction of its total revenue recovery from Access Recovery Charges assessed on Residential and Single Line Business lines than:
- A. The number of Residential and Single-Line Business lines divided by
  - B. The sum of the number of Residential and Single-Line Business lines and two (2) times the number of End User Common Line charges assessed on Multi-Line Business customers.
- (ii) For purposes of this rule, Residential and Single Line Business lines are lines (other than lines of Lifeline Customers) assessed the residential and single line business end user common line charge and lines assessed the non-primary residential end user common line charge.
- (iii) For purposes of this rule, Multi-Line Business Lines are lines assessed the multi-line business end user common line charge.
- (5) Per-line caps and other limitations on Access Recovery Charges
- (i) For each line other than lines of Lifeline Customers assessed a primary residential or single-line business end user common line charge or a non-primary residential end user common line charge pursuant to § 69.152 of this Chapter, a Price Cap Carrier may assess an Access Recovery Charge as follows:
    - A. Beginning July 1, 2012, a maximum of \$0.50 per month for each line;
    - B. Beginning July 1, 2013, a maximum of \$1.00 per month for each line;
    - C. Beginning July 1, 2014, a maximum of \$1.50 per month for each line;
    - D. Beginning July 1, 2015, a maximum of \$2.00 per month for each line; and
    - E. Beginning July 1, 2016, a maximum of \$2.50 per month for each line.

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- (ii) For each line assessed a multi-line business end user common line charge pursuant to § 69.152 of this Chapter, a Price Cap Carrier may assess an Access Recovery Charge as follows:
- A. Beginning July 1, 2012, a maximum of \$1.00 per month for each multi-line business end user common line charge assessed;
  - B. Beginning July 1, 2013, a maximum of \$2.00 per month for each multi-line business end user common line charge assessed;
  - C. Beginning July 1, 2014, a maximum of \$3.00 per month for each multi-line business end user common line charge assessed;
  - D. Beginning July 1, 2015, a maximum of \$4.00 per month for each multi-line business end user common line charge assessed; and
  - E. Beginning July 1, 2016, a maximum of \$5.00 per month for each multi-line business end user common line charge assessed.
- (iii) The Access Recovery Charge allowed by paragraph (e)(5)(i) may not be assessed to the extent that its assessment would bring the total of the Rate Ceiling Component Charges above the Residential Rate Ceiling on January 1 of that year. This limitation applies only to the first residential line obtained by a residential end user and does not apply to single-line business customers.
- (iv) The Access Recovery Charge allowed by paragraph (e)(5)(ii) may not be assessed to the extent that its assessment would bring the total of the multi-line business end user common line charge and the Access Recovery Charge above \$12.20 per line.
- (v) The Access Recovery Charge assessed on lines assessed the non-primary residential line end user common line charge in a study area may not exceed the Access Recovery Charge assessed on residential end-users' first residential line in that study area.
- (vi) The Access Recovery Charge may not be assessed on lines of any Lifeline Customers.
- (vii) If in any year, the Price Cap Carrier's Access Recovery Charge is not at its maximum, the succeeding year's Access Recovery Charge may not increase more than \$.050 per line per month for charges assessed under paragraph (e)(5)(i) or \$1.00 per line per month for charges assessed under paragraph (e)(5)(ii).
- (f) Price Cap Carrier eligibility for CAF ICC Support.
- (2) A Price Cap Carrier shall elect in its July 1, 2012 access tariff filing whether it will receive CAF ICC Support under this paragraph. A Price Cap Carrier eligible to receive CAF ICC Support subsequently may elect at any time not to receive such funding. Once

it makes the election not to receive CAFF ICC Support , it may not elect to receive such funding at a later date.

- (3) Beginning July 1, 2012, a Price Cap Carrier may recover any eligible recovery allowed by paragraph (d) that it could not have recovered through charges assessed pursuant to paragraph (e) from CAF ICC Support pursuant to § 54.304. For this purpose, the Price Cap Carrier must impute the maximum charges it could have assessed under paragraph (e).
- (4) Beginning July 1, 2017, a Price Cap Carrier may recover two-thirds (2/3) of the amount it otherwise would have been eligible to recover under subparagraph (2) from CAF ICC Support .
- (5) Beginning July 1, 2018, a Price Cap Carrier may recover one-third (1/3) of the amount it otherwise would have been eligible to recover under subparagraph (2) from CAF ICC Support .
- (6) Beginning July 1, 2019, a Price Cap Carrier may no longer recover any amount related to revenue recovery under this paragraph from CAF ICC Support .
- (7) A Price Cap Carrier that elects to receive CAF ICC support must certify with its 2012 annual access tariff filing and on April 1<sup>st</sup> of each subsequent year that it has complied with paragraphs (d) and (e), and, after doing so, is eligible to receive the CAF ICC support requested pursuant to paragraph (f).

**§ 51.917 Revenue recovery for Rate-of-Return Carriers.**

- (a) **Scope.** This section sets forth the extent to which Rate-of-Return Carriers may recover, through the recovery mechanism outlined below, a portion of revenues lost due to rate reductions required by §§ 20.11(b), 51.705 and 51.909 of this chapter.
- (b) **Definitions.** 2011 Interstate Switched Access Revenue Requirement. 2011 Interstate Switched Access Revenue Requirement means: (a) for a Rate-of-Return Carrier that participated in the NECA 2011 annual switched access tariff filing, its projected interstate switched access revenue requirement associated with the NECA 2011 annual interstate switched access tariff filing; (b) for a Rate-of-Return Carrier subject to section 61.38 of this chapter that filed its own annual access tariff in 2010 and did not participate in the NECA 2011 annual switched access tariff filing, its projected interstate switched access revenue requirement in its 2010 annual interstate switched access tariff filing; and (3) for a Rate-of-Return Carrier subject to section 61.39 of this chapter that filed its own annual switched access tariff in 2011, its historically-determined annual interstate switched access revenue requirement filed with its 2011 annual interstate switched access tariff filing.
- (1) **Expected Revenues.** Expected Revenues from an access service are calculated using the default transition rate for that service specified by § 51.909 of this part and forecast demand for that service. Expected Revenues from a non-access service are calculated using the default transition rate for that service specified by § 20.11 or § 51.705 of this chapter and forecast net demand for that service.

- (2) Rate-of-Return Carrier Baseline Adjustment Factor. The Rate-of-Return Carrier Baseline Adjustment Factor, as used in calculating eligible recovery for Rate-of-Return Carriers, is equal to ninety-five (95) percent for the period beginning July 1, 2012. It is reduced by five (5) percent of its previous value in each subsequent annual tariff filing.
- (3) Revenue Requirement. Revenue Requirement is equal to a carrier's regulated operating costs plus an 11.25 percent return on a carrier's net rate base calculated in compliance with the provisions of parts 36, 65 and 69 of this chapter. For an average schedule carrier, its Revenue Requirement shall be equal to the average schedule settlements it received from the pool, adjusted to reflect an 11.25 percent rate of return, or what it would have received if it had been a participant in the pool. If the reference is to an operating segment, these references are to the Revenue Requirement associated with that segment.
- (4) True-up Adjustment. The True-up Adjustment is equal to the Expected Revenues less the True-up Revenues for any particular service for the period in question.
- (5) True-up Revenues. True-up Revenues from an access service are equal to Expected Revenues minus ((projected demand minus actual realized demand for that service) times the default transition rate for that service specified by 51.909). True-up Revenues from a non-access service are equal to Expected Revenues minus ((projected demand minus actual realized net demand for that service) times the default transition rate for that service specified by 20.11(b) or 51.705). Realized demand is the demand for which payment has been received, or has been made, as appropriate, by the time the true-up is made.
- (c) 2011 Rate-of-Return Carrier Base Period Revenue. (1) 2011 Rate-of-Return Carrier Base Period Revenue is the sum of:
- (i) 2011 Interstate Switched Access Revenue Requirement;
  - (ii) Fiscal Year 2011 revenues from Transitional Intrastate Access Service received by March 31, 2012; and
  - (iii) Fiscal Year 2011 reciprocal compensation revenues received by March 31, 2012, less Fiscal Year 2011 reciprocal compensation payments paid and/or payable by March 31, 2012
- (2) 2011 Rate-of-Return Carrier Base Period Revenue shall be adjusted to reflect the removal of any increases in revenue requirement or revenues resulting from access stimulation activity the Rate-of-Return Carrier engaged in during the relevant measuring period. A Rate-of-Return Carrier should make this adjustment for its initial July 1, 2012, tariff filing, but the adjustment may result from a subsequent Commission or court ruling.
- (d) Eligible Recovery for Rate-of-Return Carriers. (1) Notwithstanding any other provision of the Commission's rules, a Rate-of-Return Carrier may recover the amounts specified in this paragraph through the mechanisms described in paragraphs (e) and (f).

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- (i) Beginning July 1, 2012, a Rate-of-Return Carrier's eligible recovery will be equal to the Rate-of-Return Carrier Baseline Adjustment Factor multiplied by the sum of:
1. The Fiscal Year 2011 revenues from Transitional Intrastate Access Service less the Expected Revenues from Transitional Intrastate Access Service for the year beginning July 1, 2012, reflecting the rate transition contained in § 51.909;
  2. 2011 Base Period Revenue Requirement less the Expected Revenues from interstate switched access for the year beginning July 1, 2012, reflecting the rate transition contained in § 51.909;
  3. CMRS Net Reciprocal Compensation Revenues; and
  4. A Rate-of-Return Carrier's reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) of this part resulting from rate reductions required by § 51.705, which may be calculated in one of the following ways:
    - i. Fiscal Year 2011 net reciprocal compensation revenue less the Expected Revenues from net reciprocal compensation for the year beginning July 1, 2012, reflecting the rate reductions required by § 51.705;
    - ii. By using a composite reciprocal compensation rate as follows:
      1. Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;
      2. Estimate the expected reduction in net reciprocal compensation for the year beginning July 1, 2012, by calculating the expected difference between the Fiscal Year 2011 composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2012 using projected 2012 demand; or
    - iii. For the purpose of establishing its recovery for net reciprocal compensation, a Rate-of-Return Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.
- (ii) Beginning July 1, 2013, a Rate-of-Return Carrier's eligible recovery will be equal to the Rate-of-Return Carrier Baseline Adjustment Factor multiplied by the sum of:
1. The Fiscal Year 2011 revenues from Transitional Intrastate Access Service less the Expected Revenues from Transitional Intrastate Access Service for the year beginning July 1, 2013, reflecting the rate transition contained in § 51.909;

2. 2011 Rate-of-Return Carrier Base Period Revenue Requirement less the Expected Revenues from interstate switched access for the year beginning July 1, 2013
  3. CMRS Net Reciprocal Compensation Revenues;
  4. A Rate-of-Return Carrier's reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:
    - i. Fiscal Year 2011 net reciprocal compensation revenue less the Expected Revenues from net reciprocal compensation for the year beginning July 1, 2013, reflecting the rate reductions required by 51.705;
    - ii. By using a composite reciprocal compensation rate as follows:
      1. Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;
      2. Estimate the expected reduction in net reciprocal compensation for the year beginning July 1, 2013, by calculating the expected difference between the Fiscal Year 2011 composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2013 using projected 2013 demand; or
    - iii. For the purpose of establishing its recovery for net reciprocal compensation, a Rate-of-Return Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.
- (iii) Beginning July 1, 2014, a Rate-of-Return Carrier's eligible recovery will be equal to the Rate-of-Return Carrier Baseline Adjustment Factor multiplied by the sum of the amounts in paragraphs (d)(1)(iii)(1)-(d)(1)(iii)(4), and by adding the amount in paragraph (d)(1)(iii)5 to that amount:
1. The Fiscal Year 2011 revenues from Transitional Intrastate Access Service less the Expected Revenues from Transitional Intrastate Access Service for the year beginning July 1, 2014, reflecting the rate transitions contained in § 51.909 (including the reduction in intrastate End Office Switched Access Service rates), adjusted to reflect the True-Up Adjustment for Transitional Intrastate Access Service for the year beginning July 1, 2012;
  2. 2011 Base Period Revenue Requirement less the Expected Revenues from interstate switched access for the year beginning July 1, 2014, adjusted to reflect

the True-Up Adjustment for Interstate switched Access for the year beginning July 1, 2012;

3. CMRS Net Reciprocal Compensation Revenues; and
  4. A Rate-of-Return Carrier's reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:
    - i. Fiscal Year 2011 net reciprocal compensation revenue less the Expected Revenues from net reciprocal compensation for the year beginning July 1, 2014, reflecting the rate reductions required by 51.705 adjusted to reflect the True-Up Adjustment for reciprocal compensation for the year beginning July 1, 2012;
    - ii. By using a composite reciprocal compensation rate as follows:
      1. Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;
      2. Estimate the expected reduction in net reciprocal compensation for the year beginning July 1, 2014, by calculating the expected difference between the Fiscal Year 2011 composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2014, adjusted to reflect the True-Up Adjustment for reciprocal compensation for the year beginning July 1, 2012; or
    - iii. For the purpose of establishing its recovery for net reciprocal compensation, a Rate-of-Return Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.
  5. An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2012.
- (iv) Beginning July 1, 2015, and for all subsequent years, a Rate-of-Return Carrier's eligible recovery will be calculated by updating the procedures set forth in paragraph (d)(1)(iii) for the period beginning July 1, 2014, to reflect the passage of an additional year in each subsequent year.
- (v) If a Rate-of-Return Carrier receives payments for intrastate or interstate switched access services or for Access Recovery Charges after the period used to measure the adjustments to reflect the differences between estimated and actual revenues, it shall

- treat such payments as actual revenue in the year the payment is received and shall reflect this as an additional adjustment for that year.
- (vi) If a Rate-of-Return Carrier receives or makes reciprocal compensation payments after the period used to measure the adjustments to reflect the differences between estimated and actual net reciprocal compensation revenues, it shall treat such amounts as actual revenues or payments in the year the payment is received or made and shall reflect this as an additional adjustment for that year.
- (vii) If a Rate-of-Return Carrier recovers any costs or revenues that are already being recovered as Eligible Recovery through Access Recovery Charges or the Connect America Fund from another source, that carrier's ability to recover reduced switched access revenue from Access Recovery Charges or the Connect America Fund shall be reduced to the extent it receives duplicative recovery. A Rate-of-Return Carrier seeking revenue recovery must annually certify as part of its tariff filings to the Commission and to the relevant state commission that the carrier is not seeking duplicative recovery in the state jurisdiction for any Eligible Recovery subject to the recovery mechanism.
- (e) Access Recovery Charge. (1) A charge that is expressed in dollars and cents per line per month may be assessed upon end users that may be assessed a subscriber line charge pursuant to § 69.104 of this chapter, to the extent necessary to allow the Rate-of-Return Carrier to recover some or all of its Eligible Recovery determined pursuant to paragraph (d), subject to the caps described in paragraph (e)(6) below. A Rate-of-Return Carrier may elect to forgo charging some or all of the Access Recovery Charge.
- (2) Total Access Recovery Charges calculated by multiplying the tariffed Access Recovery Charge by the projected demand for the year may not recover more than the amount of eligible recovery calculated pursuant to paragraph (d) for the year beginning on July 1.
- (3) For the purposes of this section, a Rate-of-Return Carrier holding company includes all of its wholly-owned operating companies. A Rate-of-Return Carrier Holding Company may recover the eligible recovery attributable to any Rate-of-Return study areas operated by its wholly-owned operating companies that are Rate-of-Return incumbent local exchange carriers through assessments of the Access Recovery Charge on end users in any Rate-of-Return study areas operated by its wholly owned operating companies that are Rate-of-Return incumbent local exchange carriers.
- (4) Distribution of Access Recovery Charges among lines of different types
- (i) A Rate-of-Return Carrier that does not receive ICC-replacement CAF support (whether because they elect not to or because they do not have sufficient eligible recovery after the Access Recovery Charge is assessed or imputed) may not recover a higher ratio of its total revenue recovery from Access Recovery Charges assessed on Residential and Single Line Business lines than the following ratio (using holding company lines):

1. The number of Residential and Single-Line Business lines assessed an End User Common Line charge (excluding Lifeline Customers), divided by
  2. The sum of the number of Residential and Single-Line Business lines assessed an End User Common Line charge (excluding Lifeline Customers), and two (2) times the number of End User Common Line charges assessed on Multi-Line Business customers.
- (5) For purposes of this rule, Residential and Single Line Business lines are lines (other than lines of Lifeline Customers) assessed the residential and single line business end user common line charge.
- (i) For purposes of this rule, Multi-Line Business Lines are lines assessed the multi-line business end user common line charge.
- (6) Per-line caps and other limitations on Access Recovery Charges. (i) For each line other than lines of Lifeline Customers assessed a primary residential or single-line business end user common line charge pursuant to § 69.104 of this Chapter, a Rate-of-Return Carrier may assess an Access Recovery Charge as follows:
1. Beginning July 1, 2012, a maximum of \$0.50 per month for each line;
  2. Beginning July 1, 2013, a maximum of \$1.00 per month for each line;
  3. Beginning July 1, 2014, a maximum of \$1.50 per month for each line;
  4. Beginning July 1, 2015, a maximum of \$2.00 per month for each line;
  5. Beginning July 1, 2016, a maximum of \$2.50 per month for each line; and
  6. Beginning July 1, 2017, a maximum of \$3.00 per month for each line.
- (ii) For each line assessed a multi-line business end user common line charge pursuant to § 69.104 of this Chapter, a Rate-of-Return Carrier may assess an Access Recovery Charge as follows:
1. Beginning July 1, 2012, a maximum of \$1.00 per month for each multi-line business end user common line charge assessed;
  2. Beginning July 1, 2013, a maximum of \$2.00 per month for each multi-line business end user common line charge assessed;
  3. Beginning July 1, 2014, a maximum of \$3.00 per month for each multi-line business end user common line charge assessed;
  4. Beginning July 1, 2015, a maximum of \$4.00 per month for each multi-line business end user common line charge assessed;

5. Beginning July 1, 2016, a maximum of \$5.00 per month for each multi-line business end user common line charge assessed; and
  6. Beginning July 1, 2017, a maximum of \$6.00 per month for each multi-line business end user common line charge assessed.
- (iii) The Access Recovery Charge allowed by subparagraph (e)(6)(i) may not be assessed to the extent that its assessment would bring the total of the Rate Ceiling Component Charges above the Residential Rate Ceiling. This limitation does not apply to single-line business customers.
- (iv) The Access Recovery Charge allowed by subparagraph (e)(6)(ii) may not be assessed to the extent that its assessment would bring the total of the multi-line business end user common line charge and the Access Recovery Charge above \$12.20 per line.
- (v) The Access Recovery Charge may not be assessed on lines of Lifeline Customers.
- (vi) If in any year, the Rate of return carriers' Access Recovery Charge is not at its maximum, the succeeding year's Access Recovery Charge may not increase more than \$0.50 per line for charges under subparagraph (e)(6)(i) or \$1.00 per line for charges assessed under subparagraph (e)(6)(ii).
- (vii) A Price Cap Carrier with study areas that are subject to rate-of-return regulation shall recover its eligible recovery for such study areas through the recovery procedures specified in this section. For that purpose, the provisions of paragraph (e)(3) shall apply to the rate-of-return study areas if the applicable conditions in paragraph (e)(3) are met.
- (f) Rate-of-Return Carrier eligibility for CAF ICC Recovery. (1) A Rate-of-Return Carrier shall elect in its July 1, 2012 access tariff filing whether it will receive CAF ICC Support under this paragraph. A Rate-of-Return Carrier eligible to receive CAF ICC Support subsequently may elect at any time not to receive such funding. Once it makes the election not to receive CAF ICC Support, it may not elect to receive such funding at a later date.
- (2) Beginning July 1, 2012, a Rate-of-Return Carrier may recover any eligible recovery allowed by paragraph (d) that it could not have recovered through charges assessed pursuant to paragraph (e) from CAF ICC Support pursuant to § 54.304. For this purpose, the Rate-of-Return Carrier must impute the maximum charges it could have assessed under paragraph (e).
- (3) A Rate-of-Return Carrier that elects to receive CAF ICC support must certify with its 2012 annual access tariff filing and on April 1<sup>st</sup> of each subsequent year that it has complied with paragraphs (d) and (e), and, after doing so, is eligible to receive the CAF ICC support requested pursuant to paragraph (f).

**§ 51.919 Reporting and monitoring**

(a) A Price Cap Carrier that elects to participate in the recovery mechanism outlined in § 51.915 shall, beginning in 2012, file with the Commission the data consistent with Section XIII (f)(3) of FCC 11-161 with its annual access tariff filing.

(b) A Rate-of-Return Carrier that elects to participate in the recovery mechanism outlined in § 51.917 shall file with the Commission the data consistent with Section XIII (f)(3) of FCC 11-161 with its annual interstate access tariff filing, or on the date such a filing would have been required if it had been required to file in that year.

**PART 54—UNIVERSAL SERVICE**

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

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

**Subpart A—General Information**

33. Amend §54.5 by adding definitions of “community anchor institutions,” “high-cost support,” “Tribal lands” and “unsubsidized competitor,” and by revising the definition of “rate-of-return carrier” to read as follows:

**§ 54.5 Terms and Definitions.**

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Community anchor institutions. For the purpose of high-cost support, “community anchor institutions” refers to schools, libraries, health care providers, community colleges, other institutions of higher education, and other community support organizations and entities.

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High-cost support. “High-cost support” refers to those support mechanisms in existence as of October 1, 2011, specifically, high-cost loop support, safety net additive and safety valve provided pursuant to subpart F of part 36, local switching support pursuant to § 54.301, forward-looking support pursuant to § 54.309, interstate access support pursuant to §§ 54.800 through 54.809, and interstate common line support pursuant to §§ 54.901 through 54.904, support provided pursuant to §§ 51.915, 51.917, and 54.304, support provided to competitive eligible telecommunications carriers as set forth in §54.307(e), Connect America Fund support provided pursuant to § 54.312, and Mobility Fund support provided pursuant to subpart L of this part.

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Rate-of-return carrier. “Rate-of-return carrier” shall refer to any incumbent local exchange carrier not subject to price cap regulation as that term is defined in § 61.3(aa) of this chapter.

\* \* \* \* \*

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

Unsubsidized competitor. An “unsubsidized competitor” is a facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support.

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14. Revise § 54.7 to read as follows:

**§ 54.7 Intended use of federal universal service support.**

(a) A carrier that receives federal universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

(b) The use of federal universal service support that is authorized by paragraph (a) shall include investments in plant that can, either as built or with the addition of plant elements, when available, provide access to advanced telecommunications and information services.

**Subpart B—Services Designated for Support**

34. Revise §54.101 to read as follows:

**§ 54.101 Supported services for rural, insular and high cost areas.**

(a) Services designated for support. Voice telephony service shall be supported by federal universal service support mechanisms. 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; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems; and toll limitation for qualifying low-income consumers (as described in subpart E of this part).

(b) An eligible telecommunications carrier must offer voice telephony service as set forth in paragraph (a) of this section in order to receive federal universal service support.

**Subpart C—Carriers Eligible for Universal Service Support**

35. Revise §54.202 to read as follows:

**§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.**

(a) In order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

(1) (i) Certify that it will comply with the service requirements applicable to the support that it receives.

(ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area. Each applicant shall estimate the area and population that will be served as a result of the improvements.

(2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(b) Public Interest Standard. Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determines that such designation is in the public interest.

(c) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of Tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send any public notice seeking comment on any petition for designation as an eligible telecommunications carrier on Tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable, by the most expeditious means available.

#### **Subpart D—Universal Service Support for High-Cost Areas**

36. Amend §54.301 by revising paragraph (a)(1), revising the first sentence of paragraph (b), and by revising the first sentence of paragraph (e)(1) to read as follows:

#### **§ 54.301 Local switching support.**

(a) \*\*\*

(1) Beginning January 1, 1998 and ending December 31, 2011, an incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall receive support for local switching costs using the following formula: the carrier's projected annual unseparated local switching revenue requirement, calculated pursuant to paragraph (d) of this section, shall be multiplied by the local switching support factor. Beginning January 1, 2012 and ending June 30, 2012, a rate-of-return carrier, as that term is defined in § 54.5 of this chapter, that is an incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines and is not affiliated with a price cap carrier, as that term is defined in § 61.3(aa) of this chapter, shall receive support for local switching costs frozen at the

same support level received for calendar year 2011, subject to true-up. For purposes of this section, local switching costs shall be defined as Category 3 local switching costs under part 36 of this chapter. Beginning January 1, 2012, no carrier that is a price cap carrier, as that term is defined in § 61.3(aa) of this chapter, or a rate-of-return carrier, as that term is defined in § 54.5 of this chapter, that is affiliated with a price cap carrier, shall receive local switching support. Beginning July 1, 2012, no carrier shall receive local switching support.

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(b) Submission of data to the Administrator. Until October 1, 2011, each incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the projected total unseparated dollar amount assigned to each account listed below for the calendar year following each filing.\*\*\*

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(e) True-up adjustment—(1) Submission of true-up data. Until December 31, 2012, each incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the historical total unseparated dollar amount assigned to each account listed in paragraph (b) of this section for each calendar year no later than 12 months after the end of such calendar year.\*\*\*

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37. Add §54.302 to subpart D to read as follows:

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

(a) Beginning July 1, 2012 and until June 30, 2013, each study area's universal service monthly support (not including Connect America Fund support provided pursuant to § 54.304) on a per-line basis shall not exceed \$250 per-line plus two-thirds of the difference between its uncapped per-line monthly support and \$250. Beginning July 1, 2013 and until June 30, 2014, each study area's universal service monthly support on a per-line basis shall not exceed \$250 per-line plus one third of the difference between its uncapped per-line monthly support and \$250. Beginning July 1, 2014, each study area's universal service monthly per-line support shall not exceed \$250.

(b) For purposes of this section, universal service support is defined as the sum of the amounts calculated pursuant to §§ 36.605, 36.631, 54.301, 54.305, and 54.901-.904 of this chapter. Line counts for purposes of this section shall be as of the most recent line counts reported pursuant to § 36.611(h) of this chapter.

(c) The Administrator, in order to limit support to \$250 for affected carriers, shall reduce safety net additive support, high-cost loop support, safety valve support, and interstate common line support in proportion to the relative amounts of each support the study area would receive absent such limitation.

**§54.303 [Removed]**

38. Section 54.303 is removed.

39. Add §54.304 to subpart D to read as follows:

**§54.304 – Administration of Connect America Fund Inter-carrier Compensation Replacement.**

- (a) The Administrator shall administer CAF ICC support pursuant to § 51.915 and § 51.917 of this chapter.
- (b) The funding period is the period beginning July 1 through June 30 of the following year.
- (c) For price cap carriers that are eligible and elect, pursuant to § 51.915(f) of this chapter, to receive CAF ICC support, the following provisions govern the filing of data with the Administrator, the Commission, and the relevant state commissions and the payment by the Administrator to those carriers of CAF ICC support amounts that the carrier is eligible to receive pursuant to § 51.915 of this chapter.

(1) A price cap carrier seeking CAF ICC support pursuant to § 51.915 of this chapter shall file data with the Administrator, the Commission, and the relevant state commissions no later than June 30, 2012, for the first year, and no later than March 31, in subsequent years, establishing the amount of the price cap carrier's eligible CAF ICC funding during the upcoming funding period pursuant to § 51.915 of this chapter. The amount shall include any true-ups, pursuant to § 51.915 of this chapter, associated with an earlier funding period.

(2) The Administrator shall monthly pay each price cap carrier one-twelfth (1/12) of the amount the carrier is eligible to receive during that funding period.

- (d) For rate-of-return carriers that are eligible and elect, pursuant to § 51.917(f) of this chapter, to receive CAF ICC support, the following provisions govern the filing of data with the Administrator, the Commission, and the relevant state commissions and the payment by the Administrator to those carriers of CAF ICC support amounts that the rate-of-return carrier is eligible to receive pursuant to § 51.917 of this chapter.

(1) A rate-of-return carrier seeking CAF ICC support shall file data with the Administrator, the Commission, and the relevant state commissions no later than June 30, 2012, for the first year, and no later than March 31, in subsequent years, establishing the rate-of-return carrier's projected eligibility for CAF ICC funding during the upcoming funding period pursuant to § 51.917 of this chapter. The projected amount shall include any true-ups, pursuant to § 51.917 of this chapter, associated with an earlier funding period.

(2) The Administrator shall monthly pay each rate-of-return carrier one-twelfth (1/12) of the amount the carrier is to be eligible to receive during that funding period.

40. Amend §54.305 by adding a sentence at the end of paragraph (a) and by adding a sentence at the beginning of paragraph (b) to read as follows:

**§ 54.305 Sale or transfer of exchanges.**

(a) \*\*\* After December 31, 2011, the provisions of this section shall not be used to determine support for any price cap incumbent local exchange carrier or a rate-of-return carrier, as that term is defined in § 54.5 of this chapter, that is affiliated with a price cap incumbent local exchange carrier.

(b) Beginning January 1, 2012, any carrier subject to the provisions of this paragraph shall receive support pursuant to this paragraph or support based on the actual costs of the acquired exchanges, whichever is less. \*\*\*

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41. Amend §54.307 by adding paragraph (e) to read as follows:

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

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(e) Support Beginning January 1, 2012. Competitive eligible telecommunications carriers will, beginning January 1, 2012, receive support based on the methodology described in this paragraph and not based on paragraph (a) of this section.

(1) Baseline Support Amount. Each competitive eligible telecommunication carrier will have a “baseline support amount” equal to its total 2011 support in a given study area, or an amount equal to \$3,000 times the number of reported lines for 2011, whichever is lower. Each competitive eligible telecommunications carrier will have a “monthly baseline support amount” equal to its baseline support amount divided by twelve.

(i) “Total 2011 support” is the amount of support disbursed to a competitive eligible telecommunication carrier for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by the Administrator on January 31, 2012.

(ii) For the purpose of calculating the \$3,000 per line limit, the average of lines reported by a competitive eligible telecommunication carrier pursuant to line count filings required for December 31, 2010, and December 31, 2011 shall be used.

(2) Monthly Support Amounts. Competitive eligible telecommunications carriers shall receive the following support amounts, except as provided in paragraphs (e)(3) through (e)(6) of this section.

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

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

(iii) From July 1, 2013, to June 30, 2014, each competitive eligible telecommunications carrier shall receive 60 percent of its monthly baseline support amount each month.

(iv) From July 1, 2014, to June 30, 2015, each competitive eligible telecommunications carrier shall receive 40 percent of its monthly baseline support amount each month.

(v) From July 1, 2015, to June 30, 2016, each competitive eligible telecommunications carrier shall receive 20 percent of its monthly baseline support amount each month.

(vi) Beginning July 1, 2016, no competitive eligible telecommunications carrier shall receive universal service support pursuant to this section.

(3) Delayed Phase Down for Remote Areas in Alaska. Certain competitive eligible telecommunications carriers serving remote areas in Alaska shall have their support phased down on a later schedule than that described in paragraph (e)(2) of this section.

(i) Remote Areas in Alaska. For the purpose of this paragraph, “remote areas in Alaska” includes all of Alaska except;

(A) The ACS-Anchorage incumbent study area; (2) the ACS-Juneau incumbent study area;

(B) The fairbankszone1 disaggregation zone in the ACS-Fairbanks incumbent study area; and

(C) The Chugiak 1 and 2 and Eagle River 1 and 2 disaggregation zones of the Matanuska Telephone Association incumbent study area.

(ii) Carriers Subject to Delayed Phase Down. A competitive eligible telecommunications carrier shall be subject to the delayed phase down described in paragraph (e)(3) of this section to the extent that it serves remote areas in Alaska, and it certified that it served covered locations in its September 30, 2011, filing of line counts with the Administrator. To the extent a competitive eligible telecommunications carrier serving Alaska is not subject to the delayed phase down, it will be subject to the phase down of support on the schedule described in paragraph (e)(2) of this section.

(iii) Baseline for Delayed Phase Down. For purpose of the delayed phase down for remote areas in Alaska, the baseline amount shall be calculated in the same manner as described in paragraph (e)(1) of this section, except that support amounts from 2013 shall be used.

(iv) Monthly Support Amounts. Competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall receive the following support amounts, except as provided in paragraphs (e)(4) through (e)(6) of this section.

(A) From January 1, 2014, to June 30, 2014, each competitive eligible telecommunications carrier shall receive its monthly baseline support amount each month.

(B) From July 1, 2014 to June 30, 2015, each competitive eligible telecommunications carrier shall receive 80 percent of its monthly baseline support amount each month.

(C) From July 1, 2015, to June 30, 2016, each competitive eligible telecommunications carrier shall receive 60 percent of its monthly baseline support amount each month.

(D) From July 1, 2016, to June 30, 2017, each competitive eligible telecommunications carrier shall receive 40 percent of its monthly baseline support amount each month.

(E) From July 1, 2017, to June 30, 2018, each competitive eligible telecommunications carrier shall receive 20 percent of its monthly baseline support amount each month.

(F) Beginning July 1, 2018, no competitive eligible telecommunications carrier serving remote areas in Alaska shall receive universal service support pursuant to this section.

(v) Interim Support for Remote Areas in Alaska. From January 1, 2012, until December 31, 2013, competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall continue to receive support as calculated pursuant to paragraph (a) of this section, provided that the total amount of support for all such competitive eligible telecommunications carriers shall be capped.

(A) Cap Amount. The total amount of support available on an annual basis for competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall be equal to the sum of “total 2011 support,” as defined in paragraph (e)(1)(i) of this section, received by all competitive eligible telecommunications carriers subject to the delayed phase down for serving remote areas in Alaska.

(B) Reduction Factor. To effectuate the cap, the Administrator shall apply a reduction factor as necessary to the support that would otherwise be received by all competitive eligible telecommunications carriers serving remote areas in Alaska subject to the delayed phase down. The reduction factor will be calculated by dividing the total amount of support available amount by the total support amount calculated for those carriers in the absence of the cap.

(4) Further reductions. If a competitive eligible telecommunications carrier ceases to provide services to high-cost areas it had previously served, the Commission may reduce its baseline support amount.

(5) Implementation of Mobility Fund Phase II Required. In the event that the implementation of Mobility Fund Phase II has not occurred by June 30, 2014, competitive eligible telecommunications carriers will continue to receive support at the level described in paragraph (e)(2)(iv) of this section until Mobility Fund Phase II is implemented. In the event that Mobility Fund Phase II for Tribal lands is not implemented by June 30, 2014, competitive eligible telecommunications carriers serving Tribal lands shall continue to receive support at the level described in paragraph (e)(2)(iv) of this section until Mobility Fund Phase II for Tribal lands is implemented, except that competitive eligible telecommunications carriers serving remote areas in Alaska and subject to paragraph (e)(3) of this section shall continue to receive support at the level described in paragraph (e)(3)(iv)(A) of this section.

(6) Eligibility after Implementation of Mobility Fund Phase II. If a competitive eligible telecommunications carrier becomes eligible to receive high-cost support pursuant to the Mobility Fund Phase II, it will cease to be eligible for phase-down support in the first month for which it receives Mobility Fund Phase II support.

(7) Line Count Filings. Competitive eligible telecommunications carriers, except those subject to the delayed phase down described in paragraph (e)(3) of this section, shall no longer be required to file line counts beginning January 1, 2012. Competitive eligible telecommunications carriers subject to the delayed phase down described in paragraph (e)(3) of this section shall no longer be required to file line counts beginning January 1, 2014.

42. Amend §54.309 by adding paragraph (d) to read as follows:

**§ 54.309 Calculation and distribution of forward-looking support for non-rural carriers.**

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(d) Support After December 31, 2011. Beginning January 1, 2012, no carrier shall receive support under this rule.

**§54.311 [Removed]**

43. Section 54.311 is removed.

44. Section 54.312 is added to read as follows:

**§ 54.312 Connect America Fund for Price Cap Territories – Phase I**

(a) Frozen High-Cost Support. Beginning January 1, 2012, each price cap local exchange carrier and rate-of-return carrier affiliated with a price cap local exchange carrier will have a “baseline support amount” equal to its total 2011 support in a given study area, or an amount equal to \$3,000 times the number of reported lines for 2011, whichever is lower. For purposes of this section, price cap carriers are defined pursuant to §61.3(aa) of this chapter and affiliated companies are determined by §32.9000 of this chapter. Each price cap local exchange carrier and rate-of-return carrier affiliated with a price cap local exchange carrier will have a “monthly baseline support amount” equal to its baseline support amount divided by twelve. Beginning January 1, 2012, on a monthly basis, eligible carriers will receive their monthly baseline support amount.

(1) “Total 2011 support” is the amount of support disbursed to a price cap local exchange carrier or rate-of-return carrier affiliated with a price cap local exchange carrier for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by USAC on January 31, 2012.

(2) For the purpose of calculating the \$3,000 per line limit, the average of lines reported by a price cap local exchange carrier or rate-of-return carrier affiliated with a price cap local exchange carrier pursuant to line count filings required for December 31, 2010, and December 31, 2011 shall be used.

(3) A carrier receiving frozen high cost support under this rule shall be deemed to be receiving Interstate Access Support and Interstate Common Line Support equal to the amount of support the carrier to which the carrier was eligible under those mechanisms in 2011.

(b) Incremental Support. Beginning January 1, 2012, support in addition to baseline support defined in paragraph (a) of this section will be available for certain price cap local exchange carriers and rate-of-return carriers affiliated with price cap local exchange carriers as follows.

(1) For each carrier for which the Wireline Competition Bureau determines that it has appropriate data or for which it determines that it can make reasonable estimates, the Bureau will determine an average per-location cost for each wire center using a simplified cost-estimation function derived from the Commission's cost model. Incremental support will be based on the wire centers for which the estimated per-location cost exceeds the funding threshold. The funding threshold will be determined by calculating which funding threshold would allocate all available incremental support, if each carrier that would be offered incremental support were to accept it.

(2) An eligible telecommunications carrier accepting incremental support must deploy broadband to a number of unserved locations, as shown as unserved by fixed broadband on the then-current version of the National Broadband Map, equal to the amount of incremental support it accepts divided by \$775.

(3) A carrier may elect to accept or decline incremental support. A holding company may do so on a holding-company basis on behalf of its operating companies that are eligible telecommunications carriers, whose eligibility for incremental support, for these purposes, shall be considered on an aggregated basis. A carrier must provide notice to the Commission, relevant state commissions, and any affected Tribal government, stating the amount of incremental support it wishes to accept and identifying the areas by wire center and census block in which the designated eligible telecommunications carrier will deploy broadband to meet its deployment obligation, or stating that it declines incremental support. Such notification must be made within 90 days of being notified of any incremental support for which it would be eligible. Along with its notification, a carrier accepting incremental support must also submit a certification that the locations to be served to satisfy the deployment obligation are shown as unserved by fixed broadband on the then-current version of the National Broadband Map; that, to the best of the carrier's knowledge, the locations are, in fact, unserved by fixed broadband; that the carrier's current capital improvement plan did not already include plans to complete broadband deployment within the next three years to the locations to be counted to satisfy the deployment obligation; and that incremental support will not be used to satisfy any merger commitment or similar regulatory obligation.

(4) An eligible telecommunications carrier must complete deployment of broadband to two-thirds of the required number of locations within two years of providing notification of acceptance of funding, and must complete deployment to all required locations within three years. To satisfy its deployment obligation, the eligible telecommunications carrier must offer broadband service to such locations of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications,

including Voice over Internet Protocol, and with usage caps, if any, that are reasonably comparable to comparable offerings in urban areas.

45. Revise §54.313 to read as follows:

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

(a) Any recipient of high-cost support shall provide:

(1) A progress report on its five-year service quality improvement plan pursuant to § 54.202(a), including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year. The information shall be submitted at the wire center level or census block as appropriate;

(2) Detailed information on any outage in the prior calendar year, as that term is defined in 47 CFR 4.5, of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect

(i) At least ten percent of the end users served in a designated service area; or

(ii) A 911 special facility, as defined in 47 CFR 4.5(e).

(iii) Specifically, the eligible telecommunications carrier's annual report must include information detailing:

(A) The date and time of onset of the outage;

(B) A brief description of the outage and its resolution;

(C) The particular services affected;

(D) The geographic areas affected by the outage;

(E) Steps taken to prevent a similar situation in the future; and

(F) The number of customers affected.

(3) The number of requests for service from potential customers within the recipient's service areas that were unfulfilled during the prior calendar year. The carrier shall also detail how it attempted to provide service to those potential customers;

(4) The number of complaints per 1,000 connections (fixed or mobile) in the prior calendar year;

(5) Certification that it is complying with applicable service quality standards and consumer protection rules;

(6) Certification that the carrier is able to function in emergency situations as set forth in §54.202(a)(2);

(7) The company's price offerings in a format as specified by the Wireline Competition Bureau;

(8) The recipient's holding company, operating companies, affiliates, and any branding (a "dba," or "doing-business-as company" or brand designation), as well as universal service identifiers for each such entity by Study Area Codes, as that term is used by the Administrator. For purposes of this paragraph, "affiliates" has the meaning set forth in section 3(2) of the Communications Act of 1934, as amended;

(9) To the extent the recipient serves Tribal lands, documents or information demonstrating that the ETC had discussions with Tribal governments that, at a minimum, included:

(i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;

(ii) Feasibility and sustainability planning;

(iii) Marketing services in a culturally sensitive manner;

(iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and

(v) Compliance with Tribal business and licensing requirements. 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.

(10) Beginning April 1, 2013. A letter certifying that the pricing of the company's voice services is no more than two standard deviations above the applicable national average urban rate for voice service, as specified in the most recent public notice issued by the Wireline Competition Bureau and Wireless Telecommunications Bureau; and

(11) Beginning April 1, 2013. The results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology and the information and data required by this paragraphs (a)(1)through (7) of this section separately broken out for both voice and broadband service.

(b) In addition to the information and certifications in paragraph (a) of this section, any recipient of incremental CAF Phase I support pursuant to § 54.312(b) shall provide:

- (1) In its next annual report due after two years after filing a notice of acceptance of funding pursuant to § 54.312(b), a certification that the company has deployed to no fewer than two-thirds of the required number of locations; and
- (2) In its next annual report due after three years after filing a notice of acceptance of funding pursuant to § 54.312(b), a certification that the company has deployed to all required locations and that it is 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 Voice over Internet Protocol, and with usage caps, if any, that are reasonably comparable to those in urban areas.
- (c) In addition to the information and certifications in paragraph (a) of this section, price cap carriers that receive frozen high-cost support pursuant to § 54.312(a) shall provide:
- (1) By April 1, 2013. A certification that frozen high-cost support the company received in 2012 was used consistent with the goal of achieving universal availability of voice and broadband;
- (2) By April 1, 2014. A certification that at least one-third of the frozen-high cost support the company 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;
- (3) By April 1, 2015. A certification that at least two-thirds of the frozen-high cost support the company received in 2014 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; and
- (4) By April 1, 2016 and in subsequent years. A certification that all frozen-high cost support the company received in the previous year 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.
- (d) In addition to the information and certifications in paragraph (a) of this section, beginning April 1, 2013, price cap carriers receiving high-cost support to offset reductions in access charges shall provide a certification that the support received pursuant to § 54.304 in the prior calendar year was used to build and operate broadband-capable networks used to offer provider's own retail service in areas substantially unserved by an unsubsidized competitor.
- (e) In addition to the information and certifications in paragraph (a) of this section, any recipient of CAF Phase II support shall provide:
- (1) In the calendar year no later than three years after implementation of CAF Phase II. A certification that the company is providing broadband service to 85% of its supported locations at actual speeds of at least 4 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas as determined in an annual survey.

(2) In the calendar year no later than five years after implementation of CAF Phase II. A certification that the company is providing broadband service to 100% of its supported locations at actual speeds of at least 4 Mbps downstream/1 Mbps upstream, and a percentage of supported locations, to be specified by the Wireline Competition Bureau, at actual speeds of at least 6 Mbps downstream/1.5 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas as determined in an annual survey.

(3) Beginning April 1, 2014. A progress report on the company's five-year service quality plan pursuant to § 54.202(a), including the following information:

(i) A letter certifying that it is meeting the interim deployment milestones as set forth, and that it is taking reasonable steps to meet increased speed obligations that will exist for all supported locations at the expiration of the five-year term for CAF Phase II funding; and

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

(f) In addition to the information and certifications in paragraph (a) of this section, any rate-of-return carrier shall provide:

(1) Beginning April 1, 2014. A progress report on its five-year service quality plan pursuant to §54.202(a) that includes the following information:

(i) A letter certifying that it is taking reasonable steps to provide upon reasonable request broadband service at actual speeds of at least 4 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas as determined in an annual survey, and that requests for such service are met within a reasonable amount of time; and

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

(2) Privately held rate-of-return carriers only. A full and complete annual report of the company's financial condition and operations as of the end of the 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, including non-regulated revenue, by its sources.

(g) Areas with No Terrestrial Backhaul. Carriers without access to terrestrial backhaul that are compelled to rely exclusively on satellite backhaul in their study area must certify annually that no terrestrial backhaul options exist. Any such funding recipients must certify they offer broadband service at actual speeds of at least 1 Mbps downstream and 256 kbps upstream within the supported area served by

satellite middle-mile facilities. To the extent that new terrestrial backhaul facilities are constructed, or existing facilities improve sufficiently to meet the relevant speed, latency and capacity requirements then in effect for broadband service supported by the CAF, within twelve months of the new backhaul facilities becoming commercially available, funding recipients must provide the certifications required in paragraphs (e) or (f) of this section in full. Carriers subject to this paragraph must comply with all other requirements set forth in the remaining paragraphs of this section.

(h) Additional voice rate data. All incumbent local exchange carrier recipients of high-cost support must report all of their flat rates for residential local service, as well as state fees as defined pursuant to § 54.318(e) of this subpart. Carriers must also report all rates that are below the local urban rate floor as defined in § 54.318 of this subpart, and the number of lines for each rate specified. Carriers shall report lines and rates in effect as of January 1.

(i) All reports pursuant to this section shall be filed with the Office of the Secretary of the Commission clearly referencing WC Docket No. 10-90, and with the Administrator, and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

(j) Filing deadlines. In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this section no later than April 1, 2012, except as otherwise specified in this section to begin in a subsequent year, and thereafter annually by April 1 of each year. Eligible telecommunications carriers that file their reports after the April 1 deadline shall receive support pursuant to the following schedule:

(1) Eligible telecommunication carriers that file no later than July 1 shall receive support for the second, third and fourth quarters of the subsequent year.

(2) Eligible telecommunication carriers that file no later than October 1 shall receive support for the third and fourth quarters of the subsequent year.

(3) Eligible telecommunication carriers that file no later than January 1 of the subsequent year shall receive support for the fourth quarter of the subsequent year.

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

46. Revise §54.314 to read as follows:

**§ 54.314 Certification of support for eligible telecommunications carriers.**

(a) Certification. States that desire eligible telecommunications carriers to receive support pursuant to the high-cost program 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 was 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. High-cost support shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.

(b) Carriers not subject to State jurisdiction. An eligible telecommunications carrier not subject to the jurisdiction of a State that desires to receive support pursuant to the high-cost program must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carrier was 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. Support provided pursuant to the high-cost program shall only be provided to the extent that the carrier has filed the requisite certification pursuant to this section.

(c) Certification format. (1) A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 10-90, and with the Administrator of the high-cost support mechanism, on or before the deadlines set forth in paragraph (d) of this section. If provided by the appropriate regulatory authority for the State, the annual certification must identify which carriers in the State are eligible to receive federal support during the applicable 12-month period, and must certify that those carriers only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. A State may file a supplemental certification for carriers not subject to the State's annual certification. All certificates filed by a State pursuant to this section shall become part of the public record maintained by the Commission.

(2) An eligible telecommunications carrier not subject to the jurisdiction of a State shall file a sworn affidavit executed by a corporate officer attesting that the carrier only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. The affidavit must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 10-90, and with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth in paragraph (d) of this section. All affidavits filed pursuant to this section shall become part of the public record maintained by the Commission.

(d) Filing deadlines. In order for an eligible telecommunications carrier to receive federal high-cost support, the State or the carrier, if not subject to the jurisdiction of a State, must file an annual certification, as described in paragraph (c) of this section, with both the Administrator and the Commission. Upon the filing of the certification described in this section, support shall be provided in accordance with the following schedule:

(1) Certifications filed on or before October 1. Carriers subject to certifications filed on or before October 1 shall receive support in the first, second, third, and fourth quarters of the succeeding year.

(2) Certifications filed on or before January 1. Carriers subject to certifications filed on or before January 1 shall receive support in the second, third, and fourth quarters of that year. Such carriers shall not receive support in the first quarter of that year.

(3) Certifications filed on or before April 1. Carriers subject to certifications filed on or before April 1 shall receive support in the third and fourth quarters of that year. Such carriers shall not receive support in the first or second quarters of that year.

(4) Certifications filed on or before July 1. Carriers subject to certifications filed on or before July 1 shall receive support beginning in the fourth quarter of that year. Such carriers shall not receive support in the first, second, or third quarters of that year.

(5) Certifications filed after July 1. Carriers subject to certifications filed after July 1 shall not receive support in that year.

(6) Newly designated eligible telecommunications carriers. Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6) of the Act, provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d) of this section.

**§54.316 [Removed]**

47. Section 54.316 is removed.

48. Add §54.318 to subpart D to read as follows:

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

(a) Beginning July 1, 2012, each carrier receiving high-cost support in a study area under this subpart will receive the full amount of high-cost support it otherwise would be entitled to receive if its flat rate for residential local service plus state regulated fees as defined in paragraph (e) of this section exceeds a local urban rate floor representing the national average of local urban rates plus state regulated fees under the schedule specified in paragraph (f) of this section..

(b) Carriers whose flat rate for residential local service plus state regulated fees offered for voice service are below the specified local urban rate floor under the schedule below plus state regulated fees shall have high-cost support reduced by an amount equal to the extent to which its flat rate for residential local service plus state regulated fees are below the local urban rate floor, multiplied by the number of lines for which it is receiving support.

(c) This rule will apply to rate-of-return carriers as defined in §54.5 and carriers subject to price cap regulation as that term is defined in §61.3 of this chapter.

(d) For purposes of this section, high-cost support is defined as the support available pursuant to § 36.631 of this chapter and support provided to carriers that formerly received support pursuant to § 54.309.

(e) State regulated fees. (1) Beginning on July 1, 2012, for purposes of calculating limitations on high-cost support under this section, state regulated fees shall be limited to state subscriber line charges, state universal service fees and mandatory extended area service charges, which shall be determined as part of a local rate survey, the results of which shall be published annually.

(2) Federal subscriber line charges shall not be included in calculating limitations on high-cost support under this section.

(f) Schedule. High-cost support will be limited where the flat rate for residential local service plus state regulated fees are below the local urban rate floor representing the national average of local urban rates plus state regulated fees under the schedule specified in this paragraph. To the extent end user rates plus state regulated fees are below local urban rate floors plus state regulated fees, appropriate reductions in high-cost support will be made by the Universal Service Administrative Company.

(1) Beginning on July 1, 2012, and ending June 30, 2013, the local urban rate floor shall be \$10.

(2) Beginning on July 1, 2013, and ending June 30, 2014, the local urban rate floor shall be \$14.

(3) Beginning July 1, 2014, and thereafter, the local urban rate floor will be announced annually by the Wireline Competition Bureau.

(h) Any reductions in high-cost support under this section will not be redistributed to other carriers that receive support pursuant to § 36.631 of this chapter.

49. Add §54.320 to subpart D to read as follows:

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

- (a) Eligible telecommunications carriers authorized to receive universal service high-cost support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders.
- (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. All such documents shall be made available upon request to the Commission and any of its Bureaus or Offices, the Administrator, and their respective auditors.
- (c) Eligible telecommunications carriers authorized to receive high-cost support that fail to comply with the public interest obligations in this section or any other terms and conditions may be subject to further action, including the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designation, and suspension or debarment pursuant to § 54.8.

**Subpart H—Administration**

50. Amend §54.702 by revising paragraphs (a), (b), (c), and (h) to read as follows:

**§ 54.702 Administrator's functions and responsibilities.**

(a) The Administrator, and the divisions therein, shall be responsible for administering the schools and libraries support mechanism, the rural health care support mechanism, the high-cost support mechanism, and the low income support mechanism.

(b) The Administrator shall be responsible for billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.

(c) The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.

\* \* \* \* \*

(h) The Administrator shall report quarterly to the Commission on the disbursement of universal service support program funds. The Administrator shall keep separate accounts for the amounts of money collected and disbursed for eligible schools and libraries, rural health care providers, low-income consumers, and high-cost and insular areas.

\* \* \* \* \*

51. Amend § 54.709 by adding three sentences to the end of paragraph (b) to read as follows:

**§ 54.709 Computations of required contributions to universal service support mechanisms.**

\*\*\*\*\*

(b)\* \* \* The Commission may instruct the Administrator to treat excess contributions in a manner other than as prescribed in this 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.

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52. Amend §54.715 by revising paragraph (c) to read as follows:

**§ 54.715 Administrative expenses of the Administrator.**

\* \* \* \* \*

(c) The Administrator shall submit to the Commission projected quarterly budgets at least sixty (60) days prior to the start of every quarter. The Commission must approve the projected quarterly budgets before the Administrator disburses funds under the federal universal service support mechanisms. The administrative expenses incurred by the Administrator in connection with the schools and libraries support mechanism, the rural health care support mechanism, the high-cost support mechanism, and the low income

support mechanism shall be deducted from the annual funding of each respective support mechanism. The expenses deducted from the annual funding for each support mechanism also shall include the Administrator's joint and common costs allocated to each support mechanism pursuant to the cost allocation manual filed by the Administrator under § 64.903 of this chapter.

**Subpart J— Interstate Access Universal Service Support Mechanism**

53. Amend §54.801 by adding paragraph (f) to read as follows:

**§ 54.801 General**

\*\*\*\*\*

(f) Beginning January 1, 2012, no incumbent or competitive eligible telecommunications carrier shall receive support pursuant to this subpart, nor shall any incumbent or competitive eligible telecommunications carrier be required to complete any filings pursuant to this subpart after March 31, 2012.

**Subpart K— Interstate Common Line Support Mechanism for Rate-of-Return Carriers**

54. Amend §54.901 by adding a paragraphs (b)(4), (c) and (d) to read as follows:

**§ 54.901 Calculation of Interstate Common Line Support.**

\*\*\*\*\*

(b) \*\*\*

(4) Beginning January 1, 2012, competitive eligible telecommunications carriers shall not receive Interstate Common Line Support pursuant to this subpart and will instead receive support consistent with § 54.307(e).

(c) Beginning January 1, 2012, for purposes of calculating Interstate Common Line Support, corporate operations expense allocated to the Common Line Revenue Requirement, pursuant to § 69.409 of this chapter, shall be limited to the lesser of:

(1) The actual average monthly per-loop corporate operations expense; or

(2) A monthly per-loop amount computed pursuant to 36.621(a)(4)(iii) of this chapter.

(d) Support After December 31, 2011. Notwithstanding paragraph (a) of this section, beginning January 1, 2012, no carrier that is a rate-of-return carrier, as that term is defined in §54.5 affiliated with a price cap local exchange carrier, as that term is defined in § 61.3(aa) of this chapter, shall receive support under this subpart.

55. Add subpart L to part 54 as follows:

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**Subpart L – Mobility Fund**

**Sec.**

- 54.1001 Mobility Fund – Phase I
- 54.1002 Geographic Areas Eligible for Support
- 54.1003 Provider Eligibility
- 54.1004 Service to Tribal Lands
- 54.1005 Application Process
- 54.1006 Public Interest Obligations
- 54.1007 Letter of Credit
- 54.1008 Mobility Fund Phase I Disbursements
- 54.1009 Annual Reports
- 54.1010 Record Retention for Mobility Fund Phase I

**§ 54.1001 Mobility Fund – Phase I.**

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

**§ 54.1002 Geographic Areas Eligible for Support**

- (a) Mobility Fund Phase I support may be made available for census blocks identified as eligible by public notice.
- (b) Except as provided in § 54.1004, coverage units for purposes of conducting competitive bidding and disbursing support based on designated road miles will be identified by public notice for each census block eligible for support.

**§ 54.1003 Provider Eligibility**

- (a) Except as provided in § 54.1004, an applicant shall be an Eligible Telecommunications Carrier in an area in order to receive Mobility Fund Phase I support for that area. The applicant's designation as an Eligible Telecommunications Carrier may be conditional subject to the receipt of Mobility Fund support.

(b) An applicant shall have access to spectrum in an area that enables it to satisfy the applicable performance requirements in order to receive Mobility Fund Phase I support for that area. The applicant shall certify, in a form acceptable to the Commission, that it has such access at the time it applies to participate in competitive bidding and at the time that it applies for support and that it will retain such access for five (5) years after the date on which it is authorized to receive support.

(c) An applicant shall certify that it is financially and technically qualified to provide the services supported by Mobility Fund Phase I in order to receive such support.

**§ 54.1004 Service to Tribal Lands**

(a) A Tribally-owned or –controlled entity that has pending an application to be designated an Eligible Telecommunications Carrier may participate in any Mobility Fund Phase I auction, including any auction for support solely in Tribal lands, by bidding for support in areas located within the boundaries of the Tribal land associated with the Tribe that owns or controls the entity. To bid on this basis, an entity shall certify that it is a Tribally-owned or –controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. A Tribally-owned or –controlled entity shall receive Mobility Fund Phase I support only after it has become an Eligible Telecommunications Carrier.

(b) In any auction for support solely in Tribal lands, coverage units for purposes of conducting competitive bidding and disbursing support based on designated population will be identified by public notice for each census block eligible for support.

(c) Tribally-owned or –controlled entities may receive a bidding credit with respect to bids for support within the boundaries of associated Tribal lands. To qualify for a bidding credit, an applicant shall certify that it is a Tribally-owned or –controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. An applicant that qualifies shall have its bid(s) for support in areas within the boundaries of Tribal land associated with the Tribe that owns or controls the applicant reduced by twenty-five (25) percent or purposes of determining winning bidders without any reduction in the amount of support available.

(d) A winning bidder for support in Tribal lands shall notify and engage the Tribal governments responsible for the areas supported.

(1) A winning bidder's engagement with the applicable Tribal government shall consist, at a minimum, of discussion regarding:

(i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;

(ii) Feasibility and sustainability planning;

(iii) Marketing services in a culturally sensitive manner;

(iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and

(v) Compliance with Tribal business and licensing requirements

(2) A winning bidder shall notify the appropriate Tribal government of its winning bid no later than five (5) business days after being identified by public notice as a winning bidder.

(3) A winning bidder shall certify in its application for support that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1004(d)(1), at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

(4) A winning bidder for support in Tribal lands shall certify in its annual report, pursuant to § 54.1009(a)(5), and prior to disbursement of support, pursuant to § 54.1008(c), that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1004(d)(1), at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

**§ 54.1005 Application Process**

(a) Application to Participate in Competitive Bidding for Mobility Fund Phase I Support. In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for Mobility Fund Phase I support also shall:

- (1) Provide ownership information as set forth in § 1.2112(a) of this chapter;
- (2) Certify that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1006 in each area for which it seeks support;
- (3) Disclose its status as an Eligible Telecommunications Carrier in any area for which it will seek support or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any such area, and certify that the disclosure is accurate;
- (4) Describe the spectrum access that the applicant plans to use to meet obligations in areas for which it will bid for support, including whether the applicant currently holds a license for or leases the spectrum, and certify that the description is accurate and that the applicant will retain such access for at least five (5) years after the date on which it is authorized to receive support;
- (5) Certify that it will not bid on any areas in which it has made a public commitment to deploy 3G or better wireless service by December 31, 2012; and
- (6) Make any applicable certifications required in § 54.1004 .

(b) Application by Winning Bidders for Mobility Fund Phase I Support.

(1) Deadline. Unless otherwise provided by public notice, winning bidders for Mobility Fund Phase I support shall file an application for Mobility Fund Phase I support no later than 10 business days after the public notice identifying them as winning bidders.

(2) Application Contents.

- (i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter.
- (ii) Certification that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1006 in the geographic areas for which it seeks support.
- (iii) Proof of the applicant's status as an Eligible Telecommunications Carrier or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any area for which it seeks support and certification that the proof is accurate.

(iv) A description of the spectrum access that the applicant plans to use to meet obligations in areas for which it is the winning bidder for support, including whether the applicant currently holds a license for or leases the spectrum, and a certification that the description is accurate and that the applicant will retain such access for at least five (5) years after the date on which it is authorized to receive support.

(v) A detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the budget and describes each specific phase of the project, e.g., network design, construction, deployment, and maintenance. The applicant shall indicate whether the supported network will provide third generation (3G) mobile service within the period prescribed by § 54.1006(a) or fourth generation (4G) mobile service within the period prescribed by § 54.1006(b).

(vi) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from Mobility Fund Phase I and that the applicant will comply with all program requirements.

(vii) Any guarantee of performance that the Commission may require by public notice or other proceedings, including but not limited to the letters of credit required in §54.1007, or a written commitment from an acceptable bank, as defined in §54.1007(a)(1), to issue such a letter of credit.

(viii) Certification that the applicant will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas for a period extending until five (5) years after the date on which it is authorized to receive support.

(ix) Any applicable certifications and showings required in §54.1004.

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

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

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

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

(iii) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the Administrator, or other parties. Minor modifications include correcting

typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

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

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive Mobility Fund Phase I support after the winning bidder submits a Letter of Credit and an accompanying opinion letter as required by § 54.1007, in a form acceptable to the Commission, and any final designation as an Eligible Telecommunications Carrier that any Tribally-owned or –controlled applicant may still require. Each such winning bidder shall submit a Letter of Credit and an accompanying opinion letter as required by §54.1007, in a form acceptable to the Commission, and any required final designation as an Eligible Telecommunications Carrier no later than 10 business days following the release of the public notice.

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

**§ 54.1006 Public Interest Obligations.**

(a) Deadline for Construction – 3G networks. A winning bidder authorized to receive Mobility Fund Phase I support that indicated in its application that it would provide third generation (3G) service on the supported network shall, no later than two (2) years after the date on which it was authorized to receive support, submit data from drive tests covering the area for which support was received demonstrating mobile transmissions supporting voice and data to and from the network covering 75% of the designated coverage units in the area deemed uncovered, or a higher percentage established by Public Notice prior to the competitive bidding, and meeting or exceeding the following:

(1) Outdoor minimum data transmission rates of 50 kbps uplink and 200 kbps downlink at vehicle speeds appropriate for the roads covered;

(2) Transmission latency low enough to enable the use of real time applications, such as VoIP.

(b) Deadline for Construction – 4G networks. A winning bidder authorized to receive Mobility Fund Phase I support that indicated in its application that it would provide fourth generation (4G) service on the supported network shall, no later than three (3) years after the date on which it was authorized to receive support, submit data from drive tests covering the area for which support was received demonstrating mobile transmissions supporting voice and data to and from the network covering 75% of the designated coverage units in the area deemed uncovered, or an

applicable higher percentage established by public notice prior to the competitive bidding, and meeting or exceeding the following:

(1) Outdoor minimum data transmission rates of 200 kbps uplink and 768 kbps downlink at vehicle speeds appropriate for the roads covered;

(2) Transmission latency low enough to enable the use of real time applications, such as VoIP.

(c) Coverage Test Data. Drive tests submitted in compliance with a recipient's public interest obligations shall cover roads designated in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's support. Scattered site tests submitted in compliance with a recipient's public interest obligations shall be in compliance with standards set forth in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's authorized support.

(d) Collocation Obligations. During the period when a recipient shall file annual reports pursuant to § 54.1009, the recipient shall allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase I on newly constructed towers that the recipient owns or manages in the area for which it receives support. In addition, during this period, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the facilities.

(e) Voice and Data Roaming Obligations. During the period when a recipient shall file annual reports pursuant to § 54.1009, the recipient shall comply with the Commission's voice and data roaming requirements that were in effect as of October 27, 2011, on networks that are built through Mobility Fund Phase I support.

(f) Liability for Failing To Satisfy Public Interest Obligations. A winning bidder authorized to receive Mobility Fund Phase I support that fails to comply with the public interest obligations in this paragraph or any other terms and conditions of the Mobility Fund Phase I support will be subject to repayment of the support disbursed together with an additional performance default payment. Such a winning bidder may be disqualified from receiving Mobility Fund Phase I support or other USF support. The additional performance default amount will be a percentage of the Mobility Fund Phase I support that the winning bidder has been and is eligible to request be disbursed to it pursuant to § 54.1008. The percentage will be determined as specified in the public notice detailing competitive bidding procedures prior to the commencement of competitive bidding. The percentage will not exceed twenty percent.

**§ 54.1007 Letter of Credit.**

(a) Before being authorized to receive Mobility Fund Phase I support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission. Each winning bidder authorized to receive Mobility Fund Phase I support shall maintain its standby letter of credit or multiple standby letters of credit in an amount equal to the amount of Mobility Fund Phase I support that the winning bidder has been and is eligible to request be disbursed to it pursuant to § 54.1008 plus the additional performance default amount

described in § 54.1006(f), until at least 120 days after the winning bidder receives its final distribution of support pursuant to § 54.1008(b)(3).

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

(i) Any United States Bank that

(A) Is among the 50 largest United States banks, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit,

(B) Whose deposits are insured by the Federal Deposit Insurance Corporation, and

(C) Who has a long-term unsecured credit rating issued by Standard & Poor's of A- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(ii) Any non-U.S. bank that

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

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

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

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

(2) Reserved.

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

(c) Authorization to receive Mobility Fund Phase I support is conditioned upon full and timely performance of all of the requirements set forth in § 54.1006 and any additional terms and conditions upon which the support was granted.

(1) Failure by a winning bidder authorized to receive Mobility Fund Phase I support to comply with any of the requirements set forth in § 54.1006 or any other term or conditions upon which support was granted, or its loss of eligibility for any reason for Mobility Fund Phase I support, will be deemed an automatic performance default, will entitle the Commission to draw the entire amount of the letter of credit, and may disqualify the winning bidder from the receipt of Mobility Fund Phase I support or additional USF support.

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

**§ 54.1008 Mobility Fund Phase I Disbursements.**

(a) A winning bidder for Mobility Fund Phase I support will be advised by public notice whether it has been authorized to receive support. The public notice will detail how disbursement will be made available.

(b) Mobility Fund Phase I support will be available for disbursement to authorized winning bidders in three stages.

(1) One-third of the total possible support, if coverage were to be extended to 100 percent of the units deemed unserved in the geographic area, when the winning bidder is authorized to receive support.

(2) One-third of the total possible support with respect to a specific geographic area when the recipient demonstrates coverage of 50 percent of the coverage requirements of § 54.1006(a) or (b), as applicable.

(3) The remainder of the total support, based on the final total units covered, when the recipient demonstrates coverage meeting the requirements of §54.1006(a) or (b) , as applicable.

(c) A recipient accepting a final disbursement for a specific geographic area based on coverage of less than 100 percent of the units in the area previously deemed unserved waives any claim for the remainder of potential Mobility Fund Phase I support with respect to that area.

(d) Prior to each disbursement request, a winning bidder for support in a Tribal land will be required to certify that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1004(d)(1), at a minimum, as well as any other issues specified by the Commission and to provide a summary of the results of such engagement.

(e) Prior to each disbursement request, a winning bidder will be required to certify that it is in compliance with all requirements for receipt of Mobility Fund Phase I support at the time that it requests the disbursement.

**§ 54.1009 Annual Reports.**

(a) A winning bidder authorized to receive Mobility Fund Phase I support shall submit an annual report no later than April 1 in each year for the five years after it was so authorized. Each annual report shall include the following, or reference the inclusion of the following in other reports filed with the Commission for the applicable year:

(1) Electronic Shapefiles site coverage plots illustrating the area newly reached by mobile services at a minimum scale of 1:240,000;

- (2) A list of relevant census blocks previously deemed unserved, with road miles and total resident population and resident population residing in areas newly reached by mobile services (based on Census Bureau data and estimates);
- (3) If any such testing has been conducted, data received or used from drive tests, or scattered site testing in areas where drive tests are not feasible, analyzing network coverage for mobile services in the area for which support was received;
- (4) Certification that the applicant offers service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas;
- (5) Any applicable certifications and showings required in § 54.1004; and
- (6) Updates to the information provided in § 54.1005(b)(2)(v).

(b) The party submitting the annual report must certify that they have been authorized to do so by the winning bidder.

(c) Each annual report shall be submitted to the Office of the Secretary of the Commission, clearly referencing WT Docket No. 10-208; the Administrator; and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

#### **§ 54.1010 Record Retention for Mobility Fund Phase I.**

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

#### **PART 61—TARIFFS**

56. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403, unless otherwise noted.

57. Add §61.3 (aaa) to read as follows:

#### **§ 61.3 Definitions**

\* \* \* \* \*

(aaa) Access stimulation.

(1) A rate-of-return local exchange carrier or a Competitive Local Exchange Carrier engages in access stimulation when it satisfies the following two conditions:

(i) Has an access revenue sharing agreement, whether express, implied, written or oral, that, over the course of the agreement, would directly or indirectly result in a net payment to the other party (including affiliates) to the agreement, in which payment by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier is based on the billing or collection of access charges from interexchange carriers or wireless carriers. When determining whether there is a net payment under this rule, all payments, discounts, credits, services, features, functions, and other items of value, regardless of form, provided by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier to the other party to the agreement shall be taken into account; and

(ii) Has either an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month, or has had more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year.

(2) The local exchange carrier will continue to be engaging in access stimulation until it terminates all revenue sharing arrangements covered in paragraph (a)(1)(i) of this section. A local exchange carrier engaging in access stimulation is subject to revised interstate switched access charge rules under §61.38 and § 69.3(e)(12) of this chapter.

58. Revise §61.26 to read as follows:

**§ 61.26 Tariffing of competitive interstate switched exchange access services.**

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=1706fbbfe9b1f68c6dcfd3fa1884a36c&rgn=div5&view=text&node=47:3.0.1.1.9&idno=47 - PartTop#PartTop> (a) Definitions. For purposes of this section, the following definitions shall apply:

(1) CLEC shall mean a local exchange carrier that provides some or all of the interstate exchange access services used to send traffic to or from an end user and does not fall within the definition of “incumbent local exchange carrier” in 47 U.S.C. 251(h).

(2) Competing ILEC shall mean the incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC.

(3) Switched exchange access services shall include:

(i) The functional equivalent of the ILEC interstate exchange access services typically associated with following rate elements: carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching;

(ii) The termination of interexchange telecommunications traffic to any end user, either directly or via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. § 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. § 153(36), that does not itself seek to collect reciprocal compensation charges prescribed by

this subpart for that traffic, regardless of the specific functions provided or facilities used.

(4) Non-rural ILEC shall mean an incumbent local exchange carrier that is not a rural telephone company under 47 U.S.C. 153(44).

(5) The rate for interstate switched exchange access services shall mean the composite, per-minute rate for these services, including all applicable fixed and traffic-sensitive charges.

(6) Rural CLEC shall mean a CLEC that does not serve (i.e., terminate traffic to or originate traffic from) any end users located within either:

(i) Any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or

(ii) An urbanized area, as defined by the Census Bureau.

(b) Except as provided in paragraphs (c), (e), and (g) of this section, a CLEC shall not file a tariff for its interstate switched exchange access services that prices those services above the higher of:

(1) The rate charged for such services by the competing ILEC or

(2) The lower of:

(i) The benchmark rate described in paragraph (c) of this section or

(ii) In the case of interstate switched exchange access service, the lowest rate that the CLEC has tariffed for its interstate exchange access services, within the six months preceding June 20, 2001.

(c) The benchmark rate for a CLEC's switched exchange access services will be the rate charged for similar services by the competing ILEC. If an ILEC to which a CLEC benchmarks its rates, pursuant to this section, lowers the rate to which a CLEC benchmarks, the CLEC must revise its rates to the lower level within 15 days of the effective date of the lowered ILEC rate.

(d) Except as provided in paragraph (g) of this section, and notwithstanding paragraphs (b) and (c) of this section, in the event that, after June 20, 2001, a CLEC begins serving end users in a metropolitan statistical area (MSA) where it has not previously served end users, the CLEC shall not file a tariff for its exchange access services in that MSA that prices those services above the rate charged for such services by the competing ILEC.

(e) Rural exemption. Except as provided in paragraph (g) of this section, and notwithstanding paragraphs (b) through (d) of this section, a rural CLEC competing with a non-rural ILEC shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching. In addition to that NECA rate, the rural CLEC may assess a presubscribed

interexchange carrier charge if, and only to the extent that, the competing ILEC assesses this charge. Effective July 1, 2013, all CLEC reciprocal compensation rates for intrastate switched exchange access services subject to this subpart also shall be no higher than that NECA rate.

(f) If a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services, except if the CLEC is listed in the database of the Number Portability Administration Center as providing the calling party or dialed number, the CLEC may assess a rate equal to the rate that would be charged by the competing ILEC for all exchange access services required to deliver interstate traffic to the called number.

(g) Notwithstanding paragraphs (b) through (e) of this section:

(1) a CLEC engaging in access stimulation, as that term is defined in §61.3(aaa) , shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the access tariff of the price cap LEC with the lowest switched access rates in the state.

(2) A CLEC engaging in access stimulation, as that term is defined in §61.3(aaa), shall file revised interstate switched access tariffs within forty-five (45) days of commencing access stimulation, as that term is defined in § 61.3(aaa) , or within forty-five (45) days of [date] if the CLEC on that date is engaged in access stimulation, as that term is defined in § 61.3(aaa) .

59. Revise §61.39(a) paragraph (a) and add paragraph (g) to read as follows:

**§61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings by incumbent local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in §69.602.**

(a) Scope. Except as provided in paragraph (g) of this section, This section provides for an optional method of filing for any local exchange carrier that is described as a subset 3 carrier in §69.602 of this chapter, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under §36.611(a)(8) of this chapter. However, the Commission may require any carrier to submit such information as may be necessary for review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings of local exchange carriers subject to price cap regulation.

\* \* \* \* \*

(g) A local exchange carrier otherwise eligible to file a tariff pursuant to this section may not do so if it is engaging in access stimulation, as that term is defined in §61.3(aaa) of this part, and has not terminated its access revenue sharing agreement(s). A carrier so engaged must file interstate access tariffs in accordance with §61.38, and §69.3(e)(12)(1) of this chapter.

\* \* \* \* \*

**PART 64-MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

60. The authority citation for part 64 is amended to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 254(k), 227; secs. 403(b)(2)(B), (c), 1302, Pub. L. 104–104, 100 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 207, 228, and 254(k) unless otherwise noted.

61. In §64.1600, redesignate paragraphs (f) through (i) as paragraphs (h) through (j) respectively and add new paragraph (f) to read as follows:

**§64.1600 Definitions.**

\* \* \* \* \*

(f) Intermediate Provider. The term Intermediate Provider means any entity that carries or processes traffic that traverses or will traverse the PSTN at any point insofar as that entity neither originates nor terminates that traffic.

\* \* \* \* \*

62. Revise §64.1601 (a) to read as follows:

**§ 64.1601 Delivery requirements and privacy restrictions.**

(a) Delivery. Except as provided in paragraphs (d) and (e) of this section:

(1) Telecommunications carriers and providers of interconnected Voice over Internet Protocol (VoIP) services, in originating interstate or intrastate traffic on the public switched telephone network (PSTN) or originating interstate or intrastate traffic that is destined for the PSTN (collectively “PSTN Traffic”), are required to transmit for all PSTN Traffic the telephone number received from or assigned to or otherwise associated with the calling party to the next provider in the path from the originating provider to the terminating provider. This provision applies regardless of the voice call signaling and transmission technology used by the carrier or VoIP provider. Entities subject to this provision that use Signaling System 7 (SS7) are required to transmit the calling party number (CPN) associated with all PSTN Traffic in the SS7 ISUP (ISDN User Part) CPN field to interconnecting providers, and are required to transmit the calling party’s charge number (CN) in the SS7 ISUP CN field to interconnecting providers for any PSTN Traffic where CN differs from CPN. Entities subject to this provision who use multi-frequency (MF) signaling are required to transmit CPN, or CN if it differs from CPN, associated with all PSTN Traffic in the MF signaling automatic numbering information (ANI) field.

(2) Intermediate providers within an interstate or intrastate call path that originates and/or terminates on the PSTN must pass unaltered to subsequent providers in the call path signaling information identifying the telephone number, or billing number, if different, of the calling party that is received with a call. This requirement applies to SS7 information including but not limited to CPN and CN, and also applies to MF signaling information or other signaling information intermediate providers receive with a call. This requirement also applies to VoIP signaling messages, such as calling party and charge information identifiers contained in Session Initiation Protocol (SIP) header fields, and to equivalent identifying information as used in other VoIP signaling technologies, regardless of the voice call signaling and transmission technology used by the carrier or VoIP provider.

\* \* \* \* \*

**PART 69—ACCESS CHARGES**

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

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

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

64. Add paragraph (d) to §69.1 to read as follows:

**§69.1 Application of access charges.**

\* \* \* \* \*

(d) To the extent any provision contained in part 51 subparts H and J conflict with any provision of this part, the part 51 provision supersedes the provision of this part.

\* \* \* \* \*

65. Revise §69.3 paragraphs (e)(6) and (e)(9) and add paragraph (e)(12) to read as follows:

**§69.3 Filing of access service tariffs.**

\* \* \* \* \*

(e) \* \* \*

(6) Except as provided in paragraph (e)(12) of this section, a telephone company or companies that elect to file such a tariff shall notify the association not later than March 1 of the year the tariff becomes effective, if such company or companies did not file such a tariff in the preceding biennial period or cross-reference association charges in such preceding period that will be cross-referenced in the new tariff. A telephone company or companies that elect to file such a tariff not in the biennial period shall file its tariff to become effective July 1 for a period of one year. Thereafter, such telephone company or companies must file its tariff pursuant to paragraphs (f)(1) or (f)(2) of this section.

\* \* \* \* \*

(9) Except as provided in paragraph (e)(12) of this section, a telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff pursuant to paragraph (a) of this section shall notify the association not later than March 1 of the year the tariff becomes effective that it will no longer participate in the association tariff. A telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff for one of its study areas shall file its own Carrier Common Line tariff(s) for all of its study areas.

\* \* \* \* \*

(12)(i) A local exchange carrier, or a group of affiliated carriers in which at least one carrier is engaging in access stimulation, as that term is defined in §61.3(aaa) of this chapter, shall file its own access tariffs within forty-five (45) days of commencing access stimulation, as that term is defined in §61.3(aaa) of this chapter, or within forty-five (45) days of [date] if the local exchange carrier on that date is engaged in access stimulation, as that term is defined in §61.3(aaa) of this chapter.

(ii) Notwithstanding paragraphs (e)(6) and (e)(9) of this section, a local exchange carrier, or a group of affiliated carriers in which at least one carrier is engaging in access stimulation, as that term is defined in §61.3(aaa) of this chapter, must withdraw from all interstate access tariffs issued by the association within forty-five (45) days of engaging in access stimulation, as that term is defined in §61.3(aaa) of this chapter, or within forty-five (45) days of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] if the local exchange carrier on that date is engaged in access stimulation, as that term is defined in §61.3(aaa) of this chapter.

(iii) Any such carrier(s) shall notify the association when it begins access stimulation, or on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] if it is engaged in access stimulation, as that term is defined in §61.3(aaa) of this chapter, on that date, of its intent to leave the association tariffs within forty-five (45) days.

**APPENDIX B**

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 to read as follows:

**PART 54 – UNIVERSAL SERVICE**

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

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

2. Revise subpart L to part 54 to read as follows:

**Subpart L – Mobility Fund**

**Sec.**

54.1011 Mobility Fund – Phase II

54.1012 Geographic Areas Eligible for Support

54.1013 Provider Eligibility

54.1014 Service to Tribal Lands

54.1015 Application Process

54.1016 Public Interest Obligations

54.1017 Letter of Credit

54.1018 Mobility Fund Phase II Disbursements

54.1019 Annual Reports

54.1020 Record Retention for Mobility Fund Phase II

**§ 54.1011 Mobility Fund – Phase II.**

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

**§ 54.1012 Geographic Areas Eligible for Support**

(a) Mobility Fund Phase II support may be made available for census blocks or other areas identified as eligible by public notice.

(b) Except as provided in § 54.1014, coverage units for purposes of conducting competitive bidding and disbursing support based on designated road miles will be identified by public notice for each area eligible for support.

**§ 54.1013 Provider Eligibility.**

(a) Except as provided in § 54.1014, an applicant shall be an Eligible Telecommunications Carrier in an area in order to receive Mobility Fund Phase II support for that area. The applicant's designation as an Eligible Telecommunications Carrier may be conditional subject to the receipt of Mobility Fund support.

(b) An applicant shall have access to spectrum in an area that enables it to satisfy the applicable performance requirements in order to receive Mobility Fund Phase II support for that area. The applicant shall certify, in a form acceptable to the Commission, that it such access at the time it applies to participate in competitive bidding and at the time that it applies for support and that it will retain such access for ten (10) years after the date on which it is authorized to receive support.

(c) An applicant shall certify that it is financially and technically qualified to provide the services supported by Mobility Fund Phase II in order to receive such support.

**§ 54.1014 Service to Tribal Lands.**

(a) A Tribally-owned or –controlled entity that has pending an application to be designated an Eligible Telecommunications Carrier may participate in an auction by bidding for support in areas located within the boundaries of the Tribal land associated with the Tribe that owns or controls the entity. To bid on this basis, an entity shall certify that it is a Tribally-owned or –controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. A Tribally-owned or -controlled entity shall receive any Mobility Fund Phase II support only after it has become an Eligible Telecommunications Carrier.

(b) In any auction for support solely in Tribal lands, coverage units for purposes of conducting competitive bidding and disbursing support based on designated population will be identified by public notice for each census block eligible for support.

(c) Tribally-owned or –controlled entities may receive a bidding credit with respect to bids for support within the boundaries of associated Tribal lands. To qualify for a bidding credit, an applicant shall certify that it is a Tribally-owned or –controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. An applicant that qualifies shall have its bid(s) for support in areas within the boundaries of Tribal land associated with the Tribe that owns or controls the applicant reduced by twenty-five (25) percent or purposes of determining winning bidders without any reduction in the amount of support available.

(d) A winning bidder for support in Tribal lands shall notify and engage the Tribal governments responsible for the areas supported.

(1) A winning bidder's engagement with the applicable Tribal government shall consist, at a minimum, of discussion regarding:

(i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;

(ii) Feasibility and sustainability planning;

- (iii) Marketing services in a culturally sensitive manner;
  - (iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and
  - (v) Compliance with Tribal business and licensing requirements
- (2) A winning bidder shall notify the appropriate Tribal government of its winning bid no later than five (5) business days after being identified by public notice as a winning bidder.
- (3) A winning bidder shall certify in its application for support that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1014(d)(1), at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.
- (4) A winning bidder for support in Tribal lands shall certify in its annual report, pursuant to § 54.1019(a)(5), and prior to disbursement of support, pursuant to § 54.1018, that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1014(d)(1), at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

**§ 54.1015 Application Process.**

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

- (1) Provide ownership information as set forth in § 1.2112(a) of this chapter;
- (2) Certify that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1016 in each area for which it seeks support;
- (3) Disclose its status as an Eligible Telecommunications Carrier in any area for which it will seek support or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any such area, and certify that the disclosure is accurate;
- (4) Describe the spectrum access that the applicant plans to use to meet obligations in areas for which it will bid for support, including whether the applicant currently holds a license for or leases the spectrum, and certify that the description is accurate and that the applicant will retain such access for at least ten (10) years after the date on which it is authorized to receive support;
- (5) Make any applicable certifications required in § 54.1014.

(b) Application by Winning Bidders for Mobility Fund Phase II Support.

- (1) Deadline. Unless otherwise provided by public notice, winning bidders for Mobility Fund Phase II support shall file an application for Mobility Fund Phase II support no later than 10 business days after the public notice identifying them as winning bidders.
- (2) Application Contents.
  - (i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter.
  - (ii) Certification that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1016 in the geographic areas for which it seeks support.
  - (iii) Proof of the applicant's status as an Eligible Telecommunications or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any area for which it seeks support and certification that the proof is accurate.
  - (iv) A description of the spectrum access that the applicant plans to use to meet obligations in areas for which it is winning bidder for support, including whether the applicant currently holds a license for or leases the spectrum, and certification that the description is accurate and that the applicant will retain such access for at least ten (10) years after the date on which it is authorized to receive support.
  - (v) A detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the budget and describes each specific phase of the project, e.g., network design, construction, deployment and maintenance.

(vi) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from Mobility Fund Phase II and that the applicant will comply with all program requirements.

(vii) Any guarantee of performance that the Commission may require by public notice or other proceedings, including but not limited to the letters of credit required in §54.1017, or a written commitment from an acceptable bank, as defined in §54.1017(a)(1), to issue such a letter of credit.

(viii) Certification that the applicant will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas for a period during the term of the support the applicant seeks.

(ix) Any applicable certifications and showings required in §54.1014.

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

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

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

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

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

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

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive Mobility Fund Phase II support, after the winning bidder submits a Letter of Credit and an accompanying opinion letter as required by § 54.1016, in a form acceptable to the Commission, and any final designation as an Eligible Telecommunications Carrier that any Tribally-owned or –controlled applicant may still require. Each such winning bidder shall submit a Letter of Credit and an accompanying opinion letter as required by § 54.1016, in a form acceptable to the Commission, and any required final designation as an Eligible Telecommunications Carrier no later than 10 business days following the release of the public notice.

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

**§ 54.1016 Public Interest Obligations.**

(a) Deadline for Construction. A winning bidder authorized to receive Mobility Fund Phase II support shall, no later than three (3) years after the date on which it was authorized to receive support, submit data from drive tests covering the area for which support was received demonstrating mobile transmissions supporting voice and data to and from the network covering 75% of the designated coverage units in the area deemed uncovered, or an applicable higher percentage established by public notice prior to the competitive bidding, and meeting or exceeding the following:

(1) Outdoor minimum data transmission rates of 200 kbps uplink and 768 kbps downlink at vehicle speeds appropriate for the roads covered;

(2) Transmission latency low enough to enable the use of real time applications, such as VoIP.

(b) Coverage Test Data. Drive tests submitted in compliance with a recipient's public interest obligations shall cover roads designated in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's support. Scattered site tests submitted in compliance with a recipient's public interest obligations shall be in compliance with standards set forth in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's authorized support.

(c) Collocation Obligations. During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase II on newly constructed towers that the recipient owns or manages in the area for which it receives support. In addition, during this period, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the facilities.

(d) Voice and Data Roaming Obligations. During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall comply with the Commission's voice and data roaming requirements that were in effect as of October 27, 2011, on networks that are built through Mobility Fund Phase II support.

(e) Liability for Failing To Satisfy Public Interest Obligations. A winning bidder authorized to receive Mobility Fund Phase II support that fails to comply with the public interest obligations in this paragraph or any other terms and conditions of the Mobility Fund Phase II support will be subject to repayment of the support disbursed together with an additional performance default payment. Such a winning bidder may be disqualified from receiving Mobility Fund Phase II support or other USF support. The additional performance default amount will be a percentage of the Mobility Fund Phase II support that the applicant has been and is eligible to request be disbursed to it pursuant to § 54.1018. The percentage will be determined as specified in the public notice detailing competitive bidding procedures prior to the commencement of competitive bidding. The percentage will not exceed twenty percent.

**§ 54.1017 Letter of Credit.**

(a) Before being authorized to receive Mobility Fund Phase II support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission. Each winning bidder authorized to receive Mobility Fund Phase II support shall maintain the standby letter of credit or multiple standby letters of credit in an amount equal to the amount of Mobility Fund Phase II support that the winning bidder has been and is eligible to request be disbursed to it pursuant to § 54.1018 plus the additional performance default amount described in § 54.1016(e), until at least 120 days after the winning bidder receives its final distribution of support pursuant to § 54.1017.

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

(i) Any United States Bank that

(A) Is among the 50 largest United States banks, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit,

(B) Whose deposits are insured by the Federal Deposit Insurance Corporation, and

(C) Who has a long-term unsecured credit rating issued by Standard & Poor's of A- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(ii) Any non-U.S. bank that

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

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

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

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

(2) Reserved.

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

(c) Authorization to receive Mobility Fund Phase II support is conditioned upon full and timely performance of all of the requirements set forth in § 54.1016 , and any additional terms and conditions upon which the support was granted.

(1) Failure by a winning bidder authorized to receive Mobility Fund Phase II support to comply with any of the requirements set forth in § 54.1015 or any other term or conditions upon which support was granted, or its loss of eligibility for any reason for Mobility Fund Phase II support will be deemed an automatic performance default, will entitle the Commission to draw the entire amount of the letter of credit, and may disqualify the winning bidder from the receipt of Mobility Fund Phase II support or additional USF support.

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

**§ 54.1018 Mobility Fund Phase II Disbursements.**

- (a) A winning bidder for Mobility Fund Phase II support will be advised by public notice whether it has been authorized to receive support. The public notice will detail disbursement will be made available.
- (b) Mobility Fund Phase II support will be available for disbursement to a winning bidder authorized to receive support on a quarterly basis for ten (10) years following the date on which it is authorized.
- (c) Prior to each disbursement request, a winning bidder for support in a Tribal land will be required to certify that it has substantively engaged appropriate Tribal officials regarding the issues specified in §54.1014(d)(1), at a minimum, as well as any other issues specified by the Commission and to provide a summary of the results of such engagement.
- (d) Prior to each disbursement request, a winning bidder will be required to certify that it is in compliance with all requirements for receipt of Mobility Fund Phase II support at the time that it requests the disbursement.

**§ 54.1019 Annual Reports.**

- (a) A winning bidder authorized to receive Mobility Fund Phase II support shall submit an annual report no later than April 1 in each year for the five years after it was so authorized. Each annual report shall include the following, or reference the inclusion of the following in other reports filed with the Commission for the applicable year:
  - (1) Electronic Shapefiles site coverage plots illustrating the area newly reached by mobile services at a minimum scale of 1:240,000;
  - (2) A list of relevant census blocks previously deemed unserved, with road miles and total resident population and resident population residing in areas newly reached by mobile services (based on Census Bureau data and estimates);
  - (3) If any such testing has been conducted, data received or used from drive tests, or scattered site testing in areas where drive tests are not feasible, analyzing network coverage for mobile services in the area for which support was received;
  - (4) Certification that the winning bidder offers service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas;
  - (5) Any applicable certifications and showings required in § 54.1014; and
  - (6) Updates to the information provided in § 54.1015(b)(2)(v).
- (b) The party submitting the annual report must certify that they have been authorized to do so by the winning bidder.

(c) Each annual report shall be submitted to the Office of the Secretary of the Commission, clearly referencing WT Docket No. 10-208; the Administrator; and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate

**§ 54.1020 Record Retention for Mobility Fund Phase II.**

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

3. Add subpart M to part 54 to read as follows:

**Subpart M – Connect America Fund Phase II Competitive Bidding**

**Sec.**

54.1101 Connect America Fund (CAF) Phase II Competitive Bidding

54.1102 Geographic Areas Eligible for Support

54.1103 Provider Eligibility

54.1104 Service to Tribal Lands

54.1105 Application Process

54.1106 Public Interest Obligations and Annual Reports

54.1107 Connect America Fund (CAF) Phase II Competitive Bidding Disbursements

**§ 54.1101 Connect America Fund (CAF) Phase II Competitive Bidding.**

The Commission will use competitive bidding, as provided in part 1, subpart AA, to determine the recipients of support available through Connect America Fund Phase II Competitive Bidding and the amount(s) of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

**§ 54.1102 Geographic Areas Eligible for Support.**

(a) CAF Fund Phase II Competitive Bidding support may be made available for census blocks or other areas identified as eligible by public notice.

(b) Except as provided in § 54.1104, coverage units for purposes of conducting competitive bidding and disbursing support based on the number of residential and business locations will be identified by public notice for each area eligible for support.

**§ 54.1103 Provider Eligibility.**

(a) Except as provided in § 54.1104, an applicant shall be an Eligible Telecommunications Carrier in an area in order to receive CAF Phase II Competitive Bidding support for that area. The designation may be conditional subject to the receipt of CAF Phase II Competitive Bidding support.

(b) An applicant shall certify that is financially and technically qualified to provide the services supported by CAF Phase II Competitive Bidding support in order to receive such support.

**§ 54.1104 Service to Tribal Lands.**

(a) A Tribally-owned or –controlled entity that has pending an application to be designated an Eligible Telecommunications Carrier may participate in an auction by bidding for support in areas located within the boundaries of the Tribal land associated with the Tribe that owns or controls the entity. To bid on this basis, an entity shall certify that it is a Tribally-owned or –controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. A Tribally-owned or -controlled entity shall receive any CAF Phase II Competitive Bidding support only after it has become an Eligible Telecommunications Carrier.

(b) Tribally-owned or –controlled entities may receive a bidding credit with respect to bids for support within the boundaries of associated Tribal lands. To qualify for a bidding credit, an applicant shall certify that it is a Tribally-owned or –controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. An applicant that qualifies shall have its bid(s) for support in areas within the boundaries of Tribal land associated with the Tribe that owns or controls the applicant reduced by twenty-five (25) percent or purposes of determining winning bidders without any reduction in the amount of support available.

(c) A winning bidder for support in Tribal lands shall notify and engage the Tribal governments responsible for the areas supported.

(1) A winning bidder’s engagement with the applicable Tribal government shall consist, at a minimum, of discussion regarding:

- (i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;
- (ii) Feasibility and sustainability planning;
- (iii) Marketing services in a culturally sensitive manner;
- (iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and
- (v) Compliance with Tribal business and licensing requirements

(2) A winning bidder shall notify the appropriate Tribal government of its winning bid no later than five (5) business days after being identified by public notice as a winning bidder.

(3) A winning bidder shall certify in its application for support that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1104(c)(1), at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

(4) A winning bidder for support in Tribal lands shall certify in its annual report, pursuant to § 54.1106, and prior to disbursement of support, pursuant to § 54.1107, that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1104(c)(1), at a

minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

**§ 54.1105 Application Process.**

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

- (1) Provide ownership information as set forth in § 1.2112(a) of this chapter;
- (2) Certify that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1106 in each area for which it seeks support;
- (3) Disclose its status as an Eligible Telecommunications Carrier in any area for which it will seek support or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any such area, and certify that the disclosure is accurate.
- (4) Make any applicable certifications required in § 54.1104 of this chapter.

(b) Application by Winning Bidders for CAF Phase II Support. (1) Deadline. Unless otherwise provided by public notice, winning bidders for CAF Phase II support shall file an application for CAF Phase II support no later than 10 business days after the public notice identifying them as winning bidders.

- (2) Application Contents. (i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter.
- (ii) Certification that the applicant is financially and technically capable of meeting the public interest obligations of §54.1106 in the geographic areas for which it seeks support.
- (iii) Proof of the applicant's status as an Eligible Telecommunications Carrier or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any area for which it seeks support and certification that the proof is accurate.
- (iv) Certification that the applicant will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by providers in urban areas for a period extending until 5 years after the date on which it is authorized to receive support.
- (v) Any applicable certifications and showings required in § 54.1104.
- (vi) Certification that the party submitting the application is authorized to do so on behalf of the applicant.
- (vii) Such additional information as the Commission may require.

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

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

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

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

(v) A tribally-owned or –controlled winning bidder that was not as an Eligible Telecommunications Carrier shall provide its final designation as an Eligible Telecommunications Carrier.

(vi) After receipt of all necessary information, the Commission shall release a public notice identifying each winning bidder that is authorized to receive CAF Phase II support.

**§ 54.1106 Public Interest Obligations and Annual Reports.**

A winning bidder authorized to receive CAF Phase II shall satisfy all public interest obligations and annual reporting requirements of § 54.313.

**§ 54.1107 Connect America Fund (CAF) Phase II Competitive Bidding Disbursements.**

(a) A winning bidder for CAF Phase II Competitive Bidding support will be advised by public notice whether it has been authorized to receive support. The public notice will detail how disbursement will be made available.

(b) CAF Phase II Competitive Bidding support will be available for disbursement to each winning bidder authorized to receive support on a quarterly basis for five (5) years after it is authorized to receive support.

(c) Prior to each disbursement request, a winning bidder for support in a Tribal land will be required to certify that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1104(c)(1), at a minimum, as well as any other issues specified by the Commission and to provide a summary of the results of such engagement.

(d) Prior to each disbursement request, a winning bidder will be required to certify that it is in compliance with all requirements for receipt of CAF Phase II Competitive Bidding support at the time that it requests the disbursement.

4. Add subpart N to part 54 to read as follows:

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**Subpart N – Remote Areas Fund**

**Sec.**

54.1201 Remote Areas Fund

54.1202 Geographic Areas Eligible for Support

54.1203 Provider Eligibility

54.1204 Public Interest Obligations and Annual Reports

54.1205 Remote Areas Fund Disbursements

**§ 54.1201 Remote Areas Fund.**

This subpart sets forth procedures for determining the recipients of universal service support pursuant to the Remote Areas Fund and the amount(s) of support that each recipient respectively may receive.

**§ 54.1202 Geographic Areas Eligible for Support.**

Remote Areas Fund support may be made available for census blocks or other areas identified by public notice.

**§ 54.1203 Provider Eligibility.**

(a) An applicant applying for Remote Areas Fund support must be designated an Eligible Telecommunications Carrier in any area for which it will seek support. The designation may be conditional subject to the receipt of Remote Areas Fund support.

(b) An applicant applying for Remote Areas Fund support must certify that is financially and technically qualified to provide the supported services.

**§ 54.1204 Public Interest Obligations and Annual Reports.**

(a) Except as expressly provided in this paragraph or otherwise by the Commission, an applicant authorized to receive Remote Areas Fund support shall satisfy all public interest obligations and annual reporting requirements of § 54.313 for applicants receiving CAF Phase II support.

(b) An applicant for Remote Areas Fund support must pass the per location support received along to the subscriber at the qualifying location as a discount on the price of service. Provided, however, that the subscriber must pay, or provide a deposit of, an amount sufficient to assure that the subscriber is able to pay for the services to which they subscribe and to provide an incentive to comply with any terms of the service agreements regarding use and return of equipment.

**§ 54.1205 Remote Areas Fund Disbursements.**

(a) An applicant for Remote Areas Fund support will be advised by public notice that it is authorized to receive support. Procedures by which applicants authorized to receive support may obtain disbursements will be provided by public notice.

(b) Remote Areas Fund support will be available for disbursement to an applicant authorized to receive support on a quarterly basis for five (5) years following its authorization.

(c) Remote Areas Fund support will be disbursed in an amount calculated based on the number of newly served residences or households within an eligible area. For purposes of this paragraph, “residence” and “household” shall use the same definition applied in the Lifeline Program. Applicants for Remote Areas Fund support must certify the number of qualifying locations newly served in the most recent quarter, specifying the number of signed contracts for qualifying locations, and certify that each location meets the qualifying criteria established by the Commission.

(d) Prior to each disbursement request, an applicant authorized to receive support will be required to certify that it is in compliance with all requirements for receipt of Remote Areas Fund support at the time that it requests the disbursement.

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**APPENDIX C****Explanation of Methodology for Modifications to Corporate Operations Expense Formulae**

1. This appendix describes the procedure used to derive the formulae, set forth in section 36.621, for determining the maximum allowable corporate operations expense recoverable through universal service support mechanisms.

**The Basic Formulae**

2. We conducted a statistical analysis using actual incumbent local exchange carrier data submitted by NECA.<sup>1</sup> We used statistical regression techniques that focused on corporate operations expense per loop and the number of loops, in which the cap on corporate operations expense per loop declines as the number of loops increases so that economies of scale, which are evident in the data, can be reflected in the model. As in the previous corporate operations expense limitation formulae, the linear spline model developed has two line segments joined together at a single point or knot. In general, the linear spline model allows the per-line cap on corporate operations expense to decline as the number of loops increases for the smaller study areas having fewer loops than the knot point. Estimates produced by the linear spline model suggest that the per-loop cap on corporate operations expense for study areas with a number of loops higher than the spline knot is constant.

3. The linear spline model requires selecting a knot, the point at which the two line segments of differing slopes meet. We retained the knot point at 10,000 loops from the Commission's previous analysis. The regression results are as follows:

- for study areas having fewer than 10,000 total working loops, the projected monthly corporate operations expense per-loop equals  $\$ 36.815 - 0.00285 \times (\text{number of working loops})$ ;
- for study areas with total working loops equal or greater than 10,000 loops, the projected monthly corporate operations expense per-loop equals  $\$ 8.12$ .

**Correcting for Non-monotonic Behavior in the Model's Total Corporate Operations Expense**

4. The linear spline model has one undesirable feature. For a certain range, it yields a total allowable corporate operations expense that declines as the number of working loops increases. This occurs because multiplying the linear function that defines the first line segment of the estimated spline model ( $36.815 - (0.00285 \times \text{the number of loops})$ ) by the number of loops defines a quadratic function that determines total allowable corporate operations expense. This quadratic function produces a maximum value at 6,459 loops, well below the selected knot point of 10,000.<sup>2</sup> To correct this problem, we refined the formulae to ensure that the total allowable corporate operations expense always increases

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<sup>1</sup> See NECA 2010 USF Data Filing. Our analysis only examined rural study areas. Additionally, in order to avoid skewed results caused by outliers, we excluded study areas whose corporate operations expense were in excess of \$200 per loop.

<sup>2</sup> The feature exists with all knot points considered. The practical effect of the function peaking at 6,459 loops is that a carrier with more than 6,459 loops, but less than 10,000 loops, will receive less corporate operations expense support than one with just 6,459 loops.

as the number of loops increases. We chose a point to the left of the point at which the total corporate operations expense estimate peaks. At that selected point, the slope of the function defining total corporate operations expense is positive. We then calculated the slope at that point and extended a line with the same slope upward to the right of that point until the line intersected the original estimated total operations expense, which is represented by  $8.315 \times$  the number of loops. Thus, we created a line segment with constant slope covering the region over which the original model of corporate operations expenses declines so that total corporate operations expense continues to increase with the number of loops. We chose the point that leads to a line segment that yields the highest  $R^2$ .

5. Using this procedure, we selected 6,000 as the point. The slope of total operations expense at this point is 2.615 and the line extended intersects the original total operations expense model at 17,887. Accordingly, the line segment formed for total corporate operations expenses, to be applied from 6,000 loops to 17,887 loops, is  $\$2.615 \times$  the number of working loops +  $\$102,600$ . Dividing this number by the number of working loops defines the maximum allowable corporate operations expense per-loop for the range from 6,000 to 17,887 working loops, i.e.,  $\$2.615 + (\$102,600/\text{number of working loops})$ . Therefore, the projected per-loop corporate operations expense formulae are:

- for study areas having fewer than 6,000 total working loops, the projected monthly corporate operations expense per-loop equals  $\$36.815 - 0.00285 \times (\text{number of total working loops})$ ;
- for study areas having 6,000 or more total working loops, but less than 17,887 total working loops, the projected monthly corporate operations expense per-loop equals  $\$2.615 + (102,600/\text{number of total working loops})$ ;
- for study areas having total working loops greater than or equal to 17,887 total working loops, the projected monthly corporate operations expense per-loop equals  $\$8.315$ .

6. The Commission concluded previously that the amount of corporate operations expense per-loop that is supported through our universal service programs should fall within a range of reasonableness.<sup>3</sup> Consistent with the formulae currently in place, we define this range of reasonableness for each study area as including levels of reported corporate operations expense per-loop up to a maximum of 115 percent of projected level of corporate operations expense per-loop. Therefore, each of the above formulae is multiplied by 115 percent to yield the maximum allowable monthly per-loop corporate operations expense as follows:

- for study areas having fewer than 6,000 total working loops, the maximum allowable monthly corporate operations expense per-loop equals  $\$42.337 - 0.00328 \times \text{number of total working loops}$ ;<sup>4</sup>
- for study areas having 6,000 or more total working loops, but fewer than 17,887 total working loops, the maximum allowable monthly corporate operations expense per-loop equals  $\$3.007 + (117,990/\text{number of total working loops})$ ;

<sup>3</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 8931, para. 284.

<sup>4</sup> We also retain the existing rule that for incumbents LECs with fewer than 6,000 total working loops, the maximum allowable monthly corporate operations expense per-loop will be the amount produced by this formula or  $\$50,000/\text{the number of total working loops}$ , whichever is greater. Pursuant to section 36.621(a)(4)(ii), however, the  $\$50,000$  figure has been adjusted for inflation to  $\$63,000$  effective January 1, 2012. See 47 C.F.R. § 36.621(a)(4)(ii).

- for study areas with total working loops greater than or equal to 17,887 total working loops, the maximum allowable monthly corporate operations expense per-loop equals \$9.562.

Consistent with the existing rules, we will adjust the monthly per-loop limit to reflect the annual change in GDP-CPI.<sup>5</sup>

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<sup>5</sup> See 47 C.F.R § 36.621(a)(4)(iii)(D).

## APPENDIX D

## Puerto Rico Telephone Company Petition for Reconsideration

1. For the reasons set forth below, we Puerto Rico Telephone Company, Inc.'s (PRTC) petition to reconsider our decision declining to adopt a new high-cost support mechanism for non-rural insular carriers.<sup>1</sup> For the sake of brevity, we decline to restate PRTC's request or our reasons for having rejected it previously. We emphasize, however, that our rejection of PRTC's request should not be taken to suggest that we are unmindful of the significant challenges facing consumers in Puerto Rico.

2. Reconsideration is appropriate only when the petitioner either shows a material error or omission in the original Order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.<sup>2</sup> PRTC has not done so. Below, we briefly address PRTC's principal arguments and several minor ones.

3. PRTC, in its petition, repeats its assertion that section 254 of the Act requires us to establish a "separate insular support mechanism for insular areas."<sup>3</sup> We have already considered and rejected that interpretation of the statute.<sup>4</sup> Rather, as we explained in the *2010 Insular Order*, "the statute leaves to the Commission's discretion the task of developing one or more mechanisms" to implement the statute's goals.<sup>5</sup>

4. PRTC next asserts that the Commission's decision not to create a separate insular support mechanism is unlawful because it embodies the view that "consumers in Puerto Rico [need not have any] access to wireline service as long as wireless service is available to a substantial majority of the population."<sup>6</sup> PRTC argues that "[b]ecause other areas have access to *both* wireline and wireless services, then insular areas are entitled to 'reasonably comparable' wireline *and* wireless service."<sup>7</sup>

5. PRTC's argument for a separate, dedicated insular fund suffers from a fundamental flaw. PRTC failed to show that consumers in Puerto Rico lack access to supported voice services because of inadequate federal universal service support, a point emphasized by the Commission in the Order. That is, PRTC did not demonstrate that it needs additional high-cost universal service support to deploy facilities to provide voice service to unserved communities in Puerto Rico. To the contrary, the

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<sup>1</sup> See *High-Cost Universal Service Support*, WC Docket Nos. 05-337, 03-109, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 4136, 4137-38, paras. 1-3 (2010) (*2010 Insular Order*); Puerto Rico Telephone Company Petition for Reconsideration, WC Docket Nos. 05-337, 03-109, CC Docket No. 96-45 (filed Apr. 27, 2010) (PRTC Petition for Recon).

<sup>2</sup> *Petition for Reconsideration by National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415, para. 4 (2003).

<sup>3</sup> PRTC Petition for Recon at 4.

<sup>4</sup> See *2010 Insular Order*, 25 FCC Rcd at 4148-49, paras. 22-24.

<sup>5</sup> See *2010 Insular Order*, 25 FCC Rcd at 4148, para. 22. As a fallback, PRTC argues that even if the statute is ambiguous with regard to whether a separate insular support mechanism is required, our interpretation of the statute is unreasonable. See PRTC Petition for Recon at 6. We do not believe, however, that the statute is ambiguous on this point. As we have said, the statute provides us with discretion about how to structure universal service support mechanisms, and that discretion includes the discretion to decide whether to create a separate insular mechanism. See *2010 Insular Order*, 25 FCC Rcd at 4148-49, paras. 22-24.

<sup>6</sup> PRTC Petition for Recon at 7.

<sup>7</sup> *Id.*

Commission noted that PRTC's parent had committed to investing more than \$1 billion to improve services in Puerto Rico.<sup>8</sup> PRTC has never claimed that such a sum would have been inadequate to fund the deployment of wireline facilities to all residents that currently lack them.

6. PRTC, moreover, did not show that it would have to raise rates in order to deploy additional facilities, or that if it did, any such rate increase would result in rates that are not reasonably comparable to the national average urban rate.<sup>9</sup> Indeed, as the Commission noted in the Order, PRTC did not submit any rate data in the record at all, and the rate data submitted by Verizon showed that PRTC's rates were well below the national average urban rate.<sup>10</sup> But even if the foregoing were not so, PRTC did not indicate that, even if it *did* receive additional high-cost universal service support, it would actually deploy wireline facilities. Rather, PRTC initially resisted the idea that any conditions at all should be placed on its receipt of support, and only later informed the Commission that it would "be willing to commit" to apply funding from its proposed support mechanism "for the provision, maintenance, and upgrading of broadband facilities, with the priority of extending broadband capabilities to lines that are not broadband-capable today."<sup>11</sup> However, as the Commission pointed out in the Order, such a commitment would do nothing to address PRTC's allegation that some Puerto Rico consumers lack access to wireline *voice* service, which forms the basis of its demand for additional high-cost support.

7. PRTC alleges that the Commission "reversed course," without adequate explanation, when it declined to follow the tentative conclusion in the *2005 Insular NPRM* that the Commission should create an insular support mechanism.<sup>12</sup> PRTC relies on the Supreme Court's statement in *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.*<sup>13</sup> which, as quoted by PRTC, holds that "an agency changing its course . . . is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance."<sup>14</sup>

8. The passage from *State Farm* cited by PRTC has little bearing on the present situation. Restoring the text that PRTC has omitted (here in italics), the passage reads "an agency changing its course *by rescinding a rule* is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance."<sup>15</sup> The Commission did not rescind a rule in the *2010 Insular Order*; instead, it declined to adopt its tentative conclusion, put forward in a notice of proposed rulemaking, that it should amend its rules to create a new insular support mechanism. On that point, another passage from *State Farm* is perhaps more relevant: "If Congress established a presumption from which judicial review should start, that presumption . . . is not *against* . . . regulation, but *against* changes in current policy that are not justified by the rulemaking record."<sup>16</sup> We further note

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<sup>8</sup> See *2010 Insular Order*, 25 FCC Rcd at 4154, para. 29.

<sup>9</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 18 FCC Rcd 22559, 22638, para. 140 (2003) (noting, in discussing PRTC's concerns with the non-rural high cost support mechanism, "the purpose of non-rural high-cost support is to ensure reasonable comparability of rates among states").

<sup>10</sup> *2010 Insular Order*, 25 FCC Rcd at 4153-54, para. 29.

<sup>11</sup> See *id.* at 4153, para. 28 & n.96 (citing Letter from Nancy J. Victory, counsel for PRTC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 05-337 at 3 (April 1, 2010)).

<sup>12</sup> PRTC Petition for Recon at 10.

<sup>13</sup> 463 U.S. 29 (1983) (*State Farm*).

<sup>14</sup> PRTC Petition for Recon at 10 n.29 (quoting *State Farm*, 463 U.S. at 42) (ellipses in PRTC Petition for Recon).

<sup>15</sup> *State Farm*, 463 U.S. at 42 (emphasis added).

<sup>16</sup> *Id.* (emphasis in original).

that the D.C. Circuit has considered, and rejected, an argument much like the one PRTC seems to make. As that court put it, “petitioners would have us bind [the agency] to its ‘tentative[]’ [earlier] conclusions.”<sup>17</sup> The court declined to do so, explaining that it “kn[ew] of no authority for this proposition.”<sup>18</sup>

9. Even if the passage from *State Farm* that PRTC relies upon were controlling, which it is not, the Commission would only be required to offer a reasoned explanation for its decision.<sup>19</sup> The Commission did so, and we will not rehash that discussion here.

10. PRTC next takes aim at the reasoned explanation provided by the Commission. First, PRTC attacks the Commission’s reliance on telephone subscribership numbers in Puerto Rico in support of its conclusion that a non-rural insular fund was unnecessary.<sup>20</sup> Those subscribership figures included wireless subscribers, and PRTC argues that the Commission could not rely on those figures because it has previously found, in a different context, that mobile wireless service and wireline service are not perfect substitutes. We are unpersuaded. As the Commission explained in the *2010 Insular Order*, data in the record suggested that “PRTC’s line losses have resulted from customer migration to new service providers, not from the decisions of customers to terminate service entirely because high-cost support levels have rendered local telephone service rates unaffordable.”<sup>21</sup> In the context of universal service, the Commission has never held that we must ignore the fact that some consumers prefer to purchase telephone service from a mobile wireless service provider rather than wireline service provider. Indeed, as the Commission explained in the *2010 Insular Order*, “[t]he Commission measures telephone subscribership based on access to telecommunications service, regardless of whether such service is provided by traditional wireline service or by newer technologies, including wireless.”<sup>22</sup> In any event, as discussed above, there is no evidence that, because of inadequate high-cost support, PRTC’s rates for voice service are so high that they are not reasonably comparable to rates paid by consumers in non-insular areas.<sup>23</sup>

11. PRTC next claims that the telephone subscribership numbers used by the Commission—which include wireless subscribers—demonstrate that additional high-cost universal service support is necessary for Puerto Rico, because those figures show subscribership below the national average.<sup>24</sup> In the *2010 Insular Order*, the Commission recognized that telephone subscribership in Puerto Rico likely falls below the national average because of the number of low-income consumers who are unable to afford

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<sup>17</sup> *New York v. EPA*, 413 F.3d 3, 32 (D.C. Cir. 2005).

<sup>18</sup> *Id.*

<sup>19</sup> *See FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1810-11 (2009).

<sup>20</sup> *See* PRTC Petition at 12-13.

<sup>21</sup> *See 2010 Insular Order*, 25 FCC Rcd at 4151-52, para. 27.

<sup>22</sup> *Id.* PRTC finds no support in the *Qwest II Remand Order* for its position that wireline service “is the proper benchmark for the ‘reasonably comparable’ assessment” required by section 254(b)(3) of the Act. *See* PRTC Petition at 8 (citing *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 (2010) (“*Qwest II Remand Order*”). That order relied on the near ubiquitous deployment of wireless services to support the Commission’s conclusion that rates and services are reasonably comparable nationwide. *See Qwest II Remand Order*, 25 FCC Rcd at 4078-81, 4085, 4102-03, paras. 14-18, 22, 55-57.

<sup>23</sup> *See supra* para. 6; *see also 2010 Insular Order*, 25 FCC Rcd at 4153-54, para. 29.

<sup>24</sup> *See* PRTC Petition at 14.

access to telephone service.<sup>25</sup> But if low telephone subscribership is related to consumer income, as PRTC seems to acknowledge, it is not at all apparent why the Commission should establish a new insular high-cost support mechanism rather than increase support for low-income consumers through its existing low-income support programs. Indeed, as the Commission stated in the *2010 Insular Order*, subscribership in Puerto Rico is on the rise due, in part, to efforts by the Commission, the Telecommunications Regulatory Board of Puerto Rico, and telecommunications carriers in Puerto Rico to improve the effectiveness and consumer awareness of federal low-income support programs.<sup>26</sup>

12. PRTC further argues that the Commission erred because, in assessing the total amount of high-cost support that PRTC receives, the Commission relied upon “cherry-picked” data, specifically PRTC’s 2008 data rather than 2009 data.<sup>27</sup> The Commission sufficiently explained why it elected not to rely on the 2009 data—it found the data were not a reliable guide to how much support PRTC could be expected to receive in the future.<sup>28</sup>

13. PRTC argues the Commission erred because it allegedly “failed to consider ‘relevant data’”—specifically, a variety of assertions in the record about the costs and burdens of providing telephone service in Puerto Rico.<sup>29</sup> We disagree. The Commission considered, *inter alia*, evidence regarding telephone subscribership, telephone rates, and high-cost support levels. That the particular obstacles to service in Puerto Rico might include costs related to providing service in “rough, hilly terrain and heavy tropical vegetation,”<sup>30</sup> among other challenges, does not demonstrate that PRTC needs additional high-cost support to keep rates for voice service affordable, or that PRTC requires additional high-cost support to extend lines to areas where it may not already have wireline facilities.<sup>31</sup> This is particularly so given evidence in the record that PRTC’s rates and its costs are both relatively low compared to other carriers.<sup>32</sup>

14. PRTC next argues that the *2010 Insular Order* arbitrarily treats carriers serving insular areas differently from carriers that serve rural areas.<sup>33</sup> In this regard, PRTC cites the Commission’s decision to provide additional high-cost support to a carrier serving Wyoming under a “separate mechanism.”<sup>34</sup> PRTC’s argument suffers from two fatal flaws. The first is that the “separate mechanism” to which PRTC refers is not “separate” at all—Wyoming received additional support under an “exception” or “safety valve” that is equally available to PRTC.<sup>35</sup> Second, PRTC ignores the facts of the Wyoming case. There, the petitioners (the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate) demonstrated that rates for customers in rural areas in Wyoming were not reasonably comparable to the national average urban rate, and that the state had taken all reasonably

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<sup>25</sup> See *id.* (citing *2010 Insular Order*, 25 FCC Rcd at 4165, para. 49).

<sup>26</sup> See *2010 Insular Order*, 25 FCC Rcd at 4151-52, 4155-57, paras. 27, 33-34 & n.91.

<sup>27</sup> See PRTC Petition at 15.

<sup>28</sup> See *2010 Insular Order*, 25 FCC Rcd at 4143 n.52.

<sup>29</sup> See PRTC Petition at 16 (citing *State Farm*, 463 U.S. at 43).

<sup>30</sup> PRTC Petition at 17.

<sup>31</sup> See *supra* para. 6.

<sup>32</sup> See *2010 Insular Order*, 25 FCC Rcd at 4154, 4160, paras. 29 & 39.

<sup>33</sup> See PRTC Petition at 20.

<sup>34</sup> See *id.* at 20-21 (citing *Qwest II Remand Order*, 25 FCC Rcd at 4116, para. 84 and 47 C.F.R. § 54.316).

<sup>35</sup> See 47 C.F.R. § 54.316.

possible steps to achieve reasonable rate comparability.<sup>36</sup> PRTC provided no comparable evidence. As discussed above, for example, PRTC failed to provide any rate data at all, and the rate data in the record provided by another party indicated that PRTC's rates were below the national average.<sup>37</sup>

15. For these reasons, we deny PRTC's petition for reconsideration.

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<sup>36</sup> See *Qwest II Remand Order*, 25 FCC Rcd at 4117-20, paras. 86-88.

<sup>37</sup> See *2010 Insular Order*, 25 FCC Rcd at 4153-54, para. 29.

## APPENDIX E

Verizon Wireless Petition for Reconsideration of the  
Wireline Competition Bureau's April 1, 2011 Guidance Letter to USAC

## I. INTRODUCTION

1. In this Order, we deny Verizon Wireless's petition for reconsideration of the Wireline Competition Bureau's (Bureau) letter directing the Universal Service Administrative Company (USAC) to implement certain caps on high-cost universal service support for two companies, known as the company-specific caps.<sup>1</sup>

## II. BACKGROUND

2. In October 2007, as a condition of the Commission's approval of ALLTEL's merger with Atlantis Holdings, Inc., the Commission imposed a cap on high-cost, competitive eligible telecommunications carrier (competitive ETC) support provided to ALLTEL.<sup>2</sup> The Commission imposed a similar interim cap on AT&T when it merged with Dobson Communications Corporation.<sup>3</sup> The caps were not self-executing, however, and required administrative actions to implement. Before the caps were implemented, the Commission issued the *Interim Cap Order*, establishing an industry-wide cap on high-cost, competitive ETC support.<sup>4</sup> The industry-wide cap "supersede[d] the interim caps on high-cost, competitive ETC support adopted in the *ALLTEL-Atlantis Order* and the *AT&T-Dobson Order*."<sup>5</sup>

3. On August 21, 2009, USAC sought guidance from the Commission on how and whether to implement the Commission's Orders imposing the company-specific caps.<sup>6</sup> USAC explained that it "believes that it is required to implement the orders AT&T and ALLTEL company-specific caps for the time period each respective order was in effect until the date it was superseded . . . because the [competitive ETC] industry-wide cap was effective prospectively and did not state that it superseded the company-specific caps retroactively."<sup>7</sup> USAC further stated that "[t]he company specific caps were not implemented prior to the CETC industry-wide cap for administrative reasons only. . . . At the written

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<sup>1</sup> Letter from Sharon E. Gillett, FCC, to Richard A. Belden, USAC, 16 FCC Rcd 5034 (Wireline Comp. Bur. 2011) (*Guidance Letter*); Verizon Wireless Petition for Reconsideration, WC Docket Nos. 05-337, 06-122, CC Docket No. 96-45 (filed May 2, 2011) (Petition).

<sup>2</sup> *Applications of Alltel Corporation, Transferor, and Atlantis Holdings LLC, Transferee for Consent to Transfer Control of Licenses, Leases and Authorizations*, WT Docket No. 07-128, Memorandum Opinion and Order, 22 FCC Rcd 19517, 19521, paras. 9-10 (2007) (*ALLTEL-Atlantis Order*).

<sup>3</sup> *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 07-153, Memorandum Opinion and Order, 22 FCC Rcd 20295, 20329-30, paras. 71-72 (2007) (*AT&T-Dobson Order*). Both the *ALLTEL-Atlantis Order* and the *AT&T-Dobson Order* noted that the caps would be replaced when the Commission adopted comprehensive universal service reforms. *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19521, para. 9; *AT&T-Dobson Order*, 22 FCC Rcd at 20329, para. 71.

<sup>4</sup> *High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*).

<sup>5</sup> *Id.* at 8837 n.21.

<sup>6</sup> See Letter from Richard A. Belden, USAC, to Julie Veach, FCC, WC Docket Nos. 05-337, 06-122, at 5 (filed Aug. 24, 2009) (USAC Guidance Request Letter).

<sup>7</sup> *Id.*

direction of Commission staff, however, USAC did not [subsequently] implement the company-specific caps” for that time period.<sup>8</sup>

4. The Bureau responded to USAC’s guidance request and directed USAC to implement the company-specific caps from the date each merger took effect until the effective date of the industry-wide cap.<sup>9</sup> The Bureau stated that each cap was “imposed as a condition of the Commission’s approval of a merger” and “the later *Interim Cap Order* superseded the company-specific orders; it did not, however, have any retroactive effect or nullify the prior orders.”<sup>10</sup> Accordingly, the Bureau explained, the earlier Orders imposing the caps should be implemented for the time each was in effect.<sup>11</sup>

### III. DISCUSSION

5. Reconsideration is appropriate only where the petitioner either shows a material error or omission in the original action or raises additional facts not known or existing at the petitioner’s last opportunity to present such matters.<sup>12</sup> Verizon Wireless has not done so.

6. Verizon Wireless’s primary argument is that the Bureau misinterpreted what the Commission meant when it said, in the *Interim Cap Order*, that the industry-wide cap “supersede[d]” the not-yet-implemented company-specific caps on high-cost support.<sup>13</sup> Specifically, Verizon Wireless argues that the Commission’s use of the word “supersede” in that Order meant that USAC should have “implement[ed] the industry cap *instead of* the ALLTEL-specific cap, to the extent the latter had not yet been implemented.”<sup>14</sup> This is so, Verizon Wireless contends, because according to Black’s Law Dictionary, the word supersede means “‘annul, make void, or repeal by taking the place of,’”<sup>15</sup> which “inherently includes the concept of annulling and making void the requirement or obligation that has been superseded.”<sup>16</sup>

7. We disagree. As the Supreme Court has explained, “the term ‘supersede’ ordinarily means ‘to displace (and thus render ineffective) while providing a substitute rule.’”<sup>17</sup> That is precisely what the *Interim Cap Order* did—it displaced the company-specific caps and provided a substitute rule. We do not think the term supersede necessarily carries with it the special additional meaning Verizon Wireless ascribes to it: that a rule that is superseded should be treated as though it never existed, but only to the precise extent that it had not already been applied. Rather, the question of which rule to apply when

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<sup>8</sup> *Id.*

<sup>9</sup> *Guidance Letter*, 16 FCC Rcd at 5035.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See *Petition for Reconsideration by National Association of Broadcasters*, 18 FCC Rcd 24414, 24415, para. 4 (2003). *MetroPCS Communications, Inc.*, AU Docket No. 08-46, Order on Reconsideration, 25 FCC Rcd 2209, 2213, para. 13 (Wireless Telecomm. Bur. 2010); *Christian Voice of Central Ohio, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 15943, 15944, para. 2 (2008).

<sup>13</sup> See *Guidance Letter*, 16 FCC Rcd at 5035.

<sup>14</sup> Petition at 4 (emphasis added).

<sup>15</sup> *Id.* (quoting Black’s Law Dictionary 1576 (9th ed. 2009)).

<sup>16</sup> Petition at 4.

<sup>17</sup> *Humana Inc. v. Forsyth*, 525 U.S. 299, 307 (1999).

considering circumstances that existed in the past, when new law has superseded (that is, displaced or replaced) old law is a distinct one, and a substantial body of law addresses that very issue in various contexts.<sup>18</sup>

8. The Supreme Court’s usage of the term “supersede” is consistent with our view. For example, in *H.P. Welch Co. v. New Hampshire*, appellant, a commercial freight carrier, argued that it could not be punished for violating New Hampshire’s statute limiting the amount of time a commercial driver could operate a vehicle.<sup>19</sup> Prior to the time the company had committed the violations, Congress had enacted a statute that empowered the Interstate Commerce Commission (ICC) to establish rules governing the same issue. The ICC subsequently issued such regulations, though they had not yet gone into effect. The Court “assume[d] . . . that when the federal regulations take effect they will operate to supersede the challenged provisions of the state statute.”<sup>20</sup> But, the Court continued, the relevant question was “whether Congress intended, that from the time of the federal enactment until effective action by the Commission, there should be no regulation of periods of continuous operation by drivers of motor vehicles hauling in interstate commerce.”<sup>21</sup> The Court concluded that Congress did not intend such a result: “it cannot be inferred that Congress intended to supersede any state safety measure prior to the taking effect of a federal measure found suitable to put in its place.”<sup>22</sup> Nothing in the Court’s opinion suggested that a different case would have been presented if the state had waited until after the federal rules went into effect before initiating the proceedings. Yet if the Court used the term “supersede” in the sense that Verizon Wireless claims, the superseded state statute could not be applied once federal rules superseded it—even to conduct occurring before the effective date of the federal regulations.<sup>23</sup> That, however, is precisely the result the Court rejected.

9. Verizon Wireless’s other definitional arguments are no more persuasive. Verizon Wireless argues that the word “supersede” in the *Interim Cap Order* should be understood to mean the same thing as the word “supersedeas” in the venerable writ of that name. A writ of supersedeas, as Verizon Wireless correctly notes, is a writ commanding an officer not to execute another writ the officer might be about to execute.<sup>24</sup> So, according to Verizon Wireless, the *Interim Cap Order* should be understood to be a writ commanding USAC not to execute the Commission’s previous instruction to it regarding the company-specific caps. We think, however, that the fact that there is a particular writ that uses the Latin word for

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<sup>18</sup> See, e.g., *Whorton v. Bockting*, 549 U.S. 406, 416 (2007) (discussing how to determine whether to apply a new rule announced by the Supreme Court in criminal cases at various stages of review); *Danforth v. Minnesota*, 552 U.S. 264 (2008) (holding that state courts may give greater retroactive effect to Supreme Court decisions than is required under the line of cases discussed in *Whorton*); *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529 (1991) (discussing retroactivity in both civil and criminal contexts).

<sup>19</sup> 306 U.S. 79 (1939).

<sup>20</sup> *Id.* at 84.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 85.

<sup>23</sup> We do not think it makes a difference that the company-specific caps on high-cost support had not been implemented and applied against any carrier while our example of a freight carrier involves a regulation that had been applied against others but not against the carrier in question. The question is whether, when a new rule “supersedes” an old rule, the fact that the old rule has been “superseded” means that it cannot be applied for the time period when it was in effect. We do not see why whether it can be applied against one entity would depend on whether it has previously been applied to another.

<sup>24</sup> See Petition at 5.

supersede and that has a very specific function does not mean that the word can only be used to mean precisely what it means in the context of that writ—just as we do not think that the word “body” can mean only what it means in the context of a writ of habeas corpus. Nor do we find any of Verizon Wireless’s citations to Commission or judicial authority helpful to Verizon Wireless’s argument, as none of them involve the use of the word “supersede” in a context where it actually had the effect that Verizon Wireless claims it ought to have here.<sup>25</sup>

10. Verizon Wireless next argues that implementing the company-specific caps now would be inconsistent with the Commission’s goal in adopting them, which was “to limit the size of the universal service fund and, thereby, to reduce the demand for contributions borne by consumers.”<sup>26</sup> Had USAC implemented the company-specific caps earlier, support recaptured from Verizon Wireless would result in a reduction of the contribution factor borne by consumers pursuant to section 54.709(b) of the Commission’s rules. As Verizon Wireless explains, however, the Commission temporarily waived that provision in the *Corr Wireless Order*.<sup>27</sup> So, at the time the Bureau issued its guidance to USAC regarding the company-specific caps, amounts that USAC might collect in contributions (or amounts recaptured from carriers) beyond what was needed to fund the high-cost program would not result in reductions to the contribution factor, but instead would be reserved as a “down payment on proposed broadband universal service reforms.”<sup>28</sup> In Verizon Wireless’s view, this means that implementing the company-specific caps now would be inconsistent with the purpose the Commission had in adopting them, and, therefore, either unlawful or a mistake of policy.

11. We disagree. The reserve fund was created in order to provide funding for a variety of broadband universal service reforms.<sup>29</sup> As the Commission explained at the time, “[r]eserving funds now, rather than collecting them through a higher contribution factor at a later time, will . . . minimize[e] unnecessary volatility in the contribution factor, which would otherwise decline and then increase . . . . The reclaimed funds will also provide a continuing benefit to the universal service fund by earning interest until they are disbursed.”<sup>30</sup> Verizon Wireless’s argument thus misses the mark both conceptually

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<sup>25</sup> We are also unconvinced by Verizon Wireless’s claim that the Commission’s intent was “clear” in the *Interim Cap Order* that the company-specific caps should not be implemented. See Petition at 8-10. Nor do we think the fact that the Commission did not refer to the company-specific caps in subsequent orders, where the effect of the company-specific caps was not at issue, to be particularly relevant. See Petition at 11-13. Verizon Wireless also points to the Commission’s recitation in the *Corr Wireless Order* of an estimate from the National Broadband Plan of the amount of money that Verizon Wireless and Sprint Nextel received in 2008, which seems to have included the full amount each actually received, rather than reflecting the amount Verizon Wireless *would have received* in 2008 if the company-specific cap had already been implemented. See Petition at 11; *High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 12854, 12856, para. 4 (2010) (*Corr Wireless Order*). We think the statement cannot bear the weight Verizon Wireless places on it. For one thing, the language in the *Corr Wireless Order* cites an estimate from the National Broadband Plan of the amount of money the carriers *actually received* in 2008, it does not claim to be an estimate that reflects adjustments like true-ups or the company-specific cap. For another, the *Corr Wireless Order* used the number only to provide context regarding the phasedown. The Commission’s use of a number that was readily at hand in such a situation does not indicate anything in particular about whether it had decided not to implement the company-specific caps.

<sup>26</sup> Petition at 14 (citing *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19520-21, paras. 8-9).

<sup>27</sup> Petition at 15 (citing *Corr Wireless Order*, 25 FCC Rcd at 12862-63, para. 22).

<sup>28</sup> *Corr Wireless Order*, 25 FCC Rcd at 12862, para. 20.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

and in the particulars. That is, by reserving funds, including funds recovered by implementing the company-specific caps, rather than reducing the contribution factor, the Commission will have funds available to disburse to support its reforms. That means a lower contribution factor, at that future time, than would otherwise be the case. And the point of the caps in that regard—both the company-specific caps and the later industry-wide cap—was not to achieve a particular contribution factor. Instead, it was to limit demand for funds and to control the overall size of the Fund. In other words, the goal was to cause the contribution factor to be lower than it otherwise would be absent such a cap. Reserving funds associated with the company-specific caps is consistent with that goal; the result will be a lower contribution factor than would otherwise be required to fund the reforms the Commission adopts today. Second, Verizon Wireless ignores the fact that funds in the reserve earn interest until they are disbursed. To the extent interest income reduces the need for contributions from consumers, the use of the reserve fund directly supports the goal the Commission identified.

12. Verizon Wireless further argues that the Guidance Letter was incorrect to claim that implementing the company-specific caps would not require an adjustment to the industry-wide interim cap amounts. That is, under the *Interim Cap Order*, the interim cap amount for each state is based on the amount of support each competitive ETC in that state was eligible to receive in March 2008.<sup>31</sup> Verizon Wireless claims that the company-specific caps, if implemented, would have reduced the amount of high-cost, competitive ETC support those companies were eligible to receive in March 2008, and, therefore, the interim cap would need to be reduced accordingly, contrary to the Bureau's statement in the Guidance Letter.<sup>32</sup>

13. We disagree. As the Commission explained in the *Corr Wireless Order*, carrier-specific high-cost, competitive ETC support reductions do not influence the amount of the industry-wide cap.<sup>33</sup> To the contrary, "as long as [carriers] continue to be competitive ETCs . . . [they] remain *eligible* for high-cost support, even though they have agreed to surrender such support."<sup>34</sup>

14. Verizon Wireless also argues that it would be manifestly unjust for USAC to recapture the high-cost, competitive ETC support provided to ALLTEL, as ALLTEL—as it was required to do pursuant to Commission rules—already spent that money.<sup>35</sup> In this regard, Verizon Wireless complains that there was no way either ALLTEL or Verizon Wireless could have known that the Commission would later implement the company-specific caps.

15. We are not persuaded. As explained above, we disagree with Verizon Wireless about whether the Commission intended, in the *Interim Cap Order*, to declare that the company-specific caps would never be implemented. Because the Commission never said that the company-specific caps would not be implemented, we find that any assumption otherwise by ALLTEL or Verizon Wireless was unfounded. Nor does Verizon Wireless's repeated assertion that staff informed ALLTEL and USAC that the company-specific caps would not be implemented change our view, as informal staff guidance cannot bind the Commission.<sup>36</sup> In addition, we do not believe that directing USAC to implement the company-

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<sup>31</sup> *Interim Cap Order*, 23 FCC Rcd at 8846, para. 27.

<sup>32</sup> Petition at 2-3.

<sup>33</sup> See *Corr Wireless Order*, 25 FCC Rcd at 12857-58, paras. 7-9.

<sup>34</sup> *Id.* at 12858, para. 10.

<sup>35</sup> Petition at 14-15.

<sup>36</sup> See, e.g., *Petition for Waiver of Section 61.45(d)*, Memorandum Opinion and Order, 21 FCC Rcd 14293, 14299, para. 15 (2006) (finding informal staff letters non-binding on the Commission); *C.F. Communications Corp. v.* (continued...)