

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Connect America Phase II Challenge Process)	WC Docket No. 14-93

ORDER

Adopted: March 30, 2015

Released: March 30, 2015

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) concludes the Connect America Phase II Challenge Process and provides the final determination regarding all challenged census blocks. We announce the results of our review of the challenges and replies, and we provide an accompanying listing of those census blocks that will be treated as served and those that will be treated as unserved for purposes of calculating the Phase II offer of model-based support to price cap carriers. We will make the necessary adjustments in the Phase II cost model in the weeks ahead in order to make final calculations of the offer of support to price cap carriers.

2. In June 2014, the Bureau announced that nearly 745,000 census blocks would be eligible for the offer of Phase II model-based support, subject to the outcome of the challenge process.¹ In August 2014, more than 140 parties filed challenges regarding the classification of nearly 180,000 census blocks. In September 2014, the Bureau determined that challengers made a *prima facie* case that the status of 95,093 census blocks should be changed and set a comment cycle for parties to reply.²

3. We now conclude, based on review of the challenges and replies, that 57,288 census blocks should be treated as unserved and that 36,700 census blocks should be treated as served.³ We summarize in Table 1 below the results of the challenge process for census blocks served by those carriers that will be eligible for the offer of model-based support:

¹ *Wireline Competition Bureau Commences Connect America Phase II Challenge Process*, WC Docket Nos. 14-93, 10-90, Public Notice, 29 FCC Rcd 7986 (Wireline Comp. Bur. 2014) (*Phase II Challenge Process Commencement Public Notice*).

² *See Replies Sought in Connect America Phase II Challenge Process*, WC Docket Nos. 10-90, 14-93, Public Notice, 29 FCC Rcd 11497, 11497-501 (Wireline Comp. Bur. 2014) (*Prima Facie Public Notice*); *see also Unserved-to-Served Prima Facie Challenges and Served-to-Unserved Prima Facie Challenges*, available at <http://www.fcc.gov/encyclopedia/connect-america-phase-ii-challenge-process> (last visited Feb. 12, 2015) (*Prima Facie Lists*). The Bureau concluded that petitioners presented valid *prima facie* challenges for 70,868 Served to Unserved census blocks and 24,225 Unserved to Served census blocks.

³ A number of census blocks were challenged by more than one provider (“duplicates”). Therefore, Appendix A and the final numbers of designations for both Served and Unserved census blocks reported in this Order include these duplicates. These numbers also include the challenge and reply filings from the Consolidated/Enventis proceeding. *See* Connect America Fund, et. al., WC Docket Nos. 10-90, et. al, Order, 29 FCC Rcd 11776 (Wireline Comp. Bur. 2014) (*Consolidated/Enventis Order*).

Table 1: Results of Phase II Challenge Process, By Price Cap Carrier⁴

Price Cap Carrier	Initial Eligible Census Blocks	Number of Served Census Blocks Reclassified as Unserved	Number of Unserved Census Blocks Reclassified as Served	Net Change in Unserved Census Blocks	Revised Number of Eligible Census Blocks⁵
AT&T	236,331	16	6,702	(6,686)	229,645
Cincinnati Bell	841	-	2	(2)	839
CenturyLink	205,547	51,621	18,644	32,977	238,524
Consolidated Communications⁶	3,531	4,475	1,037	3,438	6,969
FairPoint Communications	16,249	1,530	540	990	17,239
Frontier⁷	127,032	722	2,675	(1,953)	125,079
Hawaiian Telecom	1,544	2	235	(233)	1,311
Micronesian Telecom	690	-	-	-	690
Verizon	75,750	1	3,107	(3,106)	72,644
Windstream	76,924	11,717	6,068	(5,649)	82,573
TOTAL	744,439	70,084	39,010	31,074	775,513

Because we resolve the status of over 95,000 census blocks today, we are posting the list showing the treatment of individual census blocks on the Commission's website so that interested parties can download the voluminous file and sort it as necessary.⁸ That list is incorporated by reference into this decision. The list available at <http://www.fcc.gov/wcb/CAF II Challenge App A.zip> identifies the Bureau's decision for all challenged census blocks, including those census blocks for which there was a *prima facie* challenge but no reply, and those where we did not consider a pleading, in whole or in part, because it was improperly filed or dismissed as moot.

⁴ This chart does not include the census blocks for the non-contiguous carriers that have notified the Commission that they do not wish to receive an offer of model-based support: ACS, Puerto Rico Telephone Company, and Virgin Islands Telephone Company. See Letter from Karen Brinkmann, Counsel for ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Jan. 2, 2015); Letter from Thomas J. Navin, counsel for PRTC, to Julie Veach, Chief, Wireline Competition Bureau, WC Docket No. 10-90 (filed Dec. 22, 2014); Letter from Russell M. Blau, counsel for Virgin Islands Telephone Corporation d/b/a Innovative Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 29, 2014) (all notifying the Bureau of interest to continue receiving Connect America Phase II frozen support in lieu of model-based support). For completeness, we list in the appendix the challenges received with respect to certain ACS census blocks, which were filed before ACS indicated it did not wish to receive an offer of model-based support.

⁵ The precise number of census blocks actually eligible for the offer of model-based support will likely be different, once the Bureau completes the final run of the Connect America Cost Model for purposes of determining the offer of model-based support.

⁶ These numbers include Enventis, Heartland Telecommunications Co. of Iowa, Illinois Consolidated Telephone Company, Mankato Citizens Telephone Company, Mid-Communications, Inc., Consolidated of Fort Bend, and Consolidated of Texas.

⁷ These numbers include Frontier-Idaho, Frontier-Indiana, Frontier-Montana, and Frontier of West Virginia.

⁸ See Appendix A: Final Challenge Decisions.

II. BACKGROUND

4. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the universal service and intercarrier compensation systems to maintain voice service and extend broadband-capable infrastructure to millions of Americans.⁹ 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.¹⁰ 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.

5. Implementing the Commission's decision, in 2013, the Bureau set the parameters for how it would determine whether an entity would be considered an unsubsidized competitor, specifying the performance metrics a provider would be required to meet and how the Bureau would initially determine whether a census block was served or unserved by an unsubsidized competitor.¹¹ In the *Phase II Challenge Process Order*, the Bureau established a process by which parties could challenge the initial designation of a block as served or unserved.¹² The Bureau also adopted FCC Form 505, which parties must use in filing challenges and responses.¹³ In submitting Form 505, parties must also fill out an accompanying certification, affirming that the statements contained in the challenge or responses are true and accurate to the best of the knowledge of the certifying official.¹⁴

6. The challenge process is focused on whether an area is served or unserved by an unsubsidized competitor. There are two types of challenges: the first is when a provider (typically a price cap carrier) is challenging the designation on the National Broadband Map of a particular census block as served and arguing it should instead be treated as unserved in the cost model for purposes of the offer of model-based support (hereafter a "Served to Unserved challenge"). The second is when a provider (typically a cable operator or fixed wireless provider) is challenging the designation of a particular block on the map as unserved and arguing it should instead be treated as served in the model for purposes of the offer of support – because they serve it (hereafter an "Unserved to Served" challenge).

7. *Service Requirements for Unsubsidized Competitors*. In order to qualify as "served" by an unsubsidized competitor, a census block must have voice service and broadband service with pricing that is reasonably comparable to pricing for similar services in an urban area.¹⁵ As the Bureau stated in the *Phase II Challenge Process Guidance Public Notice*, a census block will be considered "served" if a provider can show three elements: (1) the provider actually offers voice and broadband service in the census block, (2) the provider has physical assets in or adjacent to the census block, and (3) the provider

⁹ *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*), *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

¹⁰ *Id.* at 17729, para. 170.

¹¹ *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060, 15076-80, paras. 39-47 (Wireline Comp. Bur. 2013) (*Phase II Service Obligations Order*).

¹² *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211 (Wireline Comp. Bur. 2013) (*Phase II Challenge Process Order*).

¹³ *Id.* at 7217, para. 14.

¹⁴ *Id.*

¹⁵ *Phase II Service Obligations Order*, 28 FCC Rcd at 15061-65. See also generally *Connect America Fund*, WC Docket No. 10-90, Report and Order, 29 FCC Rcd 13485 (Wireline Comp. Bur. 2014) (*Reasonable Comparability Benchmarks Order*).

currently has or previously had voice or broadband customers in the census block.¹⁶ In addition, the broadband service must have, at a minimum, speeds of 4 Mbps downstream and 1 Mbps upstream, a usage allowance of at least 100 GB, and latency of 100 ms or less.¹⁷

8. *Standard for Review.* The Bureau adopted a preponderance of the evidence standard for the Phase II challenge process: whether it is more likely than not, based on all the evidence in the record, that the status of a census block should be changed from its designation on the National Broadband Map.¹⁸ As outlined in the *Phase II Challenge Process Order*, respondents to a challenge must provide, for each challenged census block, concrete and verifiable evidence supporting their claim that the challenge should not be granted.¹⁹ Similarly, respondents attempting to show that a block is served must show that all of the Commission's criteria are met, while respondents attempting to show that a block is unserved need only show that any one of the criteria is not met.²⁰

9. *Procedural History of Phase II Challenge Process.* On June 30, 2014, the Bureau commenced the Phase II challenge process, releasing a public notice with a list of census blocks that were deemed initially eligible for the offer of Phase II model-based support.²¹ 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.²² Challenges were due on August 14, 2014.

10. In the initial phase of the challenge process, more than 140 parties filed challenges to nearly 180,000 census blocks. The Bureau then undertook the process of determining which challenges presented sufficient evidence to establish 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.

11. On September 26, 2014, the Bureau announced the results of its initial review and identified 95,093 census blocks for which the challengers presented a *prima facie* case.²³ The Bureau released two lists identifying these census blocks: the Unserved-to-Served list identified 24,225 census blocks, where the filing party made a *prima facie* challenge the block should be treated as served and

¹⁶ *Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 7505, 7507-8 (Wireline Comp. Bur. 2014) (*Challenge Process Guidance Public Notice*); see also FCC, *A Basic Guide to the Challenge Process* at 9 (July 31, 2014) (*Challenge Process Basic Guide*), available at <http://www.fcc.gov/encyclopedia/connect-america-phase-ii-challenge-process> (last visited Feb. 20, 2015).

¹⁷ *Phase II Service Obligations Order*, 28 FCC Rcd at 15076-80, paras. 39-47. In April 2014, the Commission directed the Bureau to commence the Phase II challenge process using the standards then in place, including the 4 Mbps downstream and 1 Mbps upstream speed standard. *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) (*April 2014 Connect America Order and FNPRM*).

¹⁸ *Phase II Challenge Process Order*, 29 FCC Rcd at 7215, para. 21 n.48; see also *Challenge Process Basic Guide* at 8-9.

¹⁹ *Phase II Challenge Process Order*, 28 FCC Rcd at 7214-15, paras. 8-9.

²⁰ *Id.*

²¹ See generally *Phase II Challenge Process Commencement Public Notice*. This list consisted of census blocks that were: (1) shown as unserved by an unsubsidized competitor on the National Broadband Map (data as of June 2013, as reflected in the version of the Connect America Cost Model adopted by the Bureau in April 2014); (2) "high cost" according to the adopted version of the model, with an calculated average cost per location above \$52.50 and below \$207.81; and (3) located in price cap territories. See *id.* at 7986.

²² *Id.*

²³ See *Prima Facie Public Notice*, 29 FCC Rcd at 11497-501.

therefore not be eligible for the offer of model-based support,²⁴ and the Served-to-Unserved list identified 70,868 census blocks, where the filing party made the *prima facie* challenge the block should be treated as unserved and therefore eligible for the offer of support.²⁵ The Bureau then solicited replies to these *prima facie* challenges.²⁶ Replies were due on November 10, 2014.²⁷

12. During the challenge reply period, 80 entities filed replies regarding 30,689 census blocks.²⁸ There was no reply received for 61,848 of the *prima facie* challenged census blocks. In total, 71 entities, totaling 22,718 census blocks, filed a reply to a Served to Unserved challenge, and 8 entities, totaling 8,958 census blocks, filed a reply to an Unserved to Served challenge.

13. *Consolidated/Eventis Challenge Process.* On October 3, 2014, the Bureau established a separate, but related, challenge process in light of the acquisition of Eventis Corporation (Eventis), a rate-of-return carrier, by Consolidated Communications Holdings, Inc. (Consolidated), a price cap carrier.²⁹ As explained in the *Consolidated/Eventis Order*, the objective was to provide parties the opportunity to challenge the status of the new Consolidated census blocks as served or unserved for purposes of Connect America Phase II model-based support.³⁰ As such, the process was limited exclusively to the high-cost census blocks in the three incumbent study areas Consolidated acquired from Eventis.³¹ Challenges were due on November 3, 2014 and any replies on December 2, 2014. The Bureau received four challenges totaling 1,631 census blocks: 1,592 census blocks were challenged as Served to Unserved, and 39 census blocks were challenged as Unserved to Served.

14. *December 2014 Connect America Fund Order.* In December 2014, the Commission adopted several decisions relevant to the Phase II challenge process. First, it reaffirmed that the Bureau should use the 4 Mbps downstream and 1 Mbps upstream standard for a competitor in the Phase II challenge process to focus the offer of model-based support to those areas lacking this level of service.³² Second, it concluded that any census block served by a competitor, whether or not that competitor was subsidized, should be removed from the offer of model-based support. The Commission directed the Bureau to exclude from the offer of model-based support any census block that is served by a subsidized facilities-based terrestrial competitor offering fixed residential voice and broadband services meeting or exceeding speeds of 3 Mbps/768 kbps.³³ The Bureau implemented that direction in December 2014 when

²⁴ See *Unserved-to-Served Prima Facie Challenges*, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-329607A1.xlsx (last visited Feb. 20, 2015).

²⁵ See *Served-to-Unserved Prima Facie Challenges*, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-329606A1.xlsx (last visited Feb. 20, 2015).

²⁶ See *Prima Facie Public Notice*, 29 FCC Rcd at 11501-2.

²⁷ *Id.*

²⁸ These numbers reflect overall totals and include the filings regarding census blocks that we determine in this Order to be procedurally defective and dismissed or otherwise not considered.

²⁹ Eventis is a holding company owning three rate-of-return local exchange carriers, and Consolidated is a holding company owning price cap local exchange carriers. See *Consolidated/Eventis Order*, 29 FCC Rcd at 11776.

³⁰ Due to the limited number of census blocks and time considerations, the Bureau decided to forego reviewing the initial challenges for *prima facie* sufficiency before soliciting replies. *Id.* at 11778, para. 3, n.12. Challenges were subsequently reviewed once all filings were received.

³¹ The study areas are: Heartland-HickoryTech, IA (SAC 351096); Mid-Comm-HickoryTech, MN (SAC 361375); Mankato-HickoryTech MN (SAC 361427).

³² See *Connect America Fund, et. al.*, WC Docket Nos. 10-90, 14-58, 14-192, Report and Order, 29 FCC Rcd 15644, 15673-74, para. 79 (2014) (*December 2014 Connect America Fund Order*).

³³ See *id.* at paras. 73-74 and note 166. The Commission stated that the Bureau should not complete individual adjudications regarding the eligibility of such blocks in the Phase II challenge process.

it released version 4.2 of the Connect America Cost Model, which now treats such blocks as served.³⁴

III. DISCUSSION

15. In this Order, the Bureau makes its final determination regarding all challenged census blocks. First, we review the challenges that were filed in the separate Consolidated/Eventis challenge process to determine which of those challenges present sufficient evidence to make a *prima facie* case. Second, we dismiss a number of reply filings we do not need to consider, including those that were procedurally defective. Third, we address requests for waiver that ask the Bureau to consider evidence filed by a respondent arguing a census block is served despite the unsubsidized competitor's lack of current or former voice or broadband customers in the census block.³⁵ Fourth, we grant the *prima facie* challenges that were unopposed. Finally, we describe our general framework for resolving the challenges where there were replies and apply the framework to the contested challenges. Based on the review of the evidence for each contested challenge, we determine whether it is more likely than not that a census block is served and therefore ineligible for the offer of model-based Phase II funding.³⁶

A. Consolidated/Eventis Challenges

16. Based on the evidence presented by the challengers in the Consolidated/Eventis challenge process, we now conclude that all of the 1,592 Served to Unserved census block challenges filed by Consolidated presented sufficient evidence to make a *prima facie* case that the census blocks should be treated as unserved.³⁷ We also conclude that all 39 Unserved to Served census block challenges filed by Premier Communications, Inc. (Premier) presented sufficient evidence to establish a *prima facie* case that the census blocks should be treated as served.³⁸ Charter Communications, Inc. (Charter) filed a reply to the Served to Unserved challenges for 778 census blocks.³⁹ The results of our review of these separate Consolidated/Eventis challenges and the Charter reply is incorporated into our discussion below

³⁴ *Wireline Competition Bureau Announces Availability of Version 4.2 of the Connect America Fund Phase II Cost Model and the First Version of an Alternative Cost Model Being Developed for Potential Use in Rate-of-Return Areas*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 16157 (Wireline Comp. Bur. 2014).

³⁵ See Appendix B: Requests to Waive Customer Showing in Reply Round (providing a summary of those cases in which we considered this argument).

³⁶ For the Connect America rural broadband experiments, the Bureau will remove a total of 19 census blocks deemed ineligible by the Phase II challenge process from provisionally selected projects and adjust the support requested by these bidders accordingly. See *Wireline Competition Bureau Announces Application Process for Entities Participating in the Rural Broadband Experiments*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 10016, 10035-36, paras. 64-66 (Wireline Comp. Bur. 2014); *Connect America Fund, ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8786, paras. 51 (2014) (*Rural Broadband Experiments Order*); see also *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 14684 (Wireline Comp. Bur. 2014) (*Provisionally Selected Bidders Public Notice*); *Wireline Competition Bureau Announces Additional Provisionally Selected Bidders for Rural Broadband Experiments and Sets Deadlines for Submission of Additional Information*, WC Docket Nos. 10-90, 14-259, Public Notice, DA 15-288 (rel. Mar. 4, 2015).

³⁷ See Challenge by Heartland Telecommunications Company of Iowa, WC Docket 14-93 (filed Nov. 3, 2014); Challenge by Mankato Citizens Telephone Company, WC Docket 14-93 (filed Nov. 3, 2014); Challenge by Mid-Communications, Inc., WC Docket 14-93 (filed Nov. 3, 2014).

³⁸ See Challenge by Premier Communications, Inc., WC Docket 14-93 (filed Oct. 27, 2014) (*Premier Consolidated Challenge*).

³⁹ See *Challenge Reply of Charter Communications, Inc.*, WC Docket 14-93 (filed Nov. 26, 2014). Note that this number does not include duplicates and Charter appears on Appendix A as having replied to 783 census blocks, because five census blocks were challenged by two parties. There was no reply filed to the Premier Unserved to Served challenge.

of the overall challenge process and included in the numbers reported in Appendix A.

B. Filings Not Considered

17. The Bureau stated several times that it would not consider evidence or arguments raised outside of the specified time period for filing challenges and responses.⁴⁰ Additionally, the Bureau stated it would only entertain responses made in direct reply to a challenge.⁴¹ Accordingly, we hereby do not consider a respondent's filing, in whole or in part, if the challenge reply was filed after the deadline, if the filing was actually a challenge instead of a reply to a challenge, if the census block listed did not match any of those on the *prima facie* lists, or if the census block listed had an invalid census block number. The result of not considering these filings is that either the challenger prevailed in its *prima facie* challenge or the initial eligibility status of the census block remains unchanged (if there was no challenge).⁴² For these reasons, the Bureau did not consider various aspects of respondent filings regarding a total of 579 census blocks.⁴³

18. Additionally, as explained above, following the *December 2014 Connect America Fund Order*, the Bureau excluded from the offer of model-based support any census block that is served by a subsidized facilities-based terrestrial competitor offering fixed residential voice and broadband services meeting or exceeding 3 Mbps downstream/768 kbps upstream.⁴⁴ As such, we dismiss and do not resolve, in whole or in part, challenges filed by several entities as the filings are now moot.⁴⁵ For this reason, the Bureau did not consider challenges or challenge replies relating to a total of 2,616 census blocks.⁴⁶

19. Lastly, we dismiss certain other requests and filings associated with the challenge process that did not meet the stated filing requirements. The Bureau previously stated that "challengers and respondents will only have one opportunity each to submit evidence" and therefore "will have an incentive to submit a full evidentiary record at the time they make their submissions." We find it is in the public interest not to deviate from that procedural requirement for the challenge process.⁴⁷ We do not consider and hereby dismiss an informal email request to correct errors made in identifying census blocks

⁴⁰ See *Challenge Process Guidance Public Notice*, 29 FCC Rcd at 7507 ("[W]e remind parties that we do not intend to consider evidence or arguments submitted after the close of the comment cycle for the Phase II challenge process. Thus, the Phase II challenge process will operate under a best and final evidence system (i.e., parties only have one opportunity to submit evidence and arguments in support of their challenge)."); see also *Prima Facie Public Notice*, 29 FCC Rcd at 11501-2; *Phase II Challenge Process Order*, 28 FCC Rcd at 7218-19, para. 17 n. 39, 7220, paras. 20-21; *Challenge Process Basic Guide* at 9-10.

⁴¹ See also *id.* at 7507-8.

⁴² These filings, in whole or in part, relate to the following entities: AT&T Services, Inc, Bretton Woods Telephone Company, California Oregon Broadcast Inc. dba Crestview Cable Communications, Chouteau Telephone Company (FairPoint), Fidelity Telephone Company, Gardonville Cooperative Telephone Association, Otter Tail Telecom, LLC, Santel Communications Cooperative, Inc., Telephone Operating Company of Vermont LLC and FairPoint Vermont, Inc., and Wired or Wireless, Inc.

⁴³ See Appendix A. These filings are marked with a reason code "IF" or "Improper Filing."

⁴⁴ See *infra* para. 15 note 29.

⁴⁵ These filings, in whole or in part, relate to the following entities: BEK Communications Cooperative, Cable One, Inc., CenturyLink, Consolidated Communications Networks, Inc., General Communications, Inc., Heart of Iowa Ventures, JAB Wireless, Mediacom, Midcontinent Communications, Nex-Tech, North Dakota, Premier Communications, Inc., and Windstream.

⁴⁶ See Appendix A. These filings are marked with a designation of "Subsidized" and the reason code "NC" or "Not Considered."

⁴⁷ See *Phase II Challenge Process Order*, 28 FCC Rcd at 7220, para. 20 n.45 ("As challengers and respondents will only have one opportunity each to submit evidence, parties will have an incentive to submit a full evidentiary record at the time they make their submissions.").

in the initial challenge.⁴⁸ We also dismiss a request and waiver request to consider further information filed to support a challenge after the filing due date.⁴⁹

C. Requests to Waive Customer Requirement in the Reply Round

20. As noted above, prior to commencing the challenge process, the Bureau issued guidance clarifying what is required for a party to truthfully certify on FCC Form 505 that a given census block is “served.”⁵⁰ In particular, the *Phase II Challenge Process Guidance Public Notice* stated, among other things, that in order to certify that a census block is “served,” the provider must currently have or previously have had voice or broadband customers in the census block.⁵¹

21. In the initial phase of the challenge process, a number of petitioners sought waiver of the requirement of actual or former customers.⁵² At that time, the Bureau concluded that low density or high poverty in the blocks could provide a plausible explanation as to why a census block has access to service but no customers have taken advantage of it. Similarly, it concluded that recent or ongoing new deployment in a particular area could also explain the lack of a current or former customer, as there would be no former customers and the new provider would have had only a limited period of time to sign up potential customers. The Bureau reasoned that granting waivers for these reasons was appropriate, because any opposing parties would have the opportunity during the response period to present their arguments as to why the census blocks in question should be treated as unserved.

22. In the reply period, 14 respondents argued we should consider their evidence in adjudicating Served to Unserved challenges for 4,956 census blocks, even though they were unable to identify any current or former voice or broadband customers in these particular census blocks.⁵³ As justification for these waiver requests, the respondents pointed to low population density,⁵⁴ high poverty,⁵⁵

⁴⁸ See Email from Danny Jobe, VP Systems Operation, MetroCast Communications in Mississippi, to Ryan Yates, Attorney Advisor, Wireline Competition Bureau, Federal Communications Commission (received Oct. 1, 2014). MetroCast emailed the Bureau stating that following release of the list of *prima facie* challenges, the company determined that the block number it identified on Form 505 (281059501004035) for one of its challenges, which was dismissed as an invalid FIPS code, actually contained a typographical error. The company requested to submit an erratum correcting the error, arguing the initial submission contained proper supporting evidence to designate the block as served. It would not be appropriate to treat this block as served, as interested parties have not had the opportunity to reply to the challenge.

⁴⁹ See Letter from Kevin Owen, President, First Step Internet, LLC, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 14-93 (received Jan. 26, 2015). First Step filed supplemental information in the docket to further explain elements of its initial challenge. However, this filing was submitted several months after the August 14, 2014 due date. The company also requested a waiver to allow it to file this supplemental information. We conclude there is no good cause shown to grant the waiver and consider the information, and so the waiver is denied and the information is not considered. “[D]eadlines can only be waived under ‘unusual or compelling circumstances.’” *NetworkIP, LLC v. FCC*, 548 F.3d 116, 126 (D.C. Cir. 2008) (citation omitted).

⁵⁰ See *Challenge Process Guidance Public Notice*, 29 FCC Rcd at 7507-8 (identifying the three elements of showing a census block is served: (1) the provider actually offers voice and broadband service in the census block, (2) the provider has physical assets in or adjacent to the census block, and (3) the provider currently has or previously had voice or broadband customers in the census block). See also *Challenge Process Basic Guide* at 9.

⁵¹ *Id.*

⁵² See *Prima Facie Public Notice*, 29 FCC Rcd at 11499-500 (reporting waivers granted and criteria).

⁵³ See Appendix B.

⁵⁴ See *Amplex Electric, Inc. (Amplex) CAF II Census Block Challenge*, WC Docket No. 14-93 at 1-2 (filed Nov. 10, 2014)(*Amplex Challenge Reply*); *Armstrong Utilities, Inc. (Armstrong) Petition for Limited Waiver of CAF Phase II Evidentiary Requirement*, WC Docket No. 14-93 at 4 (filed Nov. 10, 2014)(*Armstrong Waiver Request*); *Cablevision Systems Corporation (Cablevision) Petition for Waiver*, WC Docket Nos. 10-90, 14-93 at 1-2, 4 (filed

(continued....)

recent/ongoing deployment,⁵⁶ the existence of video customers,⁵⁷ lack of access to billing records of a predecessor company,⁵⁸ and inability to match locations in internal databases⁵⁹ as grounds for a waiver of the evidentiary requirement that they have at least one current or former customer.

23. Based on our examination of each individual waiver request, we grant the requests of five respondents, grant in part and deny in part the request of three respondents, and deny the request of six respondents.⁶⁰ We first discuss our general approach to evaluating these waiver requests, and then we address the individual merits of particular requests.⁶¹

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Nov. 10, 2014)(*Cablevision Waiver Request*); *Charter Communications, Inc. (Charter) Petition for Limited Waiver of CAF Phase II Evidentiary Requirement*, WC Docket No. 10-90, 14-93 at 4 (filed Nov. 10, 2014)(*Charter Waiver Request*); *Custer Telephone Broadband Services, LLC (Custer) Request for Limited Waiver of Connect America Fund Phase II Evidentiary Requirement*, WC Docket No. 14-93 at 2-4 (filed Nov. 6, 2014)(*Custer Waiver Request*); *Flint Cable Television (Flint) Petition for Limited Waiver of Connect America Fund Phase II Evidentiary Requirement*, WC Docket No. 14-93 at 1, 3-4 (filed Nov. 10, 2014)(*Flint Waiver Request*); *Northland Communications Corporation (Northland) Petition for Limited Waiver of CAF Phase II Evidentiary Requirement*, WC Docket No. 14-93 at 4-5 (filed Nov. 10, 2014)(*Northland Waiver Request*); *PVT NetWorks, Inc. (PVT) Request for Limited Waiver of Connect America Fund Phase II Evidentiary Requirement*, WC Docket No. 14-93 at 1-4 (filed Nov. 10, 2014)(*PVT Waiver Request*); *Shenandoah Cable Television, LLC (Shenandoah) Petition for Limited Waiver of CAF Phase II Evidentiary Requirement*, WC Docket No. 14-93 at 4 (filed Nov. 10, 2014)(*Shenandoah Waiver Request*); *TVS Service, Inc. (TVS) Request for Limited Waiver of Connect America Fund Phase II Evidentiary Requirement*, WC Docket No. 14-93 at 1-3 (filed Nov. 10, 2014)(*TVS Waiver Request*); *Vyve Broadband A, LLC and Vyve Broadband J, LLC (Vyve) Petition for Limited Waiver of CAF Phase II Evidentiary Requirement*, WC Docket No. 14-93 at 5 (filed Nov. 10, 2014)(*Vyve Waiver Request*).

⁵⁵ See *Armstrong Waiver Request* at 4; *Northland Waiver Request* at 5; *Shenandoah Waiver Request* at 4; *Vyve Waiver Request* at 5.

⁵⁶ See *Charter Waiver Request* at 4; *Request for Waiver of Cox Communications, Inc. (Cox)*, WC Docket Nos. 10-90, 14-93 at 2, 5-7 (filed Nov. 10, 2014)(*Cox Waiver Request*).

⁵⁷ See *Charter Waiver Request* at 4 (filed Nov. 10, 2014)(citing the Declaration of James Daley at 11-12; *TVS Waiver Request* at 2-3 (explaining that it has or has had video subscribers in the challenged census blocks, which use the same facilities as those used to provide voice and broadband service); *Service Electric Cablevision, Inc. (Service Electric) Opposition to Connect America Fund Phase II Challenge* filed by Windstream Communications, Inc., WC Docket Nos. 10-90, 14-93 at 3-4 (filed Nov. 10, 2014)(*Service Electric Challenge Reply*); *TVS Waiver Request* at 1-3.

⁵⁸ See *Shenandoah Waiver Request* at 4 (explaining that it cannot verify with accuracy former customers in some census blocks due to its lack of billing records from periods prior to its acquisition of other systems).

⁵⁹ *Cox Waiver Request* at 3-5 (explaining that it is unable to determine with certainty whether it has customers in 168 census blocks due to variances in addresses in its billing database and network facilities database); *Charter Waiver Request*, at 2-4 (filed Nov. 10, 2014) (explaining difficulties in verifying billing records with geolocation).

⁶⁰ See Appendix B. The census blocks where we waive our evidentiary requirements to allow consideration of the reply pleading are included in the numbers presented below where we discuss our resolution of the contested challenges. In the case where we denied the waiver for a particular census block, but another provider also challenged that same census block and we concluded that the block should be designated served, the designation for the denied waiver in Appendix B is listed as “Denied.”

⁶¹ 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission’s rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

24. As outlined in the *Phase II Challenge Process Order*, respondents attempting to show that a block is served must show that all of the Commission's criteria are met.⁶² Moreover, respondents must provide, for each challenged census block, concrete and verifiable evidence supporting their claim that the challenge should not be granted.⁶³ We apply this standard to those who seek a waiver as well as the replies more generally. Specifically, during this phase, the Bureau is persuaded that good cause to consider a reply exists only when the party presents clear factual information or substantive evidence to support its reasons for not having current or former customers in a particular census block. That is, an argument that they meet only the first and the second prongs of the three-prong evidentiary standard for "serving" an area is insufficient without an explanation and evidence to support why current or former customers (the third prong) are lacking. For example, we are not persuaded by assertions there are few potential customers in a census block without a showing that the census block indeed has relatively few houses and other structures. Further, we are not persuaded by the argument that the lack of customers can be explained by low income demographics without substantive evidence that the census block is, in fact, low income.⁶⁴ Finally, we are not persuaded by those requests that present a general indiscriminate list of arguments supporting the grant of a waiver without indicating to which particular census blocks those arguments apply.

25. We reject, however, CenturyLink's argument that we should not consider any of these replies at all.⁶⁵ We are not persuaded by CenturyLink that low population density should never be grounds for a waiver, because there is no statistically significant difference between the census blocks for which petitioners seek a waiver and those for which they are not seeking a waiver, and that all high-cost areas have low density.⁶⁶ This argument fails to address the basic point that a census block with only a few homes simply may contain residents who continue to subscribe to the incumbent telephone company for phone service and choose not to subscribe to broadband,⁶⁷ even though it is available. We also reject CenturyLink's argument that granting these waivers is in conflict with the Commission's goal of extending service to unserved areas.⁶⁸ The net result of granting waivers to consider some of the replies is to remove certain census blocks from eligibility for model-based support, while making other census blocks available for model-based support in order to stay within the overall budget for the offer of model-based support. Thus, the full amount of Phase II funding will be directed to unserved areas.

⁶² *Phase II Challenge Process Order*, 28 FCC Rcd at 7214-15, para. 9 n.19.

⁶³ *Id.* at paras. 8-9.

⁶⁴ None of the respondents that asserted poverty as grounds for a waiver of the one customer requirement provided any specific factual information to demonstrate that the census blocks in question have a low average income level.

⁶⁵ See generally *Opposition of CenturyLink to Further Petitions for Limited Waiver of CAF Phase II Evidentiary Requirement*, WC Docket No. 14-93 (filed Nov. 20, 2014) (*CenturyLink Opposition*).

⁶⁶ See *CenturyLink Opposition* at 4-6.

⁶⁷ We note that more than 25% of households nationwide do not subscribe to broadband. See *Internet Access Services: Status as of December 31, 2013*, Report at 35, Table 14 (Wireline Comp. Bur. Oct. 2014) (showing subscribership of residential fixed connections for all states at about 72%), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1016/DOC-329973A1.pdf. Thus, if a service provider has 100 census blocks with only one home each, you would expect it to have 25 census blocks, on average, in which there is no broadband subscription. Additionally, some types of households are less likely to subscribe to broadband, making the chances of having no broadband subscription higher in areas with certain demographic characteristics. If, for instance, there are only a few homes in a census block and they happen to be inhabited by elderly residents, the fact they do not subscribe to either voice or broadband from the competitor is not surprising, and the inability to identify a customer does not mean the competitor is not serving the census block. Pew research indicates that broadband adoption is lower among certain groups, such as the elderly. See <http://www.pewinternet.org/2014/04/03/usage-and-adoption/> or <http://www.pewinternet.org/data-trend/internet-use/latest-stats/>.

⁶⁸ *CenturyLink Opposition* at 6.

26. After carefully reviewing each waiver request, we grant in their entirety the individual waiver requests of Amplex, Cablevision, Flint, PVT NetWorks, and TV Service. Each of them provides specific information for all of the blocks for which they seek a waiver. In particular, Cablevision provides maps to support its contention that the blocks are low density, while the other four provide specific information regarding the number of structures in individual census blocks. We also grant in substantial part the request of Custer Telephone Broadband Services, which provides information regarding the number of houses on a block by block basis for five out of seven of the census blocks for which it seeks a waiver.

27. In contrast, we conclude that Armstrong, Northland, Shenandoah Cable, and Vyve have only offered conclusory assertions in support of their waiver request, without any specific information in support of their asserted justifications. None of them present any information regarding the number of housing units or other structures in the census blocks for which they seek a waiver, nor do they provide any information to document the income levels of the census blocks. Shenandoah argues that it lacks billing records for systems it acquired from other entities, but it fails to explain whether this is true for all of the census blocks or only some of them. Moreover, Shenandoah concedes that some amount of those acquisitions occurred up to five years ago; the fact it has no records of customers over the last five years is significant. We therefore conclude that these four service providers have not adequately demonstrated the existence of special circumstances warranting the requested waiver relief.

28. We grant in part and deny in part the request of Service Electric. It asks us to grant relief for two different groups: 33 census blocks in which it has video customers, but no current or former voice or broadband customers, and 44 census blocks in which it lacks any customers – voice, video or broadband. For the latter group, the company concedes that it lacks a physical plant in those 44 census blocks, asserting that it maintains a plant in “adjacent” census blocks.⁶⁹ While we are persuaded that the existence of video customers in the identified 33 census blocks justifies consideration of the reply with respect to those 33 census blocks, Service Electric offers no explanation for why it has no customers at all in the latter group of 44 census blocks. We therefore find its showing with respect to the 44 census blocks to be insufficient to establish grounds for a waiver.

29. Cox asks us to consider its waiver request for 178 census blocks, comprised of two sets of census blocks.⁷⁰ For ten census blocks, Cox explains that the reason it does not have customers is due to residential developments that have not yet been completed.⁷¹ We find Cox’s evidence with respect to these ten census blocks sufficient to grant a waiver. For 168 census blocks, however, Cox explains that it is unable to determine with certainty whether it has customers due to variances in addresses in its billing database and network facilities database.⁷² Cox states that in some cases, locations where service is available were entered into the network facilities database when a subdivision was being developed, before street addresses were assigned.⁷³ However, Cox provides no evidence to support why there are no customers in these blocks, and instead asks us to ignore the third prong of the evidentiary standard because of the inadequacies of its internal records. We conclude that inadequacies in Cox’s internal records do not constitute special circumstances justifying a waiver of the requirement to have at least one current or former voice or broadband customer. Granting relief on this basis would effectively create a loophole that would allow any service provider to claim it has poor records in order to evade the application of the third prong of our evidentiary standard.

⁶⁹ See *Service Electric Challenge Reply* at 3-4.

⁷⁰ See *Cox Waiver Request* at 4-6.

⁷¹ See *Cox Waiver Request* at 5-6.

⁷² See *Cox Waiver Request* at 4-5.

⁷³ See *Cox Waiver Request* at 4.

30. Charter asks us to consider a waiver request for 4,323 census blocks.⁷⁴ It argues that despite its best efforts, it is unable to determine with certainty whether customers exist in these census blocks due to difficulties in matching billing addresses with geolocation information for voice and broadband service.⁷⁵ Like we conclude for Cox, we do not find inadequacies in internal records to be special circumstances justifying grant of a waiver.

31. Charter also offers several reasons why there may not be customers in the blocks, including low density, high poverty, and ongoing development.⁷⁶ However, Charter does not provide any specific evidence in support of these assertions, nor does it identify for which census blocks a particular reason applies. Unlike Cox, which identified ten specific census blocks with unfinished residential developments, Charter only asserts that it “may” have deployed plant in new subdivisions,⁷⁷ but it fails to identify for which of the more than 4,300 census blocks this is the case. Similarly, Charter argues that “many” of the census blocks have video customers,⁷⁸ but, unlike Service Electric, it fails to identify which of the 4,323 census blocks have video customers, and which do not. Finally, Charter offers the conclusory assertion that “many census blocks are located in extremely rural areas where there are few potential customers,”⁷⁹ without identifying which of the more than 4,300 census blocks have few customers or providing information regarding the number of residential or other structures in those blocks. Information regarding housing counts in each census block is readily available,⁸⁰ as demonstrated by the fact that a number of the other smaller service providers provided such information for the census blocks for which they sought a waiver.⁸¹

32. The census-block specific evidence that Charter provides does not go to the question of why it lacks customers in those blocks. Charter provides marketing materials to support its claim that it offers service; however, this evidence merely supports that Charter meets the first prong of the three part standard – that Charter holds itself out to the public as able and willing to provide service to the census blocks.⁸² This evidence does not, by itself, explain or justify the lack of a current or former customer, the third prong at issue here. Similarly, Charter provides facilities maps for a limited number of census blocks to show where it has node boundaries,⁸³ but that merely supports Charter’s showing that it meets the second prong of the three part standard – that Charter has plant in or adjacent to a small subset of the challenged census blocks. In sum, Charter failed to provide any specific evidence these census blocks are actually low density, high poverty, undergoing current development, or have existing video customers. Therefore, we conclude based on the submissions before us that Charter has not demonstrated special circumstances exist to grant a waiver of the evidentiary requirement that there be at least one current or

⁷⁴ See Appendix B (this includes the requests for the Consolidate/Eventis proceeding).

⁷⁵ *Charter Waiver Request* at 2-4. See also *Charter Petition for Limited Waiver of CAF Phase II Evidentiary Requirement*, WC Docket Nos. 10-90, 14-93 at 2-4 (filed Nov. 26, 2014)(*Charter Consolidated Waiver Request*).

⁷⁶ *Charter Waiver Request* at 4; *Charter Consolidated Waiver Request* at 4.

⁷⁷ *Id.* (citing the Daley Declaration at 11).

⁷⁸ *Id.* (citing Daley Declaration at 11-12).

⁷⁹ *Id.* (citing Daley Declaration at 11).

⁸⁰ The Census Bureau publishes such information at <https://tigerweb.geo.census.gov/tigerweb/>.

⁸¹ The fact that Charter was responding to a large number of challenges is not grounds for holding it to a lesser evidentiary standard than the smaller providers who were able to provide such information for specific blocks.

⁸² Charter provides 596 website marketing screen shots and 155 pages of mailed marketing flyers or letters to support its claim that it offers service, but provides such evidence for roughly only 1400 out of the more than 4,300 census blocks for which it seeks a waiver.

⁸³ Charter filed maps of its network plant for only 48 census blocks out of the more than 4,300 census blocks for which it seeks a waiver.

former customer for 4,323 census blocks.

33. MetroCast Cablevision of New Hampshire asks us to consider alternative evidence in its reply for one census block. MetroCast attempts to justify its request by submitting customer invoices from adjacent census blocks, but fails to provide any explanation whatsoever for why it lacks customers in the census block for which it seeks a waiver. It therefore has not demonstrated special circumstances exist.⁸⁴

D. Uncontested Challenges

34. For the Served to Unserved challenges, collectively, various providers challenged a total of 137,407 census blocks initially classified as served, arguing they were unserved and therefore should be eligible for the offer of model-based support.⁸⁵ After reviewing those challenges, the Bureau determined that challengers for 70,868 of those blocks presented a *prima facie* case. No party filed a reply in opposition to the challenge for 48,857 census blocks. We therefore conclude the challenger met its burden of persuasion that 51,236 blocks should be deemed unserved.⁸⁶

35. For the Unserved to Served challenges, the Bureau received challenges to 37,652 census blocks initially classified as unserved, with the challenger arguing the blocks instead should be treated as served and ineligible for model-based support.⁸⁷ After reviewing the challenges, the Bureau concluded that challengers for 24,225 census blocks presented a *prima facie* case. No party filed a reply in opposition to the challenge for 12,991 census blocks. We therefore now conclude that the challenger met its burden of persuasion that 15,098 blocks should be deemed served.⁸⁸

E. Contested Challenges

36. For the Served to Unserved challenges, there were 21,935 blocks for which replies were received.⁸⁹ Of this group, we now conclude that, based on review of the evidence presented both in the challenge and the reply, 5,787 census blocks should be treated as unserved (the challenge is granted), and 16,113 census blocks should be treated as served (the challenge is denied).

37. For the Unserved to Served challenges, there were 8,958 census blocks for which replies were received. Of this group, we now conclude that, based on review of the evidence provided in both the challenge and the reply, 7,291 census blocks should be treated as served (the challenge is granted), and 1,667 census blocks should be treated as unserved (the challenge is denied).

38. In reviewing contested challenges, we considered all the evidence filed in both the challenge and the reply, which included customer records, customer invoices, plant and other facilities maps, employee statements and declarations, advertising materials, website screenshots, and test data. As a general matter, for those providers that were able to certify they served a census block, we find a service provider's declaration that it serves an area, when coupled with network maps, publicly available descriptions of service offerings, advertising materials, and similar documents to be more persuasive than

⁸⁴ See *MetroCast Cablevision of New Hampshire, LLC (MetroCast) Connect America Fund Phase II Challenge*, WC Docket Nos. 10-90, 14-93 at 1 (filed Oct. 17, 2014)(*MetroCast Challenge Reply*).

⁸⁵ See *Prima Facie Public Notice*, 29 FCC Rcd at 11500. These numbers also include census blocks at issue in the Consolidated/Eventis challenge proceeding, including any census blocks for which a waiver of the customer requirement was requested.

⁸⁶ This number reflects the adjustment to remove the previously determined subsidized census blocks.

⁸⁷ See *Prima Facie Public Notice*, 29 FCC Rcd at 11498-500. These numbers also include census blocks at issue in the Consolidated/Eventis challenge proceeding.

⁸⁸ This number reflects the adjustment to remove the previously determined subsidized census blocks.

⁸⁹ This figure includes those replies for which the respondent sought a waiver with respect to certain census blocks, discussed in the preceding section.

a price cap carrier's assertion that an area should be treated unserved because, for instance, there is no recent evidence of number porting,⁹⁰ no indication of IP traffic to the census blocks in question,⁹¹ or a failure on the part of the competitor to file an annual CPNI certification, or FCC Form 499 or Form 477.⁹² We place significant weight on evidence that network facilities are in place and service is advertised throughout an area. We find that a competitor's assertions regarding its own offerings and the existence of voice or broadband customers, made in the context of a Commission proceeding where there are consequences for misrepresentations,⁹³ should carry more weight than analyses that rely on third-party data, which itself may be based on faulty and inaccurate information.⁹⁴

39. For those respondents that were unable to certify that they had a current or former customer, however, we do not give any weight to the arguments they make on reply that they have plant in the area and are offering service. Because the respondent was unable to certify as to the existence of a customer, we conclude in that subset of cases that the challenger prevails, and the blocks will be treated for purposes of the offer of model-based support as unserved.

40. Although the totality of the evidence submitted for each census block was individually considered, and there may have been several facts that contributed to the Bureau's decision regarding a particular census block, for administrative efficiency, ultimately each census block was placed into one of the following seven mutually exclusive categories based on the nature of the evidence that we found most persuasive in making our determination. We summarize below these categories.

41. *Customer Information.* For some contested census blocks, the evidence included specific customer information (e.g., invoices, customer list, or maps showing specific customer locations) that the Bureau concluded made it more likely than not that the census block is served. In all such cases, we found this evidence to be more persuasive to show a census block's status should be changed than the evidence submitted to support the argument a block was unserved.⁹⁵ There were a total of 3,821 census

⁹⁰ See *Phase II Challenge Process Order*, 28 FCC Rcd at 7214-15, n.19. For instance, we find persuasive Armstrong's argument that Windstream's porting analysis done over the last 12 months does not demonstrate an area is unserved, given that Armstrong began providing voice service in 2005, and the voice market therefore is relatively mature with little churn among voice subscribers. See *Armstrong Response to Price Cap LEC's Served-to-Unserved Challenges Under Connect America fund Phase II*, WC Docket No. 14-93 at Appendix 1 at 6 (filed Nov. 10, 2014)(*Armstrong Challenge Reply*).

⁹¹ For instance, we find persuasive the argument that Windstream's analysis of IP traffic is not indicative of whether a service provider has customers because assigned IP addresses in the ARIN database are not associated with particular census blocks but rather with one or more centralized locations for the service provider. *Armstrong Challenge Reply* at Appendix 1 p.7; Reply of TV Service, Inc. to Census Block Challenge by Windstream Corporation, WC Docket No. 14-93at 4 (filed Nov. 10, 2014).

⁹² See *Phase II Challenge Process Order*, 28 FCC Rcd at 7215-16, n.24 (noting that reporting of voice subscribers on FCC Form 477 is not necessarily probative of whether a company is actually providing service in a particular census block).

⁹³ As we recognized in the Phase I challenge process, parties face criminal penalties for knowingly and willingly making materially false, fictitious, or fraudulent statements or representations on official matters before the Commission. 18 U.S.C. §1001. See also *Connect America Fund*, WC Docket No. 10-90, Order, 29 FCC Rcd 181, 185, para. 12 (Wireline Comp. Bur. 2014) (*Phase I Challenge Order*)(a certification alone is enough to support a determination that it is more likely than not that a census block is served).

⁹⁴ Third-party data sources, such as GeoResults or the TomTom U.S. Address Point database, themselves may contain faulty information in particular instances, so there is no reason to provide greater weight to such information than to a submission regarding a service provider's own network.

⁹⁵ The following types of evidence were submitted in support of arguments that a census block should be treated as unserved: the challenger searched the service provider's website and could not find information that the offered service met the speed, usage and pricing requirements; the challenger searched the service provider's online service availability tool, with no service availability for addresses in the census block; an unsubsidized competitor's served

(continued...)

blocks with such customer information presented, and the Bureau concludes 3,820 should be treated as served, and one should be treated as unserved.⁹⁶

42. *Maps and/or Marketing Materials.* For 35 contested census blocks, the evidence included maps and/or marketing materials providing infrastructure information that the Bureau concluded was sufficient to show the census block should be treated as served. This information was also supported by other materials showing that service meets the speed, pricing, latency and usage criteria. After weighing the evidence on both sides, we found this evidence to be more persuasive to show a census block's status should be changed than the evidence offered in support of the argument that the block was unserved. For this group, the Bureau concludes that 23 census blocks should be treated as served based on the showing made in maps and/or marketing materials and 12 census blocks should be treated as unserved.⁹⁷

43. *Declaration with Evidence.* For 15,746 contested census blocks, the evidence provided was a specific declaration as well as additional supporting documents showing the census block should be treated as served. We found this evidence to be more persuasive to show a census block's status should be changed than the types of evidence offered in support of arguments that a block should be treated as unserved. In those cases where the supporting documentation did not show the respondent met all of the service requirements, and the declaration did not specifically address all of the service requirements, however, the census block was marked unserved. We concluded such blocks should be treated as unserved based on the totality of the circumstances, weighing both the evidence presented in the initial challenge as well as the specificity of the evidence submitted on reply. For this group, the Bureau concludes, based on its review of all of the evidence, that 10,103 of these census blocks should be treated as served, and 5,618 of these census blocks should be treated as unserved.⁹⁸

44. *Evidence without Declaration.* For 2,795 contested census blocks, other types of evidence were submitted, e.g., testing data, service agreements, or marketing materials. In most cases, we found this evidence to be more persuasive to show a census block's status should be changed than the type of evidence submitted in support of arguments that a block should be treated as unserved. For this group, we now conclude the evidence was sufficient to convince the Bureau that 2,758 census blocks should be treated as served. In those cases where the supporting documentation did not show the provider met all of the service requirements, and there was no declaration addressing those service requirements, however, the census block was marked unserved. Taking into account the totality of the evidence, we conclude that 37 census blocks should be treated as unserved.⁹⁹

45. *Declaration Only.* For 5,743 contested census blocks, the evidence included only a declaration or factual statement, with no additional evidence or supporting documents to demonstrate the block should be treated as served. The Bureau made its decision by considering whether the information provided in the declaration was sufficient to overcome the initial *prima facie* case. More specifically, a declaration that was specific as to how service is or could be achieved and addressed all of the required

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addresses were not found in the TomTom U.S. Address Point database; no telephone numbers were ported to the census block; there was no evidence of IP traffic in the census block; the fixed service provider was not in the census block according to GeoResults; a provider did not appear in the ALI database; an entity did not file the annual CPNI certification; service was not reported on the provider's FCC Form 477 or 499; unsubstantiated maps purporting to show a provider did not serve an area; and declarations without any additional evidence that the purported competitor did not serve the area.

⁹⁶ See Appendix A, available at <http://www.fcc.gov/wcb/CAF II Challenge App A.zip> (identifying census blocks for 24 entities).

⁹⁷ See *id.* (identifying census blocks for 6 entities).

⁹⁸ See *id.* (identifying census blocks for 50 entities).

⁹⁹ See *id.* (identifying census blocks for 3 entities).

service levels was deemed sufficient to overcome a *prima facie* challenge arguing a census block was unserved in those cases.¹⁰⁰ Ultimately, we found a clear and specific declaration that a respondent served a census block more persuasive to show a census block's status should be changed than most of the evidence supported to support an argument that a census block should be treated as unserved.

46. On the other hand, the Bureau concludes that a declaration submitted by the respondent that was vague and only stated that service could be provided, without identifying how the provider could meet the service criteria, or without addressing the specific price, speed, latency and usage requirements, was insufficient to overcome the challenger's argument that a census block was unserved.¹⁰¹ The only exception to this was in the instance where the challenger also provided no substantive evidence in support of its challenge (e.g., only a declaration or conclusory statement). In those cases, weighing the evidence provided in both the challenge and the reply, the Bureau concludes the party asserting service is provided to the census block should prevail, because the declaration was made under penalty of perjury, and the serving party is in a better position to know whether or not it serves the census block.¹⁰²

47. There were 5,743 census blocks that presented only declarations as evidence. Of this group, the Bureau concludes 4,928 census blocks should be treated as served, and 815 census blocks should be treated as unserved.¹⁰³

48. *Not Enough Evidence.* Finally, there were 1,733 census blocks for which the respondent provided no substantive evidence, or the evidence provided was extremely weak and inadequate to overcome the evidence filed by the challenger without even statements sufficient to determine whether the party could or did meet any of the evidentiary requirements. In such cases, the Bureau ruled in favor of the challenger who presented the *prima facie* case that the classification of the block should be changed. Accordingly, the Bureau concludes 809 census blocks should be treated as served, and 924 census blocks should be treated as unserved.¹⁰⁴

IV. ORDERING CLAUSES

49. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), 5, 214, and 254 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 154(i), 154(j), 155, 214, 254, 1302, sections 0.91, 0.291, 1.3 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.102, and the authority delegated to the Wireline Competition Bureau in paragraph 170 of the *USF/ICC Transformation Order*, 26 FCC Rcd 17663 (2011), *aff'd sub nom., In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), that this Order, IS ADOPTED.

50. IT IS FURTHER ORDERED that the requests to consider evidence presented in the reply round listed in the Appendix B of this Order, ARE GRANTED, DENIED or GRANTED IN PART AND DENIED IN PART as described therein.

¹⁰⁰ See *Challenge Process Guidance Public Notice*, 29 FCC Rcd at 7509-10 (discussing the Bureau's consideration of factual statements).

¹⁰¹ See *supra* n.40.

¹⁰² See *Challenge Process Guidance Public Notice*, 29 FCC Rcd at 7508, para. 10 n.20 (discussing the consequences for misrepresentation or lack of candor in statements made to the Commission).

¹⁰³ See Appendix A, available at <http://www.fcc.gov/wcb/CAF II Challenge App A.zip> (identifying census blocks for 14 entities).

¹⁰⁴ See *id.* (identifying census blocks for 10 entities).

51. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau

APPENDIX A**Final Challenge Decisions**

(List showing the designation of served or unserved for each challenged census block)

This list can be found at: <http://www.fcc.gov/wcb/CAF II Challenge App A.zip>

Sample Format:

<u>Census Block</u>	<u>State</u>	<u>Challenger</u>	<u>Respondent</u>	<u>Designation</u>	<u>Reason</u>

Legend for Appendix A

<u>Reason</u>	<u>Abbreviation</u>
Customer Information	CI
Maps and/or Marketing Materials	MM
Declaration with Evidence	DE
Evidence without Declaration	E
Declaration Only	DO
Not Enough Evidence	NE
Filing Not Considered (Subsidized)	NC
Improper Filing	IF
Uncontested	U

APPENDIX B

Requests to Waive Customer Showing in Reply Round

WC Docket No. 14-93

Entity Name	Number of Census Blocks	Decision (Granted or Denied)	Arguments Raised	Date Filed
Amplex Electric, Inc.	29	Granted	low population density	Nov. 10, 2014
Armstrong Utilities, Inc.	76	Denied	low population density; high poverty	Nov. 7, 2014
Cablevision Systems Corporation	9	Granted	low population density	Nov. 10, 2014
Charter Communications, Inc.	4,155	Denied	low population density; recently built housing subdivisions; current video customers; difficulties geolocating certain addresses with precision	Nov. 10, 2014
Charter Communications, Inc.¹⁰⁵	168	Denied	recently built housing subdivisions; current video customers; difficulties geolocating certain addresses with precision	Nov. 26, 2014
Cox Communications, Inc.	178	10 CBs Granted 168 CBs Denied	unfinished residential developments; inconsistent addresses in network database and billing database	Nov. 10, 2014
Custer Telephone Broadband	7	5 CBs	low population	Nov. 6, 2014

¹⁰⁵ This request was made in the Consolidated/Enventis proceeding, which had a deadline of Dec. 2, 2104.

Services, LLC		Granted 2 CBs Denied	density	
Flint Cable Television	10	Granted	low population density	Nov. 10, 2014
MetroCast Cablevision of New Hampshire	1	Denied	No reason provided	Oct. 22, 2014
Northland Communications Corporation	66	Denied	low population density; high poverty	Nov. 10, 2014
PVT NetWorks, Inc.	2	Granted	low population density	Nov. 10, 2014
Service Electric Cablevision, Inc.	77	33 CBs Granted 44 CBs Denied	current video customers (33 CBs) No reason (44 CBs)	Nov. 10, 2014
Shenandoah Cable Television, LLC	58	Denied	current or recent acquisition of facilities; low population density; high poverty	Nov. 10, 2014
TV Service, Inc.	17	Granted	current video customers; low population density	Nov. 10, 2014
Vyve Broadband A, LLC and Vyve Broadband J, LLC	103	Denied	low population density; high poverty	Nov. 10, 2014