

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

In the Matter of
Connect America Fund
WC Docket No. 10-90

ORDER

Adopted: November 12, 2019

Released: November 12, 2019

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. The Connect America Phase II Auction (Phase II Auction) is one part of a multi-step process comprehensively reforming and modernizing the high-cost component of the Universal Service Fund. At the conclusion of this auction, 103 bidders won \$1.49 billion in support over 10 years to provide fixed broadband and voice services to over 700,000 locations in high-cost areas in 45 states. Then, 134 applicants submitted the long-form application portion of the FCC Form 683 by the October 15, 2018 deadline. For these long-form applicants, the Commission created a voluntary process to facilitate post-auction review of the defined deployment obligations (and associated support) on a state-by-state basis when the total number of actual locations in eligible areas is less than the number of funded locations. The Wireline Competition Bureau (Bureau) in this Order establishes procedures to ensure swift and efficient administration of this process.

II. BACKGROUND

2. In the Phase II Auction Order, the Commission adopted a competitive bidding process to support deployment in price cap areas not already served by a carrier receiving high-cost support. Winning bidders would, as a condition of receiving support, commit to offering service to a specific

1 Connect America Fund et al., WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17725, para. 156 (2011), aff'd sub nom., In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

2 See Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 8257, 8257 (2018) (Phase II Auction Closing Public Notice).

3 134 Long-Form Applicants in the Connect America Fund Phase II Auction (Auction 903), AU Docket 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 10967 (RBATF, WCB, WTB 2008). Twenty-two applicants assigned all or part of their winning bids to one or more related entities pursuant to the process established in the Phase II Auction Closing Public Notice. See Phase II Auction Closing Public Notice 33 FCC Rcd at 8259-8260, paras. 9-13.

4 Connect America Fund, WC Docket No. 14-259, Order on Reconsideration, 33 FCC Rcd 1380, 1390-92, paras. 23-28 (2018) (Phase II Auction Reconsideration Order).

5 Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5968-74, paras. 51-73, 5979, para. 90 (2016) (Phase II Auction Order); see also Wireline Competition Bureau Releases List and Map of Eligible Census Blocks for the Connect America Phase II Auction (Auction 903), Public Notice, 32 FCC Rcd 10381 (WCB 2017).

number of funded locations (as determined by the Connect America Cost Model (CAM)) in all eligible areas won in the state.⁶ The Commission set the defined deployment obligation for each support recipient based on the sum of the funded locations in all of the areas won in that state.⁷

3. Several parties sought clarification on whether the Commission would give funding recipients the opportunity to bring to the Commission's attention any discrepancies between the number of funded locations and the number of actual locations.⁸ In the *Phase II Auction Reconsideration Order*, the Commission created a process to facilitate appropriate adjustments to the defined deployment obligations of CAF Phase II auction support recipients (with associated support reductions), on a state-by-state basis, where the actual number of eligible locations is less than the number of funded locations.⁹ Specifically, the Commission provided that Phase II auction support recipients seeking to reduce their defined deployment obligation must submit location information (including address and geocoordinates) for every location within the areas won in the state and provide additional evidence demonstrating that no further locations could be found.¹⁰ "Relevant stakeholders," the Commission continued, would then have the opportunity to challenge the accuracy and completeness of such evidence and to provide their own evidence of actual locations.¹¹ The Commission delegated to the Bureau the authority to decide, based on a preponderance of the evidence and on a state-by-state basis, whether the participant's total number of funded locations within the state exceeds the total number of actual eligible locations in the state, thus warranting a reduction in the participant's defined deployment obligation and a pro rata reduction in support.¹² The Commission also specified that any data submitted by the participant would be subject to future audit.¹³

4. While the Commission set some parameters for certain aspects of this process, it also directed the Bureau to adopt requirements and issue guidance necessary for implementation, consistent with prior Commission direction.¹⁴ The Commission directed the Bureau to "release a public notice or order (following its issuance of a notice and opportunity for comment) detailing instructions, deadlines,

⁶ *Phase II Auction Order*, 31 FCC Rcd at 5964, 5966, paras. 40, 46; CostQuest Associates, Inc., Connect America Cost Model: Model Methodology 12-15 (Dec. 22, 2014), <https://transition.fcc.gov/wcb/CAM v.4.2 Methodology.pdf>.

⁷ *Phase II Auction Order*, 31 FCC Rcd at 5964, 5966, paras. 40, 46. The Commission also incorporated into the defined deployment obligations of Phase II auction support recipients the flexibility to serve 95% of their funded locations and refund a pro rata share of their support that is based the number of unserved locations and one-half the average support for the top five percent of the highest cost funded locations nationwide. *Id.* at 5965-66, paras. 44-46.

⁸ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389, para. 22; *see also* Request for Clarification or Partial Reconsideration of Southern Tier Wireless, Inc., WC Docket No. 10-90 et al., at 4 (filed July 20, 2016); Petition for Reconsideration of Broad Valley Micro Fiber Networks, Inc., WC Docket No. 10-90 et al., at 3-4 (filed July 20, 2016); Petition for Clarification or Reconsideration of Crocker Telecommunications, LLC, WC Docket No. 10-90 et al., at 7 (filed July 18, 2016).

⁹ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389-90, paras. 23, 25-26.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 1389, para. 24 & n.62 (explaining that the "new support amount in the state would be reduced by (total state support/model locations) x number of deficient locations").

¹³ *Id.* at 1389, para. 23.

¹⁴ *Id.* at 1389, para. 24 (directing the Bureau "to implement this process, consistent with our prior direction to the Bureau concerning model location adjustments" and to "set the parameters of this review process, set the parameters for the audits, and adopt any other necessary implementation details"); *see also* *Connect America Fund et al.*, WC

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and requirements for filing valid geolocation data and evidence for both [participants] and commenters.”¹⁵ On September 10, 2018, the Bureau released a public notice seeking comment on several proposals, including proposals relating to the processes and procedures the Bureau should adopt to facilitate the adjudication of claims; the evidentiary requirements and burdens that the Bureau should impose on participating Phase II auction support recipients (participants) and/or stakeholders; the formatting and submission of such evidence; whether and, if so, what information should be treated confidentially; and what processes and procedures, in addition to those set forth in the Commission’s rules, the Bureau should establish for auditing participants’ submissions.¹⁶ The Bureau received seven comments and three replies.¹⁷

III. DISCUSSION

5. In this Order, the Bureau establishes an Eligible Locations Adjustment Process (ELAP) consistent with the parameters set forth in the *Phase II Auction Reconsideration Order* and prior Commission guidance for making adjustments to defined deployment obligations.¹⁸ We adopt a challenge framework, generally as proposed in the *Locations Adjustment Public Notice*.¹⁹ After setting forth this framework, we follow with more detailed information regarding evidentiary standards, location data formatting, confidentiality of information, and future post-adjudication verification. We conform this process, where necessary, to the requirements of the Privacy Act of 1974, as amended, and related federal rules.²⁰

A. Challenge Process Overview

6. *Participant Submission.* This process begins with a new, one-time collection of information from support recipients that seek to participate in ELAP (participants) that includes information about all eligible locations within the state as well as evidence substantiating the completeness and accuracy of such information. Participants must certify the accuracy of their submissions as of the date of submission under penalty of perjury in accordance with the proposal in the *Locations Adjustment Public Notice*.²¹ As specified in our proposal, this certification must be signed by

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Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15659, para. 38 & n.88 (2014) (encouraging electing price cap carriers to raise with the Commission, during their first funded year, any known disparities between the number of funded locations and the number of actual locations and delegating authority to the Bureau to address any such situations); *id.* at 15660, para. 40 & n.93, 15700, para. 154 (stating that electing price cap carriers may seek waiver of their build-out deadlines or obligations).

¹⁵ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390-92, paras. 23-28.

¹⁶ *Wireline Competition Bureau Seeks Comment on Procedures to Identify and Resolve Location Discrepancies in Eligible Census Blocks Within Winning Bid Areas*, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 8620 (2018) (*Locations Adjustment Public Notice*).

¹⁷ California Internet, L.P. DBA GeoLinks (filed Oct. 29, 2018) (GeoLinks Comments); Commnet Wireless, LLC (Oct. 29, 2018) (Commnet Comments); Hughes Network Systems LLC (Oct. 29, 2018) (Hughes Comments); ITTA – The Voice of America’s Broadband Providers (Oct. 29, 2018) (ITTA Comments); USTelecom — The Broadband Association (Oct. 29, 2018) (US Telecom Comments); Verizon (Oct. 29, 2018) (Verizon Comments); Wireless Internet Service Providers Association (Oct. 29, 2018) (WISPA Comments); California Internet, L.P. DBA GeoLinks (Nov. 13, 2018) (GeoLinks Reply); NTCA–The Rural Broadband Association (Nov. 13, 2018) (NTCA Comments). Wireless Internet Service Providers Association (Nov. 13, 2018) (WISPA Reply).

¹⁸ See *supra* note 14.

¹⁹ This process is also summarized in Appendix A.

²⁰ Privacy Act of 1974, as amended, 5 U.S.C. § 552a; 47 CFR § 0.551-0.561.

²¹ *Locations Adjustment Public Notice*, 33 FCC Rcd at 8626, para. 20.

an individual with relevant knowledge (such as an officer of the company), certifying under penalty of perjury that the participant has engaged in due diligence to verify statements and evidence presented in this challenge process and that such information is accurate to the best of the certifying party's knowledge and belief.²²

7. Participants may certify their submissions at any time and amend and recertify their submissions until the filing deadline. In permitting this flexibility, we concur with Verizon's comment that our original proposal—requiring certification of submissions at or near the deadline for submitting information—is too onerous because it requires participants to continuously monitor and update their data and submissions as updates are made to a data source/sources; instead, participants will be able to rely on any reasonably current data source, i.e., a source containing data that describes conditions as they exist within the year preceding the submission deadline.²³

8. In the *Phase II Auction Reconsideration Order*, the Commission required participants to file actual location data “within a year” of the publication of the Phase II auction closing public notice which occurred on August 28, 2018.²⁴ Pursuant to the delegated authority entrusted to us in the *Phase II Auction Reconsideration Order* to adopt “necessary implementation details,” and to issue an order “detailing instructions, deadlines and requirements for filing valid geolocation data and evidence for both support recipients and commenters,” we waive and extend this deadline consistent with the timing of the Bureau's implementation.²⁵ The Bureau's implementation of ELAP has and will continue to involve significant coordination of resources, including the creation of a specific module in the High Cost Universal Broadband (HUBB) portal to accept ELAP-related filings and to facilitate access to such information; the module, in turn, will help facilitate swift implementation of similar processes in other high-cost programs.²⁶ The Bureau will announce by public notice when the module is ready to accept the required information from participants as well as the deadline for submitting and certifying such information. We will set a deadline that provides participants with at least a three-month timeframe to upload information into the module, correct any errors identified through the module's validation processes, and certify such information.²⁷

²² *Id.*

²³ Verizon Comment at 5.

²⁴ See *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390, para. 23; *Phase II Auction Closing Public Notice*, 33 FCC Rcd 8257. The Bureau also has general delegated authority to clarify and waive certain rules. 47 CFR §§ 0.91 (describing the functions of the Bureau), 0.201(d) (“The Commission . . . may delegate its functions . . .”), 0.291 (delegating authority to the Bureau chief).

²⁵ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390, para. 24.

²⁶ 47 CFR § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”). Good cause, in turn, may be found “where particular facts would make strict compliance inconsistent with the public interest.” *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In making this determination, the Commission may “take into account considerations of hardship, equity, or more effective implementation of overall policy.” *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of the Commission's rules is “appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.” *Ne. Cellular Tel. Co.*, 897 F.2d at 1166. To make such a public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule. See, e.g., *Request for Permanent Renewal of, and Changes to Conditions on, Waiver Granted to SafeView, Inc.*, Order, 26 FCC Rcd 10250, 10252 (OET 2011) (citing *Ne. Cellular Tel. Co.*, 897 F.2d at 1166); see also *WAIT Radio*, 418 F.2d at 1155, 1157.

²⁷ The submission deadline cannot occur before the Commission receives OMB approval of the collection pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13.

9. *Protective Order.* Before the participant's filing deadline, the Bureau will adopt a protective order consistent with the requirements specified herein to protect against disclosure or misuse of information submitted by parties pursuant to ELAP.

10. *Prima Facie Determination.* Within 60 days following the participant submission deadline, the Bureau will release a list of participants that have met the prima facie evidentiary standards for location modification, along with the certain location information for qualifying locations and prospective locations, i.e., state, study area code (SAC), addresses, geocoordinates, and number of units.²⁸ We direct the Universal Service Administrative Company (USAC) to use the reported geocoordinates of these locations to populate a publicly available map (ELAP Map) of presumptively eligible locations so that outside parties that qualify as a relevant stakeholder may decide whether to file challenges. The Bureau will dismiss any participant submission that is not certified, that includes incomplete or improperly formatted location data, that fails to include a description of methodology for identifying all eligible locations, or that fails to provide at least some supporting evidence (or show cause why supporting evidence is not needed or unavailable).²⁹

11. *Stakeholder Challenge.* Eligible stakeholders will then have 90 days from the public release of the participants' location information to establish their eligibility, sign the protective order, and review and challenge the participants' evidence (challenge window). WISPA recommends that we limit the challenge window to 60 days, stressing that stakeholders will prepare their challenge information concurrent with the preparation and submission of information by participants.³⁰ While stakeholders may do some preparation at the same time as participants, stakeholders will submit challenges that are responsive to the participants' location information by identifying locations, or multiple units, that were not reported or misreported by the participant. For this reason, stakeholders will need time to access and review participants' location information and to compare such information against their own. A 60-day time frame does not afford stakeholders adequate time to complete these steps prior to submitting their challenges, particularly as some stakeholders may be state regulatory or public interest entities that will be responding to participant information for large or widespread geographic areas.

12. The stakeholder location information will be used to further populate and revise the ELAP Map to inform and supplement the work of other stakeholders filing challenges against the same participant in the same state prior to the close of the challenge window. Participants will have access to this information as it is processed but will not be able to file replies until after the close of the challenge window. Unlike participant location information, stakeholder location information will not be publicly available.

13. *Participant Reply.* Challenged participants will have 30 days from the stakeholder submission deadline (response window) to: (1) access and review certified data submitted by the stakeholder with respect to the challenged area; and (2) submit additional data/information to oppose the challenge (response window). If a challenged participant does not oppose the challenge, the participant need not submit any additional information. A challenged participant, however, will not have a further opportunity to submit any additional information or data for the Bureau's consideration after the response window closes.

14. The response window is for a longer time frame than the Bureau originally proposed, as most commenters stress the need for at least 30 days to review stakeholder filings and prepare a

²⁸ *Id.* (supporting the 60-day time frame). No other commenter supported or opposed this timeframe.

²⁹ WISPA Comments at 8 (stating that the prima facie standard for dismissal should be based on the failure to certify the truth and accuracy of submissions or the failure to submit required information, not on a lack of evidence).

³⁰ *Id.* at 9. No other commenters opposed the 90-day timeframe.

response.³¹ Participants must certify, under penalty of perjury, the truth and accuracy of information submitted in the reply. Verizon requests a 45-day window for preparing and filing a reply to “give support recipients enough time to review the diverse forms of evidence and, if necessary, conduct field research to determine whether the additional addresses submitted by commenters meet the Commission’s definition of a ‘location.’”³² Participants, however, should be well familiar with supporting evidence, will have a targeted number of locations to research, and are likely to already have (or should have) some information about those locations because of their initial submissions. For this reason, the Bureau determines that a 30-day response window strikes the appropriate balance between the interests of the participant and the public interest in swift resolution of these claims.

15. *Location Adjudication.* In the *Phase II Reconsideration Order*, the Commission directed the Bureau to adjudicate participants’ requests for adjustment of defined deployment obligations based on the preponderance of the evidence standard.³³ In the *Locations Adjustment Public Notice*, we proposed that participants would also bear the burden of persuasion.³⁴ We received no comments on such proposal.³⁵ Accordingly, we will only modify a participant’s defined deployment obligation to the extent that the participant produces adequate evidence demonstrating that it is more likely than not that the defined deployment obligation is greater than the number of actual locations within the state. In adjudicating these claims, the Bureau will consider stakeholder challenges and participant replies to determine not only the overall credibility of participants’ information but also to adjust the participants’ qualifying location count.

16. We decline WISPA’s suggestion that the Bureau resolve these cases within 90 days of the reply deadline.³⁶ While we acknowledge that expeditious resolution is critical to participants’ financial and deployment plans (including adjustments to the letter of credit), it is difficult to predict the number of participants and stakeholders, and the associated amount of information that may be submitted; moreover, we expect that information is likely to be highly variable. During ELAP, participants may deploy service to, and report as served, any known actual location and must report such locations in their initial ELAP submission. We expect to resolve all ELAP disputes well in advance of the participants’ first deployment milestone. We also decline to adopt WISPA’s suggestion that the Bureau allow participants and stakeholders to bypass the ELAP adjudication process by entering into negotiated settlements, subject to review and adjustment by the Bureau.³⁷ Allowing for a negotiated settlement process would introduce additional administrative burdens without corresponding efficiencies, as both processes should produce the same result, i.e., a complete and accurate accounting of all qualifying locations. Without careful Bureau oversight, a settlement process between outside parties is less optimal and could introduce into

³¹ *Locations Adjustment Public Notice*, 33 FCC Rcd at 8627, para. 22; ITTA Comments at 5 (stating that the 15-day time frame is not “a fair opportunity” to present a case); *id.* at 4 (“To the extent that such rebuttal sends the participant ‘back to the drawing board’ in assessing the challenged data, 15 days pales in comparison to the 90 that its putative opponent had to present its case.”); WISPA Comments at 9 (“It would be daunting, if not impossible, for a participant, especially a small provider, to respond in 15 days to contrary methodologies and evidence filed by different parties for a large number of its supported census blocks”).

³² Verizon Comments at 5; WISPA Reply Comment at 5-6 (supporting Verizon’s request).

³³ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389, para. 24.

³⁴ *Locations Adjustment Public Notice*, 33 FCC Rcd at 8627, para. 23; *see id.* (noting that “placing the burden of persuasion on the participant encourages the participant to fully present its evidence and further tempers any incentive to ‘cherry pick’ locations”).

³⁵ *Locations Adjustment Public Notice*, 33 FCC Rcd at 8627, para. 23.

³⁶ WISPA Comments at 10.

³⁷ *Id.*

ELAP additional considerations contrary to USF-related goals as well as disparities in bargaining power and expertise that ELAP protects against.

17. *Support Adjustment.* The Commission has directed that, in circumstances where the Bureau determines that modification of the participant's number of funded locations is warranted, it must reduce the authorized support on a pro rata basis.³⁸ Consistent with our proposal, the Bureau will order a pro-rata reduction in future payments for the remainder of the support term proportionally to reflect the total amount of reduction.³⁹ Participants will be permitted to adjust their letters of credit to reflect the new authorized funding amount once the Bureau's order modifying the authorized support is issued.⁴⁰

B. Participant Requirements

1. Eligible Location Information

18. As an initial step, the Commission requires participants to submit a list of qualifying locations within the state.⁴¹ Qualifying locations include every location eligible for high-cost support, i.e., residential housing unit or small business served with mass market services.⁴² In the Bureau's *HUBB Reporting Public Notice*, the Bureau clarified that qualifying locations cannot be abandoned, derelict, condemned, or otherwise uninhabitable.⁴³ The Bureau and USAC have provided further guidance and clarification on the meaning of a qualifying location for carriers reporting location data into the HUBB to demonstrate compliance with defined deployment obligations, which we now incorporate here as generally applicable to ELAP.⁴⁴ Participants should follow this guidance unless and until the Bureau or the Commission issues different guidance.⁴⁵

19. As we noted in the *Locations Adjustment Public Notice*, however, there are important distinctions in reporting served locations in the HUBB for the purpose of demonstrating compliance with a defined deployment obligation and reporting qualifying locations for the purpose of seeking adjustment to a defined deployment obligation. Carriers reporting information in the HUBB must report information

³⁸ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389, para. 24 & n.62.

³⁹ *Id.* We received no comments on this proposal.

⁴⁰ *Id.*

⁴¹ *Id.* at 1389-90, paras. 23, 25-26.

⁴² *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390-1391, para. 27; *see also Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 3964, 4031-32, para. 159 (WCB 2014) (excluding the costs of extending fiber to community anchor locations from cost-to-serve calculations, and excluding the locations served by enterprise services from "the unitization of the total middle mile cost of a census block to avoid location counts that are a mixture of residences and small businesses intermingled with enterprise locations"); *see also id.* at 4032 & n.458 (explaining that "[w]hen the total middle mile cost of serving the census block is divided by all locations passed, the locations passed only include residential as well as those business locations assumed to receive the same type of voice and broadband services as residential customers.>").

⁴³ *Locations Adjustment Public Notice*, 33 FCC Rcd at 8623, para. 8 (citing *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, Public Notice, 31 FCC Rcd 12900, 12905 (WCB 2016) (*HUBB Reporting Public Notice*)).

⁴⁴ *See generally*, *HUBB Public Notice*, 31 FCC Rcd 12900; HUBB Frequently Asked Questions, https://www.usac.org/_res/documents/hc/pdf/tools/HC-HUBB-FAQ.pdf.

⁴⁵ *See, e.g.*, Comments Sought on Petition for Declaratory Ruling of Northeast Iowa Telephone Company and Western Iowa Telephone Association, WC Docket 10-90, Public Notice, 34 FCC Rcd 5092 (WCB 2019) (seeking comment on a joint petition requesting clarification or declaratory ruling on the treatment of a single property that contains both a residence and home-based business). We make no finding here that would alter the current guidance in USAC's HUBB Frequently Asked Questions.

about served locations, i.e., qualifying locations to which the reporting carrier can provide the requisite level of service within ten business days of a customer request.⁴⁶ Such locations need not be occupied but cannot be unfinished or an ongoing or future real estate development.⁴⁷ In ELAP, however, participants seeking to reduce their defined deployment obligation are to report all locations that they will be capable of serving within the six-year build out period. Accordingly, we sought comment on whether participants should be required or permitted to include in their location information, information about unfinished properties or prospective developments that have a reasonable certainty of coming into existence within the six-year build-out period (prospective locations).⁴⁸

20. ITTA argues that participants must report prospective locations to avoid a “perverse” effect on universal service goals where the “net diminution in unserved locations would be undermined by the addition of new unserved locations that would have been served” had the participants’ defined deployment obligation not been adjusted.⁴⁹ ITTA stresses that this is particularly true when “unfinished residential or business locations are at the edge of participants’ service areas and the business case does not exist to extend service to these locations absent universal service support.”⁵⁰ Most commenters, however, argue against such a requirement, stressing that there are too many variables in determining the probability of whether and, if so, when, an unfinished or planned development or construction project will be completed.⁵¹ These commenters stress that the research and documentation requirements necessary to identify all prospective locations is too burdensome.⁵² Further, USTelecom asserts, requiring participants to serve a revised location count that includes prospective locations would be an “unfair burden completely outside of the provider’s control.”⁵³

21. We agree with the majority of commenters. Accordingly, we will not require, but will permit, participants to report prospective locations as part of their initial submission. We find that this approach is consistent with the purpose and scope of ELAP, a process designed to address the inherent limitations in the model’s underlying data inputs by reducing funded location estimates.⁵⁴ This process refines the defined deployment obligation but does not alter the nature of the obligation; participants, like all other funding recipients in the same programs, must serve a specific number of locations with the requisite level of service by certain deadlines.⁵⁵ The number of locations that they must serve is based on data estimates describing conditions at a point in time.⁵⁶ Participants may report toward satisfaction of

⁴⁶ See *Locations Adjustment Public Notice*, 33 FCC Rcd at 8623-24, para. 9; see also *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428, 1435, para. 14 (2018); *HUBB Public Notice*, 31 FCC Rcd at 12902.

⁴⁷ *Locations Adjustment Public Notice*, 33 FCC Rcd at 8623-24, para. 9.

⁴⁸ *Id.* at 8624, para. 9.

⁴⁹ See ITTA Comments at 4.

⁵⁰ *Id.*

⁵¹ Verizon Comments at 4; USTelecom Comments at 2-3; GeoLinks Reply Comments at 2; NTCA Reply Comments at 3; WISPA Reply Comments at 3-4.

⁵² Verizon Comments at 2; USTelecom Comments at 2-3; GeoLinks Reply Comments at 2; NTCA Reply Comments at 3; WISPA Reply Comments at 3-4.

⁵³ USTelecom Comments at 3; see also WISPA Reply Comments at 3, n.11 (supporting USTelecom Comments).

⁵⁴ See *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389-90, paras. 23, 25-26.

⁵⁵ See *Phase II Auction Order*, 31 FCC Rcd at 5972, para. 65.

⁵⁶ See *id.* at 5966, para. 45 (acknowledging that there may be “significant changes at a network is being deployed); *id.* at 5966 & n.94 (acknowledging that in the *December 2014 Connect America Order*, the Commission recognized that customer location data utilized in the model reflected data at a particular point in time, and the precise number
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their build-out requirements, any qualifying location within eligible areas, regardless of whether such location preexists the estimates or is newly built. They are also expected to adopt flexible network plans that permit reallocation of resources, as necessary, to deal with inevitable changes in consumer demand, network capacity, as well as location eligibility.⁵⁷

22. We do not expect significant changes in the net number of actual locations in these high-cost areas within the time-limited build-out period, although we recognize that there is likely to be some fluctuation in where locations are situated as certain locations become unserviceable and new locations are built.⁵⁸ If we were to require participants to count *all* prospective locations toward their overall qualifying location count, participants would have less overall flexibility in responding to such fluctuations in comparison to a Phase II auction support recipient that did not participate in ELAP and therefore, has a defined deployment obligation that does not include prospective locations. We agree with the views of several commenters that mandatory reporting of all prospective locations introduces uncertainty into an otherwise clear evidentiary burden.⁵⁹ We further recognize, however, consistent with ITTA comments, that there may be circumstances where a participant intentionally excludes from its location counts almost completed developments at the edge of denser communities, where service costs may exceed that of the average qualifying location due to the necessity of extending network facilities.⁶⁰ For this reason, we will permit relevant stakeholders to argue for inclusion of these kinds of locations in actual locations counts.

23. Some participants may want to commit to serving some number of locations greater than the number of qualifying actual locations that it has been able to find, but less than the CAM-estimated number of locations.⁶¹ Accordingly, and consistent with some commenters' suggestion, we will permit participants to report location data for prospective locations.⁶² These prospective locations may include

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of locations in some funded census blocks is likely to change over time for a variety of reasons); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15659, para. 38 (2014) (*December 2014 Connect America Order*).

⁵⁷ In this regard, CAF Phase II support recipients are expected to adopt flexible network deployment plans capable of responding to such contingencies and cannot avoid default findings based solely on fluctuations in where qualifying locations exist. See *Phase II Auction Reconsideration Order*, 1393, para. 33 & n.88 (noting that in the *December 2014 Connect America Order*, the Commission stated that if an ETC is unable to meet the required deployment obligations due to circumstances beyond its control, it could seek waiver of the service milestones, but that the Commission had also cautioned that it did not expect to routinely grant such waiver requests and that the failure to plan for some contingencies might make it difficult to establish good cause to warrant waiver) (citing *December 2014 Connect America Order*, 29 FCC Rcd at 15660, 15700, paras. 40 & n.93, 154). The Commission is in the process of amending HUBB functionality to permit the bulk deletion of locations previously reported toward satisfaction of earlier defined deployment milestones in circumstances where, *inter alia*, the carrier is no longer serving or capable of serving such locations. Connect America Fund - High Cost Portal Filing, Revision of a Currently Approved Collection, OMD Control No. 3060-1228, Supporting Statement (filed Aug. 20, 2019), available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201907-3060-013.

⁵⁸ See *December 2014 Connect America Order*, 29 FCC Rcd at 15659, para. 38 (acknowledging that the "precise number of locations in some funded census blocks is likely to change over time for a variety of reasons, which may impact the orderly progress of the planned construction cycle").

⁵⁹ Verizon Comments at 4; USTelecom Comments at 2-3; GeoLinks Reply Comments at 2; NTCA Reply Comments at 3; WISPA Reply Comments at 3-4.

⁶⁰ ITTA Comments at 4.

⁶¹ See *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390, para. 25 (declining to permit support applicants to identify additional locations to serve above their required state total with an accompanying increase in support).

⁶² GeoLinks Comments at 2; WISPA Comments at 3.

plots, parcels, or partially completed structures in planned unit developments or structures currently undergoing renovation. Participants should exercise due diligence when assessing the likelihood that these reported prospective locations will become qualifying locations and in assessing the overall probability of fluctuations in the net number of qualifying locations within the six-year buildout time frame to ensure future compliance with adjusted defined deployment obligations.

2. Additional Evidence

24. Together, qualifying locations and voluntarily-reported prospective location data form the actual location count that provides the evidentiary basis for adjusting participants' defined deployment obligation. As recognized by the Commission in the *Phase II Auction Reconsideration Order*, however, participants have the incentive to maximize their average ratio of support and build-out costs, even when such maximization means leaving actual locations unserved and support unclaimed.⁶³ For this reason, the Commission directed the Bureau to adopt requirements that would help ensure that the actual location counts submitted by participants are complete and demonstrate that "no additional locations could be found."⁶⁴ As explained more fully below, these requirements include the submission of a methods description and some supporting evidence that those methods were applied systematically in the relevant areas.

25. *Methods Description.* In the *Locations Adjustment Public Notice*, we proposed that participants submit, in addition to location information, information regarding the participants' methodology for identifying all such locations within eligible areas within the state.⁶⁵ We sought comment on whether we should require participants to use specific Global Positioning System (GPS) methods or if they should be permitted to rely on any of the three generally accepted GPS methods outlined by USAC in its HUBB guidance, i.e., field research, computer-based geolocation, or automated address geolocation (databases).⁶⁶ All commenters commenting on this issue supported flexibility of method,⁶⁷ stating that the best choice of method may be determined by variable geographic features,⁶⁸ availability of resources,⁶⁹ and the technology used to provide service.⁷⁰ We agree with commenters' suggestions.⁷¹ Accordingly, participants will be able to use any of the three generally accepted GPS

⁶³ See *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390, para. 25.

⁶⁴ See *id.* at 1389-90, paras. 23, 25-26.

⁶⁵ *Locations Adjustment Public Notice*, 33 FCC Rcd at 8624-8625, paras. 10-12.

⁶⁶ *Id.* at 8624, para. 11.

⁶⁷ GeoLinks Comments at 2 (asserting that, "so long as a location is verified by the provider and the methodology (or combination thereof) for verification can be sufficiently explained, the Bureau should not limit a provider's use of any such methods"); ITTA Comments at 1 (asserting that the Bureau must "adopt an approach grounded in flexibility"); *Id.* at 5 (asserting that "flexibility . . . should guide the Bureau's implementation of procedures"); USTelecom Comments at 3 ("USTelecom supports allowing a participant sufficient flexibility"); Verizon Comment at 3 ("[a] support recipient may need to use various sources of location data and various geocoding methods"); see also NTCA Reply Comments at 1-2; WISPA Reply Comments at 2.

⁶⁸ GeoLinks Comments at 2; USTelecom Comments at 3; Verizon Comments at 3; WISPA Comments at 4; see also NTCA Reply Comments at 2 n.7.

⁶⁹ WISPA Comments at 6 ("Requiring small providers or stakeholders to purchase software or send teams of employees to knock on rural farmhouse doors may, in many cases, be cost-prohibitive, extremely time-consuming and, in general, disproportionate to the intended benefits.").

⁷⁰ ITTA Comments at 2.

⁷¹ Geolinks Reply Comments at 3 ("GeoLinks believes that the proposal of many different options makes clear that there are many ways for CAF II recipients to verify location data. So long as a CAF recipient's selected methodology (or methodologies) can be explained, it should not be precluded from using any reasonable method.").

(continued....)

methods to compile location information.

26. In the *Locations Adjustment Public Notice*, we also sought comment on whether participants should be required to justify their methodological choices and make clear that they systematically and reasonably gathered location data for all eligible areas.⁷² Such information is essential to the Bureau's ability to evaluate whether the participants' location information is accurate and complete. Consistent with this proposal, several commenters acknowledge that a description of method is necessary for the evaluation of location information.⁷³

27. We acknowledge Hughes' concern that many commercial vendors treat their methods for identifying locations as proprietary content and prevent disclosure.⁷⁴ We decline to follow Hughes' suggestion, however, to require all potential commercial vendors or the actual vendors upon which participants rely to establish that their databases meet Commission standards.⁷⁵ Commission collection and comparison of such data methods and information from such vendors (which could be numerous), as well as the management of such information, is prohibitively burdensome, particularly given the limited purpose and time constraints of this process. Further, the Bureau lacks delegated authority to impose such obligations.

28. We also disagree with Hughes contention that absent such a process, requiring participants to establish that their location data is accurate, reliable and complete excludes reliance on most commercial databases.⁷⁶ Participants need not disclose the specific proprietary methods used by vendors to compile location data so long as they demonstrate that the database or geolocation software has an evidentiary basis, such as customer records. Participants must also establish the source's accuracy and reliability in the relevant geographic areas, which may be accomplished through, for example, statistical sampling and verification of sampled locations in eligible areas.⁷⁷ While we encourage participants to use publicly available databases/information, including E911, tax records, real estate records, and other publicly available resources, participants must account for differences between such databases/information and the Commission's requirements (such as in how buildings and other structures are defined as locations).

29. We also decline to adopt USTelecom's suggestion that the Commission make available to participants all CAM data relevant to CAM funded location estimates so that participants can demonstrate that their information is more accurate than CAM estimates.⁷⁸ USTelecom stresses, in particular, the need to access information about the "surrogate" locations that the model randomly placed along roadways

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In parallel with our collection of location information with ELAP and the reporting of served locations in the HUBB for all programs with defined deployment obligations, the Commission is developing a multi-faceted Digital Opportunity Data Collection process that will incorporate location-specific data, as informed by input received on how to best implement this approach. *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, 34 FCC Rcd 7505, 7545-49 (2019).

⁷² *Locations Adjustment Public Notice*, 33 FCC Rcd at 8624-25, para. 12.

⁷³ USTelecom Comments at 3-4; WISPA Comments at 3; GeoLinks Reply Comment at 3.

⁷⁴ *Id.* at 2-3.

⁷⁵ Hughes Comments at 2-3.

⁷⁶ *Id.*

⁷⁷ Commnet Comment at 5 (explaining that certain participants face a "scarcity of publicly available data regarding locations," and thus, should be permitted to rely on commercial databases and only be required to verify a statistically valid sample of the database locations).

⁷⁸ US Telecom Comments at 5

when precise geocoordinates could not be identified.⁷⁹ The CAM model, however, is used to provide an estimate of the overall number of locations in eligible areas and, as explained in the *CAM Inputs Order*, whether a location is identified by geocoordinates or randomly placed is irrelevant to whether the location is reasonably determined to be a high-cost location in the relevant census block.⁸⁰ We also explained that providing geographic coordinates of locations would require the Bureau to publicly release proprietary commercial data — the geographic coordinates of those locations that came from a commercial data source, and “[a]s a practical matter, after the location demand data are generated, information about whether any individual location was based on a geocoded address or randomly assigned is not retained.”⁸¹ Accordingly, we cannot release information that no longer exists and we would decline to release it if it did. To meet their evidentiary burdens, participants are not measuring their location information against CAM estimates but providing detailed information about individual actual locations in eligible areas subject to challenge.

30. *Supporting Evidence.* In the *Locations Adjustment Public Notice*, we also proposed that participants submit evidence supporting their descriptions of methods and location information.⁸² Several commenters express concern that this requirement is “excessive” or “overly prescriptive.”⁸³ We disagree. Absent supporting evidence, the Bureau’s evaluation of the *completeness* of the location list would largely be based on the truth and candor of the participant and where applicable, stakeholder challenges. Moreover, requiring the submission of supporting evidence does not impose significantly greater evidentiary burdens since it is the by-product of participants’ research methods and should be kept by participants for future auditing purposes.

31. We will, however, allow participants flexibility in determining what and how much evidence to submit. Participants may, for example, submit print-outs (or links to) web-based photography, database pages, and/or public records information for a sample of randomly selected land units (i.e., parcels, plots) within the relevant eligible areas cross-referenced against reported locations. Participants may also choose to submit location information for any location that it has affirmatively determined to be a non-qualifying location together with a description of the reason why such structure should not be counted, e.g., derelict, industrial facility, temporary or mobile unit, or incomplete build. To support such a conclusion, participants may submit, as requested by WISPA in its comment, “qualitative evidence,” such as roof size or other visual evidence.⁸⁴

32. In making these decisions, we have carefully weighed the burdens on participants (and stakeholders) against the need to have sufficient data and evidence to ensure that the adjusted defined deployment obligations will not undercut service to locations that are the most expensive to serve. As

⁷⁹ *Id.* (citing CostQuest Associates, Inc., *Connect America Cost Model* at 44 (2015), https://transition.fcc.gov/wcb/Model%20MethodologyACAM1_1v5_Post.docx (“CQLL then augments actual geocoded point data with surrogate locations for demand that cannot be located accurately. These surrogate locations are based upon generally accepted data sources (e.g., Census data), client-specific engineering and optimization rules, and standard industry practices.”). As the Commission explained in the *CAM Platform Order*, because 96% of residential locations and 94% of business locations are geocoded, the effect on average cost in a census block because of random placement of certain locations would be small. *Connect America Fund et al.*, *WC Docket No. 10-90 et al.*, Report and Order, 28 FCC Rcd 5301, 5323 & n.115 (WCB 2013) (*CAM Platform Order*).

⁸⁰ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 3964, 3987, para. 48 (WCB 2014) (*CAM Inputs Order*).

⁸¹ *Id.* at 3987 & n.153.

⁸² See *Locations Adjustment Public Notice*, 33 FCC Rcd at 8624-25, para. 12.

⁸³ Hughes Comments at 3; USTelecom Comments at 3-4; Verizon Comments at 3, n.12; WISPA Reply Comments at 2.

⁸⁴ WISPA Comment at 5.

with any process, these benefits and burdens may not fall equally on every participant. WISPA, for example, states that small providers may find participation cost-prohibitive, time-consuming, and generally not worth the benefits, particularly if the participant must purchase expensive software and/or conduct ground studies.⁸⁵ To limit potential burdens on small providers, we have provided participants with considerable discretion in adopting processes to identify locations in eligible areas. We have only required participants describe the steps that they have taken to ensure that their eligible location lists are complete and accurate and submit a limited amount of readily-available supporting evidence. If such requirements are too expensive or burdensome for successful Phase II Auction applicants, then they may choose not to participate in this process and thereby assume the associated risk of noncompliance if they are unable to meet their defined deployment obligation.⁸⁶

C. Stakeholders' Submissions

33. *Stakeholder Eligibility.* We adopt our proposal to define relevant stakeholders eligible to participate as challengers in this process as government entities (state, local, and Tribal) as well as individuals or non-governmental entities with a legitimate and verifiable interest in ensuring service in the relevant areas. In this regard, ELAP is distinguishable from other similar processes designed to test service in eligible areas because, unlike in those processes, entities or individuals are likely to have specific knowledge required to support a challenge: information about omitted or incorrectly reported locations.⁸⁷ Moreover, individuals or entities might have more specific and up-to-date information than possessed by governing authorities and accordingly they may be able to represent their interest in service to eligible areas. Finally, we are motivated to conduct an adjustment process that is as open and transparent as possible to ensure the most complete, accurate, and reliable outcomes. Accordingly, our definition includes individuals or entities residing or doing business in the relevant areas as well as those entities with a legitimate and verifiable interest, such as landlords or property developers. Commenters generally supported our proposal.⁸⁸

34. Several commenters also support excluding individuals or entities otherwise meeting the definition of a relevant stakeholder if such individual or entity has a controlling interest in a competitive provider in the same area and market.⁸⁹ We find that such a restriction is necessary. Competitors have unique incentives that work at cross purposes with this process, including an interest in facilitating future default of participants by obstructing this process.⁹⁰ While any individual or entity otherwise eligible to

⁸⁵ To be statistically valid, the sampled population should be representative of the population and not biased in a systematic manner. Depending on factors such as geographic spread and database parameters, a participant may want to use a multistage random sampling.

⁸⁶ Generally, a shortage of locations caused by the overestimation of locations by the CAM in eligible areas would be discoverable through ordinary due diligence measures and should be reflected in bid strategies. *See, e.g., Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1393, para. 35 (explaining that Phase II auction participants would be hard pressed to demonstrate good cause for waiver if they did not plan on serving 100% of their locations at the start of the program (as adjusted, as warranted, through the Commission's adjustment process)); *Phase II Auction Order*, 31 FCC Rcd at 5966, para. 47 (acknowledging that the risk of noncompliance is a factor in the bidding process but emphasizing that recipients of support awarded through a competitive bidding process generally have control over project areas and size and bid amounts).

⁸⁷ *See, e.g., Connect America Fund; Universal Service Reform — Mobility Fund*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6302-6305, paras. 42-45 (2017).

⁸⁸ USTelecom Comments at 5; WISPA Reply Comments at 4.

⁸⁹ WISPA Comments at 4, 6; Geolinks Reply Comments at 3.

⁹⁰ In other challenge processes designed to distinguish between unserved and served areas, competitors were uniquely situated in terms of access to the relevant information, i.e., they have records demonstrating service at a particular location. *See, e.g., Connect America Fund; Connect America Phase II Challenge Process*, Order, 33 FCC (continued....)

participate as a stakeholder may request waiver of this restriction, we generally find that the public interest in protecting the integrity of this process against potential anticompetitive behaviors outweighs the benefits of permitting a limited number of competitive entities to challenge participant location information.

35. To determine the eligibility of non-government entities or individuals to participate as a stakeholder, the Bureau will use one more ore automated data source that compile public records information, such as LexisNexis Public Records, to verify identity and eligibility. The Bureau will collect from all prospective stakeholders through the HUBB module basic identifying and contact information, e.g., name, residential or business address, phone number, and email addresses. The Bureau may also collect other kinds of information as required by the automated data source to verify identity. To demonstrate eligibility, the prospective stakeholder must also provide the address of the relevant locations in the eligible areas and information regarding the nature of the interest in that location, e.g., residency, ownership, lease management. To the extent that such information is available in public records, the commercial data source may verify that the interest is held by the individual/entity. If the Bureau cannot verify the identity of the stakeholder and his/her/its interest in ensuring service in eligible areas using automated data sources, the Bureau will not permit the stakeholder to access participant information.

36. As a condition of participating in this process, the stakeholder must acknowledge and consent to the disclosure of its contact information to the relevant participant and the linking of such information to the challenge evidence submitted. The stakeholder must also certify that it satisfies the Bureau's definition of relevant stakeholder. The Bureau will review such information and make an affirmative determination whether to allow further access and participation by the stakeholder.

37. *Stakeholder Location Evidence.* Once a stakeholder demonstrates that it meets the definition of a relevant stakeholder, makes the requisite certifications, and enters into a protective order, as appropriate, a stakeholder may (1) access confidential participant information for areas it wishes to challenge; (2) identify the area(s) it wants to challenge; (3) submit evidence supporting the challenge; and (4) certify its challenge for the specified area(s). Based on our consideration of the record and given the policy objectives of this process, we find that to certify a challenge, a stakeholder must submit location information for omitted or inaccurately reported locations generally in the same format as required of participants, e.g., geocodes, addresses, number of units. Such information may include omitted prospective locations, but such locations must be separately identified as existing and prospective locations.

38. GeoLinks and WISPA assert that, in addition to location information, the Commission should require stakeholders to provide a short description of their methods, including an explanation as to why their methods produce a more accurate data set than that of the participant.⁹¹ These commenters assert that the Commission should reject any challenge that merely alleges deficiencies in participants' methods or evidence without presenting any additional location information since such a challenge would be too onerous to verify or refute when applied to the particular facts relevant to the eligible areas.⁹² These commenters also would require stakeholders to submit supporting evidence to the same extent that the Bureau requires participants to submit this information.⁹³ WISPA adds to such assertions that any

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Rcd 8908, 8911, paras. 12-13 (WCB 2018) (allowing GCI to challenge locations that ACS identified as unserved). Here, while competitive providers may have some location information, such information is likely to be more readily available to individuals and other entities in the communities in question.

⁹¹ WISPA Comments at 7; *see also* GeoLinks Comments at 3-4; *see also* USTelecom Comment at 5 (asserting that stakeholders should be required to submit a description of their methodology for identifying a location but otherwise should have flexibility in determining what kinds of information to submit).

⁹² Geolinks Comments at 3; WISPA Comments at 7.

⁹³ *Id.*

stakeholder relying on publicly-available data must submit such data as part of its challenge.⁹⁴

39. Despite what commenters argue, the Commission decided that participants carry the burden of proof and, therefore, heavier evidentiary burdens.⁹⁵ In this Order, the Bureau has determined that participants will also carry the burden of persuasion.⁹⁶ We also note that the imposing certain evidentiary requirements might dissuade stakeholders with limited experience and expertise from participating. Accordingly, we are not convinced by the assertions of some commenters that we should impose the same evidentiary requirements on stakeholders that we impose on participants. Instead, we require stakeholders to submit some but not all the information required of participants.

40. Stakeholders must describe their methods for identifying locations, including any limitations thereof, and must submit proof that the location data describes a qualifying residential or small business location.⁹⁷ Generally, the Bureau has determined that sets of geocoordinates a distance of 36 feet or more from another will describe separate structures. Accordingly, when a stakeholder's location data falls within 36 feet of the geocoordinates reported by the participant (generally, an overlap in the first three decimal places of geocoordinates), the stakeholder must also explain why the location should be considered a separate and unique location from the location reported (e.g., the location data describes a separate business or residential location or unit within the same property/parcel).⁹⁸ If a stakeholder reports prospective locations as omitted locations, it must explain why such location should be considered when determining participants' defined deployment obligations and submit some supporting evidence that the location will become a qualifying location within the six-year build-out period. Stakeholders may include factual arguments demonstrating why their methodology produces location information more complete or accurate than that of the participant but are not required to do so. A stakeholder must certify that its submission is true and accurate and may revise and recertify its filing until the filing deadline.⁹⁹

41. Once a stakeholder submits its evidence in the HUBB, the system will conduct an automatic validation process to determine whether the stakeholder provided enough evidence to justify proceeding with each submitted challenge. The system will inform the stakeholder of any problems associated with the prior submission in due course. The stakeholder may submit additional or modified data, as required, to resolve the problem if it can do so before the deadline. Once the challenge window closes, however, the stakeholder will have no further opportunity to correct existing, or provide additional, information in support of its challenge. Only those challenges to areas that are certified by a stakeholder at the close of the window and validated by the HUBB will be considered.

D. Participant Opportunity to Respond

42. We find that providing challenged participants with a limited 30-day opportunity to submit additional data in response to a challenge promotes our goals of a fair and balanced process. It

⁹⁴ WISPA Comments at 6.

⁹⁵ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389, para. 24.

⁹⁶ See *supra* paragraph 15.

⁹⁷ We expect that there will be a variety of stakeholders responding to participants' submissions. Accordingly, the description of methodology may range from a simple explanation, such as might occur if a homeowner reports that his/her home has been omitted from the participant's list of qualifying locations, or a more in-depth explanation, such as might occur if a local government entity claims that several locations have been omitted from the participant's list.

⁹⁸ These locations will be identified by USAC through its automated validation process.

⁹⁹ *Locations Adjustment Public Notice*, 33 FCC Rcd at 8627, para. 22 (proposing that stakeholders' submissions be signed by an individual with relevant knowledge, certifying under penalty of perjury, that the information presented is accurate to the best of his or her knowledge and belief).

will also help ensure that the adjusted defined deployment obligations accurately reflect the actual number of locations (plus any prospective locations that the participant chooses to include). However, we expect stakeholders to provide irrefutable evidence of any omitted qualified locations overlooked by the participant, making responses largely unnecessary. We do not adopt specific evidentiary requirements for this reply process, preferring instead to defer to participants' judgment regarding the most probative evidence to rebut the stakeholders' information. The reply should not be used to introduce new evidence not responsive to the challenge or update preexisting evidence that is non-responsive to one or more stakeholder challenges. The information must be submitted in the same format as specified for participants' and stakeholders' data and information. Any information submitted must be certified as true and accurate by an officer of the participant under penalty of perjury.

E. Location Data Formatting Requirements

43. In the *Phase II Auction Reconsideration Order*, the Commission determined that participants should be required to submit addresses and geocoordinates for eligible locations but otherwise requested that the Bureau develop formatting and evidentiary requirements for location data after seeking notice and comment.¹⁰⁰ In the *Locations Adjustment Public Notice*, we proposed adopting data format requirements for this process similar to those used for the HUBB, stressing several advantages to such an approach, including streamlined validations and future auditing of data, potential transferability of data to the HUBB, and preexisting and refined guidance for carriers reporting in the HUBB that can be adapted to the locations adjustment process.¹⁰¹ The Bureau and USAC developed these HUBB formatting standards to help ensure that a location may be easily distinguished from nearby properties and readily determined to be located within eligible areas. By adopting these standards, we give both participants and stakeholders a meaningful opportunity to review location data. Commenters generally express support for the adoption of such standards.¹⁰²

44. Participants and stakeholders must submit location information in a tabular format (e.g., a .csv file) into a module within the HUBB. Such information will include (1) basic information, e.g., participant/stakeholder name and contact information; (2) information regarding the relevant geographic area, e.g., the relevant state and SAC; (3) location specific information, e.g., addresses, geocoordinates, and number of units; (4) method information, e.g., GPS methods and/or source used and the "as-of" date of such method or source; and (5) certification information, including the name of the officer certifying that the information is true and correct and his or her contact information. The module will also accept the participants' methods description (e.g., as a .pdf file) and the supporting evidence (e.g., .pdf, jpeg).

45. In its comment (and in ex parte filings with the Bureau relating to HUBB functionality), USTelecom requests that geocoordinate reporting requirements be limited to the five decimal places rather than the currently required six places.¹⁰³ USTelecom asserts that in the predominately rural areas served by participants, reporting at the fifth decimal place adequately ensures that the location will be

¹⁰⁰ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389-90, paras. 23, 25-26.

¹⁰¹ *Locations Adjustment Public Notice*, 33 FCC Rcd at 8625-26, para. 17.

¹⁰² WISPA Comments at 8; NTCA Reply Comments at 2.

¹⁰³ USTelecom Comments at 4; *see also* WISPA Reply Comments at 3 (supporting USTelecom's recommendation); *see also* USTelecom Comments at 4, n.13 (citing Sarah Zang, *How Precise is One Degree of Longitude or Latitude?*, Gizmodo (Sept. 5, 2014) <https://gizmodo.com/how-precise-is-one-degree-of-longitude-or-latitude-1631241162> ("The fifth decimal place is worth up to 1.1 m: it distinguishes trees from each other. Accuracy to this level with commercial GPS units can only be achieved with differential correction. The sixth decimal place is worth up to 0.11 m: you can use this for laying out structures in detail, for designing landscapes, building roads. . . . This can be achieved by taking painstaking measures with GPS, such as differentially corrected GPS.")).

readily identifiable by stakeholders and for future auditing purposes.¹⁰⁴ USTelecom stresses that, in comparison, requiring a higher degree of accuracy places a significant burden on participants, noting that in CAF areas, the “rooftop level geocoding accuracy” is only approximately 55%.¹⁰⁵ We generally agree. Reporting accuracy at the fifth decimal place generally will enable stakeholders (and any future auditor) to identify attached properties and to distinguish such properties from apartments and other multiple dwelling units. We do not, however, wish to foreclose a participant or stakeholder from entering more precise coordinates. Accordingly, we will configure the HUBB to allow participants to enter a trailing “0” in lieu of a sixth decimal place. Such entry will not be interpreted to suggest that the participant is certifying the accuracy of its information to the sixth decimal place.

F. Verification of Participant Submissions

46. In the *Phase II Auction Reconsideration Order*, the Commission provided that all evidence submitted by participants pursuant to this process would be subject to future audit and directed the Bureau to adopt parameters for such audits.¹⁰⁶ These verifications will mirror HUBB verification processes. Because, however, participants’ submissions produce a “snapshot” of conditions as they exist at a specific point in time, verifying the accuracy, reliability, and completeness of participants’ location information may be increasingly difficult as time passes. For this reason, WISPA suggests that the Bureau limit verification to CAF Phase II support recipients’ six-year deployment period, while USTelecom proposes a more abbreviated time frame, i.e., 18-months after the participants’ certification.¹⁰⁷

47. We conclude that these verifications should be limited to the support term (plus any time reserved by USAC for final verification of HUBB deployment information).¹⁰⁸ Such a time frame provides USAC and the participants with a realistic time frame to sample and test location information. We remind participants that under section 54.320(b) of the Commission’s rules, all recipients of high-cost support must maintain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules and must maintain such records for a minimum of 10 years from the receipt of funding, and we interpret such requirement as applicable to this process.¹⁰⁹ Participants may need to produce supporting evidence or documentation that is not already in the record in this proceeding and thus should retain all evidence and documentation gathered to identify all locations, as well as any documentation supporting its methodology.

48. In response to the Bureau’s request for comments, several commenters suggested specific circumstances when verification would be appropriate. For example, Hughes proposes that verifications

¹⁰⁴ USTelecom Comments at 4; *see also* Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Sept. 4, 2018) (asserting with respect to HUBB filing requirements that requiring geocoding to the sixth decimal place is unnecessarily precise given that most rural houses are “more likely to be 50 feet to a mile apart,” and “given the inconsistent results across geocoders”).

¹⁰⁵ USTelecom Comments at 4.

¹⁰⁶ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389, para. 23. Consistent with terminology that we use for other carriers with defined deployment obligations, we describe the process of confirming whether the locations reported by participants are accurate, reliable and complete as a “verification.”

¹⁰⁷ USTelecom Comments at 7; WISPA Comments at 12.

¹⁰⁸ *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40.

¹⁰⁹ 47 CFR § 54.320(b) (requiring recipients of high-cost support to retain, for at least 10 years, all records necessary to demonstrate to auditors that the support received was consistent with universal service high-cost program rules and to make these documents available upon request to the FCC (and any of its bureaus or offices) and to USAC, and to their respective auditors).

should be triggered when a participant frequently misreports location evidence toward its defined deployment obligation or when there are significant differences between the participant's served location information and its ELAP location information.¹¹⁰ WISPA suggests that verifications are appropriate when the participant defaults or misreports served locations over 30% in any year or 15% in two years.¹¹¹ We find such suggestions compelling and will consider them in our verification decisions. We decline, however, to adopt any limiting criteria that would trigger verification and that might encourage participants to engage in strategic HUBB reporting or that would impliedly limit our discretion to conduct random audits.

49. If the Bureau discovers that actual locations were not reported by the participant, the Bureau will add the locations to the participant's defined deployment obligation. If the participant cannot demonstrate compliance with the readjusted defined deployment obligation, the Bureau will find the participant in performance default and subject to the Commission's default measures.¹¹² In situations where it appears that the participant may have intentionally or negligently misrepresented the number of actual locations in ELAP, the Bureau may refer the case to the FCC's Enforcement Bureau for further investigation and possible forfeiture penalty.¹¹³ We stress that the Bureau is not limiting these actions to the deployment or support term and reserves the right, coterminous with Commission authority to recover improperly disbursed support, to act on information about inaccurate participant filings at any future point.¹¹⁴

G. Confidentiality of ELAP Information

50. *Participant's Information.* In the *Locations Adjustment Public Notice*, we noted similarities between served location data, which the Commission treats as non-confidential and makes publicly available, and ELAP location information.¹¹⁵ We also noted, however, important differences, namely, that unverified lists of actual locations, particularly when coupled with related evidence, could reveal competitively sensitive information regarding participants' future deployment plans or link

¹¹⁰ Hughes Comments at 3.

¹¹¹ WISPA Comments at 10.

¹¹² See *Phase II Auction Order*, 31 FCC Rcd at 6016-6018, para. 188-194. No commenters responded to the Bureau's questions regarding the consequences of such verification.

¹¹³ 47 CFR § 1.17(a)(2) (stating that no person may provide, in any written statement of fact "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading"); see also *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4016-17, 4021, paras. 1-2, 12 (2003) (stating that the revision to section 1.17 of the Commission's rules is intended to "prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive").

¹¹⁴ *Request for Waiver of Review of a Decision of the Universal Service Administrator by Premio Computer, Inc. et al.*, Order, 29 FCC Rcd 8185, 8186-87, para. 6 (WCB 2014) ("In some instances, *consistent with its general obligation to recover funds improperly disbursed*, the Commission has elected to proceed with recovery even when more than five years has lapsed between final delivery of services for a specific funding year and the initiation of an investigation.") (emphasis added); see also *id.* at 8186-87, para. 6 & n.15 (citing "*United States v. Wurts*, 303 U.S. 414, 416, 58 S.Ct. 637, 638 (1938) ('The Government's right to recover funds, from a person who received them by mistake and without right, is not barred unless Congress has 'clearly manifested its intention' to raise a statutory barrier [[to recovery].') (citations omitted) and stating that "Congress has imposed no such statutory barrier to recovery but, to the contrary, in the Debt Collection Improvement Act (DCIA), 31 U.S.C. § 3701 et seq., has generally directed agencies to 'try to collect a claim of the [U.S.] Government for money or property arising out of the activities of, or referred to, the agency.' 31 U.S.C. § 3711(a)(1).").

¹¹⁵ See *Connect America Fund et al.*, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, Report and Order et al., 31 FCC Rcd 3087, 3164, para. 221 (2016) ("USAC must provide the public with the ability to easily view and
(continued....)

addresses and other information to specific individuals.¹¹⁶ For this reason, we will publicly disclose only certain ELAP location information, i.e., information that is generally publicly available from multiple data sources. All other information will be treated as presumptively confidential.

51. Competitors could use the confidential information filed by participants to the competitive disadvantage of the participant. Therefore, as some commenters suggest, we will permit participants to file such information pursuant to a Protective Order.¹¹⁷ In particular, as specified in more detail in the Protective Order, we restrict availability of this information as follows: (1) in the case of commercial entities having a competitive or business relationship with the participant whose confidential information it seeks and which have obtained a waiver of the definition of stakeholder, to In-House Counsel not involved in competitive decision-making, and to their Outside Counsel of Record, their Outside Consultants and experts whom they retain to assist them in this and related proceedings, and employees of such Outside Counsel and Outside Consultants; (2) to employees and representatives of commercial entities having no competitive or business relationship with the participant whose confidential information it seeks; and (3) to individuals with no competitive or business relationship with the company. We conclude that adopting such procedures in a Protective Order will give stakeholders appropriate access to participant information while protecting competitively sensitive information from improper disclosure, and that disclosure pursuant to the Protective Order thereby serves the public interest.

52. We will also restrict access to this information. Stakeholders will only be permitted to access confidential participant location data for the census blocks in which the stakeholder has demonstrated a verifiable interest in ensuring service and the bordering census blocks. Stakeholders may access information about the methods used to gather location data for all locations identified in these census blocks by participants, the entire description of the methodology provided by the participant, and the supporting evidence associated with such methodology unless such evidence clearly and exclusively relates to locations and areas outside of the relevant census blocks, e.g., photographic evidence of derelict structures in a different area of the state or in a different state.

53. *Stakeholder Information.* Information submitted by the stakeholder to establish eligibility and to challenge participants' information may also be abused by participants and outside parties and raises significant privacy concerns. We sought comment on these concerns as well as the appropriate methods for addressing such concerns but received no comments on these issues. We determine that it is necessary to treat all stakeholder information as presumptively confidential. All information gathered to determine the stakeholder's eligibility to participate will not be disclosed publicly or to any other participant in this process. Stakeholder contact information and challenge information will be made available to the relevant participant and other stakeholders filing challenges based in the same census block areas but stakeholders may file such information pursuant to a Protective Order that limits the use of such information.

54. Specifically, as a condition of obtaining access to stakeholder information, the participant or stakeholder agrees to use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. The information may only be accessed by employees and representatives of the

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download non-confidential information, including . . . the geocoded location information . . . for both individual carriers and in aggregated form.”)

¹¹⁶ *Locations Adjustment Public Notice*, 33 FCC Rcd at 8628, para. 25.

¹¹⁷ USTelecom Comments at 6; WISPA Comments at 11.

participant/stakeholder that have no competitive, business, or legal relationship with the stakeholder.

55. Participants/other stakeholders may discuss stakeholder information with the Commission and its staff and with the stakeholder's employees, representatives, and counsel, including paralegals assisting in this proceeding. Participants/other stakeholders may also discuss location data with third-party contractors involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding. This location data must not be linked in any manner to the contact information of the stakeholder.

H. Security and Privacy of Online Records

56. The Bureau will work with USAC to create a module in the HUBB to accept and retain ELAP submissions and to control access to such information. The Bureau will also coordinate with USAC in the development of the ELAP Map. To the extent any information submitted to the module by or about individuals is a "record,"¹¹⁸ and to the extent that the module may function as a "system of records,"¹¹⁹ as those terms are defined in the Privacy Act of 1974, USAC will collect, maintain, and use the information in accordance with that law. In addition, we direct USAC to ensure that the ELAP module and map complies with all other applicable laws and Federal government guidance on privacy and security and other applicable technology requirements such as those enacted by the Federal Information Security Modernization Act (FISMA).¹²⁰ In connection with the creation of these online record systems, the Bureau will coordinate with the Office of Management and Budget (OMB) to ensure compliance with all relevant federal rules and requirements, including the Paperwork Reduction Act of 1995.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

57. This *Order* contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA.¹²¹ OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,¹²² we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.¹²³ We describe impacts that might affect small businesses, which include most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) in Appendix B.

B. Congressional Review Act

58. The Bureau has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is "non-major" under the

¹¹⁸ 5 U.S.C. § 552a(a)(4).

¹¹⁹ *Id.* § 552a(a)(5).

¹²⁰ 44 U.S.C. Chap. 35.

¹²¹ 44 U.S.C. § 3507(d).

¹²² *See* 44 U.S.C. § 3506(c)(4).

¹²³ *Locations Adjustment Public Notice*, 33 FCC Rcd at 8627, para. 23.

Congressional Review Act.¹²⁴ The Bureau will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

59. The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”¹²⁵ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes on small entities. The FRFA is set forth in Appendix B.

V. ORDERING CLAUSES

60. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254, and the authority delegated in sections 0.91 and 0.291 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, and sections 1.1 and 1.427 of the Commission’s rules, 47 CFR §§ 1.1, 1.427, that this Order IS ADOPTED.

61. IT IS FURTHER ORDERED that, pursuant to section 1.103 of the Commission’s rules, 47 CFR § 1.103, this Order SHALL BECOME EFFECTIVE thirty (30) days after publication of the text or summary thereof in the Federal Register, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the Federal Register of OMB approval.

62. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

¹²⁴ 5 U.S.C. § 804(2)

¹²⁵ *Id.* § 603. The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

APPENDIX A

Stage	Deadline	Action
Participant Evidence Submission	The Bureau will announce a participant submission deadline after the release date of this Order; participants will have at least three months to submit information into the HUBB module.	Participants submit requisite information. Participants must also certify, under penalty of perjury, the completeness and accuracy of all information in their submission.
Prima Facie Determination and Publication of ELAP Map	60 days after Participant Submission Deadline	Bureau releases an order identifying, on a state-by-state basis, participant submissions that have met the prima facie evidence standard, and therefore, will be allowed to proceed; all other submissions will be dismissed. USAC populates an interactive, publicly available online map using location information reported by participants' successful submissions.
Stakeholder Challenge	90 days after Bureau Prima Facie Determination and Publication of ELAP Map	Stakeholder must pass an eligibility verification process, certify eligibility, sign a protective order, and submit challenge. Stakeholders must certify, under penalty of perjury, the truth and accuracy of information in the challenge. USAC will revise and populate the ELAP Map with certain stakeholder location information; relevant participants and stakeholders will be able to access this information, but this information will not otherwise be made publicly available. Participants must sign protective order.
Reply	30 days after Completion of Stakeholder Challenge	Challenged participants may reply to stakeholder information. Participants must certify, under penalty of perjury, the truth and accuracy of information in their reply.
Adjudication and Support Adjustments	Rolling Basis	Bureau releases order(s) determining whether and if so, the extent to which, an adjustment of a deployment obligation is warranted; the Bureau orders USAC to make pro-rata reductions to future support payments consistent with such decisions. Participants may reduce letter of credit consistent with such reductions.
Verification	Rolling Basis during Support Term	Bureau and USAC verify completeness of participant location information.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹²⁶ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Locations Adjustment Public Notice*.¹²⁷ The Bureau sought written public comment on the proposals, including comment on the IRFA.¹²⁸ The Commission received no comments in response to the IRFA.

A. Need for, and Objectives of this Order

2. In this Order, the Bureau is implementing a process, established by the Commission in its *Phase II Auction Reconsideration Order* for successful applicants for Phase II auction support, to modify defined deployment obligations where the number of locations within the applicant's relevant bid areas within the state falls short of the number of locations that the applicant must serve within eligible areas in the state.¹²⁹ Interested parties received notice and opportunity to comment on the Bureau's proposals for this process.¹³⁰

3. Pursuant to this process, a participant must submit into a module in the HUBB, location information describing the number of actual qualifying locations (and any additional prospective locations), a description of the methods it employed to identify all actual locations, and some additional supporting evidence to demonstrate that all actual locations were identified and reported. The Bureau will identify those participants that have met the prima facie standard for submitting a claim and will order the release of a limited amount of location information in a publicly available map. Outside parties will then use such information to determine whether they can and should submit challenges to specific claims for specific areas. As a condition of accessing relevant participant information and submitting a challenge, parties must demonstrate that they meet certain criteria and must sign a protective order. To make a successful challenge, challengers must submit information similar to the information submitted by participants, including location information, a method description, and some supporting evidence, although the requirements are less rigorous. Participants must also sign a protective order to access stakeholder information. They may then respond to the stakeholder's challenge. Based on the record, the Bureau will adjudicate participants' claims for relief based on a preponderance of the evidence standard, and where such standard has been met, reduce participants' obligations and support on a pro rata basis. Participants' information is subject to future verification.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the IRFAs that are relevant to the issues discussed here.

¹²⁶ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹²⁷ *Wireline Competition Bureau Seeks Comment on Procedures to Identify and Resolve Discrepancies in Eligible Census Blocks Within Winning Bid Areas*, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 8620 (WCB 2018) (*Locations Adjustment Public Notice*).

¹²⁸ *See id.* at 8632-43, App. A.

¹²⁹ *Connect America Fund*, WC Docket No. 14-259, Order on Reconsideration, 33 FCC Rcd 1380, 1390-92, paras. 23-28 (2018).

¹³⁰ *See Locations Adjustment Public Notice*, 33 FCC Rcd 8620.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.¹³¹

6. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to which the Procedures Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.¹³² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹³³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹³⁴ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹³⁵

8. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.¹³⁶ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹³⁷ These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.¹³⁸

9. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹³⁹

¹³¹ 5 U.S.C. § 604(a)(3)

¹³² *Id.* § 604(a)(3).

¹³³ *Id.* § 601(6).

¹³⁴ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹³⁵ 15 U.S.C. § 632.

¹³⁶ *See* 5 U.S.C. § 601(3)-(6).

¹³⁷ *See* SBA, Office of Advocacy, “Frequently Asked Questions, Question 1 – What is a small business?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹³⁸ *See* SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹³⁹ 5 U.S.C. § 601(4).

Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).¹⁴⁰

10. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁴¹ U.S. Census Bureau data from the 2012 Census of Governments¹⁴² indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁴³ Of this number there were 37, 132 General purpose governments (county¹⁴⁴, municipal and town or township¹⁴⁵) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts¹⁴⁶ and special districts¹⁴⁷) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000.¹⁴⁸ Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”¹⁴⁹

1. Wireline Providers

11. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments *primarily* engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”¹⁵⁰ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies

¹⁴⁰ Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccs.urban.org/sites/all/nccs-archive/html/tablewiz/tw.php> where the report showing this data can be generated by selecting the following data fields: Report: “The Number and Finances of All Registered 501(c) Nonprofits”; Show: “Registered Nonprofits”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results”.

¹⁴¹ 5 U.S.C. § 601(5).

¹⁴² See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Program Description Census of Government, <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#>.

¹⁴³ See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States., <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

¹⁴⁴ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

¹⁴⁵ See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/>

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having 1,500 or fewer employees.¹⁵¹ Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

12. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers and under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.¹⁵² U.S. Census data for 2012 show that there were 3,117 firms that operated that year. Of that total, 3,083 operated with fewer than 1,000 employees.¹⁵³ Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

13. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.¹⁵⁴ Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.¹⁵⁵ U.S. Census Bureau data indicate that 3,117 firms operated the entire year.¹⁵⁶ Of this total, 3,083 operated with fewer than 1,000 employees.¹⁵⁷ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.¹⁵⁸ Of this total, an estimated 1,006 have 1,500 or fewer employees.¹⁵⁹ Thus using the SBA's size standard the majority of incumbent LECs can be considered small entities.

14. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined

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[ORG07.US01](#). There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

¹⁴⁶ See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

¹⁴⁷ See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. The U.S. Census Bureau data did not provide a population breakout for special district governments.

¹⁴⁸ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38,266 special district governments have populations of less than 50,000.

¹⁴⁹ *Id.*

¹⁵⁰ U.S. Census Bureau, *NAICS Search*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁵¹ 13 CFR § 121.201 (NAICS Code 517311).

above. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁶⁰ U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.¹⁶¹ Based on this data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

15. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”¹⁶² The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.¹⁶³ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

16. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers.¹⁶⁴ The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.¹⁶⁵ U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire

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¹⁵² See *id.* § 121.201. The Wired Telecommunications Carrier category formerly used NAICS code 517110. As of 2017 the U.S. Census Bureau definition shows NAICS code 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

¹⁵³ See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

¹⁵⁴ See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

¹⁵⁵ *Id.*

¹⁵⁶ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517110.

¹⁵⁷ *Id.*

¹⁵⁸ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

¹⁵⁹ *Id.*

¹⁶⁰ 13 CFR § 121.201 (NAICS Code 517311).

¹⁶¹ See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

¹⁶² 5 U.S.C. § 601(3).

year.¹⁶⁶ Of that number, 3,083 operated with fewer than 1,000 employees.¹⁶⁷ According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.¹⁶⁸ Of this total, an estimated 317 have 1,500 or fewer employees.¹⁶⁹ Consequently, the Commission estimates that the majority of interexchange service providers that may be affected are small entities.

17. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁷⁰ According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees.¹⁷¹ Consequently, the Commission estimates that the majority of OSPs are small entities.

18. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁷² According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.¹⁷³ Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.¹⁷⁴ Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities.

19. *Local Resellers*. The SBA has developed a small business size standard for Telecommunications Resellers which includes Local Resellers.¹⁷⁵ The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services

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¹⁶³ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

¹⁶⁴ See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017, the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

¹⁶⁵ *Id.*

¹⁶⁶ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517110.

¹⁶⁷ *Id.*

¹⁶⁸ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

¹⁶⁹ *Id.*

¹⁷⁰ 13 CFR § 121.201, NAICS code 517311.

¹⁷¹ *Trends in Telephone Service*, tbl. 5.3.

¹⁷² See 13 CFR § 121.201, NAICS code 517911.

¹⁷³ See *Trends in Telephone Service* at Table 5.3.

(except satellite) to businesses and households.¹⁷⁶ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.¹⁷⁷ Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.¹⁷⁸ U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services during that year.¹⁷⁹ Of that number, all operated with fewer than 1,000 employees.¹⁸⁰ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.¹⁸¹ Of these, an estimated 211 have 1,500 or fewer employees.¹⁸² Consequently, the Commission estimates that the majority of Local Resellers are small entities.

20. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers which includes toll resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁸³ According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.¹⁸⁴ Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.¹⁸⁵ Consequently, the Commission estimates that the majority of toll resellers are small entities.

21. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁸⁶ U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.¹⁸⁷ According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of

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¹⁷⁴ See *id.*

¹⁷⁵ See 13 CFR § 121.201; NAICS Code 517911.

¹⁷⁶ U.S. Census Bureau, 2012 NAICS Definition, NAICS Code 517911 "Telecommunications Resellers," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2017+NAICS+Search&search=2017>.

¹⁷⁷ *Id.*

¹⁷⁸ 13 CFR § 121.201, NAICS code 517911.

¹⁷⁹ See U.S. Census Bureau, 2012 *Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517911 Telecommunications Resellers), https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517911.

¹⁸⁰ *Id.*

¹⁸¹ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

¹⁸² *Id.*

¹⁸³ See 13 CFR § 121.201, NAICS code 517911.

¹⁸⁴ See *Trends in Telephone Service* at Table 5.3.

¹⁸⁵ See *id.*

¹⁸⁶ See 13 CFR § 121.201, NAICS code 517311.

¹⁸⁷ See http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

other toll carriage.¹⁸⁸ Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.¹⁸⁹ Consequently, the Commission estimates that most Other Toll Carriers are small.

22. *800 and 800-Like Service Subscribers.*¹⁹⁰ Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁹¹ The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.¹⁹² According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736.¹⁹³ We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

2. Wireless Providers (Except Satellite)

23. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.¹⁹⁴ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.¹⁹⁵ For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.¹⁹⁶ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.¹⁹⁷ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

¹⁸⁸ See *Trends in Telephone Service* at Table 5.3.

¹⁸⁹ See *id.*

¹⁹⁰ We include all toll-free number subscribers in this category, including those for 888 numbers.

¹⁹¹ See 13 CFR § 121.201, NAICS code 517911.

¹⁹² See *Trends in Telephone Service* at Tables 18.7-18.10.

¹⁹³ See *id.*

¹⁹⁴ NAICS Code 517210. See U.S. Census Bureau, *American Fact Finder—About the Data*, <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.517210>.

¹⁹⁵ 13 CFR § 121.201 (NAICS code 517210).

¹⁹⁶ U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table (NAICS 51720, “Subject Series - Estab & Firm Size: Employment Size of Establishments for the U.S.: 2012”).

¹⁹⁷ Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

24. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that may be affected by our actions.¹⁹⁸ The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.¹⁹⁹ Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

25. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.²⁰⁰ The SBA has approved these definitions.²⁰¹

26. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite)²⁰² and the appropriate size standard for this category under the SBA rules is that such a business is small if it has 1,500 or fewer employees.²⁰³ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.²⁰⁴ Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more.²⁰⁵ Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.²⁰⁶ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.²⁰⁷ Therefore, more than half of these entities can be considered small.

¹⁹⁸ See FCC, *Universal Licensing System*, <http://wireless.fcc.gov/uls> (last visited June 20, 2017). For the purposes of this IRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

¹⁹⁹ *Trends in Telephone Service*, at tbl. 5.3.

²⁰⁰ *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

²⁰¹ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998).

²⁰² 13 CFR § 121.201, NAICS code 517210.

²⁰³ *Id.*

²⁰⁴ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (rel. Jan. 8, 2016), https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

²⁰⁵ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

²⁰⁶ See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

²⁰⁷ *Id.*

3. Broadband Internet Access Service Providers

27. Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers.²⁰⁸ Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.²⁰⁹ The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.²¹⁰ U.S. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.²¹¹ Consequently, under this size standard the majority of firms in this industry can be considered small.

28. The broadband Internet access service provider industry has changed since this definition was introduced in 2007. The data cited above may therefore include entities that no longer provide broadband Internet access service and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband Internet access service. We note that, although we have no specific information on the number of small entities that provide broadband Internet access service over unlicensed spectrum, we include these entities in our FRFA.

4. Satellite Telecommunications

29. This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”²¹² Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.²¹³ For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.²¹⁴ Of this total, 299 firms had annual receipts of less than \$25 million.²¹⁵ Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

5. Electric Power Generators, Transmitters, and Distributors

30. *Electric Power Generators, Transmitters, and Distributors.* The Census Bureau defines an industry group comprised of “establishments, primarily engaged in generating, transmitting, and/or

²⁰⁸ See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017, the U.S. Census Bureau definition show the NAICs code as 517311. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ U.S. Census Bureau, American Fact Finder (Jan. 08, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?%20pid=ECN_2012_US_51SSSZ2&prodType=table.

²¹² U.S. Census Bureau, 2017 NAICS Definitions, “517410 Satellite Telecommunications”; <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017>.

²¹³ 13 CFR § 121.201, NAICS code 517410.

²¹⁴ U.S. Census Bureau, 2012 *Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517410 https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517410.

²¹⁵ *Id.*

distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.²¹⁶ The SBA has developed a small business size standard for firms in this category: “A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.”²¹⁷ Census Bureau data for 2012 show that there were 1,1635 firms that operated for the entire year in this category.²¹⁸ Of these firms, 63 had 1,000 employees or more, and 1,572 had fewer than 1,000 employees.²¹⁹ Based on this data, a majority of these firms can be considered small.

6. All Other Telecommunications

31. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.²²⁰ This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.²²¹ Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.²²² The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of \$ 32.5 million or less.²²³ For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year.²²⁴ Of those firms, a total of 1,400 had annual receipts less than \$25 million and 42 firms had annual receipts of \$25 million to \$49, 999,999.²²⁵ Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

²¹⁶ U.S. Census Bureau, 2012 NAICS Definitions, “2211 Electric Power Generation, Transmission and Distribution,” <https://www.census.gov/econ/isp/sampler.php?naicscode=2211&naicslevel=4#> (last visited Aug. 31, 2018).

²¹⁷ 13 CFR § 121.201, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122, n. 1.

²¹⁸ See U.S. Census Bureau, American FactFinder, Utilities: Subject Series - Establishment and Firm Size: Summary Statistics by Revenue Size of Firms for the United States: 2012, NAICS code 221122, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/22SSSZ5//naics~2211 (last visited Aug. 31, 2018).

²¹⁹ See *id.*

²²⁰ See U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code “517919 All Other Telecommunications”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

²²¹ *Id.*

²²² *Id.*

²²³ See 13 CFR § 121.201, NAICS code 517919.

²²⁴ U.S. Census Bureau, 2012 *Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517919, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517919.

²²⁵ *Id.*

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

32. Commenters, including small entities, wishing to participate in this process would be required to comply with the listed reporting and evidentiary standards. Such standards include location information, methodology descriptions, and supporting evidence in specific formats. Such information must be submitted by specific deadlines. In addition, parties may file challenges if they submit information demonstrating that they qualify as a relevant stakeholder. Relevant stakeholder's challenges must include information like that submitted by the participant. Participants may reply to stakeholder challenges.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.”²²⁶

34. This process considers the resources available to small entities by permitting participants flexibility in choosing how to identify locations within eligible areas as well as discretionary control over the amount and nature of the supporting evidence that they will submit. Small entities may also present evidence regarding the available geocoding and other resources necessary to meet the Commission's prima facie evidentiary standards. Further, by participating in this process at the beginning of the term, small entities will be able to more effectively plan their network deployments.

G. Report to Congress

35. The Commission will send a copy of the Order, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the *Federal Register*.²²⁷

²²⁶ 5 U.S.C. § 603(c)(1)-(4).

²²⁷ *Id.* § 604(b).