



# PUBLIC NOTICE

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## WIRELINER COMPETITION BUREAU RELEASES REVISED LIST OF ELIGIBLE CENSUS BLOCKS FOR PRICE CAP CARRIERS ACCEPTING STATEWIDE OFFERS

### WC Docket No. 10-90

The Wireline Competition Bureau (Bureau) announces the release of a revised list of census blocks eligible for Connect America Phase II model-based support where price cap carriers accepted a state-level commitment to deploy broadband.<sup>1</sup> This revised list reflects revisions based on responses to the *June 8, 2017 Public Notice*.<sup>2</sup> Price cap carriers accepting statewide offers of support had until March 1, 2018, to file deployment data demonstrating whether they have met their first interim deployment milestone.<sup>3</sup>

The *June 8, 2017 Public Notice* updated the list of eligible blocks released when we announced the offers of model-based support to price cap carriers in 2015.<sup>4</sup> The *June 8, 2017 Public Notice* removed blocks where carriers declined the statewide offers, and made other corrections.<sup>5</sup> It also included the extremely high-cost blocks in areas where price cap carriers accepted the offers of Phase II support, and required carriers to identify any extremely high-cost blocks that they planned to use to meet their performance obligations by July 7, 2017.<sup>6</sup>

Although extremely high-cost census blocks were not included in the Phase II offer of model-based support, the Commission in the *USF/ICC Transformation Order* gave price cap carriers the option to choose to serve locations in extremely high-cost census blocks in order to meet their performance obligations in a state.<sup>7</sup> In June 2015, while price cap carriers were evaluating the offers, the Bureau

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<sup>1</sup> The revised list is available at <https://www.fcc.gov/files/cameligiblelistupdatefinal021518zip>.

<sup>2</sup> *Wireline Competition Bureau Releases Updated List of Census Blocks Eligible for Connect America Phase II Support and Announces Deadlines for Certain Additional Updates in Price Cap and Rate-of-Return Areas*, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 4775 (WCB 2017) (*June 8, 2017 Public Notice*).

<sup>3</sup> These price cap carriers were required to deploy broadband to at least 40 percent of the requisite locations in a state by the end of 2017. See *Connect America et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15657-58, para. 36 (2014) (*December 2014 Connect America Order*). Carriers had to file deployment data with the Universal Service Administrative Company's (USAC's) HUBB (High Cost Universal Broadband) portal by March 1, 2018. See <http://www.usac.org/hc/tools/hubb.aspx>.

<sup>4</sup> *June 8, 2017 Public Notice*.

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

<sup>6</sup> *Id.*

<sup>7</sup> See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17729, para. 171 n.279 (2011) (*USF/ICC Transformation Order* and/or *FNPRM*), *aff'd sub nom. In re: FCC*

released a list of census blocks where all locations in the blocks were extremely high-cost.<sup>8</sup> This list did not account for the extremely high-cost blocks that were successfully challenged in the Phase II challenge process as being served or potentially served by an unsubsidized competitor.<sup>9</sup> While reviewing the price cap carriers' submissions in response to the *June 8, 2017 Public Notice*, it became apparent that price cap carriers were claiming certain extremely high-cost blocks that were on the June 2015 and July 2017 lists as potentially eligible, even though in March 2015 the Bureau had determined they were ineligible based on evidence submitted by an unsubsidized competitor.<sup>10</sup>

To resolve this issue, we find that good cause exists to waive, on our own motion, the Bureau's previous determination that certain extremely high-cost census blocks were served by an unsubsidized competitor and therefore ineligible for the offer of model-based Phase II funding.<sup>11</sup> In balancing the Commission's interest in increasing broadband deployment with its policy of excluding areas served by an unsubsidized competitor, we compared the 1,259 extremely high-cost blocks that were both claimed by price cap carriers and either successfully challenged by competitors or unsuccessfully challenged by price cap carriers to the FCC's December 2016 Form 477 deployment data. We find that the public interest is served by keeping on the list of eligible census blocks the 550 blocks where no provider other than the price cap carrier reported 10/1 Mbps or better broadband service as of December 2016. Although the Bureau had previously designated those blocks as "served" as of March 2015 in the *Phase II Challenge Process Order*, based on our analysis, no competitors report 10/1 Mbps or better broadband service as of our most recently publicly available Form 477 data. Phase II deployment by the price cap carriers will therefore newly bring broadband to those locations.

We also find that special circumstances exist because price cap carriers relied on our previously released lists of potentially eligible extremely high-cost blocks. Therefore, we will extend this limited waiver to locations in any of the remaining 709 census blocks to which price cap carriers have deployed and filed accordingly in the HUBB as of March 1, 2018, in determining their compliance with deployment milestones. However, after March 1, 2018, USAC will no longer accept deployment data on locations reported in these blocks that previously were determined to be ineligible based on evidence submitted by an unsubsidized competitor during the Phase II challenge process and for which there is reported 10/1 Mbps or better broadband service as of December 2016. We direct USAC to modify the

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11-161, 753 F.3d 1015 (10th Cir. 2014).

<sup>8</sup> *Wireline Competition Bureau Publishes List of Extremely High-Cost Census Blocks in Price Cap Areas*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 6418 (WCB 2015).

<sup>9</sup> *See Connect America Fund; Connect America Phase II Challenge Process*, WC Docket Nos. 10-90, 14-93, Order, 30 FCC Rcd 2718 (WCB 2015) (*Phase II Challenge Process Order*). The Phase II challenge process was conducted using June 2014 State Broadband Initiative (SBI) data to determine broadband coverage (which, at the time, was 3 Mbps/768 kbps) and the FCC Form 477 data to determine voice offerings by the provider. In addition to the high-cost blocks eligible for model-based support, the Bureau entertained challenges by unsubsidized competitors claiming to serve an extremely high-cost census block that was marked as unserved. The Bureau found in the competitors' favor for several hundred blocks. A census block was marked as served if the competitor claimed it served at least 1 location with voice and broadband, or if it certified it could serve at least 1 location in the block within 7-10 days.

<sup>10</sup> *Id.*

<sup>11</sup> Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 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 if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

HUBB accordingly.

Finally, consistent with the Commission's prior decision to forbear from the federal eligible telecommunications carrier (ETC) obligation to offer voice service in certain census blocks within a price cap carrier's designated service area, we will revise the list of census blocks where price cap carriers continue to have the ETC obligation to provide voice service pursuant to section 214(e)(1) of the Communications Act of 1934, as amended.<sup>12</sup> That list will conform with the revisions we make today.

For additional information on this proceeding, contact Katie King (Katie.King@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

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<sup>12</sup> The revised list will be available shortly at <https://www.fcc.gov/general/price-cap-resources>. See also *Wireline Competition Bureau Releases List of Census Blocks Where Price Cap Carriers Still Have Federal High-Cost Voice Obligations & Seeks to Refresh the Record on Pending Issues Regarding Eligible Telecommunications Carrier Designations and Obligations*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 7417 (WCB 2015); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15663-71, paras. 50-70 (2014) (*December 2014 Connect America Order*).