



PUBLIC NOTICE

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REPLIES SOUGHT IN CONNECT AMERICA PHASE II CHALLENGE PROCESS

WC Docket No. 10-90

WC Docket No. 14-93

RESPONSES DUE: November 10, 2014

By this Public Notice, the Wireline Competition Bureau (Bureau) announces it has completed its initial review of the Connect America Phase II challenges and has determined which of those challenges present sufficient evidence to make a prima facie case that the status of the census block should be changed for purposes of determining where Phase II support will be offered to price cap carriers. We now announce the start of the reply period for the Connect America Phase II challenge process for price cap territories.

The Bureau is releasing two lists of census blocks. The first, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-329607A1.xlsx, is a list of census blocks for which a party has made a prima facie challenge that the block should not be eligible for Phase II support. The second, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-329606A1.xlsx, is a list of blocks for which a party has made a prima facie challenge that the block should be eligible for Phase II support.¹

Parties have until **November 10, 2014**, 45 days from the release of this Public Notice, to file an FCC Form 505 to respond to the inclusion of particular census blocks on either list. **Responses may only be filed regarding blocks for which a prima facie challenge has been made.** The Bureau will disregard any “response” regarding a block that is not on either list. More detailed filing instructions are below.

After assessing the challenges, responses, and evidence received, the Bureau will at a future date make a final determination as to which census blocks will be treated as unserved, and thus potentially eligible for Phase II support.² That final determination will be used in making an offer of Phase II model-based support to price cap carriers to fund the deployment of voice and broadband-capable infrastructure in their territories.

Background. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the universal service and intercarrier compensation systems to maintain voice

¹ Whether a particular census block ultimately is on the final list of census blocks for which support is offered to price cap carriers in exchange for a state-level commitment will depend on where the Bureau ultimately sets the extremely high cost threshold.

² *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211, 7220, paras. 21 (Wireline Comp. Bur. 2013) (*Phase II Challenge Process Order*).

service and extend broadband-capable infrastructure to millions of Americans.³ As part of that reform, the Commission established Connect America Phase II, which will provide ongoing support to promote the deployment of voice and broadband-capable networks in high-cost areas in price cap territories. The Commission specified that Phase II support would not be provided in areas served by an unsubsidized competitor, and it delegated to the Bureau the responsibility of determining those areas.⁴ The Commission also specified that there be a process by which parties could challenge that initial determination of whether or not an area is unserved by an unsubsidized competitor.

The Bureau set forth the framework for the Commission-mandated challenge process in the *Phase II Challenge Process Order*.⁵ The challenge process is focused on whether an area is served or unserved by an unsubsidized competitor. Using the National Broadband Map as a starting point, the Bureau preliminarily determined which census blocks were served or unserved by an unsubsidized competitor.

On June 30, 2014, the Bureau commenced the Phase II challenge process.⁶ Parties then had an opportunity to present evidence contesting the Bureau's initial determination, arguing either that a census block deemed served should instead be treated as unserved, or that a census block deemed unserved should be treated as served.⁷ Challenges were due on August 14, 2014. More than 140 parties filed nearly 180,000 challenges. The Bureau then undertook the process of determining which challenges presented sufficient evidence to merit putting the challenge up for reply. The Commission directed the Bureau to commence the Phase II challenge process using the standard established in the 2013 *Phase II Service Obligations Order*.⁸ In order to qualify as "served" by an unsubsidized competitor, the census block must have voice service and broadband service with pricing that is reasonably comparable to that for similar services in an urban area. In addition, the broadband service must have speeds of 4 Mbps downstream and 1 Mbps upstream, a usage allowance of at least 100 GB, and latency of 100 ms or less.⁹

Unserved-to-Served Challenges. The Bureau received 37,613 challenges that a census block appearing on the initial eligible list should be removed because it was already served. The Bureau concluded that 15,603 of these challenges did not make a prima facie case because they failed to meet one of several threshold criteria: 13,006 challenges related to census blocks categorized as below the high-cost funding threshold;¹⁰ 77 challenges related to census blocks that already are deemed to be completely

³ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*).

⁴ *Id.* at 17729, para. 170.

⁵ *Phase II Challenge Process Order*, 28 FCC Rcd at 7216-20, paras. 12-22.

⁶ *Wireline Competition Bureau Commences Connect America Phase II Challenge Process*, WC Docket No. 14-93 et al., Public Notice, 29 FCC Rcd 7986 (Wireline Comp. Bur. 2014) (*Phase II Challenge Process Commencement Public Notice*).

⁷ *Id.*

⁸ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7083, para. 90 (2014) (*Connect America Order and FNPRM*); see also *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060 (Wireline Comp. Bur. 2013) (*Phase II Service Obligations Order*).

⁹ *Phase II Service Obligations Order*, 28 FCC Rcd at 15076-80, paras. 39-47.

¹⁰ As the Bureau stated in the *Phase II Challenge Process Commencement Public Notice*, parties may not challenge census blocks where the average cost per funded location is below the high-cost threshold (\$52.50). *Phase II Challenge Process Commencement Public Notice*, 29 FCC Rcd at 7987-88. Such challenges were filed by Amplex Electric (84 census blocks), Atlantic Broadband (12,918 census blocks), Cable TV of East Alabama (one census block), Midcontinent Communications (two census blocks), and Santa Rosa Telephone Cooperative CLEC (one census block).

within rate-of-return territory;¹¹ 1,935 challenges related to census blocks that were not on the initial list of eligible census blocks because they already are shown as served on the National Broadband map;¹² and 585 challenges were otherwise deemed invalid on their face as the Bureau was unable to match the FIPS code given by the challenger with any populated census block.¹³

Of the remaining 22,010 challenges that met all the threshold requirements, the Bureau concluded that 1,827 did not provide sufficient evidence to establish a prima facie case that the census block in question is served by broadband and voice services meeting the Commission's requirements.¹⁴ The Bureau concluded that 20,183 challenges made a valid prima facie cases that a census block should be treated as served, with parties now having the opportunity to reply.¹⁵

In addition to these census blocks, petitioners filed requests for waiver in relation to 4,224 census blocks, asking the Bureau to waive the requirement that a census block have a current or former customer in order to be considered served.¹⁶ We were not persuaded by the petitions for waiver as they relate to 856 census blocks.¹⁷ We grant waivers for 3,368 of these census blocks, concluding the petitioners have met the standard for granting a waiver. For these census blocks, parties provided evidence that special circumstances warrant deviating from the requirement that a census block must have a current or former

¹¹ Only price cap territories are eligible for Phase II support; therefore, there is no need to adjudicate whether a non-price cap territory census block is served or unserved by an unsubsidized competitor. Such challenges were filed by Atlantic Broadband (75 census blocks) and Farmers Telephone Company (two census blocks).

¹² As these census blocks already were initially deemed served, there is no need for the Bureau to adjudicate these challenges. Such challenges were filed by Atlantic Broadband (1,934 census blocks) and New Era Broadband (one census block).

¹³ This may be because the FIPS code is erroneous (i.e., the FIPS code does not match any census block in the United States), or the FIPS code is for a valid census block but that census block is unpopulated. Such challenges were filed by All West/Utah, Inc. (one census block), Atlantic Broadband (537 census blocks), BEK Communications Cooperative (four census blocks), Cable TV of East Alabama (three census blocks), Farmers Telephone Company (one census block), Metrocast Communications (one census block), New Era Broadband (one census block), Northland Cable Television (two census blocks), Randy Riddle dba ANR (33 census blocks), and Troy Cablevision (two census blocks).

¹⁴ Challenges that did not make a prima facie case were filed by ALTIUS Communications (1,133 census blocks – the challenge did not provide evidence of meeting the performance requirements, but rather only specified where the challenger provided service), H&B Cable Service (183 census blocks – the challenge did not provide evidence of meeting the performance requirements, but rather only specified where the challenger provided service), IguanaNet (261 census blocks – the affidavit presented as evidence did not clearly show that usage allowance, latency, and pricing criteria were being met), and Intelliwave (250 census blocks – the Bureau was not persuaded that the service offered at a rate of \$104.95 per month met the reasonably comparable pricing requirement).

¹⁵ The 20,183 challenges are for 19,753 unique census blocks, as some census blocks were challenged by more than one provider. The Commission has instructed the Bureau not to prejudge the outcome of questions raised in the pending Further Notice of Proposed Rulemaking regarding. *Connect America Fund FNPRM*, 29 FCC Rcd 7051, 7083, para. 90 n.197. Therefore, we have included subsidized providers in this list of census blocks.

¹⁶ *Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 7505, 7507-09, paras. 8-12 (Wireline Comp. Bur. 2014) (*Phase II Challenge Process Guidance Public Notice*).

¹⁷ In general, a waiver should be granted only where special circumstances warrant a deviation from the general rule, and it is shown that such a deviation will serve the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)). These petitions were filed by Amplex Electric (225 census blocks – the petition did not include evidence of special circumstances justifying a waiver), Chariton Valley Telecom Corporation (seven census blocks – the petition did not include evidence of special circumstances justifying a waiver), CTC Telecommunications dba Mosaic Telecom (152 census blocks – the petition did not include evidence of special circumstances justifying a waiver), and United Services (472 census blocks – the petition did not include evidence of special circumstances justifying a waiver).

customer. Parties variously argued that low population density, high poverty, or recent/ongoing deployment explain the lack of a current or former customer.¹⁸ We conclude that the public interest would be served by allowing these challenges to proceed to the next phase in the Phase II challenge process. These 3,368 census blocks also meet the threshold and evidentiary requirements noted above, and so we include them on the list of prima facie unserved-to-served challenges, with parties now having the opportunity to reply.

Lastly, challenges were filed relating to 683 census blocks that parties alleged fell entirely within rate-of-return study areas. We dismiss nine of these challenges as they relate to issues of service below the census block level.¹⁹ We determine that the remaining 674 challenges provided sufficient evidence that the census blocks are located solely in rate-of-return territories. Those census blocks have been added to the list of unserved-to-served prima facie challenges; opposing parties now have the opportunity to reply.

Served-to-Unserved Challenges. The Bureau received 135,815 challenges that a census block not appearing on the initial eligible list should be eligible for funding because it is unserved. The Bureau concluded that 58,949 of these challenges failed to make a prima facie because they failed to meet some threshold criteria: 40,107 challenges related to census blocks categorized as below the high-cost threshold;²⁰ 136 challenges related to census blocks that already are deemed to be completely within rate-of-return territory;²¹ one challenge related to a census block already listed on the initial list of eligible

¹⁸ Some parties filed oppositions to these waiver requests. See Opposition of Windstream Corporation to Petitions for Limited Waiver of CAF Phase II Evidentiary Requirement, WC Docket No. 10-90 et al. (filed Aug. 22, 2014); Opposition of the United States Telecom Association to the Petitions for Limited Waiver of the CAF Phase II Evidentiary Requirement by Allen’s TV Cable Service, Inc. et al., WC Docket No. 10-90 et al. (filed Aug. 25, 2014); Opposition of CenturyLink to Petitions for Limited Waiver of CAF Phase II Evidentiary Requirement, WC Docket No. 10-90 et al. (filed Aug. 25, 2014). We conclude that the waivers in question were properly filed in conjunction with these challenges. The argument that parties were not afforded reasonable notice to respond to the waiver request is undermined both by the fact that parties did respond to the waiver requests and that copies of the challenges (including waivers) were served on the interested parties. Additionally, parties opposing grant of the waiver will have an opportunity in the response period to present their arguments as to why the census blocks in question should be treated as not served. As for arguments that the evidence presented by the parties seeking waiver does not constitute special circumstances, we conclude that low density or high poverty in the blocks, alleged by many parties, could provide a plausible explanation as to why a census block has access to service but no customers have taken advantage of it. Similarly, recent or ongoing new deployment in a particular area would also explain the lack of a current or former customer, as the new provider has had only a limited period of time to sign up potential customers.

¹⁹ Peoples Telephone Cooperative filed a challenge relating to nine census blocks split between rate-of-return and price cap study areas, asking us to address sub-census block level issues related to funding for those locations. As stated in the *Phase II Challenge Process Order*, we will not entertain challenges below the census block level, and thus we dismiss Peoples Telephone Cooperative’s challenge. *Phase II Challenge Process Order*, 28 FCC Rcd at 7220, para. 22. We note, however, that price cap carriers may not use funding to deploy service in rate-of-return study areas.

²⁰ Such challenges were filed by CenturyLink (2,621 census blocks), the Clear Creek County Government (331 census blocks), FairPoint (12 census blocks), the Gilpin County Government (541 census blocks), Glenwood Telecommunications (397 census blocks), the Lake County Government (449 census blocks), LR Communications (124 census blocks), Myakka Communications (36 census blocks), the State of North Dakota – Information Technology Department (565 census blocks), Phillips County Telephone Company (234 census blocks), Secom, Inc. (34,796 census blocks), and the Suwanee Creek Homeowners’ Association (one census block).

²¹ Such challenges were filed by Glenwood Telecommunications (19 census blocks), LR Communications (three census blocks), the State of North Dakota – Information Technology Department (52 census blocks), Phillips County Telephone Company (eight census blocks), and Secom, Inc. (54 census blocks).

census blocks as unserved,²² and 18,705 challenges were deemed otherwise invalid on their face as the Bureau was unable to match the FIPS code given by the challenger with any populated census block.²³

Of the remaining 76,866 challenges that met all the threshold requirements, the Bureau concluded that 4,418 did not provide sufficient evidence to establish a prima facie case that the census block in question is unserved by broadband and voice services meeting the Commission's requirements.²⁴ Additionally, a number of challenges challenged multiple providers in a given census block, arguing that none of those entities served the block in question. In those situations where we conclude the challenger failed to present a prima facie case with respect to just one of those providers, we will not review the party's other challenges related to that census block (as only one provider is required to treat a census block as served). Due to this cascade effect, we conclude an additional 1,580 challenges failed to make a prima facie case.²⁵ The remaining 70,868 challenges were deemed as making a valid prima facie case that a census block should be treated as unserved, with parties now having the opportunity to respond.²⁶

Responses to Challenges. Respondents have until November 10, 2014, 45 days from the release of this Public Notice, to file their responses related to the list of census blocks for which prima facie challenges have been filed. As noted above, after the close of the response period, the Bureau will make its final determination as to whether the challenged census blocks will be treated as served or unserved by an unsubsidized competitor for the purposes of Phase II and will issue the final list of eligible census blocks that will be used for making an offer of Phase II model-based support to price cap carriers.²⁷ If no responses are received for a given prima facie challenge, the challenge will be automatically granted.

²² This challenge was filed by the State of North Dakota – Information Technology Department.

²³ This may be because the FIPS code is erroneous (i.e., the FIPS code does not match any census block in the United States), or the FIPS code is for a valid census block but that census block is unpopulated. Such challenges were filed by the Clear Creek County Government (647 census blocks), the Gilpin County Government (827 census blocks), Glenwood Telecommunications (1,582 census blocks), the Lake County Government (220 census blocks), LR Communications (134 census blocks), the State of North Dakota – Information Technology Department (3,117 census blocks), Phillips County Telephone Company (259 census blocks), and Secom, Inc. (11,919 census blocks).

²⁴ We conclude that the following challenges failed to present evidence sufficient to make a prima facie case for the following reasons: Clear Creek County Government (238 census blocks – the challenge alleged the provider did not meet the reasonably comparable pricing requirement for broadband, but the provider's prices are below \$60), Frontier (1,812 census blocks – the challenge alleged a lack of voice service, but the evidence provided a link to the provider's website, which shows voice service is offered), the Gilpin County Government (203 census blocks – the challenge alleged the provider did not meet the pricing requirement for broadband, but the provider's prices are below \$60), the Lake County Government (63 census blocks, the challenge alleged the provider did not meet the upload speed requirement, but the evidence provided a link to the provider's website, which lists an upload speed of 4 Mbps), and Secom, Inc. (2,102 challenges – the challenge alleged the provider did not meet the upload speed requirement, but the evidence provided a link to the provider's website, which lists an upload speed of 4 Mbps; the challenge alleged the provider did not meet the pricing requirement for broadband, but the provider's prices are below \$60; and the challenge alleged no voice service, but the provider's website shows voice service is offered).

²⁵ Such challenges were filed by the Clear Creek County Government (34 census blocks), the Gilpin County Government (371 census blocks), the Lake County Government (40 census blocks), and Secom, Inc. (1,135 census blocks).

²⁶ The 70,868 challenges are for 66,071 unique census blocks, as some blocks were challenged multiple times to account for multiple providers serving that census block.

²⁷ The determinations of the challenge process will also be used in the rural broadband experiments. For example, if the challenge process ultimately determines a given census block to be served, funding for that particular census block will not be available in the rural broadband experiments. *Wireline Competition Bureau Announces Application Process for Entities Interested in Participating in the Rural Broadband Experiments*, WC Docket No. 10-90 et al., Public Notice, DA 14-1203, paras. 64-66 (Wireline Comp. Bur. rel. Aug. 19, 2014).

The Bureau will not consider responses for any census block that is not on either of the lists of census blocks for which there is a prima facie challenge. The response period is not an opportunity to challenge a census block that was not contested in the initial challenge period, nor is it an opportunity to provide further evidence in support of challenges that the Bureau determined failed to meet the prima facie standards.

Filing Process. To file a response, parties *must* complete FCC Form 505, available at http://www.fcc.gov/wcb/tapd/Challenge_Process/FCC_Form_505.xls, and file it on the Commission's Electronic Comment Filing System (ECFS). **Responses to challenges must be filed in WC Docket No. 14-93 using Form 505. Responses not utilizing Form 505 will not be considered.** In addition to filing responses on ECFS, parties are also required to submit a copy of their response to a challenge in a native format to the Commission in one of two ways: either by e-mailing the files to Form505@fcc.gov or by delivering storage media containing the files to the Attention of Gilbert Smith, Telecommunications Access Policy Division, Wireline Competition Bureau (see Procedural Matters below).

The Bureau has also created a **challenge process guide**, designed to walk parties through the process of filing and responding to challenges, as well as answer some frequently asked questions. The guide can be found at http://www.fcc.gov/wcb/tapd/Challenge_Process/ChallengeProcessGuide7-31-14.docx. While this guide is designed to assist parties in participating in the challenge process, parties should also read the relevant Commission and Bureau documents related to the challenge process, particularly the *Phase II Challenge Process Order* and the June 20, 2014 Public Notice providing additional guidance.²⁸

Procedural Matters. Interested parties may file responses to challenges using Form 505 on or before the date indicated on the first page of this document. Responses to challenges are to reference **WC Docket No. 14-93 and DA 14-1397** and may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (May 1, 1998).

- **Electronic Filers:** Responses may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>. A electronic copy of the response and accompanying evidence must also be e-mailed to Form505@fcc.gov or mailed on machine readable media to the Attention of Gilbert Smith, Telecommunications Access Policy Division, Wireline Competition Bureau, using the mailing methods discussed below for paper filers.
- **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. Paper filers are still required to submit an electronic version of their response, either by e-mail to Form505@fcc.gov or sent on machine readable media to the Attention of Gilbert Smith, Telecommunications Access Policy Division, Wireline Competition Bureau, using the mailing methods discussed below.

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 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries

²⁸ *Phase II Challenge Process Guidance Public Notice*, 29 FCC Rcd at 7505, *Phase II Challenge Process Order*, 28 FCC Rcd at 7211.

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 12th Street, SW, Washington DC 20554.

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

For further information on this Public Notice, please contact Gilbert Smith, Telecommunications Access Policy Division, Wireline Competition Bureau at 202-418-7400, Form505@fcc.gov; or at TTY (202) 418-0484.

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