January 9, 2020

FCC FACT SHEET*

Rural Digital Opportunity Fund

Report & Order – WC Docket Nos. 19-126, 10-90

Background: Bringing digital opportunity to Americans living on the wrong side of the digital divide continues to be the Commission's top priority. Without access to broadband, rural communities cannot connect to the digital economy and the opportunities it brings for better education, employment, healthcare, and civic and social engagement. In recent years, the Commission has made tremendous strides toward increasing the availability of broadband to all Americans, but more work remains. This Order would establish a new two-stage support mechanism—the Rural Digital Opportunity Fund—that would build on the success of 2018's CAF Phase II auction.

What the *Order* Would Do:

- Establish the Rural Digital Opportunity Fund, using competitive bidding to target up to $20.4 billion over ten years to support up to gigabit speed broadband networks in areas that lack access to 25/3 Mbps broadband service and connect the most Americans in a cost-effective manner;
- Allocate up to $16 billion in Phase I for support targeting census blocks that Commission data show are clearly unserved by 25/3 Mbps broadband service and at least $4.4 billion in Phase II for unserved locations in partially served census blocks and areas not won in Phase I;
- Encourage the deployment of networks that will stand the test of time, including those providing gigabit connections, by:
    - Increasing the minimum speed to 25/3 Mbps from the 10/1 Mbps used in the Connect America Fund Phase II auction;
    - Prioritizing support for services with faster speeds and low latency;
    - Once the reverse auction hits the clearing price, allocating support in each area to the bidder in the faster speed tier when there is more than one bid to serve that area;
- Require winning bidders in Phase I to offer the supported broadband and voice service to all eligible homes and small businesses within the awarded areas, subsequently identified by the Wireline Competition Bureau;
- Prioritize support going to areas entirely lacking even 10/1 Mbps broadband as well as rural Tribal areas.

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

In the Matter of	)	
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
Connect America Fund	)	WC Docket No. 10-90
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REPORT AND ORDER*

Adopted: [ ] **Released: [ ]**

By the Commission:

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* This document has been circulated for tentative consideration by the Commission at its January 2020 open meeting. The issues referenced in this document and the Commission's ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC's *ex parte* rules apply and presentations are subject to "permit-but-disclose" *ex parte rules*. *See, e.g.*, 47 CFR §§ 1.1200(a), 1.1206. Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. *See* 47 CFR §§ 1.1200(a), 1.1203.

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I. INTRODUCTION

1. Bringing digital opportunity to Americans living on the wrong side of the digital divide continues to be the Federal Communication Commission's top priority. It is imperative that the Commission take prompt and expeditious action to deliver on its goal of connecting all Americans, no matter where they live and work. Without access to broadband, rural communities cannot connect to the digital economy and the opportunities for better education, employment, healthcare, and civic and social engagement it provides.

2. In recent years, the Commission has made tremendous strides toward its goal of making broadband available to all Americans. But while the digital divide is closing, more work remains to be done. Therefore, in this Order, we adopt the framework for the Rural Digital Opportunity Fund. It builds on the successful model from 2018's Connect America Fund (CAF) Phase II auction, which allocated $1.488 billion to deploy networks serving more than 700,000 unserved rural homes and businesses across 45 states. The Rural Digital Opportunity Fund represents the Commission's single biggest step to close the digital divide by providing up to $20.4 billion to connect millions more rural homes and small businesses to high-speed broadband networks. It will ensure that networks stand the test of time by prioritizing higher network speeds and lower latency, so that those benefitting from these networks will be able to use tomorrow's Internet applications as well as today's.[1]

II. BACKGROUND

3. In the more than two decades since the Commission established the Universal Service Fund pursuant to Congress's directive, broadband has gone from being a luxury to a necessity integrated into nearly every facet of our economy and society. For that reason, the FCC comprehensively reformed the Universal Service Fund and Intercarrier Compensation systems to promote deployment of communications networks to those Americans who lack access to infrastructure capable of providing high speed broadband. In 2011, the Commission adopted a new universal service funding approach in areas served by the incumbent local exchange carriers, known as price cap areas, through a combination of a "new forward-looking model of the cost of constructing modern multi-purpose networks" and a competitive bidding process.[2] The Commission delegated to the Wireline Competition Bureau the task of

[1] Letter from Senator John Thune et al., U.S. Senate, to Ajit Pai, Chairman, FCC (Dec. 9, 2019) (on file in WC Docket No. 19-126) (emphasizing "the importance of sustainable networks that meet the needs of consumers now and in the future"); Letter from Peter Welch et al., Members of Congress, to Ajit Pai, Chairman, FCC (Dec. 13, 2019) (on file in WC Docket No. 19-126) (requesting "further steps be taken to promote the deployment of sustainable networks that are capable of meeting consumer demands now and into the future").

[2] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17725, para. 156 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

developing a specific engineering cost model that would estimate, at a granular level, the support needed to serve areas where costs are above a specified cost benchmark, but below an "extremely high-cost" benchmark.[3] In 2015, following the development of the Connect America Cost Model, the Commission provided the incumbent price cap carriers an opportunity to accept fixed support based on the Connect America Cost Model in exchange for defined deployment obligations in each state where they were providing service. Nine price cap carriers accepted over $1.5 billion in annual support to deploy broadband networks serving more than 3.6 million homes and businesses by the end of 2020 in 45 states and one U.S. territory.[4] In areas where the price cap carriers declined the model-based support, and for certain other high-cost areas nationwide, support was to be allocated through the subsequent CAF Phase II auction,[5] "a competitive bidding process in which all eligible providers [were] given an equal opportunity to compete."[6] The auction yielded 103 winning bidders, with the 10-year support amount totaling $1.488 billion and covering 713,176 locations in 45 states.[7] As of December 2019, the Commission has authorized the Universal Service Administrative Company (USAC) to obligate and disburse funding totaling about $1.2 billion over the ten-year term to support almost 550,000 locations in 45 states for which support was made available in the CAF Phase II auction.

4. Recognizing that market realities have changed since the CAF framework was first established in 2011, and that demand for greater speeds continues to grow, on August 2, 2019, the Commission proposed the Rural Digital Opportunity Fund, a reverse auction that would build on the success of the CAF II auction and bring broadband service to millions of Americans living in the areas that need it most.[8] To that end, we proposed to adopt a budget of at least $20.4 billion over the next ten years, to increase the minimum supported speed from 10/1 Mbps to 25/3 Mbps, to make eligible for the auction most areas that do not have an unsubsidized provider of 25/3 Mbps broadband, and to implement a framework that prioritizes faster broadband speeds of up to a gigabit per second.

III. DISCUSSION

5. To ensure continued and rapid deployment of broadband networks to unserved Americans, we establish the Rural Digital Opportunity Fund, which will commit up to $20.4 billion over the next decade to support up to gigabit speed broadband networks in rural America. We opt to allocate this funding through a multi-round, reverse, descending clock auction that favors faster services with lower latency and encourages intermodal competition in order to ensure that the greatest possible number of Americans will be connected to the best possible networks, all at a competitive cost. In light of the need to bring service both to consumers in areas wholly unserved by 25/3 Mbps, as well as those living in

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[3] *Id*. at 17725, paras. 156-57; *see also Connect America Fund et al.*, WC Docket Nos. 10-90 et al., 28 FCC Rcd 5301 (WCB 2013) (adopting cost model platform); *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., 29 FCC Rcd 3964 (WCB 2014) (finalizing cost model's engineering assumptions and adopting inputs).

[4] *FCC News Release*, August 27, 2015, https://www.fcc.gov/document/carriers-accept-over-15-b-support-expand-rural-broadband; *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17725, paras. 156-57.

[5] *See generally 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 (2016) (*CAF Phase II Auction Order and/or FNPRM*); *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, AU Docket No. 17-182, WC Docket No. 10-90, 33 FCC Rcd 1428 (2018) (*Auction 903 Procedures Public Notice*); *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 (WTB and WCB 2018) (*Auction 903 Closing Public Notice*).

[6] *USF/ICC Transformation Order*, 26 FCC at 17732, para. 178 (2011).

[7] *Auction 903 Closing Public Notice*, 33 FCC Rcd at 8257.

[8] *Rural Digital Opportunity Fund; Connect America Fund*; WC Docket Nos. 10-90, 19-126, Notice of Proposed Rulemaking, 34 FCC Rcd 6778 (2019) (*Rural Digital Opportunity Fund NPRM*).

areas partially served, we will assign funding in two phases: Phase I will target those areas that current data confirm are wholly unserved; and, Phase II will target unserved locations within areas that data demonstrates are only partially served, as well as any areas not won in Phase I. By relying on a two-phase process, we can move expeditiously to commence an auction in 2020 for those areas we already know with certainty are currently unserved, while also ensuring that other areas are not left behind by holding a second auction once we have identified any additional unserved locations through improvements to our broadband deployment data collection.[9]

6. The Rural Digital Opportunity Fund Phase I auction will make use of many of the rules that made the CAF Phase II auction a success, with some exceptions to account for the passage of time and other changed circumstances. Most importantly, in addition to the weighting of performance tiers and latency, we will assign support in the auction's clearing round to the bidder with the lowest weight. After the auction, we will require Phase I support recipients to offer the required voice and broadband service to all eligible homes and small businesses within the awarded areas, without regard to the number of locations identified by the Connect America Cost Model (CAM), and instead as determined subsequently by the Bureau. This approach differs from that used in the CAF Phase II auction, which tied the deployment and service obligations to a specific number of locations within awarded areas but allowed the recipients to demonstrate that their obligations should be reduced (along with a corresponding reduction in support) where there were fewer locations than the CAM specified. As discussed below, we will use the Commission's cost model and current data to establish initial service milestones and to monitor interim progress, but we emphasize that Phase I bidders will be competing for support amounts to offer service to *all* locations ultimately identified in an area, not just to the specific number of locations in that area identified prior to the auction, without adjusting awarded support amounts.

A. Term of Support

7. We adopt a term of support of 10 years for the Rural Digital Opportunity Fund. We believe that the stability of a 10-year term of support was partially responsible for the robust participation that occurred in the CAF Phase II auction. We expect that the same principles regarding encouraging long-term investments and auction participation will also apply to the Rural Digital Opportunity Fund.[10] Most commenters addressing this issue agree that a 10-year term of support will provide the certainty and stability needed to encourage broadband deployment in unserved and underserved locations and attract participation from a wide variety of participants.[11] Moreover, disbursing support over a 10-year term minimizes the impact on the contribution factor. We do not agree that adopting a 10-year term risks funding unsustainable projects, as one commenter suggests, because we expect bidders to seek sufficient support to build and maintain their network without an expectation of ongoing support after the 10-year support term expires.[12] Nor do we agree that bidders proposing 25/3 Mbps deployments should be offered only a five-year term.[13] First, given that bids will be weighted to prioritize faster services, we expect bidders seeking support for the 25/3 Mbps tier will win support only in areas where higher speeds

[9] *See, e.g., Establishing the Digital Opportunity Data Collection, Modernizing the FCC 477 Data Program*, WC Docket Nos. 19-195, 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, 34 FCC 7505 (2019) (*Digital Opportunity Data Collection NPRM*).

[10] *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6783, para. 15.

[11] *See, e.g.*, Utilities Technology Council (UTC) Comments at 5; ADTRAN Comments at 3; WISPA Comments at 7.

[12] *See* Pacific Dataport Comments at 14 (questioning whether a proposed buildout is sustainable if the Commission needs to offer a minimum 10-year support term).

[13] *See* Illinois Department of Innovation and Technology Comments at 7-8 (proposing accelerated deployment and a five-year term for bidders proposing 25/3 Mbps deployments). Moreover, recipients will be required to deploy all CAM locations within 6 years.

are not economical, and that a five-year term may simply increase the amount sought in order to recover the same amount of costs in a shorter timeframe. We also more generally find no benefit to having multiple terms of support within the same program.

B. Budget

8. We adopt our proposal to establish a budget of $20.4 billion for the Rural Digital Opportunity Fund. We also adopt our proposal to make available $16 billion for Phase I, and to make available for Phase II a budget based on the remaining $4.4 billion, along with any unawarded funds from Phase I.[14] We sought comment on whether we should reassess the adequacy of the budget after the Phase I auction.[15] Although commenters generally supported the proposed budget,[16] several commenters suggested that the size of the budget may be insufficient to serve all the unserved locations and supported reassessing the adequacy of the budget after Phase I.[17] We expect $16 billion to be sufficient, given the areas eligible for Phase I, to balance our objectives of encouraging robust competition for support below the reserve price and closing the digital divide. We agree that it may be appropriate after the Phase I auction, when we know the areas eligible for Phase II and how many unserved locations will be eligible for Phase II within those areas, to reassess the total amount of funds available for Phase II and expect to revisit this issue at that time.

C. Areas Eligible for the Phase I and Phase II Auctions

9. The Rural Digital Opportunity Fund will target support to areas that lack access to both fixed voice and 25/3 Mbps broadband services in two stages. For Phase I, we target census blocks that are wholly unserved with broadband at speeds of 25/3 Mbps. For Phase II, we target census blocks that we later determine through the Digital Opportunity Data Collection are only partially served, as well as census blocks unawarded in the Phase I auction.[18] Because we will have an additional opportunity to seek comment on how best to target Phase II support as we gather more granular data on where broadband has been actually deployed, we focus here on the areas eligible for Phase I of the auction.

10. A number of commenters support moving forward to the extent we can identify unserved areas using existing data.[19] We agree. We currently have the tools and the data to identify census blocks that are wholly unserved, and direct the Bureau to use the CAM with updated coverage data using the most recent publicly available FCC Form 477 data to identify census blocks that are unserved with broadband at speeds of at least 25/3 Mbps for the auction. The FCC Form 477 data has been criticized for identifying partially served blocks as "served," but we are not aware of cases in which the data have identified as "unserved" a census block that is in fact served.[20]

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[14] *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6783-84, paras. 16-17.

[15] *Id*. at 6784, para. 18.

[16] *See, e.g.*, Muscogee Comments at 1; ADTRAN Comments at 3; UTC Comments at 5.

[17] *See, e.g.*, USTelecom Comments at 34-36; CenturyLink Comments at 9; NRECA Comments at 4; U.S. Cellular Reply at 23. Although WISPA agrees the Commission should reassess its budget after Phase I, it suggests the proposed budget may overstate the amount of support necessary and argues the Commission should defer establishing a budget until it finalizes its rules. WISPA Comments at 7-8.

[18] *Establishing the Digital Opportunity Data Collection, Modernizing the FCC 477 Data Program*, WC Docket Nos. 19-195, 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, 34 FCC 7505 (2019).

[19] *See, e.g.*, CenturyLink Comments at 8 (arguing that it makes sense to move forward to the extent "wholly unserved" areas can be identified quickly using existing tools).

[20] There currently is no alternative source of publicly available nationwide broadband coverage data that the Commission could use to help ensure that support is not provided to overbuild areas where another provider already is providing voice and broadband service meeting the Commission's requirements.

11. We disagree with commenters who argue that the Commission should delay the auction until it has more granular data.[21] The primary shortcomings of FCC Form 477 data do not come into play under the two-phased framework we adopt here. Thus, we see no value in denying the benefits of broadband to those rural Americans we know lack service because there may be other unserved Americans living in other areas that we have not yet identified. Waiting for the availability of more granular data before moving forward would only further disadvantage those millions of Americans that we know do not currently have access to digital opportunity.

12. We direct the Bureau to compile a preliminary list of eligible areas for Phase I of the Rural Digital Opportunity Fund auction using the following methodology. First, we will include: (1) the census blocks for which price cap carriers currently receive CAF Phase II model-based support;[22] (2) any census blocks that were eligible for, but did not receive, winning bids in the CAF Phase II auction; (3) any census blocks where a CAF Phase II auction winning bidder has defaulted; (4) the census blocks excluded from the offers of model-based support and the CAF Phase II auction because they were served with voice and broadband of at least 10/1 Mbps; (5) census blocks served by both price cap carriers and rate-of-return carriers to the extent that the census block is in the price cap carrier's territory,[23] using the most recent study area boundary data filed by the rate-of-return carriers to identify their service areas and determine the portion of each census block that is outside this service area;[24] (6) any unserved census blocks that are outside of price cap carriers' service areas where there is no certified high-cost ETC providing service, such as the Hawaiian Homelands,[25] and any other populated areas unserved by either a rate-of-return or price cap carrier; and (7) any census blocks identified by rate-of-return carriers in their service areas as ones where they do not expect to extend broadband (as we did with the CAF Phase II auction).[26] Not included in these categories are census blocks where a winning bidder in the CAF Phase II auction is obligated to deploy broadband service,[27] and census blocks where a Rural Broadband

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[21] *See, e.g.*, U.S. Cellular Comments at 10-11; California PUC Comments at 3-5; WISPA Reply at 17-18; Windstream Reply at 4-5.

[22] We exclude areas served by price cap carriers in Alaska, Puerto Rico, and the U.S. Virgin Islands, all of which declined model-based support and for which the Commission has already adopted other programs to close the digital divide. *See generally ACS Phase II Service Obligations Order*, 31 FCC Rcd 12086; *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, 34 FCC Rcd 9109 (2019).

[23] *See Phase II Auction Order*, 31 FCC Rcd at 5972, para. 66 & n.133.

[24] We will include those price cap areas that are currently served by a rate-of-return carrier due to a transfer of control. *See, e.g.*, *Connect America Fund et al*, WC Docket No. 10-90 et al., Order, 31 FCC Rcd 10683 (WCB 2016) (granting study area waiver to Mutual Telephone Company of Sioux Center Iowa d/b/a Premier Communications and Winnebago Cooperative Telecom Association after acquisition of Consolidated Communications' company in Iowa (Heartland Communications Company of Iowa)).

[25] *See Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order on Reconsideration, FCC 18-172 (Jan. 3, 2019); *Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order, 31 FCC Rcd 12999 (2016). In 2015, the Commission directed USAC to withhold support from Sandwich Isles Communications due to its owner being convicted of federal tax fraud; since 2015, the Hawaiian Public Utilities Commission has not certified Sandwich Isles Communications per section 54.314(a), making it ineligible for high-cost support.

[26] *See Wireline Competition Bureau Releases Updated List of Census Blocks Eligible for the Connect America Phase II Support and Announces Deadlines for Certain Additional Updates in Price Cap and Rate-of-Return Areas*, Public Notice, 32 FCC Rcd 4775, 4778 (2017) (citing *2016 Rate-of-Return Reform Order*, 31 FCC Rcd 3087).

[27] Thus, we exclude the blocks where a winning bidder in the CAF Phase II auction is only obligated to deploy 10/1 Mbps (less than .3% of locations in the auction). *See Auction 903 Closing Public Notice*, 33 FCC Rcd at 8257, para. 1. We also exclude those areas awarded CAF Phase II support allocated through the New NY Broadband Program, as well as the other areas of New York eligible for funding through that program. *See Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Order, 32 FCC Rcd 968 (2017) (*New York Auction Order*). Any areas within a pending CAF Phase II or New NY Broadband Program long-form application

(continued….)

Experiment support recipient is obligated to offer at least 25/5 Mbps service over networks capable of delivering 100/25 Mbps.[28]

13. Second, we will exclude those census blocks where a terrestrial provider offers voice and 25/3 Mbps broadband service according to the most recent publicly available FCC Form 477 data.[29] In addition, we will exclude those areas awarded funding through the U.S. Department of Agriculture's ReConnect Program.[30] Although we sought comment on whether there are any other areas that we should include in the initial list of eligible areas, such as areas in legacy rate-of-return areas that are almost entirely overlapped by an unsubsidized competitor, we decline to expand the list of eligible areas at this time and instead focus Phase I on the known wholly unserved census blocks.[31]

14. After compiling the preliminary list of eligible areas, the Bureau will conduct a limited challenge process for the Rural Digital Opportunity Fund Phase I auction consistent with the process the Bureau used for the CAF Phase II auction.[32] Because there is an inevitable lag between the time when areas are served and the time that service is reflected in publicly available FCC Form 477 data, parties will be given an opportunity to identify areas that have subsequently become served, and the Bureau will have the opportunity to compare the preliminary list of eligible areas with the final list to identify any obvious reporting errors. We do not agree with commenters who argue that a limited challenge process is insufficient and that we should provide a "robust" challenge process to identify census blocks that are not actually served, and thus should be eligible for Phase I.[33] We find that such a challenge process would be administratively burdensome, time-consuming, and unnecessary. In a previous challenge process, the Commission found that it was very difficult to prove a negative – that is, that an area was not served.[34] We also note that in Phase II, any areas that are reported as served based on our current data but are ultimately deemed unserved will be eligible, and expect that Phase II will occur sooner if Phase I is not delayed by a more burdensome challenge process. We direct the Bureau to release a list and map of

(Continued from previous page)
that have not been authorized to receive support at the time the Bureau announces the final eligible areas list shall likewise be excluded from eligibility for the Rural Digital Opportunity Fund.

[28] Although much of this RBE deployment should be reflected in the FCC Form 477 data, because of the lag time between reporting and public release of the data, and because some support terms do not end until 2021, we do not want to fund overbuilds in these areas that will soon have better than 25/3 Mbps broadband service.

[29] The Commission defines an unsubsidized competitor as a "facilities-based provider of residential terrestrial fixed voice and broadband service that does not receive high-cost support." *USF/ICC Transformation Order*, 26 FCC Rcd at 17701, para. 103; *see also* 47 CFR § 54.5 (defining "unsubsidized competitor"). Whether or not a broadband provider offers voice is based on FCC Form 477 subscription data and determined at the state level. The subscription data are proprietary and the publicly available FCC Form 477 filers list indicates whether the filer provides local exchange telephone or interconnected VoIP service in a state. *See* https://www.fcc.gov/general/form-477-filers-state-0.

[30] *See* U.S. Dept. of Agriculture, Rural Development Broadband ReConnect Program, https://www.usda.gov/reconnect. We direct the Bureau to consult with the U.S. Department of Agriculture's Rural Utilities Service prior to publication of the final eligible areas and exclude any census blocks from eligibility for the Rural Digital Opportunity Fund Phase I that are substantially overlapped by a ReConnect awardee as of a date certain.

[31] *See December 2018 Rate-of-Return Order*, 33 FCC Rcd 11945-48, paras. 183-99.

[32] *See Phase II Auction Order*, 31 FCC Rcd 5969-70, para. 57; *Wireline Competition Bureau Releases Preliminary List and Map of Eligible Census Blocks for Connect America Fund Phase II*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 8870 (WCB 2016) (*Preliminary Phase II Auction Areas Public Notice*).

[33] *See* NTCA Comments at 36-39, ACA Connects Comments at 19.

[34] *See Phase II Auction Order*, 31 FCC Rcd at 5971, para. 58.

initially eligible census blocks based on the most recent publicly available FCC Form 477 data.[35] If more recent FCC Form 477 data is available when the Commission adopts the specific procedures for the Phase I auction, the Bureau should use the more recent data and publish a final list.[36]

15. CAF Phase II support was targeted to "census blocks where the cost of service is likely to be higher than can be supported through reasonable end-user rates alone" by using a cost benchmark that reflected the expected amount of revenue that could reasonably be recovered from end users.[37] In the CAF Phase II auction, we included high-cost areas where the CAM estimated the cost per location to exceed $52.50 per month. We depart from that decision here in the Rural Digital Opportunity Fund auction and we also will include some census blocks where the CAM suggests the costs of deployment are below that $52.50 high-cost threshold, but deployment has nonetheless not yet occurred. When we proposed including at least some low-cost blocks, then-current data indicated that 6.3 million locations with costs below a $52.50 per month benchmark still lacked 25/3 Mbps broadband (including 3.4 million locations that lacked even 10/1 Mbps broadband based on staff analysis of current FCC Form 477 data),[38] suggesting that potential end-user revenue alone had not incentivized deployment despite the model's predictions. Therefore, to encourage deployment of high-speed broadband in rural census blocks that are wholly unserved, we will use a lower funding threshold to include blocks where the CAM estimates the cost per location equals or exceeds $40 per month, rather than $52.50. Although some commenters do not agree with providing support in such lower cost areas,[39] we find that a modest reduction in the funding threshold is warranted given the number of census blocks where market forces alone have been insufficient to bring broadband to these areas.

16. To account for the unique challenges of deploying broadband to rural Tribal communities, we will use a funding threshold of $30 per month. This approach is consistent with the Tribal Broadband Factor established for Tribal areas for carriers that elected model-based rate-of-return support, which used a 25% decrease compared to the $52.50 benchmark.[40] Because we will use a $40 benchmark for the Phase I auction, the $30 benchmark for Tribal areas reflects a 25% decrease compared to the $40 funding threshold. Using a $30 funding threshold for census blocks in Tribal areas, in addition to including blocks below the $40 threshold, has the effect of increasing the reserve price in all Tribal areas by $10 per location.[41] Finally, to provide additional incentives in wholly unserved areas that even lack 10/1 Mbps, we also will use a $30 per month funding threshold in these areas. A number of

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[35] For example, the most recent publicly available FCC Form 477 was released on September 10, 2019, and reports deployment as of June 30, 2018.

[36] For the CAF Phase II auction, more recent FCC Form 477 data was available and the Bureau published an updated list. *See Eligible Census Block List Public Notice*, 32 FCC Rcd 10381; *Revised List and Map of Eligible Census Blocks for the Connect America Phase II Auction (Auction 903)*, AU Docket No. 17-182, WC Docket No. 10-90, 33 FCC Rcd 1166 (WCB 2018) (*Final Eligible Census Block List Public Notice*).

[37] *USF/ICC Transformation Order*, 26 FCC Rcd at 17728, para. 167; *CAM Inputs Order*, 29 FCC Rcd at 4040, para. 180.

[38] *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6796, para. 51.

[39] *See e.g.*, NTCA Comments at 19 (opposing including lower-cost census blocks in Phase I); ACA Comments at 21-22 (arguing that the Commission should hold off on lowering high-cost threshold until Phase II).

[40] *Connect America Fund et al.*, WC Docket No. 10-90 et al, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC Rcd 11893, 11910-11, paras. 55-56 (*December 2018 Rate-of-Return Order*).

[41] In addition, the capped support amount in Tribal areas will be $10 higher than the capped amount in areas using a $40 benchmark.

commenters agree that we should prioritize these areas,[42] and we find that an increased reserve price could encourage deployment in areas where rural consumers have been left behind.

D. Framework for Rural Digital Opportunity Fund Phase I

17. Consistent with the approach the Commission took in the CAF Phase II auction, we adopt a general auction framework and eligibility criteria in this Order and leave the specific procedures to be established as part of the pre-auction process, including determining auction-related timing and dates, identifying areas eligible for support, and establishing detailed bidding procedures consistent with this Order.

18. *Auction Framework*. For Phase I, we adopt a single nationwide, multi-round reverse auction with competition within and across eligible geographic areas to identify areas that will receive support and determine support amounts, as we did for the CAF Phase II auction. Our experience in the CAF II auction demonstrates that reverse auctions allow for market forces to maximize the impact of finite universal service resources while awarding support to those providers that will make the most efficient use of the budgeted funds.[43] Utilizing an auction mechanism will allow us to distribute support consistent with our policy goals and priorities in a transparent manner.[44] An auction provides a straightforward means of identifying those providers that are willing to provide voice and broadband at a competitive cost to the Fund, targeting support to prioritized areas, and determining support levels that awardees are willing to accept in exchange for the obligations we impose. Moreover, a reverse auction is consistent with our decision to provide support to at most one provider per area.[45]

19. Commenters broadly support the use of a reverse auction to distribute Rural Digital Opportunity Fund support. For example, commenters state that based on the success of the CAF Phase II auction, reverse auctions can be expected to produce robust deployment cost-effectively.[46] The Nebraska PSC, on the other hand, raised concerns that a reverse auction focuses on "the cheapest way to get to the minimum speed of a given speed tier to a coverage area" rather than "focusing on robust and scalable technology."[47] We disagree. As demonstrated in CAF Phase II, reverse auctions are the best available tool to achieve our overall goal of closing the digital divide in a transparent and efficient manner while maintaining fiscal responsibility and cost-effectiveness. Moreover, in most instances, CAF Phase II winning bidders agreed to provide a higher speed than the minimum; thus, we were able to push finite universal service support to many more locations at a much lower cost and higher speeds. We therefore maintain that a reverse auction is the most efficient means of awarding Rural Digital Opportunity Fund support, consistent with our goal of supporting the buildout of the best possible networks in the most cost-effective manner possible.

20. Similar to the CAF Phase II auction, we adopt an auction design in which bidders

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[42] *See, e.g.*, Pennsylvania PUC Comments at 17; WISPA Comments at 30-31, Colorado Broadband Office Reply at 2.

[43] *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1431, para. 2.

[44] *Phase II Auction Order*, 31 FCC Rcd at 5978-79, para. 88.

[45] *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1493, para. 200.

[46] *See, e.g.*, CPUC Comments at 8 (stating that "the reverse auction process has proven to produce more robust higher speed networks at lower deployment costs"); UTC Comments at 7 (agreeing with the Commission "that such an auction will help to promote efficient bidding, which should result in bids that significantly beat the budget, similar to what happened in CAF II"); Muscogee Comments at 2 (stating that it supports using a substantially similar reverse auction format as was used in CAF Phase II); WISPA Comments at 9 (supporting the Commission in "retain[ing] the same basic nationwide, multiple-round, descending clock auction design. . . [t]here is no reason for the Commission to depart from its proposal.").

[47] Nebraska PSC Comments at 5.

committing to different performance levels will have their bids weighted to reflect our preference for higher speeds, greater usage allowances, and lower latency. However, in addition to the weights for each performance tier and latency combination adopted below, we adopt bid processing procedures specific to the "clearing round" of the Rural Digital Opportunity Fund Phase I auction.[48] In the clearing round, the bidding system will take into account the combined performance tier and latency weight when assigning support to bidders competing for support in the same area at the base clock percentage.[49] Among other modifications to the procedures used in the CAF II auction, the bidding system will assign support to the bidder with the lowest performance tier and latency weight instead of, as was done in the CAF II auction, carrying forward all bids at the base clock percentage for the same area for bidding in additional clock rounds.[50] Bidding for an area will only occur in additional clock rounds after the clearing round if two or more bids were submitted with the same lowest performance tier and latency weight.

21. In the CAF II auction, the Commission adopted an auction that considered all bids simultaneously, "so that bidders that propose to meet one set of performance standards will be directly competing against bidders that propose to meet other performance standards."[51] In the Rural Digital Opportunity Fund auction, we will continue to accept bids committing to different performance levels. In Phase I, however, once the budget has cleared, we will prioritize bids with lower tier and latency weights, thereby encouraging the deployment of networks that will be sustainable even as new advancements are made and which will be capable of delivering the best level of broadband access for many years to come, all while keeping funding within the Phase I budget.[52] Although this approach could result in less intra-area competition after the clearing round in some areas, the auction will have selected the best possible service, at a competitive level of support, for the same number of consumers living in those areas, and this will result in more rapid and efficient funding for such deployment.[53] In other words, our goal to close the digital divide is balanced against our goal to support the deployment of future-proof networks by this auction.[54] Overall, we do not expect this approach to adversely impact competition.[55] We still will accept competitive bids proposing to offer performance that meets or exceeds the minimums at each

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[48] The budget is said to clear in the first round in which an estimated aggregate cost of bids at the current round's base clock percentage is less than or equal to the budget. This round is referred to as the "clearing round."

[49] *See, e.g.*, Conexon Comments at 8; Mississippi PSC Comments at 2; NRECA Comments at 9-10; Verizon Comments at 6; ILSR Comments at 2; NTCA Reply at 5; Corning December 20, 2019 *Ex Parte* Letter at 1.

[50] Details of the specific processing mechanism, as well as any associated changes to bidding procedures required based on this decision, will be considered during the pre-auction process.

[51] *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 84.

[52] *See Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6783, para. 15 (encouraging companies to "make the necessary long-term investments to build robust, future-proof networks"), and 6786, para. 25 ("recognizing that terrestrial fixed networks may serve as a backbone for 5G deployments").

[53] NRECA Comments at 9-10 (arguing awarding support to the lowest weight "does not affect the inter-area competition that drives the bidding until the budget clears"); Verizon Comments at 6 (arguing "the benefits of supporting the deployment of scalable, low-latency terrestrial broadband infrastructure outweigh the value of any further price competition from high-latency tier bidders"); NTCA Reply at 5 (arguing "the Commission would connect just as many Americans as it would if the auction were to continue thereafter – the only difference being that, with this approach, the Commission would [be] ensuring the best possible networks are built *to the same number of locations* for the available budget").

[54] *But see*, ACA Connects Reply at 12 (arguing the Commission should prioritize "the most efficient allocation" of support); Letter from Tom Stroup, President, Satellite Industry Association, to Marlene Dortch, Secretary, FCC (filed Jan. 7, 2020) (arguing the Commission should select "the most efficient provider" to serve each area).

[55] Letter from Matthew T. Murchison, Counsel for Viasat, Inc., to Marlene H. Dortch, Secretary, FCC, at 2 (filed Dec. 20, 2019) (noting that 99.99% of locations won by Viasat had no competing terrestrial bids in the clearing round).

performance tier and latency, but once the auction has identified those bids that are within the Phase I budget, we will prioritize selection of bidders that propose to offer the highest speeds, most usage, and lowest latency for each area.

22. We also adopt the same general competitive bidding rules, which allow for the subsequent determination of additional, specific final auction procedures based on additional public input during the pre-auction process, and the Commission will apply as appropriate any modifications to those rules that it may adopt.[56] Those competitive bidding rules, together with the additional rules we adopt today, will establish Rural Digital Opportunity Fund winning bidders' performance obligations, eligible areas, and post-auction obligations and oversight.[57] As it typically does for Commission auctions, the Commission will seek further comment on auction procedures at a future date, so we do not address the comments in this Order that speak to those issues.[58] A number of commenters propose specific changes to the auction that would be better evaluated during the process to develop detailed auction procedures.[59]

23. *Reserve Prices*. Consistent with the CAF Phase II auction procedures, we will use the CAM to establish area-specific reserve prices.[60] We make several adjustments to the Commission's approach in the CAF II auction to include some unserved areas that were excluded from the CAF Phase II auction and to potentially provide additional funding to extremely high-cost areas.[61] Specifically, we conclude it is appropriate to reduce the high-cost support threshold to $40 per location. We also increase

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[56] 47 CFR § 1, Subpart AA. In the *Phase II Auction Order*, the Commission provided some basic guidance on choosing an auction design furthering its objectives for CAF Phase II competitive bidding. *See, e.g., Phase II Auction Order*, 31 FCC Rcd at 5975-5977, para. 82-85. *See also Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1493-1512, paras. 199-288.

[57] *See, e.g.*, U.S. Cellular Reply at 22, n.67 (asserting that it agrees with USTelecom's argument that "[i]t is essential for the Commission to set clear obligations and rules for auction winners in advance of the auction"); Windstream Reply at 13 (encouraging the Commission to set clear and certain service requirements in advice of the auction so that providers can formulate their bids); *see also* Frontier Reply at 13 (stating that access to additional CAF Auction information would allow for meaningful comment on RDOF design and rules).

[58] *See Auction 903 Procedures Public Notice*, 33 FCC Rcd 1428 (2018).

[59] Several parties commented that rules affecting eligibility and activity should be more stringent to avoid behavior that is arguably anti-competitive. *See, e.g.*, Viasat Comments at 28-29 (recommending the Commission specify eligibility by area, rather than by state to prevent "insincere bids in the pre-clearing rounds"); Centurylink Reply at 5, Viasat Comments at 28 (each recommending the Commission prohibit bids by a single bidder that exceed the total Rural Digital Opportunity Fund budget); USTelecom Reply at 29-30, Appendix A (recommending modification to the information rule to avoid switching bids only intended to gather information on level of competition). Windstream Comments at 20, AT&T Reply at 16, n.70 (each recommending capping the total amount that a provider can bid based on the provider's annual revenues or its customer base); *but see* WISPA Reply at 39-40 (arguing capping bids based on annual revenues is anti-competitive and short-sighted). Commenters also suggested other modifications to bid processing procedures, including USTelecom Reply at 29-30, Appendix A (recommending the auction freeze clock prices for uncontested areas in package bids after the budget clears); *see also* UTC Reply at 5 (on an additional weighting factor); Viasat Reply at 23-24 (suggesting that weights be applied by multiplying the amount of the bid by a decimal value rather than by subtracting the weight). Finally, several parties asserted that the Commission should adopt procedures to ensure that a greater share of the budget is assigned under the auction. *See, e.g.*, Conexon Comments at 6; Adtran Reply at 1-2, n.2-5; CenturyLink Reply at 4; Viasat Comments at 27.

[60] *See* 47 CFR § 1.21003(c)(3). The Commission has the discretion to establish reserve prices, and prior to the auction, can establish those reserve prices, separate and apart from any maximum opening bids, and may elect whether or not to disclose those reserves; s*ee also Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1495, para. 210.

[61] We will set the reserve prices based on the recent A-CAM offering to rate-of-return carriers. *See December 2018 Rate-of-Return Order*, 33 FCC Rcd at 11900, para. 20.

the per-location support cap to $212.50.[62] This approach will add additional locations above the new threshold and increase inter-area bidding. Finally, we will prioritize areas entirely lacking 10/1 Mbps and Tribal areas by further lowering the funding threshold for such areas by 25%.[63]

24. The reserve price in each wholly-unserved, eligible census block will be equal to the average per-location cost of deploying and operating a network (as calculated by the CAM)[64] above the $40 support threshold and up to the per-location support cap of $212.50, multiplied by the number of locations in the block.[65] Lowering the support threshold from $52.50 to $40 per locations will provide support to unserved areas in which the CAM may be understating costs, while still being cognizant about not offering support in areas market forces alone are likely to extend broadband. The Commission previously determined that a CAM-calculated average per-location cost of $52.50 reflected an appropriate line between areas requiring support and those where market forces would be sufficient.[66] Where some areas have not yet seen unsubsidized deployment of broadband networks, it could be an indication that the assumptions underlying the CAM do not always reflect the reality facing service providers, and we now conclude it is appropriate to revisit the high-cost threshold. Likewise, we increase the per-location support cap to ensure that the highest-cost areas, many of which did not receive winning bids in the CAF II auction, will see sufficient interest from bidders in the Rural Digital Opportunity Fund. Thus, we will set the reserve price based on a lower support threshold of $40 for all areas and raise the per-location support cap from $146.10 to $212.50, ultimately helping promote participation and competition in the Rural Digital Opportunity Fund Phase I auction.[67]

25. Our goal with this auction is to target support and provide incentives to serve areas that are known to currently lack service at speeds of at least 25/3 Mbps. Whereas the CAF Phase II auction targeted support to high-cost areas where the incumbent price cap carrier declined the offer of model-based support and extremely high-cost areas nationwide, here we expand our focus to include certain areas that remain unserved despite being identified by the CAM as lower cost. As we stated in the *NPRM*, the new lower support threshold of $40 will ensure that only census blocks above the new support

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[62] The CAM contains two modules. The first is a cost module that calculates costs for all areas of the country. The second module of CAM is the support module, which calculates the support for each area based on those costs, or, in this case, the reserve price allocation. In the CAF Phase II auction, the Commission capped the amount of support per location provided to extremely high-cost census blocks. *CAF Phase II Auction Order*, 31 FCC Rcd at 5979, para. 90. We therefore decline WVBC's suggestion that instead of the high-cost and extremely high-cost thresholds based on the CAM, the Commission instead should base the threshold on affordability benchmarks using the Median Household Income from the U.S. Census Bureau's most recent American Community Survey data, when the Commission already has a robust cost model that calculates both the cost to deploy and includes certain revenue assumptions. *See* WVBEC Comments at 9-10.

[63] *Wireline Competition Bureau Announces Alternative Connect America Cost Model II Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 2868 (WCB 2019).

[64] Several commenters support using the CAM to determine reserve prices. *See, e.g.*, ACA Connects Comments at 23-24; Muscogee Comments at 7-8; NRECA Comments at 12; NTCA Comments at 18; UTC Comments at 16. *But see* USTelecom Comments at 9 (arguing that the CAM is out of date because the location counts have changed).

[65] 47 CFR § 1.21003(c)(3).

[66] *December 2018 Rate-of-Return Order*, 22 FCC Rcd at 11898, 11900, paras. 14, 20-22.

[67] *See also* NRECA Comments at 11 (stating "[t]he increase in the extremely high cost threshold is important for census blocks and bidding areas having a blend of high cost and extremely high cost locations."). Verizon disagrees with increasing the per-location support cap for extremely high-cost areas, arguing as it would limit the reach of the program by spending more support on fewer locations that are more expensive to serve. Verizon Comments at 10. *But see* NCTA Reply at 8-9 (disagreeing with Verizon that the Commission should limit the amount of support available for the most expensive to serve parts of the country).

threshold will be eligible for the auction.[68] Buckeye Hills Regional Council asserts that the Commission should lower the cost threshold to $20 for difficult to serve parts of the country such as Appalachia.[69] However, lowering the threshold any further than $40 would provide more support than needed and many locations could be included that are more likely to be served without universal service support.

26. Certain commenters oppose including unserved low-cost census blocks in Phase I of the auction,[70] raising concerns that the auction would shift funding to more densely populated areas at the expense of more rural consumers and census blocks.[71] We note that these areas remain unserved, despite being identified as low cost by CAM more than five years ago. Moreover, we are lowering the support threshold in all eligible census blocks, thereby increasing reserve prices (and potentially available support) throughout. We decline to adopt NCTA's proposal to reduce the cost threshold only to account for the costs of upgrading an already deployed network capable of providing 10/1 Mbps to one capable of providing 25/3 Mbps," to "ensure the . . . fund does not . . . pay more than necessary to serve these areas."[72] We disagree. NCTA's approach focuses on areas that already have 10/1 Mbps but not 25/3 Mbps and presumes that the existing provider would be the auction winner. While an existing provider should in many cases be able to seek less support from the auction in order to upgrade existing facilities, it may ultimately be more efficient for a new provider to serve that same biddable unit with new facilities, in addition to serving neighboring areas that lack 10/1 Mbps broadband services.

27. We also adopt our proposal in the *NPRM* to prioritize census blocks that lack 10/1 Mbps over eligible census blocks that have 10/1 Mbps service, but lack service at 25/3 Mbps based on Form 477 data. Specifically, we accomplish this by reducing the support threshold for such census blocks by an additional 25% to $30, which will have the effect of raising the support cap for these blocks to $222.50. Some commenters support prioritizing areas that lack 10/1 Mbps and some suggest the reserve prices in such areas should be increased to incentivize bidders in those areas.[73] USTelecom opposes focusing first on areas that lack 10/1 Mbps stating that it would be difficult to implement "absent mapping" and due to ongoing CAF Phase II deployment.[74] Pacific Dataport objects to a 10/1 Mbps prioritization and argues it is a "desperate attempt to force-fit a terrestrial solution whether or not the economics make sense."[75] We

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[68] *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6798, para. 57.

[69] *See* Buckeye Hills Council Comments at 15. *See also* ITTA Comments at 13-14 (asserting that the Commission should set the reserve price based on a $30 eligibility threshold incentivizing providers to include these unserved census blocks in their bids, reflecting a more realistic view of take rates, for 25/3 in rural areas).

[70] *See* ACA Comments at 18 (stating that the Commission should "only consider lowering the high-cost threshold in later rounds to provide funding to areas where potential end-user revenue alone has not sufficiently incentivized deployment."); NTCA Comments at 19 (recommending against including low-cost census blocks in Phase I of the auction).

[71] *See* NTCA Comments at 19, 33-34.

[72] *See* NCTA Comments at 3-4.

[73] Geolinks Comments at 2-3 (stating that supporting the idea of higher reserve prices and/or additional bidding credits for areas that entirely lack 10/1 Mbps or better fixed service and would support a separate auction phase to encourage rapid deployment in these areas); NCTA Comments at 2-3 (suggesting that the Commission increase the reserve price by a certain percentage to encourage providers to bid in areas that lack 10/1 Mbps); UTC Comments at 16 (supporting prioritizing areas that entirely lack 10/1 Mbps or better fixed service, increasing the reserve price by 10% for these areas); PennPUC Reply at 6 (stating that it is imperative that the Commission ensure that areas lacking 10/1 Mbps service will be prioritized and supports a 10% increase in the reserve price for these areas).

[74] USTelecom Comments at 43. Other commenters also oppose prioritizing 10/1 Mbps. *See, e.g.*, NTCA Comments at 19 (urging the Commission to "refrain at this time from increasing the reserve price to funnel support specifically toward areas that appear to be lacking 10/1 Mbps broadband.").

[75] Pacific Dataport Comments at 16.

disagree with both commenters. As stated above, we have the data to identify census blocks that are wholly unserved by broadband speeds of at least 10/1 Mbps and are not aware of cases where Form 477 data have identified as "unserved" a census block that is in fact served.[76] One of the Commission's goals in this proceeding is to provide incentives to serve locations that lack any terrestrial option. Prioritizing areas that lack 10/1 entirely is consistent with our statutory mandate that such services are deployed to areas lacking broadband and makes sure this auction does not leave on the wrong side of the digital divide those areas lacking even basic broadband access.[77]

28. For Tribal areas, we similarly adopt the Tribal Broadband Factor as a 25% decrease, to $30, of the support threshold applied to Tribal areas.[78] More specifically, with regard to census blocks located within the geographic area defined by the boundaries of the Tribal land,[79] all eligible census blocks for which the CAM-derived cost is more than $30 will be included in the auction, and the reserve price for such blocks will be the CAM-derived cost minus $30, up to a per-location support cap of $222.50. We recognize the difficulty Tribal lands have faced in obtaining broadband deployment, and by incorporating this Tribal Broadband Factor, we seek to incentivize network buildout to ensure that Tribal Nations and their members obtain access to advanced communications services.[80] The record before us provides ample support for adopting a 25% decrease of the cost benchmark to incentivize Rural Digital

[76] *See supra* para. 10.

[77] 47 U.S.C. § 254(b). The Universal Service Fund's goal is that "access to advanced telecommunications and information services should be provided in all regions of the Nation."

[78] With this, we conclude our statutory obligation to complete a proceeding to address unserved Tribal areas by September 2020. *See Consolidated Appropriations Act*, 2018, Pub. L. No. 115-141, Div. P—RAY BAUM'S Act of 2018, § 508(a)(1), 132 Stat. 348, 1095-96 (2018) (RAY BAUM'S Act of 2018) (directing the Commission to conduct a proceeding to address unserved Tribal areas); *see also Report on Broadband Deployment in Indian Country, Pursuant to the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018* (CGB/WCB/WTB rel. May 1, 2019), available at https://docs.fcc.gov/public/attachments/DOC-357269A1.pdf (Tribal Broadband Report); *Wireline Competition Bureau Announces Alternative Connect America Cost Model II Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 19-372 (WCB 2019).

[79] Consistent with past precedent in the high-cost program, "Tribal lands" include any federally recognized Indian tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlements Act (85 Stat. 688), and Indian Allotments, as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, Act July 9, 1921, 42 Stat. 108, et seq., as amended. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17711, n.197. This definition was adopted in that Order for purposes of the comprehensive reforms adopted to the high-cost program. *Id.* It was also used for the Tribal Mobility Fund Phase I. *Id.* at 17819-20, paras. 481-483. Carriers serving Alaska Native regions will not be eligible to obtain additional support under the measures adopted today, however, because the Commission has already established a separate plan tailored to meet the needs of carriers serving Alaska. *See Alaska Plan Order*, 31 FCC Rcd at 10139 (2016). *See Lifeline & Link Up Reform & Modernization*, WC Docket Nos. 11-42, 09-197, 10-90, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7903, para. 257 (2015).

[80] *See CAF Phase II Auction Order*, 31 FCC Rcd at 6026, para. 225. *See also Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080-81 (2000). *See also Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12212-15, paras. 4-11 (*2000 Tribal Order*); *see generally Improving Communications for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672 (2011) (*Native Nations NOI*) (reviewing Commission actions regarding Native Nations).

Opportunity Fund participants to bid on and serve rural Tribal census blocks.[81] A Tribal Broadband Factor will attach to the eligible Tribal areas, and thus reflect the additional cost of serving Tribal lands.[82]

29. *Bidding Credits*. We decline to adopt bidding credits for offsetting bidding weights or committing to certain buildout requirements, as proposed by some bidders.[83] Adopting bidding credits to reward bidders for simply having met prior regulatory obligations, for example, would be contrary to the competitive nature of the auction, and, could ultimately reduce the potential reach of the Rural Digital Opportunity Fund. While we decline to adopt a Tribal bidding credit, above, we have incorporated into the reserve prices for Tribal lands a Tribal Broadband Factor,[84] similar to what the Commission previously incorporated into the recent offer of model-based support to rate-of-return carriers serving Tribal lands, which will reflect the higher costs unique to deploying service on Tribal lands that may not otherwise already be included in the CAM, and satisfy our goal of bridging the digital divide.[85]

30. *Minimum Geographic Area for Bidding.* We conclude that the minimum geographic area for bidding will be no smaller than a census block group, as identified by the U.S. Census Bureau, containing one or more eligible census blocks.[86] As we determined in the *CAF Phase II Procedures PN*, using census block groups ensures that all interested bidders, including small entities, have flexibility to

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[81] *See, e.g.*, Muscogee Comments at 8-9 (stating that it supports prioritizing areas where broadband is significantly lacking, and support should be particularly geared to Tribal lands); Sacred Wind Comments at 9 (asserting that it supports the Tribal Broadband Factor to assist with the "unique challenges of deploying to rural Tribal communities"); WTA Comments at 22 (agreeing that the Commission should implement the Tribal Broadband Factor); NTTA Reply at 4, n.11-12 (asserting that the "[Tribal Broadband Factor] will serve to enhance the opportunities for carriers serving Tribal areas to participate in the auctions and, presumably, bring broadband services to areas currently lacking access."); *see also* CPUC Comments at 10 (expressing support for a 35% bidding credit for rural Tribal areas); CEFT Comments at 15-16 (supporting a Tribal bidding credit between 25 percent and 50 percent for less densely populated Tribal lands); Milan Mitra Express Comment (stating that the Rural Digital Opportunity Fund should carve out some of its funding for reservations); UTC Comments at 16 (asserting that it supports a 25% bidding credit for rural Tribal areas); Navajo Nation Reply at 8-9 (asserting that a 35 percent Tribal bidding credit is necessary for Tribal lands).

[82] *See* Internet Society Comments at 4 (asserting that an issue with the bidding credit process is that it "may allow non-Tribal carriers to work with a tribe to provide services without any explicit guarantee of Tribal partnership.").

[83] *See, e.g.*, Viasat Comments at 28 (stating that "the Commission could also consider a mechanism that would credit bidders for coverage in a manner that could offset penalties associated with speed and latency."); WISPA Comments at 15 (asserting that "the Commission could award a bidding credit to a bidder that agrees to accelerated buildout"); WTA Comments at 6-7 (proposing the grant of a substantial 25% RDOF bidding credit to existing CAF support recipients that have met their build-out requirements under the current support mechanism). *But see* ACA Connects Reply at 13 (opposing WTA's proposal of 25% bidding credit for incumbent model-based price cap carriers as it contradicts the auction's competitive bidding goals); NCTA Reply at 4-5 (asserting that it does not support WTA's preferential treatment proposal of a 25% bidding credit for incumbent LECs) *and* Windstream Reply at 11 (disagreeing with WISPA that bidding credits could be given to bidder agreeing to accelerate buildout).

[84] *See* CPUC Comments at 10 (supporting a 35% bidding credit for rural Tribal areas); CEFT Comments at 15-16 (supporting a Tribal bidding credit between 25% and 50% for less densely populated Tribal lands); UTC Comments at 16 (supporting a 25% bidding credit for rural Tribal areas); Navajo Nation Reply at 8-9 (asserting that a 35% Tribal bidding credit is necessary for Tribal lands). *But see* Internet Society Comments at 5 (asserting that an issue with the bidding credit process is that it "may allow non-Tribal carriers to work with a tribe to provide services without any explicit guarantee of Tribal partnership").

[85] *See Wireline Competition Bureau Announces Alternative Connect America Cost Model II Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 2868 (WCB 2019).

[86] A census block group is a cluster of census blocks having the same first digit of their four-digit identifying numbers within a census tract.

design a network that matches their business model and the technologies they intend to use.[87] Nevertheless, as the Commission did in the CAF Phase II auction, we reserve the right to select census tracts, or other groupings of areas, when we finalize the auction design if necessary to limit the number of discrete biddable units.[88] While some commenters support bidding based on eligible census blocks,[89] we decline to adopt individual census blocks as the minimum geographic area for bidding because of the significantly larger number of eligible census blocks, increasing the complexity of the bidding process both for bidders and the bidding system and minimizing the potential for broad coverage by winning bidders.[90] Furthermore, using census blocks as the minimum geographic area could create more challenges for providers in putting together a bidding strategy that aligns with their intended network construction or expansion.[91]

E. Deployment Obligations

1. Public Interest Obligations

31. We adopt technology-neutral standards for voice and broadband services supported by the Rural Digital Opportunity Fund, based on our experience in the CAF Phase II auction and its success in awarding support to a variety of service providers to deploy broadband in unserved rural areas, and consistent with long-standing Commission policy.[92] Specifically, we will permit bids in four performance tiers, and for each tier will differentiate between bids that would offer either low or high latency service. The Minimum performance tier means 25/3 Mbps with a usage allowance that is the greater of 250 GB per month or the average usage of a majority of fixed broadband customers as announced by the Bureau on an annual basis;[93] the Baseline performance tier means 50/5 Mbps speeds with a 250 GB monthly

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[87] Many commenters support the use of census blocks groups as an appropriate minimum bidding unit for the Rural Digital Opportunity Fund. *See, e.g.*, ITTA Comments at 6-7; NTCA Comments at 16-18; NRECA Comments at 12; Sacred Wind Comments at 2; ILSR Reply at 10; GVNW Reply at 4-5; NTCA Reply at 23; WISPA Reply at 22, n.57. *Phase II Auction Order*, 31 FCC Rcd at 5979, para. 89. *See also* Geolinks Comments at 8-9 (supporting the idea of a larger geographic unit such as census tracts).

[88] *Phase II Auction Order*, 31 FCC Rcd at 5979, para. 89. *See also* Geolinks Comments at 8-9 (supporting the idea of a larger geographic unit such as census tracts).

[89] *See, e.g.*, UTC Comments at 7-8 (stating that establishing a smaller bidding unit will help promote competition and "provide a more level playing field for smaller entities to bid against larger entities"); ACA Comments at 3, 5, 9-12 (stating that census block bidding "would further maximize participation by service providers, increasing competition and the overall cost-effectiveness of the program"); Internet Society Comments at 3 (arguing that "[l]arger geographic units may make it more difficult for small and rural providers to apply for funding because they may have less specific broadband access data."); Navajo Nation Reply at 5 (stating that the Commission should use "the smallest manageable areas to auction," which will help focus on "truly unserved areas"); Windstream Reply at 9-11 (asserting that census blocks would maximize auction participation and network deployment to unserved areas); WTA Reply at 14-15 (stating that it supports "census blocks because they are more likely to encourage small existing broadband service providers to bid for areas on the edges of their existing service territories.").

[90] *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1436-1437, para. 18. *But see* UTC Comments at 8 (asserting that the auction software should be capable of allowing bidders to bid for census blocks).

[91] *See Phase II Auction Order*, 31 FCC Rcd at 5979, para. 89

[92] *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8799-8803, paras. 43-51 (adopting universal service principles identified in section 254(b) of the Act and the additional principle of competitive neutrality, which includes technological neutrality) (*Universal Service First Report and Order*) (subsequent history omitted).

[93] *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6785-86, para. 23; *see also WCB and OEA Announce Results of 2020 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers*, WC

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usage allowance or a monthly usage allowance that reflects the average usage of a majority of fixed broadband customers as announced by the Bureau on an annual basis, whichever is higher;[94] the Above-Baseline performance tier means 100/20 Mbps speeds with 2 TB of monthly usage; and the Gigabit performance tier means 1 Gbps/500 Mbps speeds with a 2 TB monthly usage allowance. We adopt 250 GB as the minimum monthly usage allowance for the Baseline performance tier rather than the 150 GB as proposed because based on Measuring Broadband America October 2018-September 2019 usage data, the average monthly usage for fixed broadband customers is 251.45 GBs per month.[95]

32. Low or high latency bids will be required to meet the same latency requirements as the CAF Phase II auction high and low latency bidders. Low latency means 95% or more of all peak period measurements of network round trip latency are at or below 100 milliseconds,[96] and high latency means 95% or more of all peak period measurements of network round trip latency are at or below 750 milliseconds and a demonstration of a score of 4 or higher using the Mean Opinion Score with respect to voice performance.[97]

33. We maintain a Minimum performance tier for the Rural Digital Opportunity Fund but increase the speed from 10/1 Mbps to 25/3 Mbps. In the CAF Phase II auction, winning bids in a Minimum performance tier, which required only 10/1 Mbps broadband, covered less than 1% of locations awarded support. The record generally supports eliminating the 10/1 Mbps performance tier.[98] Although Navajo Nation and the NNTRC request that the Commission establish a 10/1 Mbps bidding tier for Indian Country because costs of deploying 25/3 Mbps on reservations may discourage bidders, they provided no specific, detailed information about differences in cost.[99] Moreover, allowing another performance tier only in certain areas would complicate the bidding system and we believe the Tribal Broadband Factor will be sufficient to increase support on Tribal lands and incent providers to bid on Tribal lands.

34. Some commenters argue that a Baseline tier of 25/3 Mbps is too low and the Commission should establish a higher speed tier as the minimum eligible for the auction, or that bidders proposing 25/3 Mbps should be required deploy to all locations in three years and receive only five years of support.[100] Although we have a preference for higher speeds, we recognize that some sparsely populated

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Docket No. 10-90, Public Notice, DA 19-1237, at 4 (WCB rel. Dec. 5, 2019) (*2020 Urban Rate Survey Public Notice*) (announcing minimum usage allowance of 250 GB).

[94] Letter from John Badal, Sacred Wind, Steve Coran, WISPA, Mary Henze, AT&T, Ted Osborn, Nextlink, Michael Saperstein, USTelecom, Nicole Tupman, Midco, Thomas Whitehead, Windstream, to Marlene H. Dortch, Secretary, FCC (Dec. 13, 2019) (50 Mbps Tier Coalition Ex Parte).

[95] *See 2020 Urban Rate Survey Public Notice* at 2; RDOF NPRM, 34 FCC Rcd at 6785, para. 23.

[96] *Phase II Auction Order*, 31 FCC Rcd at 5960, para. 29.

[97] *Id*. at 5960-61, para. 30; *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509, 6525-26, paras. 44-46 (WCB/WTB/OET 2018) (*CAF Performance Measurements Order*); *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, FCC 19-104, paras. 27-38 (Oct. 31, 2019).

[98] *See, e.g.*, Muscogee Comments at 3; Big River Communications Comments at 2, California Internet d/b/a Geolinks Comments at 2; UTC Reply Comments at 5 (recommending increasing baseline tier to 100/20 Mbps); Institute for Local Self-Reliance Comments at 3 (arguing that the minimum proposed speed of 25/3 Mbps is too low); FiberRise Reply Comments at 3 (arguing 25/3 Mbps networks will be "woefully obsolete").

[99] Navajo Nation and NNTRC Comments at 7-8.

[100] *See, e.g.*, Illinois Department of Innovation and Technology Comments at 4-8 (arguing minimum should 100/20 Mbps or accelerated deployment if Commission retains 25/3 Mbps); UTC Comments at 9-10 (recommending increasing Baseline performance tier to 100/20 Mbps and Above Baseline to 250/50 Mbps); Institute for Local Self-Reliance Comments at 3 (arguing Baseline should be closer to what Canada has adopted at 50/10 Mbps); WTA Comments at 10-11 (recommending evolving baseline tier of 25/3 Mbps years 1-5, and 50/6 Mbps, years 6-10).

areas of the country are extremely costly to serve and providers offering only 25/3 Mbps may be the only viable alternative in the near term.[101] Accordingly, we decline to raise the required speeds in the Minimum tier and we are not persuaded that bidders proposing 25/3 Mbps should be required to build out more quickly or have their support term reduced by half.

35. Several others argue that the Commission should include a fourth performance tier between the Minimum and Gigabit tiers, some suggesting a tier between 25/3 Mbps and 100/20 Mbps, and others suggesting a tier between 100/20 Mbps and the Gigabit tier.[102] We agree, and accordingly, add an additional performance tier. We find that allowing bidders to offer 50/5 Mbps service is "critical to reaching the truly high-cost areas in a cost effective way" while meeting the "immediate broadband needs" of consumers today.[103] Adding a performance tier at 50/5 Mbps furthers our goal of incentivizing providers to deploy networks that will deliver services that consumers need today as well as in the future, but also ensures Minimum speed service will be available in the hardest to serve areas.

36. We decline to make any modifications to our two latency tiers. Some commenters propose a third, very low latency tier.[104] Commenters have provided no persuasive evidence that suggests technologies meeting latency standards below 100 milliseconds would have such a material benefit for consumers when compared to services meeting our existing long-standing low latency requirements that we should potentially divert support to those lower latency technologies and would not expect consumers to notice the lower latency that would make it worth weighting the auction differently. We note that providers are encouraged to offer service that improves upon our minimum tier thresholds.

37. Satellite providers argue that our existing latency tiers do not account for satellites capable of providing lower latency, and that the high latency weight discourages hybrid networks. SES Americom, which offers middle-mile capacity on its satellites to telecommunications carriers, argues its satellites can provide broadband service with a latency between 120 milliseconds and 150 milliseconds.[105] Viasat and Hughes ask that we permit a provider to qualify at the low-latency weight if it demonstrates a mean opinion score of 4 or more for VoIP service and routes latency-sensitive traffic over links in which 95% or more of all peak period measurements of network round trip latency are at or below 100 milliseconds.[106] Although lower earth orbit satellites and hybrid satellite technologies have the potential to deliver high-speed broadband to previously unserved rural areas, these technologies have not been

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[101] *See, e.g.*, Letter from Mike Saperstein, Vice President, Policy& Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, Wc Docket Nos. 19-126, 10-90 (filed Jan. 3, 2020) (USTelecom Jan. 3, 2020 *Ex Parte* Letter).

[102] *See, e.g.*, NTCA Comments at 7 (proposing 500/100 Mbps tier); Sacred Wind Comments at 6 (proposing 50/6 Mbps tier); NRECA Comments at 6 (proposing 100/100 Mbps tier); AT&T Reply at 11 (supporting proposal for 50/6 Mbps tier); MidContinent Comments at 7-9 (supporting 50/5 Mbps tier); WISPA Reply (supporting addition of 50/5 Mbps tier); Letter from Mike Saperstein, Vice President, Policy & Advocacy USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-126 at 5 (filed Nov. 29, 2019) (USTelecom Nov. 29, 2019, *Ex Parte* Letter) (supporting 50/5 Mbps tier and 100/10 Mbps instead of 100/20 Mbps).

[103] 50 Mbps Tier Coalition Ex Parte at 1.

[104] NRECA Comments at 7 (proposing very low 50 ms latency tier and decreasing high latency threshold from 750 ms to 600 ms; WTA Comments at 16 (proposing very low 25 ms latency tier).

[105] *See* SES Americom Comments at 5 (arguing its satellites can provide broadband service with a latency between 120 and 150 ms); *see also* OptimERA Reply at 2 (arguing Commission fails to justify 100 ms latency requirement).

[106] *See* Viasat Comments at 24-27; Hughes Reply at 7-8; SES Americom Comments at 5 (arguing its satellites can provide broadband service with a latency between 120 and 150 ms); Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes Network Systems, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-126 et al., (filed Dec. 11, 2019); Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes Network Systems, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-126 et al., (filed Nov. 18, 2019); *see also* OptimERA Reply at 2 (arguing Commission fails to justify 100 ms latency requirement).

deployed widely to deliver service to residential consumers; therefore, it would be premature to modify our latency standards based on the record before us to qualify these technologies in the Phase I auction to bid with a lower latency weight, or add an additional interim latency weight. This decision does not preclude the Commission from reconsidering the feasibility of modifying latency standards to accommodate low earth orbit satellite and hybrid satellite technologies for Phase II of the Rural Digital Opportunity Fund.

38. As in the CAF Phase II auction, we adopt weights that reflect our preference for higher speeds, higher usage allowances, and low latency.[107] We also anticipate that terrestrial fixed networks will likely result in significant fiber deployment that can serve as a backhaul for rural 5G networks. Accordingly, we choose performance tier and latency weights to encourage the deployment of higher speed, low-latency services. Specifically, we adopt weights of 50 for the Minimum performance tier, 35 for the Baseline performance tier, 20 for the Above Baseline performance tier, and 0 for the Gigabit performance tier, as well as a weight of 40 for high latency bids and 0 for low latency bids to favor higher-than Baseline speeds and low-latency services. Under the descending clock auction format we will use the weights, when subtracted from the clock percentage for the round, to indicate the percentage of an area's reserve price that a winning bidder would receive in per-location support for serving the locations in that area.[108]

39. The following charts summarize our approach:

Performance Tiers, Latency, and Weights

Performance Tier	Speed	Monthly Usage Allowance	Weight
Minimum	≥ 25/3 Mbps	≥ 250 GB or U.S. average, whichever is higher	50
Baseline	≥ 50/5 Mbps	≥ 250 GB or U.S. average, whichever is higher	35
Above Baseline	≥ 100/20 Mbps	≥ 2 TB	20
Gigabit	≥ 1 Gbps/500 Mbps	≥ 2 TB	0

Latency	Requirement	Weight
Low Latency	≤ 100 ms	0
High Latency	≤ 750 ms & MOS ≥ 4	40

[107] In the CAF Phase II auction, the Commission adopted weights of 65 for the Minimum performance tier, 45 for the Baseline performance tier, 15 for the Above Baseline performance tier, and 0 for the Gigabit performance tier, and a weight of 25 for high latency bids and 0 for low latency bids. *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1629-39, paras. 19-34.

[108] For example, if the clock percentage is 120%, the support amount corresponding to a bid with a combined weight of 20 would be 100% of the area's reserve price per location. Although the clock percentage may start above 100%, a winning bidder would not receive more than 100% of the reserve price.

40. We decline to modify the 90-point maximum spread between the tiers that the Commission used in the CAF II auction. Many commenters argued that we should increase the 90-point spread between the highest and lowest tiers to favor higher speeds even more.[109] Others argue that the Commission should narrow the weighting spread.[110] Although we do value higher speed services, we also recognize that different technologies may be better suited for different areas.[111] Based on our experience with the CAF Phase II auction and its weights, we believe the weights we adopt will provide an opportunity for providers using various technologies to participate in the auction and to compete for appropriate levels of support while providing a minimum level of service to consumers in all awarded areas.

41. We adopt our proposal to establish a weight of 40 points as the weight for high latency services, which is an increase from the CAF Phase II weight of 25. Satellite providers oppose increasing the weight for high latency.[112] Viasat claims that substantially increasing the latency weight would effectively preclude meaningful participation by geostationary orbit (GSO) satellite providers in the auction and would give Viasat and other GSO satellite providers virtually no chance of participating successfully.[113] Moreover, Viasat argues that increasing the latency weight would significantly reduce the number of supported locations, leaving behind areas where no terrestrial provider bids, and substantially increase the average per-location subsidies in areas where terrestrial providers do bid.[114] On the other

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[109] *See e.g.*, Illinois Department of Innovation and Technology Comments at 7; North Carolina Department of Information Technology at 4; ACA Comments at 8 ("[T]he Commission should widen the spread between the highest and lowest performance tier by significantly raising the weight associated with the RDOF Baseline performance tier beyond the relatively minor five percent increase proposed in the NPRM."); Fiber Broadband Comments at 7 (urging Commission to increase the discount of lower service tiers to better reflect relative value of the higher tier services); ADTRAN Comments at 10 (urging Commission to adopt 95-point spread by increasing weight of high latency service to from 40 to 50, while decreasing weight for baseline speed from 50 to 45); UTC Comments (recommending 120-point spread and weighting factor to favor symmetrical speeds); NTCA Comments at 7 (Commission should adjust weights and tiers to better anticipate the increased need for high speed broadband in the future); Incompas Comments at 12 (supports Commission increasing weight for baseline and high latency services to total of 95 or above in order to account for consumer preferences, and positive associated with terrestrial, fixed broadband services that increase fiber deployment; WTA Comments at 11-15 (proposing weighting preference for symmetrical service; unlimited monthly usage; localized maintenance; voice service integrated into local E911 services); North Dakota Joint Comments at 2-3 (arguing that the point spread between the gigabit tier and the above baseline tier should not merely recognize differences in speed but should also consider longevity, ubiquity of service, and service consistency, and that the 25-point spread is too low to take these factors into account); Conexon Comments at 11 (arguing Commission should award different weight to bids with full authorization and available spectrum. Bidders with licensed spectrum should have 0 weight and bidders with secondary, shared, or unlicensed spectrum should get 40 weight).

[110] U.S. Cellular at 7 (urging Commission to adopt a weighting mechanism that does not freeze out lowest tier applicants from realistic participation in auction); Sacred Wind comments at 6 (arguing that 25-point spread between Gigabit and Above-Baseline is unnecessarily high).

[111] *See* WISPA Reply at 11 (citing Verizon Comments).

[112] SES Americom Comments at 1-8 (arguing that the proposed standards are too harsh for satellite providers and would ultimately discourage satellite providers from participating in the auction); Pacific Dataport Comments at 17 (penalty for high latency has the effect of all but blocking the use of GEO High Throughput Satellite Systems as a critical complement to terrestrial networks); Satellite Industry Association Reply at 2 (increasing high latency penalty from 25 to 40 would significantly impar the ability of geostationary satellite providers to participate).

[113] Viasat Comments at 6-7.

[114] Viasat attaches a report by Paul Milgrom and Ilya Seagal, "Lessons from the CAF II Auction for the RDOF Auction," showing that increasing the latency penalty from 25% to 40% would take away meaningful participation from GSOs. According to the report, absent participation by Viasat, the auction would still have

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side, several commenters argue we should assign an even greater weight to high latency bids.[115] USTelecom argues that satellite broadband service is not a bridge to next-generation 5G broadband services and suggests that the Commission exclude satellite from bidding in the Phase I auction, or at a minimum, increase the high latency weighting to 60.[116] Our decision to introduce a more moderate increase to the high latency weight reflects the importance of latency to interactive, real-time applications and voice services, as well as the secondary benefits of terrestrial facilities, but also recognizes the importance of allowing all technologies the ability to participate in the auction and offer service to unserved areas. Moreover, adopting a fourth performance tier will moderate some of the effects of the *NPRM*'s proposed weights. The 90-point spread we adopt today will allow high latency bidders to compete for appropriate levels of support in a much larger auction.

42. All Rural Digital Opportunity Fund support recipients, like all other high-cost ETCs, will be required to offer standalone voice service and offer voice and broadband services at rates that are reasonably comparable to rates offered in urban areas.[117] Some commenters urge the Commission to eliminate the standalone voice requirement. WISPA argues that RDOF recipients should not be required to offer standalone voice service, because, consumers increasingly are subscribing to voice as a component of their broadband connections.[118] SpaceX claims the standalone voice requirement is no longer useful for nearly all consumers because Americans no longer choose to buy standalone voice, and the requirement adds costs to develop and make available voice equipment and provide voice-specific customer support.[119] GeoLinks urges the Commission to simply require that auction winners offer a voice service option, which can be available via a service bundle.[120] The National Association of Counties states that "unfortunately, the unintended consequence of this requirement would prevent willing and able entities from providing high-speed broadband internet services solely because they do not provide voice services in addition to broadband."[121]

43. Section 254 of the Communications Act of 1934, as amended, gives the Commission the authority to support telecommunications services, which the Commission has defined as "voice telephony

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cleared in round 12, albeit at a price point of 79.5% instead of 78.35% and this would have allowed terrestrial providers to cover at most 43 additional CBGs beyond those that were provisionally awarded to terrestrial providers.

[115] ITTA Comments at 21 (urging Commission to assign greater weight than 40 to high latency bids, which reflects extra caution warranted);

[116] USTelecom Comments at 21-24; *see also* Visionary Broadband Comments at 2 (arguing that satellite providers should be excluded, or if not, required to demonstrate technical compliance with voice requirement prior to participation). Viasat argues that any consideration of a proposal to exclude GSO providers would require, at a minimum, a new notice of proposed rulemaking and an additional round of comments and replies. Viasat Reply Comments at 7.

[117] *USF/ICC Transformation Order*, 26 FCC Rcd at 17693-94, 17708, paras. 80, 84, 113; *December 2014 Connect America Order*, 29 FCC Rcd at 15686-87, paras. 120-23; *WCB Reminds Connect America Fund Phase II Auction Participants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, 33 FCC Rcd 6696, 6697-99; *see also* 47 CFR § 54.313(a)(2), (3); *2020 Urban Rate Survey Public Notice*.

[118] WISPA Comments at 10-11. WISPA claims that, so long as voice is offered along with broadband service and the voice service meets the functional "voice-grade" requirements of section 54.101, the statutory obligation will have been satisfied.

[119] SpaceX Comments at 4.

[120] GeoLinks Comments at 8; *see also* Pacific Dataport Comments at 5; Adtran Reply Comments at 17.

[121] National Association of Counties Comments at 2 (also arguing non-ETCs should be allowed to participate if only option for connecting a community).

service."[122] The Commission made clear when it adopted the standalone voice requirement as a condition of receiving Connect America Fund support in 2011 that the definition of the supported service, voice telephony service, is technologically neutral, allowing ETCs to provision voice service over many platforms.[123] When it adopted the broadband reasonable rate comparability requirement in 2014, the Commission explained that "high-cost recipients are permitted to offer a variety of broadband service offerings as long as they offer at least one standalone voice service plan and one service plan that provides broadband that meets our requirements."[124] In 2018, the Commission dismissed requests to eliminate the standalone voice requirement.[125] The Commission reasoned that auction funding recipients, unlike funding recipients of other USF mechanisms, "may be the only ETC offering voice in some areas and not all consumers may want to subscribe to broadband service."[126] The record does not show that these facts have changed, and voice telephony is still the supported service. Therefore, we require all ETCs receiving Rural Digital Opportunity Fund support to provide standalone voice service meeting the reasonable comparability requirements in the areas in which they receive support.

44. Some commenters suggest the we adopt additional public interest obligations. For example, the Schools, Health & Libraries Broadband Coalition argues that the Commission should specifically require recipients of Rural Digital Opportunity Fund support to deploy high-quality broadband to anchor institutions in their service territories.[127] The California Emerging Technology Fund argues that the Commission should require every provider to propose a low-income package with a rate not to exceed $20.[128] We note that support recipients, like all high-cost ETCs, will be required to report annually the number of anchor institutions to which they newly began providing service and to comply with all relevant Lifeline rules.[129] Additional obligations regarding anchor institutions and low-income subscribers are more properly addressed in the Commission's other universal service programs.

2. Service Milestones

45. We adopt interim service milestones for the Rural Digital Opportunity Fund that are based on those the Commission adopted for the CAF Phase II auction for monitoring progress in meeting deployment obligations.[130] We will require support recipients to commercially offer voice and broadband service to 40% of the CAM-calculated number of locations in a state by the end of the third full calendar year following funding authorization, and 20% each year thereafter. We modify that approach, however, in the way we account for possible disparities between the CAM location counts and the actual number of locations in a winning bidder's service territory in a state. Although initial service milestones will be based on the number of locations identified by the CAM, we are confident that the Commission will have access to more accurate location data in the next few years, whether as a result of the Digital Opportunity

[122] 47 U.S.C. § 254(c)(1); 47 CFR § 54.101.

[123] *USF/ICC Transformation Order*, 26 FCC Rcd at 17692, paras. 77-78.

[124] *December 2014 Connect America Order*, 29 FCC Rcd at 156887, para. 120 (footnote omitted).

[125] *Phase II Auction Reconsideration Order*, 32 FCC Rcd 1387, para. 20.

[126] *Phase II Auction Reconsideration Order*, 32 FCC Rcd 1387, para. 20; *but see* SpaceX Comments at 5 (arguing the Commission has deemphasized voice services in other types of universal service support).

[127] SHLB Comments at 7.

[128] California Emerging Technology Fund Comments at 12.

[129] 47 CFR § 54.313(e)(2)(i)(A); 47 CFR § 54.400 et seq.

[130] A provider's deployment of broadband service in satisfaction of its Rural Digital Opportunity Fund obligation shall be independent from any other deployment obligations made as part of any other regulatory obligation or to satisfy a provider's separate commitments made to the Commission or a state or local regulatory body as part of any other proceeding.

Data Collection, the development of a broadband serviceable location database, the 2020 Census and/or some other data source. We conclude that winning bidders will be required to serve the number of locations subsequently identified in each respective area. We are persuaded by commenters who argue that the costs of building and operating broadband networks are predominantly governed by the size and characteristics of the areas served rather than the precise number of locations.[131] We accordingly direct the Bureau to seek comment on the updated location data and publish revised location counts no later than the end of service milestone year six, which we expect to be 2027. We will then use the new location counts to determine whether a Rural Digital Opportunity Fund support recipient offers the required voice and broadband service throughout the designated area by the end of milestone year eight.

46. We take this approach because the record reflects considerable concern about the proposed pro rata reductions in a winning bidder's support if, ultimately, there are fewer locations than originally identified by the Commission.[132] For the CAF Phase II auction, the Commission created a process to facilitate appropriate adjustments to the defined deployment obligations, with associated support reductions,[133] and delegated the implementation of this process to the Bureau.[134] Most commenters in this proceeding oppose the pro rata support reductions, and argue that we should not penalize support recipients when the location data used to establish milestones overstates the number of locations in an area.[135] We agree and will not reduce support if the Bureau's updated location counts indicate fewer actual locations in the awarded areas in most circumstances.

47. Location counts in the CAM are based on 2011 Census data and we recognize that there may be some disparity between the number of locations identified before the auction occurs and the "facts on the ground." Moreover, circumstances may change before the end of the 10-year support term. Some rural areas may experience a decrease in population, and in other areas new housing developments may be built. By requiring build-out to the entire designated area even in light of the possibility that location numbers could change, we seek to ensure the availability of broadband and voice services to as many rural consumers and small businesses within the Phase I auction areas by the end of the ten-year term as possible.

48. Until the Bureau adopts new location counts, we will measure compliance with service milestones against the CAM location counts across the awarded areas for each Phase I support recipient.[136] We will require support recipients to commercially offer voice and broadband service to

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[131] *See* WTA Comments at 18-20; NTCA Comments at 21-23.

[132] *See, e.g.*, USTelecom Reply Comments at 28-29 (arguing that the Commission should reduce bidders' risk of bad location data by holding provider's harmless for the Commission's inaccurate counts, and that placing all risk on potential bidders has potential to drive down participation increase costs and provide broadband to fewer rural Americans).

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

[134] *See Connect America Fund*, WC Docket No. 10-90, Order, DA 19-1165 (WCB, rel. Nov.12, 2019); *see also 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*).

[135] *See e.g.*, USTelecom Comments at 12-16; CenturyLink Comments at 21-22; ITTA Comments at 11-12; NTCA Comments at 20-21; WTA Comments at 18-20; AT&T Reply at 6-8; Pennsylvania PUC Reply at 7; CenturyLink Reply at 5-6; WISPA Reply at 41-42; NTCA Reply at 25-26; USTelecom Reply Comments at 26-29.

[136] The Bureau provided guidance about the types of residential and small business locations a support recipient can report in the HUBB to meet its service obligations. *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 12900 (WCB 2016) (*HUBB Reporting Guidance Public Notice*). *See*

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40% of the CAM-calculated number of locations in a state by the end of the third full calendar year following funding authorization, and 20% each year thereafter, consistent with the CAF Phase II deployment obligations. Below we explain how service milestones will be revised in various circumstances after the Bureau gathers more accurate location counts.

49. *More Locations.* After the Bureau adopts updated location counts, in areas where there are more locations than the number of CAM locations, we will not require a support recipient to commercially offer voice and qualifying broadband to 100% of the new number of locations until year eight. We will continue to use the CAM location counts to measure compliance with interim service milestones up to 100% of the CAM locations by the end of the sixth calendar year. If there are more new locations than CAM locations, recipients should be able to meet those milestones, and measuring compliance against the new number of locations later in the term will give carriers the opportunity to revise and update deployment plans after the Bureau announces the new number of locations. We do not adopt an interim milestone for the end of year seven, although carriers will be required to report to USAC, consistent with current high-cost rules, any locations deployed in that calendar year. Support recipients will be required to offer service to 100% of the new location count by the end of year eight.[137] Carriers for which the new location count exceeds the CAM locations within their area in each state by more than 35% will have the opportunity to seek additional support or relief from the Commission.[138]

50. Any such ETC with increased deployment obligations may also seek to have its new location count adjusted to exclude additional locations, beyond the number identified by CAM, that it determines before the end of year eight are ineligible (e.g., are not habitable), unreasonable to deploy to (e.g., if it would require a carrier to install new backhaul facilities or other major network upgrades solely to provide broadband to that location), or part of a development newly built after year six for which the cost and/or time to deploy before the end of the support term would be unreasonable.

51. *Fewer Locations*. In areas where there are fewer locations than CAM locations, a support recipient must notify the Bureau no later than the March 1 following the fifth year of deployment. Upon confirmation by the Bureau, we will require support recipients to reach 100% of the new number by the end of the sixth calendar year. While planning and deploying its network, a support recipient that discovers there are not enough locations to even meet its service milestones in years three and four, which are based on the number of CAM locations, should seek a waiver from the Bureau. Carriers for which the new location count is less than 65% of the CAM locations within their area in each state shall have their support amount reduced on a pro rata basis by the number of reduced locations.

52. *Newly Built Locations*. In addition to offering voice and broadband service to the updated number of locations identified by the Bureau, we require support recipients to offer service on reasonable request to locations built subsequently.[139] Support recipients are not obligated to offer service to these newly built locations that do not request service, or to those with exclusive arrangements with other providers. Assuming a two-year deployment cycle, support recipients similarly are not required to deploy to any locations built after milestone year eight.

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also HUBB Frequently Asked Questions, https://www.usac.org/wp-content/uploads/high-cost/documents/Tools/HC-HUBB-FAQ.pdf.

[137] 47 CFR § 54.310(c).

[138] Letter from Letter from Mike Saperstein, Vice President, Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, at 4 (filed Dec. 23, 2019) (USTelecom Dec. 23, 2019 *Ex Parte* Letter) (proposing 25% threshold). We find that 35% is a more appropriate increase in locations before which carriers may seek additional support.

[139] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7070, paras. 59-72 (2014) (issuing declaratory ruling regarding which requests should be deemed unreasonable under our current rules and policies to provide greater clarity to all affected stakeholders).

53. We align the service milestones and related reporting deadlines with those of other high-cost programs to minimize the administrative burdens on the Commission, the USAC, and support recipients.[140] Regardless of when a Rural Digital Opportunity Fund recipient is authorized to begin receiving support, each service milestone will occur on December 31. We acknowledge that, by aligning the service milestones, some Rural Digital Opportunity Fund support recipients likely will have more than three years to complete their 40% milestone.[141] CenturyLink suggests that the Commission authorize funding for all winning bidders to begin on January 1, 2022 to align all Rural Digital Opportunity Fund support recipients on calendar year basis for receipt of support and corresponding obligations.[142] We find that our method of aligning service milestones is preferable because it establishes December 31 as the service milestone date for all participants regardless of authorization date but still allows us to authorize support for a participant and thus to begin broadband deployment in unserved areas as soon as possible.[143]

54. We conclude that a support recipient will be deemed to be commercially offering voice and/or broadband service to a location if it provides service to the location or could provide it within 10 business days upon request.[144] All ETCs must advertise the availability of their voice services through their service areas, and we require support recipients also to advertise the availability of their broadband services within their service area.[145] Compliance with service milestone requirements will be determined on a state-level basis, so that a support recipient would be in compliance with a service milestone if it offers service meeting the relevant performance requirements to the required percentage of locations across all of the awarded areas included in its winning bids in a state.[146]

55. We also sought comment on whether we should require support recipients to build out more quickly earlier in their support terms by offering voice and broadband to 50% of the requisite number of locations in a state by the end of the third year.[147] A few commenters supported an accelerated

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[140] *See Phase II Auction Order*, 31 FCC Rcd at 5963, para. 39 (citing *December 2014 Connect America Order*, 29 FCC Rcd at 15657-59, paras. 36-37).

[141] For example, if recipient is authorized to begin receiving support on October 10, 2021, it must compete its 40% milestone by December 31, 2024.

[142] CenturyLink Comments at 7.

[143] We also reject WISPA's request that support recipients be given the option to submit their location information in the HUBB by either the deadline specified in section 54.316 or by the July 1 deadline for the annual report specified in section 54.313. Having all participants adhere to the same deadline set forth in section 54.316 furthers administrative simplicity. Moreover, employing optional deadlines does not minimize the administrative burdens. *See* WISPA Comments at 19.

[144] *See generally, HUBB Reporting Guidance Public Notice*, 31 FCC Rcd 12900; HUBB Frequently Asked Questions, https://www.usac.org/wp-content/uploads/high-cost/documents/Tools/HC-HUBB-FAQ.pdf. *See also, Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1435, para. 14.

[145] *See* 47 U.S.C. § 214(e)(1)(B). This requirement is justified because the Commission has a compelling interest in consumers knowing about the availability of broadband service offered in satisfaction of an ETC's deployment obligations.

[146] Because we will rely on deployment to all locations, we do not find it necessary to separately monitor compliance specifically for deployment on Tribal lands. *See Wireline Competition Bureau Provides Guidance Regarding Alternative Connect America Model Final Deployment Obligations*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 5337 (WCB 2019) (enforcing separate buildout obligations for ACAM II recipients on Tribal lands to avoid windfall in support amounts for some carriers and to accomplish Commission's goal of broadband deployment in rural Tribal communities).

[147] *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6787, para. 28.

buildout schedule,[148] while the Navajo Nation and NNTRC asked the Commission to extend build-out milestones on Tribal Lands to recognize the difficulty in deploying infrastructure in Indian Country.[149] Upon consideration, we find that using the same interim milestones as in the CAF II auction strikes the appropriate balance and, thus, adopt the identical first service milestone that we used there. Recipients have ample incentive to reach their buildout milestones as quickly as possible to increase their subscribership and revenues. However, we also recognize that deploying broadband in some areas will be more challenging than in others and may require all the time allowed by the deployment milestones.

3. Reporting Requirements

56. To ensure that support recipients are meeting their deployment obligations, we adopt essentially the same reporting requirements for the Rural Opportunity Digital Fund that the Commission adopted for the CAF Phase II auction. Consistent with our decision above to align the interim service milestones, we require Rural Digital Opportunity Fund support recipients to file annually location and technology data in the HUBB at the same time and to make the same certifications when they have met their service milestones.[150] We also amend section 54.316 of the Commission's rules to require all Rural Digital Opportunity Fund support recipients, as all high-cost support recipients currently do, to file their annual location data in the HUBB by March 1, and we encourage them to file such data on a rolling basis.[151]

57. We also require Rural Digital Opportunity Fund support recipients to file the same information in their annual FCC Form 481s that we require of the CAF Phase II auction support recipients.[152] Specifically, in addition to the certifications and information required of all high-cost ETCs in the FCC Form 481,[153] Rural Digital Opportunity Fund support recipients will be required to certify each year after they have met their final service milestone that the network they operated in the prior year meets the Commission's performance requirements.[154] In addition, they will be required to identify the number, names, and addresses of community anchor institutions to which they newly began providing access to broadband service in the preceding calendar year[155] as well as identify the total amount of support that they used for capital expenditures in the previous calendar year.[156] Moreover, support recipients will need to certify that they have available funds for all project costs that will exceed the amount of support they will receive in the next calendar year.[157] Finally, Rural Digital Opportunity Fund

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[148] West Virginia Broadband Enhancement Council Comments at 12, Brick Association Comments at 1, National Association of Counties at 2. If the Commission decides to require support recipients to build more quickly, Geolinks urges the Commission to front-load support. Geolinks Comments at 3-4.

[149] Navajo Nation and NNTRC Reply Comments at 9 (recommending extending the first milestone by at least a year and reduce incremental deployment to 15% each year for years five through nine).

[150] *See Phase II Auction Order*, 31 FCC Rcd at 6011, para. 173.

[151] *See Phase II Auction Order*, 31 FCC Rcd at 6011, para. 173. The Commission explained that it would be a "best practice" to submit location information "no later than 30 days after service is initially offered to locations in satisfaction of deployment obligations." *Id*.

[152] 47 CFR § 54.313.

[153] 47 CFR § 54.313(a).

[154] 47 CFR § 54.313(e)(2)(iii); *see also Phase II Auction Order*, 31 FCC Rcd at 6011-12, para. 176.

[155] 47 CFR § 54.313(e)(2)(i)(A).

[156] 47 CFR § 54.313(e)(2)(i)(B); *see also Phase II Auction Order*, 31 FCC Rcd at 6012, para. 178.

[157] 47 CFR § 54.313(e)(2)(ii); *see also Phase II Auction Order*, 31 FCC Rcd at 6012, para. 179. Once the requirement has been fully implemented, CAF Phase II auction support recipients must also annually make a certification regarding their bidding in the schools and libraries universal service support program (E-rate). 47 CFR § 54.313(e)(1)(ii)(C).

support recipients will be subject to the same annual section 54.314 certifications, the same record retention and audit requirements, and the same support reductions for untimely filings as all other high-cost ETCs.[158]

4. Non-Compliance Measures

58. In the event a support recipient does not meet a service milestone, we adopt the same non-compliance measures that are applicable to all high-cost ETCs, the same framework for support reductions applicable to high-cost ETCs that are required to meet defined service milestones, and the same process the Commission adopted for drawing on letters of credit for the CAF Phase II auction.[159] We also adopt additional non-compliance measures for a support recipient that fails to meet its third-year service milestone by more than 50%. Specifically, we rely on the following non-compliance tiers (which are described in more detail in section 54.320 of our rules):

Non-Compliance Framework

Compliance Gap	Non-Compliance Measure
Tier 1: 5% to less than 15% of the required number of locations[160]	Quarterly reporting
Tier 2: 15% to less than 25% of the required number of locations	Quarterly reporting + withhold 15% of monthly support
Tier 3: 25% to less than 50% of the required number of locations	Quarterly reporting + withhold 25% of monthly support
Tier 4: 50% or more of the required number of locations	Quarterly reporting + withhold 50% of monthly support for six months; after six months withhold 100% of monthly support and recover percentage of support equal to compliance gap plus 10% of support disbursed to date[161]

59. A support recipient will have the opportunity to move tiers as it comes into compliance and will receive any withheld support as it increases build-out and moves from one of the higher tiers

[158] 47 CFR §§ 54.313(j), 54.314, 54.316(c), 54.320. Those support recipients that are designated by the Commission will need to self-certify. 47 CFR § 54.314(b).

[159] 47 CFR § 54.320(d)(1)(i)-(iv); *December 2014 Connect America Order*, 29 FCC Rcd at 15695-98, paras. 147-50. A compliance gap is the percentage of required locations that a recipient has not served by the relevant service milestone. For example, assume a Rural Digital Opportunity Fund recipient is required to serve 100 locations by the end of the build-out period. If the Commission adopts its service milestone proposal, the recipient will be required to serve 40% of those locations by the end of the third year of support (i.e., 40 locations). If at the end of the third year of support the recipient has only built out to 36 locations, it will have Tier 1 status (this would be a compliance gap of 10%: 40 minus 36 = 4, 4 is 10% of 40).

[160] In the CAF Phase II auction, the Commission did not impose reporting obligations if an ETC missed an interim milestone by less than 5% of the required number of locations for that interim milestone. However, it did reserve the right to impose quarterly reporting in individual instances if the ETC shows no progress in addressing the shortfall by the fifth year of support. *December 2014 Connect America Order*, 29 FCC Rcd at 15695, para. 147 & n.323.

[161] Except that year three non-compliance of 50% or more will result in default with no additional time to come back into compliance.

(i.e., Tiers 2-4) to Tier 1 status during the build-out period.[162] If a support recipient misses the final service milestone, it will have 12 months from the date of the final service milestone deadline to come into full compliance.[163]

60. Given that we are modifying the service deployment milestones to account for the Bureau's updated location counts, we make commensurate modifications to the consequences if an ETC does not come into full compliance after its final 12-month grace period.[164] If the ETC's new location count is lower than its CAM location count, support will be recovered as follows: (1) if an ETC has deployed to 95% or more of its new location count, but less than 100%, USAC will recover an amount of support that is equal to 1.25 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations; (2) if an ETC has deployed to 90% or more of its new location count, but less than 95%, USAC will recover an amount of support that is equal to 1.5 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 5% of the support recipient's total Rural Digital Opportunity Fund support authorized over the ten-year support term for that state; and (3) if an ETC has deployed to fewer than 90% of its new location count, USAC will recover an amount of support that is equal to 1.75 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 10% of the support recipient's total Rural Digital Opportunity Fund support authorized over the ten-year support term for that state.

61. If the ETC's new location count is greater than its CAM location count, and recognizing the increased obligations of such ETCs, support will be recovered as follows: (1) if an ETC has deployed to 95% or more of its new location count, but less than 100%, USAC will recover an amount of support that is equal to the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations; (2) if an ETC has deployed to 90% or more of its new location count, but less than 95%, USAC will recover an amount of support that is equal to 1.25 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations; (3) if an ETC has deployed to 85% or more of its new location count, but less than 90%, USAC will recover an amount of support that is equal to 1.5 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 5% of the support recipient's total Rural Digital Opportunity Fund support authorized over the ten-year support term for that state; and (4) if an ETC has deployed to less than 85% of its new location count, USAC will recover an amount of support that is equal to 1.75 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 10% of the support recipient's total Rural Digital Opportunity Fund support authorized over the ten-year support term for that state.

62. The same support reductions will apply if USAC later determines in the course of a compliance review that a support recipient does not have sufficient evidence to demonstrate that it was offering service to all of the locations required by the final milestone.[165]

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[162] 47 CFR § 54.320(d)(1)(v); *December 2014 Connect America Order*, 29 FCC Rcd at 15695, para. 147 ("If at any point during the support term, the eligible telecommunications carrier reports that it is eligible for Tier 1 status, it will have its support fully restored, USAC will repay any funds that were recovered or withheld, and it will move to Tier 1 status)." A support recipient's support will not be eligible to have its support restored if it only moves between the higher tiers (e.g., from Tier 4 to Tier 3; from Tier 4 to Tier 2).

[163] 47 CFR § 54.320(d)(2); *December 2014 Connect America Order*, 29 FCC Rcd at 15697, para. 148.

[164] *See* USTelecom Dec. 23, 2019 *Ex Parte* Letter at 4-5; *see also* 47 CFR § 54.320(d); *December 2014 Connect America Order*, 29 FCC Rcd at 15697, para. 148.

[165] 47 CFR § 54.320(d)(3); *December 2014 Connect America Order*, 29 FCC Rcd at 15697-98, para. 149.

63. As in the CAF Phase II auction, USAC will be authorized to draw on an ETC's letter of credit to recover all of the support that has been disbursed in the event that a support recipient does not meet the relevant service milestones, does not come into compliance during the cure period, and does not timely repay the Commission the support associated with the non-compliance gap.[166] If a support recipient is in Tier 4 status during the build-out period or has not deployed to 100% of CAM locations by the end of year six, and USAC has initiated support recovery as described above, the support recipient will have six months to pay back the support that USAC seeks to recover.[167] If the support recipient does not repay USAC by the deadline, the Bureau will issue a letter to that effect and USAC will draw on the letter of credit to recover all of the support that has been disbursed.[168] If a support recipient has closed its letter of credit and it is later determined that the support recipient does not have sufficient evidence to demonstrate that it was offering service to the total number of required locations, that support recipient will be subject to additional non-compliance measures if it does not repay the Commission after six months.[169] And like other high-cost ETCs, support recipients will be subject to other sanctions for non-compliance with the terms and conditions of high-cost funding, including but not limited to the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designations, and suspension or debarment.[170]

64. We sought comment on whether there are additional measures we could adopt that would help ensure that Rural Digital Opportunity Fund support recipients will meet their third-year service milestones, and on what steps we should take if it appears support recipients will not be able to meet their service milestones. The National Rural Electric Cooperative Association (NRECA) suggested the Commission make more detailed inquiries of a support recipient to the extent it substantially misses the 40% service obligation at the three-year benchmark and possibly terminate support payments.[171] We agree with NRECA that it is unlikely that a recipient that substantially misses its third-year milestone would be able to come into compliance in the following year. We therefore direct any support recipient that believes it cannot meet its year three milestone to notify the Bureau and provide information explaining this expected deficiency. If a support recipient has not made such notification by March 1 following the third-year service milestone and has deployed by the end of the third-year milestone to fewer than 20% of its required locations in that state, we will find the recipient to be in default, rather than withholding support and providing an additional six months to come into compliance.[172]

5. Additional Performance Targets

65. We decline to adopt additional performance targets to provide greater incentives for Rural Digital Opportunity Fund support recipients to enroll customers in the eligible areas. We specifically sought comment on a proposal to adopt subscribership milestones set at 70% of the yearly deployment benchmarks and reduce support accordingly for failure to meet the subscription target.[173]

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[166] 47 CFR § 54.315(c)(4)(i)-(ii); *Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 189-94.

[167] 47 CFR § 54.315(c)(4)(i); *Phase II Auction Order*, 31 FCC Rcd at 6017, paras. 190-91.

[168] 47 CFR § 54.315(c)(4)(ii); *Phase II Auction Order*, 31 FCC Rcd at 6017, paras. 190-91.

[169] *Phase II Auction Order*, 31 FCC Rcd at 6017, para. 192.

[170] 47 CFR § 54.320(c).

[171] NRECA Comments at 14 ("Withholding funds and requiring additional reporting for entity in the 4th non-compliance tier at the end of year three may only make a bad situation worse or prove to be too little, too late.").

[172] We would expect any carrier that falls behind significantly in year one or year two of its deployment term will not wait until year three to bring any special circumstances to the attention of the Commission, but require such a carrier to report its non-compliance to the Commission no later than 10 business days after the three-year deadline. *See* 47 CFR § 54.320(d).

[173] *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at paras. 41-42.

Most commenters opposed a subscription requirement and argued that a 70% subscription requirement was too high and unrealistic in rural areas.[174] Even some commenters supporting the concept of a subscription requirement thought 70% was too high and suggested any subscribership requirement should be as low as 35%.[175] Commenters argued that a subscribership requirement with reductions in support for failure to meet those targets would discourage participation in the auction, and change the focus of the Rural Digital Opportunity Fund program from a deployment program to an adoption program.[176]

66. We agree that requiring specific subscription milestones is likely to discourage many bidders from participating in the auction because they would risk losing funding when they likely need it most to complete the buildout of their networks. Commenters pointed out that support recipients have a statutory obligation to advertise the availability of their services throughout their service areas and argue that they have the incentive to attract customers to increase their revenues.[177] Commenters also argued that subscription rates of 70% in some rural, low-income areas would be almost impossible to attain.[178] In addition, support recipients must be prepared to provide service meeting the relevant public interest obligations within 10 business days to any locations they report in the HUBB for purposes of meeting the service milestones, which will give support recipients added incentive to ensure their networks have sufficient capacity to serve the required number of locations. Given these requirements, the risk of discouraging participation in the auction, and the administrative complexity of monitoring subscribership, we decline to require a certain level of subscription as a condition of Rural Digital Opportunity Fund support.

F. Auction Application Process

67. Consistent with prior Commission auctions and based on our recent experience with the CAF Phase II auction, we adopt the two-stage application process that will govern the auction process for the Rural Digital Opportunity Fund, including pre-auction and post-auction requirements.[179]

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[174] *See, e.g.*, USTelecom Comments at 39; (arguing that proposal would punish carriers for agreeing to deploy broadband in high-cost areas where broadband adoption lags far behind less rural parts of the country and change focus of a broadband deployment program to adoption); WTA Comments at 21 (arguing that it is unlikely that most rural broadband service providers would be able to achieve a broadband adoption rate of 50% or more); U.S. Cellular Comments at 8-9 (arguing a carrier would be penalized for failing to meet subscribership milestones even though it had built the required service, priced the service at optimal level to achieve at least 70% subscribership, and took whatever other actions are prudent to market the service and conduct outreach to the served communities).

[175] *See* ACA Connects Comments at 16-18, NTCA Comments at 27-28.

[176] *See, e.g.*, ITTA Comments at 25-26 (arguing that subscriber milestones would depress interest in the auction because potential bidders would find it too risky); NCTA Comments at (arguing that subscribership proposal changes focus of the RDOF from a broadband deployment mechanism to a broadband adoption mechanism, placing the burden of guaranteeing adoption on the provider; USTelecom Comments at 36-37; (arguing that proposal will materially suppress participation in the auction and would punish carriers for agreeing to deploy broadband in high-cost areas where broadband adoption lags far behind less rural parts of the country and changes focus of a broadband deployment program to adoption); WISPA Comments at 25 (arguing that subscription rate benchmarks will have a chilling effect on auction participate).

[177] *See, e.g.*, ITTA Comments at 24-25; CenturyLink Comments at 18; WISPA Comments at 26 (arguing there is no evidence to show that existing rules are insufficient); *see also* 47 U.S.C. § 214(e)(1)(B). Above, we adopt a requirement that support recipients must also advertise their broadband offerings.

[178] *See, e.g.*, ACA Comments at 16-18; WTA Comments at 21; Buckeye Hills Regional Council Comments at 13; NTCA Comments at 28-29.

[179] *See* Geolinks Comments at 15 (supporting the Commission's two-step application "believe[ing] it strikes the right balance to ensure the Commission can properly vet would-be auction participants prior to the auction"); UTC Comments at 17-20 (stating that the two-step process is the appropriate approach); *see also Rural Digital*

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68. We conclude that participants in the Rural Digital Opportunity Fund Phase I auction process will be required to comply with the same short-form and long-form application process.[180] Specifically, in the pre-auction short-form application, a potential bidder will be required to establish its eligibility to participate in the auction by providing, among other things, basic ownership information and certifying to its qualifications to receive support.[181] Once approved as qualified to bid by the Bureau, the company may participate in the auction. After the auction, winning bidders must file more extensive information for the long-form application, demonstrating to the Commission that they are legally, technically and financially qualified to receive support.[182] As in CAF Phase II, we stress that each potential bidder has the sole responsibility to perform its due diligence research and analysis before proceeding to participate in the Rural Digital Opportunity Fund auction.[183] We direct the Bureau, the Office of Economics and Analytics, and the Rural Broadband Auctions Task Force, to adopt the format and deadlines for the submission of documentation for the short-form and long-form applications.[184]

1. Short-Form Application Process

69. Consistent with the approach in the CAF Phase II auction and proposed in the *NPRM*,[185] we adopt the Commission's existing universal service competitive bidding rules so that applicants will be required to provide information that will establish their identity, including disclosing parties with ownership interests and any agreements the applicants may have relating to the support to be sought through the Rural Digital Opportunity Fund auction.[186] Interested parties will submit a pre-auction short-form application, providing basic information and certifications regarding their eligibility to receive support. Commission staff will then review the short-form applications, determining whether the applicants are eligible to participate in the auction. Thereafter, Commission staff will release a public notice indicating which short-form applications are deemed complete and which are deemed incomplete. Consistent with CAF Phase II, applicants whose short-form applications are deemed incomplete will be given a limited opportunity to cure defects and to resubmit correct applications, excluding major

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Opportunity Fund NPRM, 34 FCC Rcd at 6799, para 65, 6800, 6804, paras. 68, 70, 81; *Phase II Auction Order*, 31 FCC Rcd at 5980-99, paras. 92-141.

[180] *See Phase II Auction Order*, 31 FCC Rcd at 5980, para. 92.

[181] As we concluded in CAF Phase II, any entity that files a short-form application to participate in the Phase II competitive bidding process will be considered "an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission" pursuant to section 503(b)(2)(B) of the Communications Act of 1934, as amended (the Act), and therefore subject to a forfeiture in the event of a default. 47 U.S.C. § 503(b)(2)(B).

[182] *Phase II Auction Order*, 31 FCC Rcd at 5980-5981, paras. 92, 97

[183] This is consistent with bidders' responsibility for CAF Phase II.

[184] 47 CFR §§ 1.21000 – 1.21004, pt. 54. Consistent with CAF Phase II, applicants will be able to make minor modifications to amend their applications or correct defects. *CAF Phase II Procedures PN* at 171. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted. Applications to which major modifications are made after the deadline for submitting applications shall be dismissed. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

[185] *See Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6799, para 65.

[186] 47 CFR § 1.21001(b).

modifications.[187] As in CAF Phase II, a second public notice will be released designating the applicants that are qualified to participate in the Rural Digital Opportunity Fund auction.

70. *Ownership*. We will require that each auction applicant provide information in its short-form application to establish its identity, including information concerning its real parties in interest and its ownership,[188] and to identify all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding.[189] We will also require an applicant to provide in its short-form application a brief description of any such agreements, including any joint bidding arrangements.[190] Commission staff would use such information to identify relationships among applicants, including those that might be commonly controlled or members of a joint bidding arrangement.[191] We will also require every applicant to certify in its short-form application that it has not entered into any explicit or implicit agreements, arrangements, or understandings of any kind related to the support to be sought through the Rural Digital Opportunity Fund auction, other than those disclosed in the short-form application.

71. *Types of Technologies*. We will also require all applicants to indicate the type of bids that they plan to make and describe the technology or technologies they will use to provide service for each bid. This information is imperative to establishing bidders' eligibility for the bidding weights we adopt.[192] Consistent with CAF Phase II, we will allow an applicant to use different technologies within a state as well as hybrid networks to meet its public interest obligations.[193]

72. *Technical and Financial Qualifications Certifications*. Likewise, applicants will be required to certify that they are financially and technically qualified to meet the public interest obligations in each area for which they seek Rural Digital Opportunity Fund support.[194] Based on our experience with CAF Phase II, this approach is an appropriate screening process to ensure serious participation, without being overly burdensome to applicants and recipients.

73. *Operational History*. Applicants will be required to provide additional assurances to the Commission that the entities that intend to bid in the auction have experience operating networks.[195] We adopt a requirement that applicants certify in their short-form application that they have provided voice, broadband, and/or electric distribution or transmission services for at least two years and that they specify the number of years they have been operating, or that they are the wholly-owned subsidiary of an entity that meets these requirements.[196] Applicants that have provided voice or broadband services must also

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[187] *See* 47 CFR § 1.21001(d)(5); *cf. id.* § 1.2105(b)(2); *see id*. § 1.21001(d)(4). Major modifications would include, for example, changes in ownership of the applicant that would constitute an assignment or transfer of control.

[188] 47 CFR §§ 1.2112(a), 54.315(a)(1).

[189] *See id.* §§ 1.21001(b), 54.315(a). As noted above, applicants will only be able to make minor modifications to their short-form applications. Major amendments, for example, changes in an applicant's ownership that constitute an assignment or transfer of control, will make the applicant ineligible to bid. *See id.* § 1.21001(d)(4).

[190] This requirement is consistent with the agreement disclosure requirements for short-form applications to participate in our spectrum auctions. *See id.* § 1.2105(a)(2)(viii).

[191] 47 CFR § 1.21001(b)(3)-(4).

[192] *See id.* §§ 1.21001(b), 54.315(a)(4).

[193] *See* 47 CFR § 54.315(a)(4); *see Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1452, para. 64.

[194] *See* 54.315(a)(2).

[195] *Phase II Auction Order*, 31 FCC Rcd at 5982-5983, paras. 100-101.

[196] *See Phase II Auction Order*, 31 FCC Rcd at 5982-5983, para. 100. *But see* Incompas Comments at 13 (proposing that entities be required to demonstrate at least five years of operation to customers, including voice) *and* Miller/Loy Comments at 1 (asserting that existing providers should be required to provide evidence of five years of both voice and broadband service). We conclude that requiring that an entity to have operated a network for at least two years

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certify that they have filed FCC Form 477s as required during that time period. As we determined in CAF Phase II, we also will accept certifications from entities that have provided electric distribution or transmission services for at least two years (or their wholly-owned subsidiaries).[197]

74. An applicant that can certify it has provided voice, broadband, and/or electric distribution or transmission services for at least two years, or that it is a wholly-owned subsidiary of such an entity, will provide the Commission with sufficient assurance before the auction that it has the ability to build and maintain a network.[198]

75. We will require each applicant that does not have two years of operational experience, to submit with its short-form application its (or its parent company's) financial statements that have been audited by an independent certified public accountant from the three prior fiscal years, including the balance sheets, incomes, and cash flow statements, along with a qualified opinion letter.[199] Our interest in having a level of insight into the financial health of a potential Rural Digital Opportunity Fund auction bidder over a longer period of time is a necessary prequalification to bid, particularly because this subset of bidders will not able to demonstrate that they have operated and maintained a voice, broadband and/or electric distribution or transmission network for at least two years. Likewise, such applicants will also be required to submit a letter of interest from a bank meeting the Commission's eligibility requirements stating that the bank would provide a letter of credit to the applicant if the applicant becomes a winning bidder and is awarded support of a certain dollar magnitude.[200] A letter of interest from the bank will provide the Commission with an independent basis for some additional assurance regarding the financial status of the entity.

76. We decline to adopt a suggestions from USTelecom and Windstream to limit the total bid based on the bidder's annual revenues,[201] while Verizon proposes further pre-auction scrutiny "on

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will give us sufficient assurance that an entity has the qualifications to maintain a network. As we concluded in CAF Phase II, adopting a two-year operational requirement for bidders is reasonable, particularly when we offer an alternative for entities that cannot meet this requirement. Finally, as we previously stated, we do not require entities to have operated both a voice network and a broadband network, because those entities may have made business decisions not to offer a certain service that are independent of their qualifications to offer such a service. *Id*.

[197] Applicants that have operated only an electric distribution or transmission network must submit qualified operating or financial reports for the relevant time period that they have filed with the relevant financial institution along with a certification that the submission is a true and accurate copy of the forms that were submitted to the relevant financial institution. *See* UTC Comments at 18 (supporting a requirement that applicants demonstrate their operational history and financial qualifications by certifying that it or its parent company has provided voice, broadband and/or electric distribution or transmission services for at least two years prior to the short-form application filing deadline). As we did for CAF Phase II, we will accept the Rural Utilities Service (RUS) Form 7, Financial and Operating Report Electric Distribution; the RUS Form 12, Financial and Operating Report Electric Power Supply; the National Rural Utilities Cooperative Finance Corporation (CFC) Form 7, Financial and Statistical Report; the CFC Form 12, Operating Report; or the CoBank Form 7; or the functional replacement of one of these reports.

[198] *See* 47 CFR § 315(a)(7). NRECA Comments at 12 (stating that electric cooperatives should continue to be allowed to demonstrate operational expertise based on operation and management of electric distribution and transmission networks).

[199] *See* 47 CFR § 54.315(a)(7)(ii); *Phase II Auction Order*, 31 FCC Rcd at 5985, paras. 106-07; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1445, para. 45.

[200] *See* 47 CFR § 54.315(a)(7)(ii); *Phase II Auction Order*, 31 FCC Rcd at 5985-86, paras. 106, 108; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1445-46, para. 45.

[201] USTelecom Comments at 19-20 (asserting that limiting a bidder's total amount of support based on its annual revenue); Windstream Comments at 20 (capping the total amount that a provider can bid for the ten-year support period to some portion of the provider's annual revenues will provide additional scrutiny of carriers seeking to bid

(continued….)

applicants that are seeking authority to bid for a large number of locations, relative to the size of their existing customer base, or are planning to bid for performance tiers in which they currently provide little or no commercial service."[202] We are not persuaded that either of these proposals are an effective method to guarantee the financial qualifications of bidders to perform; instead, they would more likely limit competition by arbitrarily excluding bidders with more limited revenues or existing customer bases.[203] We are generally reluctant to adopt additional measures that limit competition from bidders and any concerns with financial qualifications will be resolved during the short-form applications.

77. We decline to collect less financial and technical information from existing USF support recipients on the short-form than we did in CAF Phase II as suggested by some commenters.[204] It is important for Commission staff to review the same specific information from each carrier when evaluating carriers' qualifications to bid. However, CAF Phase II auction participants that subsequently defaulted on their entire award will be barred from participating in the Rural Digital Opportunity Fund.[205] We decline to bar participants that defaulted in other universal service programs as well as decline to subject participants to additional scrutiny that subsequently defaulted in CAF Phase II, as suggested by other commenters,[206] or that have filed for bankruptcy or that have been bankrupt in the recent past.[207] We are capable of evaluating the circumstances of a prior default and the outcome of any subsequent enforcement action without collecting additional information in the short-form application. All applicants

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on a large number of locations relative to their existing customer base). *See* AT&T Reply at 16 (supporting Windstream's comments to cap the total amount that a provider can bid for the ten-year support period). *See also* Frontier Reply at 14-15 (stating that the Commission should require bid bonds, which would place a cap on the bidders maximum bid based on an upfront payment).

[202] Verizon Comment at 7-8 (stating that further scrutiny should be placed on applicants that "are planning to bid for performance tiers in which they currently provide little or no commercial service"); *see also* AT&T Reply at 16 (agreeing that the Commission "should consider additional short form filing requirements to ensure that recipients of RDOF funds are up to the challenge of providing broadband in rural areas.")

[203] *See also* WISPA Reply 39-40 (stating that it disagrees with Windstream and USTelecom's proposals to limit bidding to bidder's annual revenue as it is anti-competitive and short-sighted).

[204] *See, e.g.*, ACA Connects Comments at 25-26 (proposing that instead bidders who are existing service providers should submit a certification stating they are technically and financially capable of meeting their RDOF public interest obligations); NCTA Comments at 9 (asserting that less technical information should be required at the short-form stage from existing providers); Sacred Wind Comments at 3-4 (arguing that Commission should have an abbreviated short-form process for authorized CAF Phase II recipients). *But see* Frontier Reply at 14 (asserting that the Commission should reject proposals that suggest less information at the short-form stage should be provided); USTelecom Reply at 23 (arguing that the Commission should decline to require less information at the short-form stage and instead consider requiring more information at that stage).

[205] We note that CAF Phase II auction participants that subsequently defaulted on only a portion of their winning bid will not be barred from participating.

[206] *See, e.g.*, Sacred Wind Comments at 4 (stating that "parties that have defaulted on their entire awards in prior universal service programs should be restricted from participating in RDOF"); Geolinks Comments at 15 (asserting that CAF Phase II defaulters should be subject to additional scrutiny but should not be precluded from participating in the auction); Miller/Loy Comments (proposing that CAF Phase II defaulters should disclose their default, and if they do not, they should be prohibited from applying to the new auction).

[207] NRECA Comments at 13 (asserting that the Commission should carefully weigh the risks of applicants that have filed for bankruptcy or that have been bankrupt in the recent past). *But see* Windstream Reply at 18 (stating the Commission should not exclude bidders that have been bankrupt in the recent past as it would exclude experienced providers). Title 11 of the United States Code prohibits government actions that discriminate against a party on the basis that (a) the party filed for bankruptcy protection or (b) such party failed to pay a debt that is dischargeable in bankruptcy. 11 U.S.C. § 525(a).

will be subject to a thorough financial and technical review in both the short-form application stage and the long-form application stage prior to bidding and ultimately receiving support.

78. Conversely, some commenters stated that we should increase the short-form requirements. For instance, NTCA asserted that we should require that a prospective bidder demonstrate "more thorough qualifications at the short-form stage" focusing on technical and operational qualifications.[208] NRECA proposes shifting to the short-form review more of the detailed technical and financial showings conducted at the long-form review.[209] USTelecom states that we should require an applicant to provide information about subscribership trends and employee expertise to show that it has the expertise and experience "to scale its network."[210] Subscribership and employee expertise do not necessarily suggest that the entity is unqualified to bid in the Rural Digital Opportunity Fund auction. Our interest in maximizing participation in the Rural Digital Opportunity Fund auction outweighs the potential risk of qualifying a less experienced entity to participate in the auction without reviewing that bidder's subscribership and employee counts, particularly given that we adopt the requirement that bidders will be required to submit their audited financial statements.[211] This will allow us to scrutinize the bidder's audited financial statements at the long-form application stage before authorizing that entity to begin receiving support. We believe that requiring more technical and operational information before the auction begins will provide significant barriers to entry for some participants and unnecessarily extend the short-form review period and delay the auction.[212] Moreover, additional technical information at the short-form stage would be speculative based on a presumption of what a winning area would look like.

79. Similarly, we decline NTCA's proposal to require applicants to submit propagation maps to show where they intend to bid,[213] as it would be burdensome on applicants "particularly given the maps may not be relevant if an applicant does not become qualified or does become qualified but does not win support in that area."[214] We conclude on balance that our short-form process provides significant assurances for serious participation and our long-form post-auction process, as discussed below, will

[208] NTCA Comments at 23 (arguing that the Commission should require potential bidders to "carefully evaluat[e] the geographic realities and corresponding technical challenges in areas where they intend to bid"); NTCA Reply at 14-15 (stating that the Commission should require "the leveraging of technical standards that will be adopted in the mapping proceeding to ensure an "apples-to-apples" comparison of capabilities when providers submit service proposal"); *see also* USTelecom Comments at 18 (stating that the Commission should enhance its the standards that it will use to determine a bidder's ability to complete service obligations and seek more information up front from potential bidders to ensure their operational readiness).

[209] NRECA Comments at 12-13 (asserting that "only competent, qualified entities utilizing proven technologies [should be able to] participate in both the Phase I and the Phase II auctions").

[210] *See* USTelecom Comments at 19.

[211] *See infra* para. 80.

[212] *See, e.g.*, WISPA Reply at 35-37 (stating that proposals to increase short-form requirements are "appropriately viewed as simply raising the cost of doing business for smaller competitors and the Commission should reject them."); AT&T Reply at 16-17 (arguing that NTCA's short-form proposal is intended to create barriers to participation by fixed wireless providers and should be rejected).

[213] NTCA Comments at 24-25 (stating the Commission should require propagation maps to show where applicants intend to bid "with a reasonably detailed justification for their purported capability to deliver service to every corner *throughout* those areas based upon reasonable assumptions regarding technological capability and subscription"); *see also* GVNW Reply at 4 (asserting that in addition requiring rural topographies, the Commission require applicants to give a detailed explanation of their capabilities based on where they intend bid).

[214] *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1456, para. 76.

provide an in-depth extensive review of the winning bidders' qualifications.[215]

80. *Audited Financials*. We will require each applicant that has certified that it has at least two years of operational experience to submit financial statements that have been audited by an independent certified public accountant from the prior fiscal year, including balance sheets, net income and cash flow, along with a qualified opinion letter with its short-form application.[216] If such an applicant (or its parent company) is not audited in the ordinary course of business, we will require the applicant to submit unaudited financial statements from the prior fiscal year with its short-form application and to certify that it will submit audited financials during the long-form application process.[217] We will require winning bidders that take advantage of this option to submit their audited financials no later than the deadline for submitting their proof of ETC designation (which is within 180 days of the public notice announcing winning bidders). If the audit process is expected to exceed 180 days, a winning bidder will have the option of seeking a waiver of this deadline.[218] In considering such waiver requests, we direct the Bureau to determine whether the entity demonstrated in its waiver petition that it took steps to prepare for an audit prior to being named a winning bidder and that it took immediate steps to obtain an audit after being announced as a winning bidder. Applicants that certify that they have at least two years of operational experience and fail to submit audited financial statements as required, will be subject to the same base forfeiture of $50,000 that we adopted for the CAF Phase II auction.[219] We note that most CAF Phase II auction support recipients were able to obtain audited financial statements by the required deadlines. As with the CAF Phase II auction,[220] we do not extend to applicants that lack two years of operational history the option of submitting audited financial statements during the long-form application stage. They must submit audited financial statements from the three prior fiscal years with their short-form application, as described above.

81. *Eligible Telecommunications Carrier Designation.* We adopt the same CAF Phase II flexibility with respect to ETC designations and do not require an applicant to obtain its designation as an ETC in the areas where it seeks support prior to bidding in the Rural Digital Opportunity Fund auction.[221] We do, however, require an applicant to disclose in its short-form application its status as an ETC in any area for which it will seek support or if it will become an ETC in any area where it wins support.[222] We

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[215] *See infra* section F.2 (discussing long-form applications); *see also* CPUC Comments at 9 (asserting that the Commission's screening process should provide assurances to prevent defaults).

[216] *See* 47 CFR § 54.315(a)(3). Complete audited financial statements include the accompanying notes. No commenters addressed the Commission's proposed pre-auction application processes for audited financials.

[217] *See* 47 CFR § 54.315(a)(7)(i); *Phase II Auction Order*, 31 FCC Rcd at 5983-84, paras. 102-03; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1445, para. 44.

[218] 47 CFR § 1.3.

[219] *See Phase II Auction Order*, 31 FCC Rcd at 5984-85, paras. 104-05; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1445, para. 44. Such forfeiture would be subject to the adjustment upward or downward as appropriate based on the criteria set forth in the Commission's forfeiture guidelines. *Phase II Auction Order*, 31 FCC Rcd at 5984-85, para. 104.

[220] *See* 47 CFR § 54.315(a)(7)(ii); *Phase II Auction Order*, 31 FCC Rcd at 5985, paras. 106-07 & n.210 (explaining the Commission's "interest in having a level of insight into the financial health of a potential Phase II auction bidder over a longer period of time" given that "this subset of bidders will not be able to demonstrate that they have operated and maintained a voice, broadband, and/or electric distribution or transmission network for at least two years").

[221] *See* 47 CFR § 54.315(a)(3); *Connect America Phase II Auction Order*, 31 FCC Rcd at 6001, para. 147.

[222] *See Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6815, Appendix A, Proposed Rules, Sec. 54.804(a)(3).

are not persuaded that we should require an applicant to secure its ETC designation prior to the auction.[223] As we determined in CAF Phase II, permitting entities to obtain ETC designation *after* the announcement of winning bidders for support, encourages broader participation in the competitive process by a wider range of entities.[224] Additionally, our experience with CAF Phase II indicates that most applicants were ultimately designated within the long form review period, even if it took them longer than the ETC designation proof deadline.[225] We will continue to presume that an entity acted in good faith if it files its ETC application within 30 days of the release of the public notice announcing that it is a winning bidder, but as with both the rural broadband experiments and the CAF Phase II auction, we discovered there were various circumstances impacting the ability of individual bidders to file their ETC applications and that when an application was filed did not always determine whether an applicant was designated within the 150 remaining days.[226]

82. *Spectrum Access.* Additionally, with respect to eligibility requirements relating to spectrum access, applicants will be required to disclose and certify the source of the spectrum they plan to use to meet Rural Digital Opportunity Fund obligations in the particular area(s) for which they plan to bid.[227] Specifically, applicants will be required to disclose whether they currently hold a license or lease the spectrum, including any necessary renewal expectancy, and whether such spectrum access is contingent on obtaining support in the auction.[228] Consistent with CAF Phase II, we will require applicants intending to use spectrum to indicate the spectrum band(s) they will use for the last mile, backhaul, and any other parts of the network; and the total amount of uplink and downlink bandwidth (in megahertz) that they have access to in each spectrum band for last mile. Applicants must also describe the authorizations they have obtained to operate in the spectrum and list the call signs and/or application file numbers associated with their spectrum authorizations, if applicable.[229] Applicants must have secured any Commission approvals necessary for the required spectrum access prior to submitting an auction application, if applicable.[230] Moreover, applicants will be required to certify that they will retain their

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[223] *See* Frontier Comments at 12-13. Frontier states that the Commission should require bidders to be an ETC from the beginning, demonstrating they provide reliable services and that "the ETC designation process is the states' opportunity to vet auction bidders and their service proposals." *But see* AT&T Reply at 17 (asserting that the Commission should reject commenters proposals to require ETC designation prior to the auction as it would discourage participation and ultimately competition).

[224] *Phase II Auction Order*, 31 FCC Rcd at 6001, para. 147; *see* Mississippi PSC Comments at 2-3 (stating that "the FCC correctly concludes that allowing these service providers, specifically electric utilities, to bid without ETC status will encourage participation from service providers that may be hesitant to invest resources in this process").

[225] If the ETC process takes longer than 180 days, winning bidders will have the option of seeking a waiver of the ETC deadline. 47 CFR § 1.3. *See also* WVBEC Comments at 11 (asking the Commission to extend the 180-day window for long-form applicants to get an ETC designation because some state commissions do not operate on a continual basis).

[226] *Phase II Auction Order*, 31 FCC Rcd at 6002-03, para. 153.

[227] *See* 47 CFR § 54.315(a)(6); *see, e.g.*, WISPA Comments at 33 (stating that the spectrum disclosure requirement was fair and balanced).

[228] *See* 47 CFR § 54.315(a)(6); *Phase II Auction Order*, 31 FCC Rcd at 5981, para. 98.

[229] *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1452, para. 64.

[230] We acknowledge that the Commission has scheduled the auction of Priority Access Licenses for the 3550-3650 MHz band for June 25, 2020 (Auction 105). *Auction of Priority Access Licenses for the 3550-3650 MHz Band; Comment Sought on Competitive Bidding Procedures for Auction 105*, AU Docket No. 19-244, Public Notice, 34 FCC Rcd 9215 (2019). A number of CAF Phase II applicants indicated that they would be participating in this auction. Because this auction will likely coincide with the Rural Digital Opportunity Fund pre-auction process, we will permit Rural Digital Opportunity Fund applicants that plan to use this spectrum to meet their obligations to indicate the status of their participation in the auction as part of their spectrum showing in their applications.

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access to the spectrum for at least ten years from the date support is authorized.[231] NTCA argues that applicants who do not have access to spectrum should be required to show how they would acquire it.[232] We agree and, consistent with our treatment of this situation in CAF Phase II, we will find a recipient in default if it is unable to meet its obligations, including if the authorization is not renewed during the support term."[233]

83. Also, any applicant that intends to provide service using satellite technology will be required to identify in its short-form application its expected timing for applying for any earth station licenses it intends to use in the areas where it intends to bid, if it has not already obtained these licenses. We do not require satellite providers to obtain all necessary earth station licenses by the short-form application deadline.[234] An earth station license requires that a satellite provider bring the station into operation within one year of obtaining a license and a satellite provider may not be ready to meet this requirement by the short-form filing deadline. Moreover, because an applicant can apply to obtain a microwave license at any time,[235] we will permit an applicant that intends to obtain microwave license(s) for backhaul to meet its public interest obligations for the Rural Digital Opportunity Fund by describing in its short-form application its expected timing for applying for such license(s), if it has not already obtained them.[236]

84. *Due Diligence Certification.* Consistent with the procedures adopted for the CAF Phase II auction, we adopt the requirement that an applicant certify that it has performed due diligence concerning its potential participation in the Rural Digital Opportunity Fund auction so the applicant understands its obligations.[237] Specifically, we adopt the requirement that each applicant make the following certification in its short-form application under penalty of perjury:

> The applicant acknowledges that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of Rural Digital Opportunity Fund support it submits as a bid, and that if the applicant wins support, it will be able to build and operate facilities in accordance with the Rural Digital Opportunity Fund obligations and the Commission's rules generally.[238]

85. This proposed certification will help ensure that each applicant acknowledges and accepts responsibility for its bids and any forfeitures imposed in the event of default,[239] and that the applicant will

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However, such an applicant must also provide alternatives for how it intends to meet its Rural Digital Opportunity Fund obligations if it is not able to obtain a license through Auction 105.

[231] 47 CFR § 54.315(a)(6); *Phase II Auction Order*, 31 FCC Rcd at 5981, para. 98.

[232] NTCA Comments at 25.

[233] *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1462, para. 89.

[234] *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1461-62, para. 88 (citing *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6251, para. 41).

[235] *See, e.g.*, 47 CFR § 101.21(f) (describing the steps an applicant must take to obtain a microwave license).

[236] *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1461-62, para. 88.

[237] *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1472, para. 119.

[238] *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1472, para. 119; *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6803, para. 78.

[239] *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1472, para. 119; *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6803-04, para. 79.

not attempt to place responsibility for the consequences of its bidding activity on either the Commission or third parties.[240]

2. Long-Form Application Process

86. Winning bidders for the Rural Digital Opportunity Fund support will be required to comply with the same long-form application process we adopted for CAF Phase II.[241] The rules we adopt below provide the basic framework and requirements for winning bidders to demonstrate their qualifications for support. After the close of the auction, the Bureau will release a public notice declaring the auction closed, identifying the winning bidders, and establishing details and deadlines for next steps. Winning bidders will then be required to submit extensive information detailing their respective qualifications in their long-form applications, allowing for a further in-depth review of their qualifications prior to authorization of support. Any additional information that is required to establish whether an applicant is eligible for Rural Digital Opportunity Fund support will be announced by public notice.[242] We note that very few commenters addressed the Commission's proposed post-auction long-form application processes[243] and none of those commenters raised significant concerns. We therefore conclude the rules we adopt today will best serve the Commission's ability to determine whether the applicants are ultimately eligible for Rural Digital Opportunity Support authorization funding, providing a fair and efficient review process.

87. *Ownership Disclosure*. We adopt the ownership disclosure requirements proposed in the *NPRM*.[244] Specifically, an applicant for Rural Digital Opportunity Fund support must fully disclose its ownership structure as well as information regarding the real party- or parties-in-interest of the applicant or application. Ownership disclosure reports from the short-form process must be updated if any information reported in the short-form has changed.[245]

88. *Financial and Technical Capability Certification*. Consistent with CAF Phase II, we will require a long-form applicant to certify that it is financially and technically capable of providing the

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[240] *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1472, para. 119; *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6803-04, para. 79.

[241] 47 CFR § 54.315(b)(2)(i-viii); *see Phase II Auction Order*, 31 FCC Rcd at 5986-5999, paras. 111-141.

[242] *See Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6815-6816, Appendix A, Proposed Rules, Sec. 54.804(a).

[243] *See* UTC Comments at 17-20 (agreeing with all of the Commission's long-form proposals). However, Windstream and Frontier both requested that the Commission adopt a protective order to allow for access to long-form applications. Windstream asserts that this process would allow for careful vetting of Rural Digital Opportunity Fund applicants and the safeguarding of commercial information from competitors. *See* Windstream Reply at 17-18. Furthermore, Frontier states that review of CAF Phase II long-form applications, including sensitive material, would provide for meaningful design for the Rural Digital Opportunity Fund. *See* Frontier Reply at 13. We are not persuaded that we should allow outside parties to review confidential information in the winning bidders' applications. As we did in CAF Phase II, a request for public inspection can be made under section 0.461 of the Commission's rules, and the applicant will be notified and will be required to justify confidential treatment of its request if the applicant has any objections to disclosure. *See id.* § 0.461. Likewise, certain information in each application will be made publicly available after the close of the auction pursuant to our limited information procedures currently in place. *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1473-76, paras. 122-27.

[244] *See Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6816, Appendix A, Proposed Rules, Sec, 54.804(b)(2)(i).

[245] *See Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6815, Appendix A, Proposed Rules, Sec, 54.804(a)(1).

required coverage and performance levels within the specified timeframe in the geographic areas in which it won support.[246]

89. *Public Interest Obligations Certifications.* We next adopt proposed rule 54.804(b)(2)(iii), concluding that a long-form applicant must certify in its long-form application that it will meet the relevant public interest obligations for each performance tier and latency combination for which it was deemed a winning bidder, including the requirement that it will offer service at rates that are equal to or lower than the Commission's reasonable comparability benchmarks for fixed services offered in urban areas.[247]

90. *Description of Technology and System Design*. Due to the varying types of technologies that entities may use to fulfill their Rural Digital Opportunity Fund competitive bidding process obligations, we find that it is also reasonable to require each winning bidder to submit a description of the technology and system design it intends to use to deliver voice and broadband service, including a network diagram, which must be certified by a professional engineer.[248] The professional engineer must certify that the network is capable of delivering, to at least 95% percent of CAM locations in each relevant state, voice and broadband service that meets the requisite performance requirements.[249] There must be sufficient capacity to meet customer demand at or above the prescribed levels during peak usage periods. Entities proposing to use wireless technologies also must provide a description of their spectrum access in the areas for which they seek support and demonstrate that they have the required licenses to use that spectrum if applicable.[250] This documentation will enable Commission staff to have assurance from an engineer that the proposed network will be able to fulfill the service obligations to which the bidders will have to commit. Filing deadlines will be strictly enforced, and bidders should not presume that they may obtain a waiver absent extraordinary circumstances.[251]

91. *Available Funds Certification.* Next we adopt proposed rule 54.804(b)(2)(v), concluding that an applicant must certify in its long-form application that it will have the funds available for all project costs that exceed the amount of support to be received, and that it will comply with all program requirements.[252] Simultaneously, we will also require that winning bidders describe in their long-form application how the required construction will be funded and include financial projections that

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[246] *See Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6816, Appendix A, Proposed Rules, Sec. 54.804(b)(2)(ii).

[247] *See Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6816, Appendix A, Proposed Rules at Sec. 54.804(b)(2)(iii).

[248] For CAF Phase II, winning bidders were required to submit a detailed project description that described each specific phase of the project, e.g., network design, construction, deployment, and maintenance. *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1515-1516, paras. 302-303.

[249] *See Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6816-17, Appendix A, Proposed Rules, Sec. 54.804(b)(2)(iv); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1514-15, para. 300.

[250] *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1516-1517, para. 304.

[251] *See* 47 CFR § 0.406 ("Persons having business with the Commission should familiarize themselves with those portions of its rules and regulations pertinent to such business."). *See also, e.g.*, *Universal Service Contribution Methodology*, WC Docket No. 06-122, Order, 26 FCC Rcd 11213, 11215-16, para. 7 (WCB 2011) (declining to review rejection of company's late-filed revisions to form which were caused by company's misunderstanding of form instructions, because "[b]usinesses have a responsibility to familiarize themselves with the rules and regulations that are relevant to their industry").

[252] *See Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6817, Appendix A, Proposed Rules at Sec. 54.804(b)(2)(v).

demonstrate that they can cover the necessary debt service payments over the life of the loan.[253] Additionally, these requirements include the public interest obligations contained in the Commission's rules.[254]

92. *ETC Eligibility and Documentation*. Consistent with the CAF Phase II auction rules, a winning bidder in the Rural Digital Opportunity Fund auction will be permitted to obtain its ETC designation after the close of the auction, submitting proof within 180 days of the public notice identifying winning bidders.[255] We decline to forbear from the ETC requirement.[256] We recognize the statutory role that Congress created for state commissions and the FCC with respect to ETC designations, and we do not disturb that framework.[257] Nothing in the record addresses the standards necessary to find forbearance in the public interest, even if some interested parties may prefer not to become ETCs with all of the associated obligations. Therefore, we will continue to require service providers to obtain ETC status to qualify for universal service support.[258] A winning bidder must demonstrate with appropriate documentation that it has been designated as an ETC covering each of the geographic areas for which it seeks to be authorized for support.[259] For example, in addition to providing the relevant state or Commission orders, each winning bidder will need to demonstrate that its ETC designation covers the areas of its winning bid(s) (*e.g.*, census blocks, wire centers, etc.). Such documentation could include

[253] *See Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6817, Appendix A, Proposed Rules at Sec. 54.804 (b)(2)(vi).

[254] *See Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6817, Appendix A, Proposed Rules at Sec. 54.804(b)(2)(v).

[255] *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6817, Appendix A, Proposed Rules, Sec, 54.804(b)(5). 180 days should provide states with enough time to consider ETC designation applications, without unreasonably delaying the authorization of support. If the audit process takes longer than 180 days, winning bidders will have the option of seeking a waiver of this deadline.[255] In considering such waiver requests, we direct the Bureau to determine whether an entity demonstrated in its waiver petition that it took steps to prepare for an audit prior to being named a winning bidder and that it took immediate steps to obtain an audit after being announced as a winning bidder.

[256] Some commenters argued that the ETC designation requirement is a barrier to entry and should be eliminated. *See* NCTA Comments at 6 (asserting that "the focus of the [Rural Digital Opportunity Fund] is on providing broadband to unserved areas, it makes little sense to continue to require providers to be certified telecommunications carriers."); Pacific Dataport Comments at 5 (stating that the ETC requirements are onerous and "will likely dissuade highly capable service providers . . . who could make significant near-term contributions to bridging the digital divide."); NACO Comments at 2 (encouraging the Commission "to establish a formula to allow fair consideration for non-ETC providers to compete against ETC entities in the overall competitive bidding process."); Muscogee Comments at 12-13 (asserting that the "use of good faith [should be applied] when including those applicants that may not be an ETC but feel qualified to carry out the scope of work should be they be support recipient."); UTC Reply at 8-10 (requesting that the ETC requirement is eliminated "for utilities that are restricted from providing retail broadband services."). *But see* AT&T Reply at 17, n.76 (disagreeing with NCTA's proposal to forbear from requiring providers to be designated as an ETC and that forbearance "undermines fair competition by allowing bids by providers that would not have to factor the costs imposed by ETC requirements into their bids."); *and* NRECA Reply at 11-12 (asserting that forbearance from requiring winning bidders to become ETCs is not warranted and the obligation to retain voice-services should be retained); Windstream Reply at 18 (asserting that the Commission should not eliminate the ETC requirement.

[257] *April 2014 Connect America Order*, 29 FCC Rcd at 7064, para. 42 (reaffirming that Connect America Fund recipients are required to obtain an ETC Designation).

[258] Likewise, §254(e) limits the distribution of support to ETCs designated under §214(e). *See* Windstream Reply at 18 (arguing the ETC requirement "ensure[s] that states, or the Commission . . . , have authority to monitor a provider's use of high-cost support and enforce the obligation to provide supported service.")

[259] 47 CFR § 54.315(b)(5).

map overlays of the winning bid areas, or charts listing designated areas. Furthermore, each winning bidder will be required to submit a letter with its documentation from an officer of the company certifying that its ETC designation for each state covers the relevant areas where the winning bidders will receive support.[260] As we experienced with CAF Phase II, these requirements will help the Commission verify that each winning bidder is permitted to operate in the areas where it will be receiving support.

93. *Forbearance from Service Area Redefinition Process.* We adopt our proposal to forbear from the statutory requirement that the ETC service area of a Rural Digital Opportunity Fund participant conform to the service area of the rural telephone company serving the same area.[261] As in the CAF Phase II auction, the Commission will be maximizing the use of Rural Digital Opportunity Fund support by making it available for only one provider per geographic area.[262] Moreover, we expect that the incumbent rural telephone company's service area will no longer be relevant because the incumbent service provider may be replaced by another Rural Digital Opportunity Fund recipient in portions of its service area. Thus, forbearance is appropriate and in the public interest.

94. Accordingly, for those entities that obtain ETC designations as a result of being selected as winning bidders for the Rural Digital Opportunity Fund, we forbear from applying section 214(e)(5) of the Act, insofar as this section requires that the service area of such an ETC conform to the service area of any rural telephone company serving an area eligible for Rural Digital Opportunity Fund support. We note that forbearing from the service area conformance requirement eliminates the need for redefinition of any rural telephone company service areas in the context of the Rural Digital Opportunity Fund competitive bidding process.[263] However, if an existing ETC seeks support through the Rural Digital Opportunity Fund competitive bidding process for areas within its existing service area, this forbearance will not have any impact on the ETC's pre-existing obligations with respect to other support mechanisms and the existing service area. Likewise, as in CAF Phase II, some of the price cap carrier study areas that may become eligible for the Rural Digital Opportunity Fund competitive bidding process meet the statutory definition so that the carrier serving those study areas would be classified as a rural telephone company.[264]

95. Thus, we conclude that forbearance is warranted in these limited circumstances. Our objective is to distribute support to winning bidders as soon as possible so that they can begin the process of deploying new broadband to consumers in those areas. Case-by-case forbearance would likely delay our post-selection review of entities once they are announced as winning bidders. The Act requires the Commission to forbear from applying any requirement of the Act or our regulations to a

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[260] *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6817, Appendix A, Proposed Rules, Sec, 54.804(b)(5).

[261] *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6807, para. 92. *See also Phase II Auction Order*, 31 FCC Rcd at 6005-09, paras. 157-68. The Act and the Commission's rules define the term "service area" as a geographic area within which an ETC has universal service obligations and may receive universal service support. 47 U.S.C. § 214(e)(5); *see also* 47 CFR § 54.207(a). Section 214(e)(5) of the Act requires that a competitive ETC's service area must conform to the incumbent rural telephone company's service area "unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board . . . establish a different definition of service area for such company." 47 U.S.C. § 214(e)(5).

[262] *Phase II Auction Order*, 31 FCC Rcd at 6006, para. 159 (concluding that "forbearance from the section 214(e)(5) service area conformance requirement for recipients of the [CAF] Phase II competitive bidding process is appropriate and in the public interest"). *See also* Muscogee Comments at 13 (stating that it "supports [the] proposal to forebear the statutory requirement listed to maximize the area and impact of the RDOF by limiting it to one provider per geographic area.").

[263] Accordingly, Commission rules regarding the redefinition process are inapplicable to petitions that are subject to this order. *See* 47 CFR § 54.207(c), (d).

[264] *Phase II Auction Order*, 31 FCC Rcd at 6005-06, paras. 157-68.

telecommunications carrier if the Commission determines that: (1) enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest.[265] For the same reasons set forth in the CAF Phase II Auction Order, we conclude each of these statutory criteria is met for winning bidders of the Rural Digital Opportunity Fund competitive bidding process.[266]

96. *Letters of Credit.* We next adopt letter of credit rules that provide appropriate protection for Rural Digital Opportunity Fund support, with reduced burdens on participants.[267] In CAF Phase II, the Commission found that requiring bidders to obtain an irrevocable standby letter of credit, covering the first year of support of a recipient's winning bid, was an effective means to safeguard the universal service funds.[268] Moreover, the letter of credit was subject to a phase-down schedule, reducing the burdens on the recipients.[269] The letter of credit requirement did not deter broad participation in the CAF Phase II auction where we awarded $1.488 billion in support to 103 winning bidders and,[270] as of December 2019, nearly 90 percent of carriers have been authorized after securing valid letters of credit.[271] Thus, we are not persuaded to adopt suggestions from commenters that we remove the letter of credit requirement entirely, either for all winning bidders or for certain groups of winning bidders such as Tribally-owned and -controlled carriers or established rural carriers.[272]

97. We find appropriate, however, certain modifications to our CAF Phase II letter of credit requirements, which will further reduce the burdens on applicants while still retaining substantial public benefits. We will allow a support recipient to reduce the amount of its letter of credit as it meets the later service milestones; once a recipient has met its deployment obligation to 60% of its CAM locations, the amount of the letter of credit may decrease to an amount equal to 80% of the total support amount already disbursed plus the amount that will be disbursed in the coming year. Consistent with CAF Phase II, once the recipient has met its deployment obligation to 80% of its CAM locations, the letter of credit amount may decrease to 60% of the total support already disbursed plus the amount that will be disbursed in the

[265] 47 U.S.C. § 160(a). *See also* 47 U.S.C. § 160(b) (directing the Commission, in "making the determination under subsection (a)(3) of this section, [to] consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services").

[266] We incorporate by reference here the analysis of forbearance factors that we considered and found warranted forbearance in CAF Phase II. *See Phase II Auction Order*, 31 FCC Rcd at 6005-06, paras. 157-68.

[267] *Phase II Auction Order*, 31 FCC Rcd at 5990, 6045, paras. 119-21, Appx. B.

[268] *Phase II Auction Order*, 31 FCC Rcd at 5990, para. 120.

[269] *Phase II Auction Order*, 31 FCC Rcd at 5990, para. 120.

[270] *See* 220 Applicants Qualified to Bid in the Connect America Fund Phase II Auction (Auction 903) Bidding to Begin on July 24, 2018, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 6171 (2018); Auction 903 Winning Bidders PN, 33 FCC Rcd at 8257.

[271] *See* Authorized Auction 903 Long-Form Applicants, https://www.fcc.gov/file/17188/download (last updated 12/16/2019).

[272] *See, e.g.*, Incompas Comments at 13 (asserting that the Commission should allow "small providers to demonstrate capability through means other than the letter of credit," like participation in other build projects like E-Rate); Internet Society Comments at 5 (proposing a vouching system and validation of interest from a Tribal government rather than a bank).

coming year. Ultimately, once a recipient has completed 100% deployment to all CAM locations by the end of year six and USAC has verified the deployment, the letter of credit can be closed.

98. Consistent with CAF Phase II, we will require each winning bidder to submit a commitment letter from a bank no later than the number of days provided by public notice.[273] A long-form applicant must submit a letter from a bank acceptable to the Commission, committing to issue an irrevocable stand-by letter of credit, to the long-form applicant.[274] The letter must, at a minimum, provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit in Appendix C.

99. Once a winning bidder has been authorized, we will require an irrevocable standby letter of credit from a bank that is acceptable to the Commission[275] in substantially the same form as the model letter of credit set forth in Appendix C.[276] The letters of credit for winning bidders must be obtained from a domestic or foreign bank meeting the requirements adopted herein. For U.S. banks, the bank must be insured by the Federal Deposit Insurance Corporation (FDIC) and have a Weiss bank safety rating of B- or higher committing to issue a letter of credit.[277] Similarly, for non-U.S. banks, we require that the bank be among the 100 largest non-U.S. banks in the world (determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit, determined on a U.S. dollar equivalent basis as of such date).[278] Winning bidders also have the option of obtaining a letter of credit from CoBank or the National Rural Utilities Cooperative Finance Corporation so long as they continue to meet the Commission's requirements.[279] When a winning applicant obtains a letter of credit, it must be at least equal to the amount of the first year of authorized support.[280] Before the winning applicant can receive its next year's support, it must modify, renew, or obtain a new letter of credit to ensure that it is valued at least at the total amount of Rural Digital Opportunity Fund money that has already been disbursed plus the amount of money that is going to be provided in the next year. We conclude that requiring recipients to obtain a letter of credit on at least an annual basis will help minimize administrative costs for USAC and the recipient rather than having to negotiate a new letter of credit for each monthly disbursement.[281]

100. However, we will require all winning bidders to provide a single letter of credit covering all of their winning bids within a single state.[282] We decline to allow multiple letters of credit that cover all bids in a state as we did for CAF Phase II,[283] as this option was not used and is administratively

[273] *See Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6817, Appendix A, 54.804(b)(3).

[274] *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1519, para. 309.

[275] 47 CFR § 54.315(c), (c)(3); *Phase II Auction Order*, 31 FCC Rcd at 5991-92, paras. 122, 125.

[276] A Rural Digital Opportunity Fund support recipient's letter of credit must be issued in substantially the same form as one of our model LOCs and, in any event, must be acceptable in all respects to the Commission.

[277] *Phase II Auction Order*, 31 FCC Rcd at 5991, paras. 120.

[278] *See Phase II Auction Order*, 31 FCC Rcd at 5996, para. 131. The bank must also have a branch in the District of Columbia or other agreed-upon location in the United States, have a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's, and must issue the letter of credit payable in United States dollars.

[279] *See* 47 CFR § 54.315(c)(2)(ii) & (iii).

[280] *Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 189-94.

[281] *See Phase II Auction Order*, 31 FCC Rcd at 5997, para. 135. Note that in accordance with the model letter of credit in Appendix C hereto, annual letters of credit must contain an evergreen provision.

[282] *See Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122.

[283] *See Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122.

burdensome on the Commission and USAC. Thus, a default in one census block could result in a draw on the entire letter of credit.

101. As we have previously recognized, we will again allow for the option of greater flexibility regarding letter of credit for Tribally-owned and -controlled winning bidders.[284] Consistent with CAF Phase II, if any Tribally-owned and -controlled Rural Digital Opportunity Fund winning bidder is unable to obtain a letter of credit, it may file a petition for a waiver of the letter of credit requirement. Consistent with our precedent, waiver applicants must show, with evidence acceptable to the Commission, that the Tribally-owned and -controlled winning bidder is unable to obtain a letter of credit.[285]

102. The determinations we reach today take into consideration the comments submitted on the burdens associated with the letter of credit requirement. We conclude, however, that the letter of credit requirement best protects the Fund. While we understand that there are costs associated with the letter of credit, we continue to believe bidders can incorporate these costs when determining their strategies prior to the auction. The universal service program provides significant benefits when weighed against the costs of the letter of credits, which in turn provide significant security of public funding. As we have previously stated, letters of credit have "the added advantage of minimizing the possibility that the support becomes property of a recipient's bankruptcy estate for an extended period of time, thereby preventing the funds from being used promptly to accomplish our goals."[286]

103. We received comments with requests to modify the letter of credit requirement. CoBank, ACB (CoBank), for example, suggests that limiting the letter of credit requirement to only one year's support could provide opportunity for smaller and more diverse participants and the risks could be mitigated by instituting more stringent annual reporting requirements.[287] Live Oak Bank advocates for a "detailed measurement" "[of] an operator's ability to meet the build-out criteria and to perform" before the second year to help lending institutions lessen its risk and monitor "the operator's performance relative to [its] plan and contractual obligations."[288] CenturyLink and NTCA agree that if a letter of credit is required, it should be reduced with each milestone verified by USAC,[289] while Windstream agrees with USTelecom that the Commission should cut the letter of credit in half after its first and

[284] *Phase II Auction Order*, 31 FCC Rcd at 5999, para. 140. *See* Muscogee Comments at 12; Navajo Reply at 12. It is also important to note that, as of December 2019, at least three CAF Phase II winning bidders that are entirely or partially owned by a Tribe have been able to obtain letters of credit complying with the Commission's rules without the need for a waiver.

[285] *Phase II Auction Order*, 31 FCC Rcd at 5999, para. 140.

[286] *Phase II Auction Order*, 31 FCC Rcd at 5990, at 120.

[287] CoBank Reply at 4-6. CoBank further asserts that "requiring a LOC in the amount of just one year's support would reduce the future liability of an awardee. . ." *Id.* at 4.

[288] *See* Letter from John Scrivner, Vice President of Broadband Lending, Live Oak Bank, to Marlene H. Dortch, FCC WC Docket No. 19-126 et al., at 1 (filed Oct. 28, 2019). Live Oak also argues that the Commission should "allow for a pro rata reduction in the ongoing Letter of Credit amount committed . . . when an operator meets the build-out thresholds stipulated in the program." It further argues that without this reduction the broadband operator bears the burdens of "increased cost and possibly reduced eligibility for Letters of Credit." *Id.*

[289] CenturyLink Comments at 10; NTCA Reply at 27. *See also* Letter from Stephen E. Coran, Counsel to Nextlink, to Marlene H. Dortch, FCC WC Docket No. 19-126 et al., at 1-2 (filed Dec. 12, 2019) (supporting the reduction in value of letters of credit as deployment milestones are met because banks charge CAF recipients around 5% of the value of the letter of credit, which by year 5 equals 25% of the value of the annual subsidy).

second milestones are completed.[290] ITTA proposes that the letter of credit "funding be limited to no more than two years of funding at any time."[291] We decline to adopt these proposals. These approaches would not permit the Commission to recover a significant portion of the public's funds that are disbursed to an entity in the event that the entity is not using the support for its intended purposes. Consistent with CAF Phase II, we will only authorize USAC to draw on the letter of credit for the entire amount of the letter of credit if the entity does not repay the Commission for the support associated with its compliance gap.[292] Additionally, as stated in CAF Phase II, "if the entity fails to pay this support amount, we conclude that the risk that the entity will be unable to continue to serve its customers or may go into bankruptcy is more likely, and thus it is necessary to ensure that the Commission can recover the entire amount of support that it has disbursed."[293]

104. In response to modification suggestions, however, we are persuaded to alter our CAF Phase II letter of credit requirements and appropriately minimize the burdens on applicants while still retaining substantial public benefits. We will allow a support recipient to reduce the amount of its letter of credit as it meets the later service milestones.[294] Once USAC has verified that the recipient has deployed to 60% of its CAM locations, the amount of the letter of credit may decrease to an amount equal to 80% of the total support amount already disbursed plus the amount that will be disbursed in the coming year. In addition, consistent with CAF Phase II, once the recipient has deployed to 80% of its CAM locations, the letter of credit amount may decrease to 60% of the total support already disbursed plus the amount that will be disbursed in the coming year. Consistent with CAF Phase II, we will require that the letter of credit only remain open until the recipient has certified that it has deployed broadband and voice service meeting the Commission's requirements to 100% of the CAM locations by the end of year six, and USAC has verified that the recipient has fully deployed its network.[295] We do not expect new additional locations in years seven and eight to be significant enough that it would be necessary to secure that additional deployment with a letter of credit, but recipients will be subject to other sanctions for non-compliance with the terms and conditions of high-cost funding, including but not limited to the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designations, and suspension or debarment.[296]

105. We disagree with ITTA that the phase-down process is "a myth," as it states that the "the increase in Letter of Credit values over the course of time relative to earlier years of the support term negatively affects auction winners' [overall profits]." This reduction in the letter of credit amount will serve to reduce the burden on the recipient and to provide additional incentive to deploy quickly to rural

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[290] USTelecom proposes that "after a participant meets its first and second milestone in *any* Commission universal service program, that participant then qualifies as a lower-risk and therefore can obtain a letter of credit for half of the value otherwise prescribed." USTelecom Comments at 46. Windstream Reply at 19-20, n.69-71. Likewise, ITTA proposes that "[i]f the RDOF provider has missed the milestone it will still post a one-year [LOC] and will be subject to the additional oversight by USAC and the Commission depending on the level of the miss." ITTA Comments at 17-18.

[291] ITTA Comments at 17-18.

[292] *See supra* Section III.E and *Phase II Auction Order*, 31 FCC Rcd at 5992, para. 124.

[293] *Phase II Auction Order*, 31 FCC Rcd at 5992, para. 124.

[294] *Phase II Auction Order*, 31 FCC Rcd at 5991-92, paras. 123-24. In instances where the amount of the letter of credit fails to satisfy the amount owed, such deficiency will be a debt due to the Commission and, if not paid, will be collected pursuant to the Commission's rules. *See* 47 C.F.R. 1.1901 *et seq.* Where the draw on the letter of credit results in a greater recovery than is required to satisfy the default, we direct the Bureau to take appropriate measures promptly to return the excess funds.

[295] *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 123.

[296] 47 CFR § 54.320(c).

areas. This approach is consistent with CAF Phase II and will help alleviate the costs of obtaining a letter of credit, particularly for entities that are able to build out their networks faster than the six year build-out period, while still protecting the Commission's ability to recover the funds in the event that the entity is not building out its network as required.[297]

106. Having established a stair-step reduction in the letter of credit that correlates with increased deployment, we decline USTelecom's phase down proposal calling for "cumulative funding that would be subject to the [letter of credit] obligation . . . reduced by an amount commensurate with that deployment."[298] We are not persuaded by this approach. Specifically, USTelecom proposes that the letter of credit is reduced by the amount of buildout verified, for example if 20% was built out in one year and verified, then the letter of credit would be reduced by 20%.[299] As stated above, the Commission requires 100% buildout to be verified and then the letter of credit can be terminated. Under USTelecom's proposal, each individual auction winner's build out would be reviewed on a yearly basis, which would be onerous and "too administratively burdensome and could potentially delay the auction."[300] Moreover, support is not disbursed exactly in relation to the percentage of locations to which a carrier has deployed facilities.

107. Commenters renewed requests for other safeguard measures, yet none of the measures fully guarantee that the Commission will be able to recover past support disbursements from a defaulting recipient. Several commenters suggested performance bonds or sureties. For example, WISPA and WTA assert the Commission should require auction winners to obtain performance bonds as an alternative to obtaining letters of credit, costing participants substantially less than a letter of credit.[301] USTelecom

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[297] *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 123.

[298] *See* USTelecom Nov. 29, 2019, *Ex Parte* Letter at 3-4. USTelecom's asserts that its proposal "could be implemented through the annual filing and certification of deployment . . . subject to verification by USAC [for years 1 and 2], even though there are no specific milestone requirements before Year 3." *Id.* at 3. USTelecom further states that once USAC verifies deployment, it could exclude an amount equal to 5% of its annual funding for every 1% of verified deployment. *Id.* at 3-4.

[299] *See* USTelecom Nov. 29, 2019, *Ex Parte* Letter at 3.

[300] *See Phase II Auction Order*, 31 FCC Rcd at 5985, para. 105.

[301] WISPA Comments at 36-38 (stating further that some CAF Phase II recipients are finding that the cost to obtain and maintain a letter of credit can approach 10% of the annual support amount. Performance bonds cost .5-1.5% of the cost of the letter of credit). Other commenters also support Performance Bonds. *See, e.g.*, WTA Reply at 17-18 (agreeing that "performance bonds would appear to be a more efficient alternative to LOCs because they are generally able to provide comparable protection to the Commission against loss of RDOF funds at a much lower cost . . . ."); *see* Geolinks Comments at 12-13 (urging the Commission to adopt performance bonds because they are a less costly alternative and carries far fewer collateral/credit requirements while still offering the Commission the same amount of coverage); NTCA Reply at 26-27 (stating that a performance bond is equally as effective as a letter of credit); WVBEC Reply at 1-4 (asserting that performance bonds cost much less than a letter of credit to secure); Letter from Thomas Cohen and J. Bradford Currier, counsel to ACA Connects, to Marlene H. Dortch, Secretary, FCC WC Docket No. 19-126 et al., at 5 (filed Nov. 21, 2019) (agreeing with commenters that "the Commission should consider allowing performance bonds and other alternative arrangements" instead of the letter of credit); Letter from Stephen E. Coran, counsel to Aristotle, Geolinks and WISPA, to Marlene H. Dortch, Secretary, FCC WC Docket No. 19-126 et al., at 1-3 (filed Dec. 9, 2019) (discussing first-hand experiences with letters of credit, equating the maintenance cost to the amount it would cost to serve broadband to a community, and arguing that performance bonds are "significantly less difficult and less expensive."); Letter from C. Douglas Jarrett, counsel to NRECA, to Marlene H. Dortch, Secretary, FCC WC Docket No. 19-126 et al., at 4 (filed Dec. 19, 2019) (asserting that the Commission should consider allowing applicants the option of a performance bond). Likewise, some commenters support Surety Bonds. *See, e.g*, SFAA Comments at 2-3 (stating that a surety bond has advantages over a letter of credit because while a default on a letter of credit only leads to the bank issuing the LOC releasing funds, a surety bond obligates the issuer to finish the work that the surety bond originally secured); CoBank Reply at 3

(continued….)

agrees, commenting that the Commission should reconsider its proposals requiring Rural Digital Opportunity Fund winners to obtain a letter of credit as it is a substantial barrier to participation.[302] Letters of credit, unlike performance bonds, allow for an immediate reclamation of support in the event the recipient is not properly using those funds. Performance bonds, on the other hand, would not provide the same level of protection and would require the involvement of a third party to adjudicate any disputes that arise, which would complicate our process and unnecessarily limit the authority of the Commission to allocate funds. A letter of credit, unlike a performance bond, has the benefit of the "independence principle" in that the letter of credit is independent of the underlying transaction.[303] The bank's obligation to pay under the letter of credit does not depend on the auction winner's default but on the presentation of documents evidencing the default.[304] Being independent in this way assures that USAC can collect monies due to it promptly without engaging in disputes with the winning bidder, the performance bond guarantor or the winning bidder's trustee in bankruptcy over whether the funds should be paid or even whether the funds are available to the Fund due to competing claims of creditors.

108. Similarly, Frontier and Windstream recommend placing money in escrow prior to bidding because they claim letters of credit are too expensive.[305] The record also includes several comments opposing letter of credits or suggesting other means of protecting our interests.[306] However, we are not persuaded that escrow agreements, or other alternatives, would provide protection equal to the letters of credit that we now require. Escrow agreements would put an amount of money with a third party who releases it when a contingency is satisfied. The auction winner would be a party to the escrow agreement, with the possibility that the support becomes the property of an auction winner's bankruptcy.[307] Additionally, the auction winner would be required to place the same amount of funds in escrow as were disbursed by USAC, which could cause "administrative burdens" on the Commission and "could potentially delay the auction."[308] The Commission itself would need to create an escrow account, attain the money of all recipients, and manage and ensure proper payment to all recipients, an unnecessary

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(stating that companies may find the process and costs of obtaining LOC prohibitive and agrees with SFAA that during the construction phase there are "possible benefits of surety bonds.").

[302] USTelecom Comments at 43-44; USTelecom Reply at 19-20. *See also* CenturyLink Comments at 10-12 (asserting that the letter of credit is "ancient" and would likely divert at least 5% of the winning bidder's rural broadband investment funds away to banks).

[303] *In re Lancaster Steel Co.*, 284 B.R. at 159.

[304] *Andy Marine, Inc. v. Zidell, Inc.*¸812, F.2d 534, 536 (9th Cir.1987).

[305] Frontier Comment at 14; Windstream Comment at 19-20; *see also* USTelecom Comments at 46-47. The Commission could consider having the provider put an amount in escrow at the beginning of the funding period, which could either be drawn down or released based on later performance. The Commission can backstop any of these approaches via its existing enforcement mechanism. *Id.* at 46.

[306] *See, e.g.*, @Link Comments at 5-6 (arguing that "the letter of credit requirement poses a needless complication and expense" and the Commission should work with the USDA to develop coordinated policies or agreements that would make the borrowers and lenders efforts); Incompas Comments at 13 (asserting that the Commission should allow small providers to demonstrate capability through means other than the letter of credit, like participation in other build projects like E-Rate); NCTA Comments at 9 (asserting that "the Commission should eliminate the letter of credit requirement for well-established broadband providers that can demonstrate financial stability in less cumbersome ways. . . ."); NRECA Reply at 10-11 (offering the Commission different proposals including freezing the aggregate amount of the LOC, such that "if the award recipient achieves [the initial] milestone the amount of the LOC does not increase for the next year"); WVBEC Comments at 11 (stating that applicants "should also be given the option of providing a personal guaranty of the refund obligation rather than providing a letter of credit").

[307] *Phase II Auction Order*, 31 FCC Rcd at 5990, para. 120.

[308] *See Phase II Auction Order*, 31 FCC Rcd at 5985, para. 105.

and inefficient duplication of a system banks already have in place with letters of credit, with none of the advantages. Instead, we can rely on the expertise of banks' experience in managing letters of credit, guaranteeing payment, and ensuring security for the Commission and ultimately the Fund. Therefore, we decline to implement escrow accounts and maintain the letter of credit requirement.

109. Finally, consistent with CAF Phase II, we will require each winning bidder to submit a bankruptcy opinion letter from outside legal counsel.[309] That opinion letter must clearly state, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the account party's bankruptcy estate, or the bankruptcy estate of any other competitive bidding process recipient-related entity requesting issuance of the letter of credit under section 541 of the Bankruptcy Code.[310] WVBEC argues that the bankruptcy opinion letter requirement is unduly burdensome and should be eliminated "to accommodate non-traditional service providers like co-ops, non-profits, and government entities . . . ."[311] However, it is important to receive confirmation from each winning bidder that its letter of credit would not be consolidated in the estate. Therefore, we decline to eliminate this requirement and conclude that the limited burden imposed on winning bidders to obtain this letter is outweighed by our policy goal to be fiscally responsible with finite universal service funds.

G. Defaults

110. We next adopt rules that establish the framework under which a Rural Digital Opportunity Fund winning bidder will be subject to a forfeiture under section 503 of the Act if it defaults on its winning bid(s) before it is authorized to begin receiving support.[312] A recipient will be considered in default and will be subject to forfeiture if it fails to timely file a long-form application, fails to meet the document submission deadlines outlined above, is found ineligible or unqualified to receive support, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of support.[313] Consistent with CAF Phase II, a winning bidder will be subject to the base forfeiture for each separate violation of the Commission's rules.

111. For Rural Digital Opportunity Fund competitive bidding purposes, we define a violation as any form of default with respect to each geographic unit subject to a bid. We maintain that each violation should not be unduly punitive and expect the forfeiture to be proportionate to the overall scope of the winning bidder's bid.[314] We conclude that it is reasonable to subject all bidders to the same $3,000 base forfeiture per violation subject to adjustment based on the criteria set forth in our forfeiture guidelines.[315] To determine the final forfeiture amount, the Commission's Enforcement Bureau will consider the "nature, circumstances, extent and gravity of the violations."[316]

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[309] *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6819, Appendix A 54.804(c)(3); *see also Phase II Auction Order*, 31 FCC Rcd at 5992, para. 125.

[310] 11 U.S.C. § 541.

[311] WVBEC Comments at 11.

[312] *See* 47 CFR § 1.21004. This forfeiture payment shall be in lieu of the requirements of Section 1.21004(b) of the Commission's rules with respect to default payments. *See id.* § 1.21004(b).

[313] *Phase II Auction Order*, 31 FCC Rcd at 6000, para. 144.

[314] *Phase II Auction Order*, 31 FCC Rcd at 6000, para. 144.

[315] 47 CFR § 1.80(b)(8), note to paragraph (b)(8). As the Commission reasoned in its CAF Phase II decision, $3,000 base forfeiture amount is equivalent to the base forfeiture that is imposed for failing to file required forms or information with the Commission. *Connect America Phase II Auction Order*, 31 FCC Rcd at 6000, para. 143.

[316] 47 CFR § 1.80(b)(8). *See also* 47 U.S.C. § 503(b)(2)(B) (describing per-violation caps); 47 CFR § 1.80(b)(8), note to paragraph (b)(8) (Guidelines for Assessing Forfeiture).

112. No commenter specifically opposed the Commission's original proposal to establish the forfeiture owed for an auction default. However, Windstream characterized the CAF Phase II forfeiture as "modest" and "apparently insufficient to prevent [defaulters] from bidding."[317] Windstream further noted that "the forfeiture penalties proposed against [defaulters], which range from $1,242 to $30,000 did not deter these entities from bidding."[318] USTelecom suggested that the Commission raise the base forfeitures, as the CAF Phase II base amounts were "not substantial enough to dissuade" uncommitted applicants from participating.[319]

113. We agree with commenters. Thus, to ensure that the amount of the base forfeiture is not disproportionate to the amount of an entity's bid, we also limit the total base forfeiture to 15% of the bidder's total bid amount for the support term, which is an increase from the CAF Phase II auction limit of 5%.[320] We expect this will further ensure serious participation, without being overly burdensome and punitive to defaulters. As a condition of participating in the Rural Digital Opportunity Fund auction, entities will acknowledge that they are subject to a forfeiture in the event of an auction default. Thus, we maintain that by adopting rules governing forfeitures for defaults, "we will impress upon recipients the importance of being prepared to meet all our requirements for the post-selection review process, and emphasize the requirement that they conduct a due diligence review to ensure that they are qualified to participate in the . . . competitive bidding process and meet its terms and conditions."[321]

IV. Rural Digital Opportunity Fund Transitions

114. In this section, we address several issues relating to the implementation of the Rural Digital Opportunity Fund in areas currently served by price cap carriers receiving either legacy high-cost or CAF Phase II model-based support. To ensure continuity of service for consumers, we adopt specific support transition paths for census blocks served by these price cap carriers. We also consider additional issues related to the transition from CAF Phase II model-based support to Rural Digital Opportunity Fund support, including the continuing responsibilities of incumbent price cap carriers no longer receiving support to serve specific areas.

115. In the *NPRM*, the Commission sought comment on adopting a transition period methodology for incumbent price cap carriers receiving disaggregated legacy support similar to the approach employed following the CAF Phase II auction.[322] Specifically, the Commission proposed that, in areas where an incumbent price cap carrier receives disaggregated legacy support and subsequently it or another provider becomes the authorized Rural Digital Opportunity Fund support recipient, the incumbent will cease receiving disaggregated legacy support on the first day of the month after it is authorized to receive Rural Digital Opportunity Fund support.[323] In legacy high-cost support areas where

[317] *See* Windstream Comments at 19.

[318] *See* Windstream Reply at 16-17.

[319] USTelecom November 29, 2019, *Ex Parte* Letter at 4.

[320] This would occur in situations where the dollar amount associated with the bid is low. For example, assume Bidder A bids to serve 100 census block groups for $100,000 over the support term. We would impose a base forfeiture of $15,000 (15% of $100,000) because otherwise the base forfeiture would be $300,000, three times the entire bid amount ($3,000 x 100 CBGs). In contrast, if Bidder B bids to serve 50 census block groups for $1,000,000 over the support term, we would impose a base forfeiture of $150,000 ($3,000 x 50 CBGs), which is 15% of the total bid.

[321] *Phase II Auction Order*, 31 FCC Rcd at 6000, para. 145; *see also* UTC Comments at 19 (asserting "these enforcement mechanisms are necessary to ensure that applicants and winning bidders demonstrate their qualifications and comply with their performance requirements, so that available funding is put to good use").

[322] *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6808-09, paras. 95-99.

[323] *Id.* at 6809, para. 98.

no Rural Digital Opportunity Fund support is authorized, the Commission proposed allowing the incumbent to continue receiving disaggregated support until further Commission action.[324] Finally, the Commission proposed ceasing disaggregated legacy support payments to incumbent carriers in any census block deemed ineligible for the Rural Digital Opportunity Fund on the first day of the month after the final Rural Digital Opportunity Fund eligible areas list is released.[325]

116. Likewise, the Commission sought comment on transitioning support in areas served by CAF Phase II model-based support recipients.[326] In particular, the Commission asked whether these carriers should receive an additional seventh year of model-based support, given the potential timing of a Rural Digital Opportunity Fund auction, and, if so, whether that additional support should be made available to all carriers receiving model-based support or only a certain subset of those carriers.[327] The Commission also sought comment on whether the seventh year of support should be modified in any way, including whether it should cover all of 2021 or just a portion of the year, as well as whether any additional obligations should be tied to this support.[328] Finally, the Commission asked parties to highlight any additional issues related to the transition of support.[329]

117. Commenters broadly supported ensuring appropriate transitions to Rural Digital Opportunity Fund auction support and encouraged the Commission to affirm that all CAF Phase II model-based support recipients are entitled to a full seventh year of funding.[330] In areas won by bidders in the Rural Digital Opportunity Fund auction, CenturyLink proposed that the Commission authorize all auction winners on January 1, 2022, with legacy transition support and CAF Phase II model-based support continuing through that time.[331] Frontier argued that, in areas where the Rural Digital Opportunity Fund auction winner is not the incumbent price cap carrier, the Commission must provide continued support to existing CAF Phase II providers to ensure continued voice and broadband services, proposing a six-year phase out of this support at periods equal to the inverse of the new provider's deployment milestones.[332] ITTA also argued for continued support for the incumbent price cap carriers in these areas, but instead proposed that the incumbent receive support at the level of the winning bidder in the respective service area until the winning bidder is able to serve all the locations currently served by the incumbent.[333] In areas where there is no Rural Digital Opportunity Fund auction winner, Frontier and ITTA encouraged the Commission to provide existing price cap carriers with sufficient support to continue providing broadband and voice service.[334] USTelecom, Windstream, and ITTA further advocated for continued support to incumbent price cap carriers in areas where auction winners are not authorized by the end of

[324] *Id.*

[325] *Id.* at 6809, para. 97.

[326] *Id.* at 6809-10, paras. 100-104.

[327] *Id.* at 6810, para. 101.

[328] *Id.* at para. 103.

[329] *Id.* at para. 104.

[330] USTelecom Comments at 31-33; ACA Connects Comments at 26-28; Muscogee Comments at 13-14; Windstream Comments at 23; NTCA Comments at 34-35; ITTA Comments at 28-29. ACA Connects Reply Comments at 31-32; AT&T Reply Comments at 8-9; Frontier Reply Comments at 7-8; PennPUC Reply Comments at 23; USTelecom Reply Comment at 16; WISPA Replay Comments at 42-43; Windstream Reply Comments at 22-23.

[331] CenturyLink Comments at 5, 7-8.

[332] Frontier Comments at 17-18.

[333] ITTA Comments at 31-32.

[334] Frontier Comments at 18-19; ITTA Comments at 32.

2021.[335] Additionally, CenturyLink and NTCA proposed extending ongoing support in areas deemed ineligible for the Rural Digital Opportunity Fund.[336] Other commenters highlighted the need for transitional support and encouraged the Commission to tie specific metrics or obligations to this support.[337]

1. Transition for Legacy High-Cost Support Areas

118. For incumbent price cap carriers currently receiving support through the disaggregated legacy high-cost support mechanism, we determine that adopting a transition to Rural Digital Opportunity Fund auction support that builds on the approach employed following the CAF Phase II auction will provide necessary clarity as we implement a new support mechanism.[338] As we noted when we adopted the transitions to CAF Phase II auction support, such an approach will "protect customers of current support recipients from a potential loss of service, and minimize the disruption to recipients of frozen legacy support from a loss of funding" while at the same time ensuring that finite universal service funds are used responsibly.[339]

119. First, in areas currently funded by disaggregated legacy support that are subsequently won in the Rural Digital Opportunity Fund auction by the incumbent price cap carrier, the incumbent will cease receiving disaggregated legacy support on the first day of the month following its authorization to receive Rural Digital Opportunity Fund support. Likewise, in legacy high-cost support areas won in the Rural Digital Opportunity Fund auction by new providers, the incumbent will cease receiving disaggregated legacy support the first day of the month after the new ETC is authorized to receive such support. In these instances, we believe it is appropriate to transition to the new support mechanism as soon as possible to ensure that finite support dollars are used most efficiently.[340]

120. We recognize that there may be eligible areas in the Rural Digital Opportunity Fund auction that see significant interest, but do not receive a winning bid. For these areas, we revisit the Commission's prior approach of extending disaggregated legacy support on an interim basis until further Commission action.[341] As we previously noted, continued legacy support in auction-eligible, high-cost

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[335] USTelecom Comments at 29-31; Windstream Comments at 22-23; ITTA Comments at 29-30.

[336] CenturyLink Comments at 5, 7-8; NTCA Comments at 35.

[337] Nebraska PSC Comments at 6-7; AdTran Comments at 15.

[338] *See e.g., Connect America Fund et al*., WC Docket No. 10-90, Report and Order, FCC 19-8, at 4-6, paras. 11-16 (Feb. 15, 2019) (*Phase II Transitions Order*). We note that Alaska Communications submitted comments highlighting "specific issues associated with the end of the CAF Phase II support for price cap carriers because these issues are likely to recur when CAF Phase II Frozen Support expires in Alaska." *See* Comments of Alaska Communications, WC Docket Nos. 19-126, 10-90, at 1 (Sept. 20, 2019). Because we have determined that census blocks that are served by price cap carriers that serve non-contiguous areas and elected to receive frozen support in lieu of CAF Phase II model-based support will not be included in the Rural Digital Opportunity Fund auction, we do not address the issues raised by Alaska Communications at this time.

[339] *Phase II Transitions Order*, FCC 19-8, at para. 11.

[340] To the extent that any carrier believes additional support is necessary, it may request a waiver pursuant to section 1.3 of the Commission's rules. *See* 47 CFR § 1.3. *See also Phase II Transitions Order*, FCC 19-8, at para. 26 ("In evaluating requests for a waiver, the Commission will consider any relevant facts presented by the carrier that demonstrate it is necessary and in the public interest for the price cap carrier to receive that additional funding to maintain reasonably priced voice service. Examples of such facts would include not only all revenues derived from network facilities that are supported by universal service but also revenues derived from unregulated and unsupported services. We do not, however, expect to grant these requests routinely, and caution petitioners that we generally intend to subject such requests to a rigorous, thorough and searching review comparable to a total company earnings review").

[341] *Phase II Transitions Order*, FCC 19-8, at para. 13.

areas was provided on an interim basis pending further Commission action.[342] Thus, carriers receiving legacy support have been on notice that this support would not be provided in perpetuity. We now conclude that price cap carriers receiving legacy support in areas that do not receive a winning bid will cease receiving such support on the first day of the month following the close of Phase I of the auction. These support amounts will instead be included as part of the budget for Phase II of the auction. We also decline to extend additional support to these carriers to maintain fixed voice services in these areas. As the Commission's most recent data indicate, mobile voice subscriptions constitute almost 75% of the overall consumer voice subscriptions in the United States.[343] Given the increasing ubiquity of fixed and mobile voice services, dedicating continued support for fixed voice services would be an inefficient use of our finite universal service dollars. Instead, we conclude that directing support toward deploying more robust broadband services, rather than continuing to maintain current minimum service levels, is the best use of this funding. We note, however, that these areas will be included in Phase II of the Rural Digital Opportunity Fund auction and thus price cap carriers currently serving these areas will have the opportunity to bid on and again receive support to provide voice and broadband services in these areas.

121. In all census blocks deemed ineligible for the Rural Digital Opportunity Fund auction, incumbent price cap carriers will no longer receive legacy support beginning the first day of the month following release of the final Rural Digital Opportunity Fund eligible areas list for Phase I of the auction.[344] Because these areas will be excluded from Phase I of this auction, the Commission has determined that continued legacy support for these areas is no longer necessary. Thus, we will cease distributing legacy support as soon as possible in order to preserve our finite universal service funds, instead focusing support to areas in the greatest need of broadband deployment.

Table 1: Transition of Price Cap Carriers' Legacy Support

Rural Digital Opportunity Fund Census Block Type	Incumbent Transition Schedule
Won at auction by the incumbent price cap carrier	Receives legacy support until the first day of the month following its authorization, then transitions to Rural Digital Opportunity Fund support
Won at auction by a new provider	Receives legacy support until the first day of the month following the new provider's authorization; new provider then receives Rural Digital Opportunity Fund support
Not won at auction	Receives legacy support until the first day of the month following close of the auction
Not eligible for auction	Receives legacy support until the first day of the month following release of the final eligible areas list

[342] *Id.* at para. 11.

[343] *See* FCC, Office of Economics and Analytics, Industry Analysis Division, *Voice Telephone Services: Status as of December 31, 2017*, at 2 (Aug. 2019), https://docs.fcc.gov/public/attachments/DOC-359343A1.pdf.

[344] *Rural Digital Opportunity Fund NPRM*, 34 FCC Rcd at 6809, para. 97.

2. Transition for Areas Receiving CAF Phase II Model-Based Support

122. Next, we address support transitions in areas where incumbent price cap carriers currently receive CAF Phase II model-based support. As with our approach for legacy support transitions, we have attempted to strike a balance between properly allocating our finite resources and ensuring that consumers across the country have access to uninterrupted services. We note at the outset that the Commission, in establishing the six-year term of support for model-based support recipients that would extend through 2020, intended to conduct a competitive bidding process in areas served by these carriers "no later than the end of 2019 to ensure there is continuity and a transition path" to the next support mechanism.[345] Though we did not meet this initial goal, we intend to conduct Phase I of the Rural Digital Opportunity Fund before the end of 2020. However, we have learned from our experience with the CAF Phase II competitive bidding process that additional work will remain post-auction before winning bidders will be authorized to receive Rural Digital Opportunity Fund support and provide the required voice and broadband service. Because this work likely will stretch into 2021, we revisit the previously established term of support for incumbent price cap carriers.[346]

123. In the *December 2014 CAF Phase II Order*, the Commission recognized the importance of providing a transition path between recipients of CAF Phase II model-based support and recipients of funding under a new support mechanism. Specifically, the Commission determined that it would offer incumbent price cap carriers the option of electing an additional year of support—through calendar year 2021—if they did not win at, or chose not to participate in, the subsequent competitive bidding process.[347] Because of the timing considerations regarding Phase I of Rural Digital Opportunity Fund explained above, we now determine that an additional seventh year for carriers receiving model-based support is necessary to ensure continuity in service for consumers and to provide a reasonable support glide path as we transition from one support mechanism to another. This additional seventh year will not be limited to carriers that do not win in Phase I of the Rural Digital Opportunity Fund auction or carriers that do not participate in the auction; instead it will be available to all price cap carriers that elected the offer of model-based support in exchange for meeting defined service obligations. We direct the Bureau to determine and implement a mechanism that will enable these price cap carriers to elect whether to receive an additional seventh year of support.

124. We clarify that in census blocks where a price cap carrier elects not to receive a seventh year of model-based support, it is indicating that ongoing model-based support is not necessary to maintain voice and broadband services in these areas. Thus, the carrier will receive no further support after the conclusion of its six-year term (i.e., December 31, 2020), even if these areas are eligible for the Rural Digital Opportunity Fund auction. Following Phase I of the auction, the provider authorized to receive funding in these areas—whether the incumbent price cap carrier or a new provider—will begin receiving Rural Digital Opportunity Fund support the first day of the month after it is authorized. For areas where no qualifying bid is received in Phase I of the Rural Digital Opportunity Fund auction, as well as for areas deemed ineligible for Phase I of the Rural Digital Opportunity Fund auction, the incumbent price cap carrier's model-based support will cease on December 31, 2020 and no further support will be provided in these areas.[348]

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[345] *December 2014 Connect America Order*, 29 FCC Rcd at 15666, para. 31.

[346] *Id.* at 15666-67, para. 32.

[347] *Id.*

[348] *See supra* para. 120 (explaining that providing additional support to maintain fixed voice services would be an inefficient use of funding, given the prevalence of mobile voice services).

Table 2: Transition for Price Cap Carriers in Areas Where a Carrier Declines a Seventh Year of Model-Based Support

Rural Digital Opportunity Fund Census Block Type	Incumbent Transition Schedule
Won at auction by the incumbent price cap carrier	Receives model-based support through 2020; begins receiving Rural Digital Opportunity Fund support the first day of the month after it is authorized
Won at auction by a new provider	Receives model-based support through 2020; new provider begins receiving Rural Digital Opportunity Fund support the first day of the month after it is authorized
Not won at auction	Receives model-based support through 2020
Not eligible for auction	Receives model-based support through 2020

125. In census blocks where a price cap carrier elects to receive a seventh year of model-based support, we clarify that the carrier will receive a full seventh calendar year of support—from January 2021 through December 2021—regardless of whether Rural Digital Opportunity Fund support is authorized in these areas in 2021. Thus, in areas where a price cap carrier currently receives model-based support that are subsequently won in the Rural Digital Opportunity Fund auction by a new provider, the incumbent price cap carrier will continue to receive model-based support through 2021, even if the new provider is authorized to receive Rural Digital Opportunity Fund support in 2021. We conclude providing support to both the incumbent price cap carrier and the new Rural Digital Opportunity Fund provider in these areas for the limited duration of 2021 will help facilitate an appropriate transition to a new ETC.[349] We note that price cap carriers receiving the seventh year of model-based support will "be required to continue providing broadband with performance characteristics that remain reasonably comparable to the performance characteristics of terrestrial fixed broadband service in urban America, in exchange for ongoing CAF Phase II support."[350]

126. Similarly, in census blocks where a price cap carrier elects to receive a seventh year of model-based support and ultimately becomes the authorized Rural Digital Opportunity Fund support recipient, the price cap carrier will continue to receive support at its model-based levels through 2021, with Rural Digital Opportunity Fund support levels commencing in January 2022.[351] We decline to adopt USTelecom's proposal that incumbent price cap carriers be allowed to choose the greater of their model-based support or RDOF support amount to receive during the remainder of 2021.[352] We observe that the reserve price for the RDOF auction is based on the support amounts calculated by the model and likely will be bid down by participants in the auction. Thus, in most, if not all, cases a price cap carrier's model-based support amount will be greater than its Rural Digital Opportunity Fund support amount. Relatedly, in some instances, the incumbent price cap carrier may wish to expand its service area from its current CAF Phase II model-based supported areas and may bid on and be authorized to receive support in census blocks eligible for the Rural Digital Opportunity Fund that are adjacent to areas in which the carrier receives model-based support. Because we expect the amount of model-based support that a

[349] *December 2014 Connect America Order*, 29 FCC Rcd at 15666-67, para. 32.

[350] *USF/ICC Transformation Order*, 26 FCC Rcd at 17726- 27, para. 163.

[351] *See supra* para. 53 (aligning service milestones to occur on December 31 of each year).

[352] US Telecom Comments at 22; Letter from Mike Saperstein, Vice President, Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, at 1-2 (Nov. 29, 2019). *See also* AT&T Reply Comments at 9.

carrier is receiving in a certain area to be higher than the amount of Rural Digital Opportunity Fund support it will receive, we expect these carriers to use the additional model-based support they receive in 2021 to begin the process of planning their buildouts for any adjacent, non-model-based support census blocks they may win.

127. In auction-eligible census blocks where a price cap carrier elects to receive a seventh year of model-based support and no qualifying bid is received in Phase I of the Rural Digital Opportunity Fund auction, the incumbent price cap carrier will continue to receive model-based support until the end of 2021. At that point, no further support will be provided to carriers serving these areas. As the Commission previously noted, the state-level commitment procedure for incumbent price cap carriers was intended to be limited in scope and duration.[353] Though we are providing carriers with a potential seventh year of support, this option is limited in duration and, as previously contemplated by the Commission, is a "a gradual transition to the elimination of support."[354] We therefore conclude that extending support in these areas beyond the seven-year term simply to maintain substandard broadband levels would be an inefficient use of our limited universal service funds. Moreover, providing additional support simply to maintain fixed voice services in these areas is an inefficient use of funding given the ubiquity of mobile voice services.[355] Instead, we determine that these funds should be aimed at deploying high-speed broadband networks in rural communities across the country.

128. Likewise, census blocks where a price cap carrier elects to receive a seventh year of model-based support that are deemed ineligible for the Rural Digital Opportunity Fund auction will cease receiving model-based support at the end of 2021. Because the Commission, by excluding these blocks from Phase I of this auction, has determined that ongoing model-based support for these areas is no longer necessary, no further support will be provided to carriers serving these blocks after 2021. This approach is consistent with our decision to stop providing legacy support in areas deemed ineligible for both the CAF Phase II auction and the Rural Digital Opportunity Fund auction and allows funding to flow to areas in the greatest need of broadband deployment.

Table 3: Transition for Price Cap Carriers in Areas Where a Carrier Elects to Receive a Seventh Year of Model-Based Support

Rural Digital Opportunity Fund Census Block Type	Incumbent Transition Schedule
Won at auction by the incumbent price cap carrier	Receives model-based support through 2021; transitions to Rural Digital Opportunity Fund support on January 1, 2022
Won at auction by a new provider	Receives model-based support through 2021; new provider receives RDOF support the first day of the month following authorization
Not won at auction	Receives model-based support through 2021
Not eligible for auction	Receives model-based support through 2021

B. Additional Transition Issues

129. Several commenters sought clarification from the Commission on the responsibilities of an incumbent price cap carrier once a new provider is authorized to receive Rural Digital Opportunity Fund support in an area previously served by the incumbent. Frontier contended that price cap carriers

[353] *USF/ICC Transformation Order*, 26 FCC Rcd at 17732, para. 178.

[354] *December 2014 Connect America Order*, 29 FCC Rcd at 15666-67, para. 32.

[355] *See supra* para. 120.

must be released from incumbent obligations, including the obligation to provide voice services, in areas where they cease to receive Rural Digital Opportunity Fund support.[356] USTelecom proposed requiring Rural Digital Opportunity Fund auction winners to offer voice services beginning in the first month after they receive Rural Digital Opportunity Fund support.[357] Likewise, Windstream and Incompas stated that new providers should be able to provide voice service on day one of their support term.[358] Commenters also encouraged the Commission to address additional issues regarding the responsibilities of price cap carriers no longer receiving support to serve specific areas.[359] Conversely, some opposed commenters' requests to eliminate ETC obligations and preempt state and discontinuance requirements.[360]

130. The Commission previously addressed the issue of ETC obligations as funding transitions to new mechanisms. In the *December 2014 CAF Phase II Order*, the Commission concluded that it was in the public interest to forbear, pursuant to section 10 of the Communications Act of 1934, as amended, from enforcing a federal high-cost requirement that price cap carriers offer voice telephony service throughout their service areas pursuant to section 214(e)(1)(A) in three types of geographic areas: (1) low-cost census blocks, (2) census blocks served by an unsubsidized competitor, as defined in our rules, offering voice and broadband at speeds of 10/1 Mbps to all eligible locations, and (3) census blocks where another ETC is receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations.[361] At that time, the Commission also noted that price cap carriers would remain obligated to maintain existing voice service "unless and until they receive authority under section 214(a) to discontinue that service."[362]

131. The same limited circumstances that required the Commission to grant forbearance to price cap carriers from the federal high-cost requirement to offer voice services in certain areas also exist here. As a result, in areas where a new provider is granted ETC status and is authorized to receive Rural Digital Opportunity Fund support, the incumbent price cap carrier that receives either legacy high-cost support or model-based support will be relieved of its federal high-cost ETC obligation to offer voice telephony services in that area. As we explained when we initially granted such forbearance, because there is another ETC in these areas required to offer voice and broadband services to fixed locations that meet the Commission's public service obligations, we conclude that enforcement of the requirement that price cap carriers offer voice telephony in these areas "is not necessary to ensure that the charges, practices, or classifications of price cap carriers are just and reasonable and not unjustly or unreasonably discriminatory in specific geographic areas."[363]

132. Our decision to extend this limited forbearance to the Rural Digital Opportunity Fund context does not redefine price cap carriers' service areas or revoke price cap carriers' ETC designations

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[356] Frontier Comments at 19-22; Frontier Reply Comments at 10. *See also* AT&T Reply Comments at 10.

[357] USTelecom Comments at 27.

[358] Windstream Comments at 23; INCOMPAS Comments at 13.

[359] Windstream Comments at 25-26 (proposing the adoption of streamlined requirements governing Section 214 discontinuance, ETC relinquishment, and relief from COLR obligations); USTelecom Comments at 28-29 (noting that existing providers should "not be bound by Section 214 discontinuance processes once a new high-cost ETC is funded in an area"); Frontier Comments at 19-22 (encouraging the commission to release price cap carriers from their incumbent obligations, forbear from section 214, and preempt state application of COLR obligations in areas where another provider is authorized to receive support); Frontier Reply Comments at 8-9; USTelecom Reply Comments 14-16.

[360] NASUCA Reply Comments at 6-8; PennPUC Reply Comments at 10-21.

[361] *December 2014 Connect America Order*, 29 FCC Rcd at 15673-74, para. 51.

[362] *Id*.

[363] *Id*. at 15676, para. 56.

in these areas. Thus, our action does not relieve ETCs of their other "incumbent-specific obligations" like interconnection and negotiating unbundled network elements pursuant to sections 251 and 252 of the Act.[364] Moreover, these price cap carriers must continue to satisfy all Lifeline ETC obligations by offering voice telephony service to qualifying low-income households in areas in which they are subject to this limited forbearance.[365] Finally, price cap carriers in these areas remain subject to other Title II requirements, including ensuring that voice telephony rates remain just and reasonable and the nondiscrimination obligations of sections 201 and 202 of the Act.[366] Additionally, we decline to preempt any state regulations or obligations to which these carriers may be subject.[367] Commenters make only vague, unsubstantiated claims about burdensome state obligations in support of these requests. Price cap carriers must continue to comply with state requirements, including carrier of last resort obligations, to the extent applicable. We similarly defer to the states' judgment in assuring that the local rates that price cap carriers offer in the areas from which we forbear remain just and reasonable. Price cap carriers will remain subject to ETC obligations unless or until they relinquish their ETC designations in those areas pursuant to section 214(e)(4). As we transition to a new funding mechanism to further our goal of supporting the deployment of both voice and broadband-capable networks, the existing service areas and corresponding obligations will help preserve existing voice service for consumers until the Rural Digital Opportunity Fund is fully implemented, and ensure that even the most remote, extremely high-cost areas are served, consistent with our universal service goals and principles.

133. More generally, price cap carriers must continue to offer voice service until they receive discontinuance authority under section 214(a) of the Act and section 63.71 of the Commission's rules.[368] As noted above, several commenters have requested that the Commission adopt a streamlined section 214 discontinuance process for price cap carriers that are replaced by a new provider receiving high-cost support. We are not persuaded that such a process would benefit consumers in these areas. The Commission's discontinuance rules are designed to ensure that customers are fully informed of any proposed change that will reduce or end service, ensure appropriate oversight by the Commission of such changes, and provide an orderly transition of service, as appropriate. This process allows the Commission to minimize harm to customers and to satisfy its obligation under the Act to protect the public interest.[369]

134. In evaluating a section 214 discontinuance application, the Commission generally considers a number of factors, including the existence, availability, and adequacy of alternatives.[370] By examining these factors, the Commission can ensure that the removal of a voice service option from the marketplace occurs in a manner that respects consumer expectations and needs. Thus, the Commission will deny a discontinuance application if it would leave customers or other end users in the proposed area without the ability to receive voice service or a reasonable alternative, or if the public convenience and

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[364] *Id*. at 15679-80, para. 67. *See also* 47 U.S.C. §§ 251, 252.

[365] *See Wireline Competition Bureau Provides Guidance Regarding Filing Procedures for Eligible Telecommunications Carriers Seeking to Invoke Forbearance Granted by Lifeline Modernization Order*, 31 FCC Rcd 12672 (WCB 2016).

[366] *December 2014 Connect America Order*, 29 FCC Rcd at 15676, para. 58. *See also* 47 U.S.C. §§ 201, 202.

[367] *December 2014 Connect America Order*, 29 FCC Rcd at 15680, para. 68 (noting that the decision to not preempt state obligations does not constitute a taking).

[368] 47 U.S.C. § 214(a), 47 C.F.R. § 63.71.

[369] See 47 U.S.C. § 201.

[370] *Southwestern Bell Tel. Co., US West Commc'ns, Bell Atlantic Tel. Cos., Bellsouth Tel. Cos. Applications for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, File Nos. W–P–C–6670, W–P–D–364, Memorandum Opinion and Order, 8 FCC Rcd 2589, 2600, para. 54 (1993); *see also Verizon Expanded Interconnection Discontinuance Order*, 18 FCC Rcd at 22742, para. 8.

necessity would be otherwise adversely affected. In such circumstances, the Commission will require price cap carriers to continue offering voice telephony services in those areas in those instances where there is no reasonable alternative. Adopting a streamlined process for areas in which we grant limited forbearance would prevent us from conducting the thorough review process necessary to ensure whether appropriate alternatives are available to consumers or the present or future public convenience and necessity would be adversely affected by such a discontinuance.

135. Finally, we clarify the specific timing to the grant of limited forbearance to incumbent price cap carriers currently receiving legacy high-cost or model-based support that are replaced by a new provider. First, we find that carriers receiving legacy high-cost support will be relieved of their federal high-cost ETC obligation to offer voice telephony in specific census blocks on the first day of the month after a new ETC is authorized to receive Rural Digital Opportunity Fund support in those blocks. Thus, the new provider receiving Rural Digital Opportunity Fund support should be prepared to provide voice service throughout its service areas, either through its own facilities or a combination of its own and other ETC's facilities, on the first day of that month. Price cap carriers electing to receive a seventh year of model-based support will maintain their obligation to provide both voice and broadband service throughout 2021, as explained above.[371] These carriers will be relieved of their federal high-cost ETC obligation to offer voice telephony in specific census blocks on January 1, 2022, regardless of when a new ETC is authorized to receive Rural Digital Opportunity Fund support. Finally, incumbent price cap carriers that decline a seventh year of model-based support will be relieved of the federal high-cost ETC obligation to offer voice telephony on the first day of the month after a new Rural Digital Opportunity Fund support recipient is authorized to receive support.

V. PROCEDURAL MATTERS

136. *Paperwork Reduction Act Analysis.* This document contains new information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,[372] 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. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) in Appendix B, *infra*.

137. *Final Regulatory Flexibility Analysis.* 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." Accordingly, we have prepared a FRFA concerning the possible impact of the rule changes contained in the Report and Order on small entities. The FRFA is set forth in Appendix B.

138. *Congressional Review Act.* The Commission will submit this draft Report and Order to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is "major" or "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

[371] *See supra* para. 125.

[372] Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat 729 (2002); *see* 44 U.S.C. § 3506(c)(4).

VI. ORDERING CLAUSES

139. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), and 403, and sections 1.1 and 1.425 of the Commission's rules, 47 CFR §§ 1.1 and 1.425 this Report and Order IS ADOPTED. The Report and Order SHALL BE EFFECTIVE 30 days after publication in the Federal Register, except for portions containing information collection requirements in sections 54.313, 54.316, 54.804, and 54.806 that have not been approved by OMB. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date of these provisions.

140. IT IS FURTHER ORDERED that Part 54 of the Commission's rules IS AMENDED as set forth in Appendix A, and that any such rule amendments that contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act SHALL BE EFFECTIVE after announcement in the Federal Register of Office of Management and Budget approval of the rules, and on the effective date announced therein.

141. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 54 to read as follows:

PART 54- UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302, unless otherwise noted.

2. Amend § 54.310 by adding paragraphs (g) and (h) to read as follows:

§ 54.310 Connect America Fund for Price Cap Territories—Phase II.

* * * * *

(g) *Extended term of model-based support*. Eligible telecommunications carriers receiving model-based support may elect to receive a seventh year of such support. An eligible telecommunications carrier electing to receive this additional year of support makes a state-level commitment to maintain the required voice and broadband services in the areas for which it receives support during this extended term. The Wireline Competition Bureau will implement a mechanism to enable an eligible telecommunications carrier to elect whether to receive an additional seventh year of support.

(h) *Transition to Rural Digital Opportunity Fund support*.

(1) In areas where the eligible telecommunications carrier elects to receive an optional seventh year of model-based support pursuant to paragraph (g) of this section, it shall receive such support for a full calendar year, regardless of the disposition of these areas in the Rural Digital Opportunity Fund auction.

(i) If the eligible telecommunications carrier becomes the winning bidder in the Rural Digital Opportunity Fund auction in these areas, it shall continue to receive model-based support through December 31, 2021. Thereafter, it shall receive monthly support in the amount of its Rural Digital Opportunity Fund winning bid.

(ii) If another provider is the winning bidder in the Rural Digital Opportunity Fund auction in these areas, the new provider shall receive monthly support in the amount of its Rural Digital Opportunity Fund winning bid starting the first day of the month following its authorization by the Wireline Competition Bureau. The eligible telecommunications carrier shall continue to receive model-based support for these areas through December 31, 2021.

(iii) If there is no authorized Rural Digital Opportunity Fund auction support recipient in these areas or if these areas are deemed ineligible for the Rural Digital Opportunity Fund auction, the eligible telecommunications carrier shall continue to receive model-based support for these areas through December 31, 2021. Thereafter, it shall receive no additional support.

(2) In areas where the eligible telecommunications carrier declines to receive an optional seventh year of model-based support pursuant to paragraph (g) of this section, it shall cease receiving model-based support for these areas on December 31, 2020.

3. Amend § 54.312 by adding paragraph (e) to read as follows:

§ 54.312 Connect America Fund for Price Cap Territories—Phase I.

* * * * *

(e) *Eligibility for support after Rural Digital Opportunity Fund auction*.

(1) A price cap carrier that receives monthly baseline support pursuant to this section and is a winning bidder in the Rural Digital Opportunity Fund auction shall receive support at the same level as described in paragraph (a) of this section for such area until the Wireline Competition Bureau determines whether to authorize the carrier to receive Rural Digital Opportunity Fund auction support for the same area. Upon the Wireline Competition Bureau's release of a public notice approving a price cap carrier's application submitted pursuant to §54.315(b) and authorizing the carrier to receive Rural Digital Opportunity Fund auction support, the carrier shall no longer receive support at the level of monthly baseline support pursuant to this section for such area. Thereafter, the carrier shall receive monthly support in the amount of its Rural Digital Opportunity Fund winning bid.

(2) Starting the first day of the month following the release of the final eligible areas list for the Rural Digital Opportunity Fund auction, as determined by the Wireline Competition Bureau, no price cap carrier that receives monthly baseline support pursuant to this section shall receive such monthly baseline support for areas that are ineligible for the Rural Digital Opportunity Fund auction.

(3) Starting the first day of the month following the close of Phase I of the Rural Digital Opportunity Fund auction, no price cap carrier that receives monthly baseline support pursuant to this section shall receive such monthly baseline support for areas where Rural Digital Opportunity Fund auction support is not awarded at auction for an eligible area.

(4) Starting the first day of the month following the authorization of Rural Digital Opportunity Fund auction support to a winning bidder other than the price cap carrier that receives monthly baseline support pursuant to this section for such area, the price cap carrier shall no longer receive monthly baseline support pursuant to this section.

* * * * *

4. Amend § 54.313 to revise paragraph (e) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(e) In addition to the information and certifications in paragraph (a) of this section, the requirements in paragraphs (e)(1) and (2) of this section apply to recipients of Phase II, Rural Digital Opportunity Fund, Uniendo a Puerto Rico Fund Stage 2 fixed support, and Connect USVI Fund Stage 2 fixed support:

* * * * *

(2) Any recipient of Phase II, Rural Digital Opportunity Fund, Uniendo a Puerto Rico Fund Stage 2 fixed, or Connect USVI Fund Stage 2 fixed support awarded through a competitive bidding or application process shall provide:

* * * * *

(iii) Starting the first July 1st after meeting the final service milestone in § 54.310(c) or § 54.802(c) of this chapter until the July 1st after the Phase II recipient's or Rural Digital Opportunity Fund recipient's support term has ended, a certification that the Phase II–funded network that the Phase II auction recipient operated in the prior year meets the relevant performance requirements in § 54.309 of this chapter, or that the network that the Rural Digital Opportunity Fund recipient operated in the prior year meets the relevant performance requirements in § 54.805 for the Rural Digital Opportunity Fund.

* * * * *

5. Amend § 54.316 to revise paragraph (a), (b), and (c) to read as follows:

§ 54.316 Broadband deployment reporting and certification requirements for high-cost recipients.

(a) * * *

* * * * *

(4) Recipients subject to the requirements of § 54.310(c) shall report the number of locations for each state and locational information, including geocodes, where they are offering service at the requisite speeds. Recipients of Connect America Phase II auction support shall also report the technology they use to serve those locations.

* * * * *

(8) Recipients subject to the requirements of § 54.802(c) shall report the number of locations for each state and locational information, including geocodes, where they are offering service at the requisite speeds. Recipients of Rural Digital Opportunity Fund support shall also report the technology they use to serve those locations.

(b) * * *

(5) Recipients of Rural Digital Opportunity Fund support shall provide: No later than March 1 following each service milestone specified by the Commission, a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations to the required percentage of its supported locations in each state.

* * * * *

(c) * * *

(1) Price cap carriers that accepted Phase II model-based support, rate-of-return carriers, and recipients of Rural Digital Opportunity Fund support must submit the annual reporting information required by March 1 as described in paragraphs (a) and (b) of this section. Eligible telecommunications carriers that file their reports after the March 1 deadline shall receive a reduction in support pursuant to the following schedule:

* * * * *

6. Revise subpart J to part 54 to read as follows:

Subpart J- Rural Digital Opportunity Fund

§ 54.801 Use of competitive bidding for Rural Digital Opportunity Fund.

The Commission will use competitive bidding, as provided in part 1, subpart AA of this chapter, to determine the recipients of Rural Digital Opportunity Fund support and the amount of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

§ 54.802 Rural Digital Opportunity Fund geographic areas, deployment obligations, and support disbursements.

(a) Geographic areas eligible for support. Rural Digital Opportunity Fund support may be made available for census blocks or other areas identified as eligible by public notice.

(b) Term of support. Rural Digital Opportunity Fund support shall be provided for ten years.

(c) Deployment obligation.

(1) All recipients of Rural Digital Opportunity Fund support must complete deployment to 40 percent of the required number of locations as determined by the Connect America Cost Model by the end of the third year, to 60 percent by the end of the fourth year, and to 80 percent by the end of the fifth year. The Wireline Competition Bureau will publish updated location counts no later than the end of the sixth year. A support recipient's final service milestones will depend on whether the Wireline Competition Bureau determines there are more or fewer locations than determined by the Connect America Cost Model in the relevant areas as follows:

(i) *More Locations.* After the Wireline Competition Bureau adopts updated location counts, in areas where there are more locations than the number of locations determined by the Connect America Cost Model, recipients of Rural Digital Opportunity Fund support must complete deployment to

100 percent of the number of locations determined by the Connect America Cost Model by the end of the sixth year. Recipients of Rural Digital Opportunity Fund support must then complete deployment to 100 percent of the additional number of locations determined by the Wireline Competition Bureau's updated location count by end of the eighth year. If the new location count exceeds 35% of the number of locations determined by the Connect America Cost Model, recipients of Rural Digital Opportunity Fund support will have the opportunity to seek additional support or relief.

(ii) *Fewer Locations.* In areas where there are fewer locations than the number of locations determined by the Connect America Cost Model, a Rural Digital Opportunity Fund support recipient must notify the Wireline Competition Bureau no later than March 1 following the fifth year of deployment. Upon confirmation by the Wireline Competition Bureau, Rural Digital Opportunity Fund support recipients must complete deployment to the number of locations required by the new location count by the end of the sixth year. Support recipients for which the new location count is less than 65 percent of the Connect America Cost Model locations within their area in each state shall have the support amount reduced on a pro rata basis by the number of reduced locations.

(iii) *Newly Built Locations.* In addition to offering the required service to the updated number of locations identified by the Wireline Competition Bureau, Rural Digital Opportunity Fund support recipients must offer service to locations built since the revised count, upon reasonable request.

(d) Disbursement of Rural Digital Opportunity Fund funding. An eligible telecommunications carrier will be advised by public notice when it is authorized to receive support. The public notice will detail how disbursements will be made.

§ 54.803 Rural Digital Opportunity Fund provider eligibility.

(a) Any eligible telecommunications carrier is eligible to receive Rural Digital Opportunity Fund support in eligible areas.

(b) An entity may obtain eligible telecommunications carrier designation after public notice of winning bidders in the Rural Digital Opportunity Fund auction.

(c) To the extent any entity seeks eligible telecommunications carrier designation prior to public notice of winning bidders for Rural Digital Opportunity Fund support, its designation as an eligible telecommunications carrier may be conditioned subject to receipt of Rural Digital Opportunity Fund support.

(d) Any Connect America Phase II auction participant that defaulted on all of its Connect America Phase II auction winning bids is barred from participating in the Rural Digital Opportunity Fund.

§ 54.804 Rural Digital Opportunity Fund application process.

(a) In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, any applicant to participate in competitive bidding for Rural Digital Opportunity Fund support shall:

(1) Provide ownership information as set forth in § 1.2112(a) of this chapter;

(2) Certify that the applicant is financially and technically qualified to meet the public interest obligations established for Rural Digital Opportunity Fund support;

(3) Disclose its status as an eligible telecommunications carrier to the extent applicable and certify that it acknowledges that it must be designated as an eligible telecommunications carrier for the area in which it will receive support prior to being authorized to receive support;

(4) Describe the technology or technologies that will be used to provide service for each bid;

(5) Submit any information required to establish eligibility for any bidding weights adopted by the Commission in an order or public notice;

(6) To the extent that an applicant plans to use spectrum to offer its voice and broadband services,

demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and deliver the minimum performance requirements to serve all of the fixed locations in eligible areas, and certify that it will retain its access to the spectrum for the term of support;

(7) Submit operational and financial information.

(i) If applicable, the applicant should submit a certification that it has provided a voice, broadband, and/or electric transmission or distribution service for at least two years or that it is a wholly-owned subsidiary of such an entity, and specifying the number of years the applicant or its parent company has been operating, and submit the financial statements from the prior fiscal year that are audited by a certified public accountant. If the applicant is not audited in the ordinary course of business, in lieu of submitting audited financial statements it must submit unaudited financial statements from the prior fiscal year and certify that it will provide financial statements from the prior fiscal year that are audited by a certified independent public accountant by a specified deadline during the long-form application review process.

(A) If the applicant has provided a voice and/or broadband service it must certify that it has filed FCC Form 477s as required during this time period.

(B) If the applicant has operated only an electric transmission or distribution service, it must submit qualified operating or financial reports that it has filed with the relevant financial institution for the relevant time period along with a certification that the submission is a true and accurate copy of the reports that were provided to the relevant financial institution.

(ii) If an applicant cannot meet the requirements in paragraph (a)(7)(i) of this section, in the alternative it must submit the audited financial statements from the three most recent fiscal years and a letter of interest from a bank meeting the qualifications set forth in paragraph (c)(2) of this section, that the bank would provide a letter of credit as described in paragraph (c) of this section to the bidder if the bidder were selected for bids of a certain dollar magnitude.

(8) Certify that the applicant has performed due diligence concerning its potential participation in the Rural Digital Opportunity Fund.

(b) Application by winning bidders for Rural Digital Opportunity Fund support—

(1) Deadline. As provided by public notice, winning bidders for Rural Digital Opportunity Fund support or their assignees shall file an application for Rural Digital Opportunity Fund support no later than the number of business days specified after the public notice identifying them as winning bidders.

(2) Application contents. An application for Rural Digital Opportunity Fund support must contain:

(i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter;

(ii) Certification that the applicant is financially and technically qualified to meet the public interest obligations for Rural Digital Opportunity Fund support in each area for which it seeks support;

(iii) Certification that the applicant will meet the relevant public interest obligations, including the requirement that it will offer service at rates that are equal or lower to the Commission's reasonable comparability benchmarks for fixed wireline services offered in urban areas;

(iv) A description of the technology and system design the applicant intends to use to deliver voice and broadband service, including a network diagram which must be certified by a professional engineer. The professional engineer must certify that the network is capable of

delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements for Rural Digital Opportunity Fund support;

(v) Certification that the applicant will have available funds for all project costs that exceed the amount of support to be received from the Rural Digital Opportunity Fund for the first two years of its support term and that the applicant will comply with all program requirements, including service milestones;

(vi) A description of how the required construction will be funded, including financial projections that demonstrate the applicant can cover the necessary debt service payments over the life of the loan, if any;

(vii) Certification that the party submitting the application is authorized to do so on behalf of the applicant; and

(viii) Such additional information as the Commission may require.

(3) No later than the number of days provided by public notice, the long-form applicant shall submit a letter from a bank meeting the eligibility requirements outlined in paragraph (c) of this section committing to issue an irrevocable stand-by letter of credit, in the required form, to the long-form applicant. The letter shall at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit.

(4) No later than the number of days provided by public notice, if a long-form applicant or a related entity did not submit audited financial statements in the relevant short-form application as required, the long-form applicant must submit the financial statements from the prior fiscal year that are audited by a certified independent public accountant.

(5) No later than 180 days after the public notice identifying it as a winning bidder, the long-form applicant shall certify that it is an eligible telecommunications carrier in any area for which it seeks support and submit the relevant documentation supporting that certification.

(6) Application processing.

(i) No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(ii) Any application that, as of the submission deadline, either does not identify the applicant seeking support as specified in the public notice announcing application procedures or does not include required certifications shall be denied.

(iii) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the Administrator, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(iv) Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

(v) After receipt and review of the applications, a public notice shall identify each long-form applicant that may be authorized to receive Rural Digital Opportunity Fund support after the long-form applicant submits a letter of credit and an accompanying opinion letter as described in paragraph (c) of this section, in a form acceptable to the Commission. Each such long-form applicant shall submit a letter of credit and accompanying opinion letter as required by paragraph

(c) of this section, in a form acceptable to the Commission no later than the number of business days provided by public notice.

(vi) After receipt of all necessary information, a public notice will identify each long-form applicant that is authorized to receive Rural Digital Opportunity Fund support.

(c) Letter of credit. Before being authorized to receive Rural Digital Opportunity Fund support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission.

(1) Value. Each recipient authorized to receive Rural Digital Opportunity Fund support shall maintain the standby letter of credit in an amount equal to at a minimum the amount of Rural Digital Opportunity Fund support that has been disbursed and that will be disbursed in the coming year, until the Universal Service Administrative Company has verified that the recipient has served 100 percent of the Connect America Cost Model-determined location total by the end of year six.

(i) Once the recipient has met its 60 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 80 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.

(ii) Once the recipient has met its 80 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 60 percent of the total support that has been disbursed plus the amount that will be disbursed in the coming year.

(2) The bank issuing the letter of credit shall be acceptable to the Commission. A bank that is acceptable to the Commission is:

(i) Any United States bank

(A) That is insured by the Federal Deposit Insurance Corporation, and

(B) That has a bank safety rating issued by Weiss of B- or better; or

(ii) CoBank, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iii) The National Rural Utilities Cooperative Finance Corporation, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iv) Any non–United States bank:

(A) That is among the 100 largest non–U.S. banks in the world, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit (determined on a U.S. dollar equivalent basis as of such date);

(B) Has a branch office in the District of Columbia or such other branch office agreed to by the Commission;

(C) Has a long-term unsecured credit rating issued by a widely-

recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's; and

(D) Issues the letter of credit payable in United States dollars

(3) A long-form applicant for Rural Digital Opportunity Fund support shall provide with its letter of credit an opinion letter from its legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 et seq. (the "Bankruptcy Code"), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate under section 541 of the Bankruptcy Code.

(4) Authorization to receive Rural Digital Opportunity Fund support is conditioned upon full and timely performance of all of the requirements set forth in this section, and any additional terms and conditions upon which the support was granted.

(i) Failure by a Rural Digital Opportunity Fund support recipient to meet its service milestones for the location totals determined by the Connect America Cost Model as required by § 54.802 will trigger reporting obligations and the withholding of support as described in § 54.320(d). Failure to come into full compliance during the relevant cure period as described in § 54.320(d)(1)(iv)(B) or 54.320(d)(2) will trigger a recovery action by the Universal Service Administrative Company. If the Rural Digital Opportunity Fund recipient does not repay the requisite amount of support within six months, the Universal Service Administrative Company will be entitled to draw the entire amount of the letter of credit and may disqualify the Rural Digital Opportunity Fund support recipient from the receipt of Rural Digital Opportunity Fund support or additional universal service support.

(ii) The default will be evidenced by a letter issued by the Chief of the Wireline Competition Bureau, or its respective designees, which letter, attached to a standby letter of credit draw certificate, shall be sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

§ 54.805 Rural Digital Opportunity Fund public interest obligations.

(a) Recipients of Rural Digital Opportunity Fund support are required to offer broadband service with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas. For purposes of determining reasonable comparable usage capacity, recipients are presumed to meet this requirement if they meet or exceed the usage level announced by public notice issued by the Wireline Competition Bureau. For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the applicable benchmark to be announced annually by public notice issued by the Wireline Competition Bureau, or no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in the state or U.S. Territory where the eligible telecommunications carrier receives support.

(b) Recipients of Rural Digital Opportunity Fund support are required to offer broadband service meeting the performance standards for the relevant performance tier.

(1) Rural Digital Opportunity Fund support recipients meeting the minimum performance tier standards are required to offer broadband service at actual speeds of at least 25 Mbps downstream and 3 Mbps upstream and offer a minimum usage allowance of 250 GB per month, or that reflects the average usage of a majority of fixed broadband customers as announced annually by the Wireline Competition Bureau over the 10–year term.

(2) Rural Digital Opportunity Fund support recipients meeting the baseline performance tier standards are required to offer broadband service at actual speeds of at least 50 Mbps downstream and 5

Mbps upstream and offer a minimum usage allowance of 250 GB per month, or that reflects the average usage of a majority of fixed broadband customers as announced annually by the Wireline Competition Bureau over the 10–year term..

(2) Rural Digital Opportunity Fund support recipients meeting the above-baseline performance tier standards are required to offer broadband service at actual speeds of at least 100 Mbps downstream and 20 Mbps upstream and offer at least 2 terabytes of monthly usage.

(3) Rural Digital Opportunity Fund support recipients meeting the Gigabit performance tier standards are required to offer broadband service at actual speeds of at least 1 Gigabit per second downstream and 500 Mbps upstream and offer at least 2 terabytes of monthly usage.

(4) For each of the tiers in paragraphs (b)(1) through (3) of this section, bidders are required to meet one of two latency performance levels:

(i) Low latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 100 milliseconds; and

(ii) High latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 750 ms and, with respect to voice performance, demonstrate a score of four or higher using the Mean Opinion Score (MOS).

(c) Recipients of Rural Digital Opportunity Fund support are required to bid on category one telecommunications and Internet access services in response to a posted FCC Form 470 seeking broadband service that meets the connectivity targets for the schools and libraries universal service support program for eligible schools and libraries (as described in § 54.501) located within any area in a census block where the carrier is receiving Rural Digital Opportunity Fund support. Such bids must be at rates reasonably comparable to rates charged to eligible schools and libraries in urban areas for comparable offerings.

§ 54.806 Rural Digital Opportunity Fund reporting obligations, compliance, and recordkeeping.

(a) Recipients of Rural Digital Opportunity Fund support shall be subject to the reporting obligations set forth in § 54.313, § 54.314, and § 54.316.

(b) Recipients of Rural Digital Opportunity Fund support shall be subject to the compliance measures, recordkeeping requirements and audit requirements set forth in § 54.320(a)-(c).

(c) Recipients of Rural Digital Opportunity Fund support shall be subject to the non-compliance measures set forth in § 54.320(d) subject to the following modifications related to the recovery of support.

(1) If the support recipient does not report it has come into full compliance after its final 12-month grace period as set forth in § 54.320(d)(2) or if USAC determines in the course of a compliance review that the eligible telecommunications carrier does not have sufficient evidence to demonstrate that it is offering service to all of the locations required by the final milestone as set forth in § 54.320(d)(3):

(i) Fewer locations. If a Rural Digital Opportunity Fund support recipient is required to serve fewer new locations than determined by the Connect America Cost Model, support will be recovered as follows after the final 12-month grace period or if USAC later determines in the course of a compliance review that a support recipient does not have sufficient evidence to demonstrate that it was offering service to all of the locations required by the final milestone:

(A) If an ETC has deployed to 95 percent or more of its new location count, but less than 100 percent, USAC will recover an amount of support that is equal to 1.25 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations;

(B) If an ETC has deployed to 90 percent or more of its new location count, but less than 95 percent, USAC will recover an amount of support that is equal to 1.5 times the average amount of support per location received in the state for that ETC over the support term for the relevant

number of locations, plus 5 percent of the support recipient's total Rural Digital Opportunity Fund support authorized over the 10-year support term for that state;

(C) If an ETC has deployed to fewer than 90 percent of its new location count, USAC will recover an amount of support that is equal to 1.75 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 10 percent of the support recipient's total Rural Digital Opportunity Fund support authorized over the 10-year support term for that state.

(ii) More locations. If a Rural Digital Opportunity Fund support recipient is required to serve more new locations than determined by the Connect America Cost Model, support will be recovered as follows after the final 12-month grace period or if USAC later determines in the course of a compliance review that a support recipient does not have sufficient evidence to demonstrate that it was offering service to all of the locations required by the final milestone:

(A) If an ETC has deployed to 95 percent or more of its new location count, but less than 100 percent, USAC will recover an amount of support that is equal to the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations;

(B) If an ETC has deployed to 90 percent or more of its new location count, but less than 95 percent, USAC will recover an amount of support that is equal to 1.25 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations;

(C) If an ETC has deployed to 85 percent or more of its new location count, but less than 90 percent, USAC will recover an amount of support that is equal to 1.5 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 5 percent of the support recipient's total Rural Digital Opportunity Fund support authorized over the 10-year support term for that state;

(D) If an ETC has deployed to less than 85 percent of its new location count, USAC will recover an amount of support that is equal to 1.75 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 10 percent of the support recipient's total Rural Digital Opportunity Fund support authorized over the 10-year support term for that state.

(2) Any support recipient that believes it cannot meet the third-year service milestone must notify the Wireline Competition Bureau within 10 business days of the third-year service milestone deadline and provide information explaining this expected deficiency. If a support recipient has not made such a notification by March 1 following the third-year service milestone, and has deployed to fewer than 20 percent of the required number of locations by the end of the third year, the recipient will immediately be in default and subject to support recovery. The Tier 4 status six-month grace period as set forth in § 54.320(d)(iv) will not be applicable.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980,[1] as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Rural Digital Opportunity Fund NPRM*.[2] The Commission sought written public comment on the proposals in the *Rural Digital Opportunity Fund NPRM*, including comment on the IRFA. The Commission did not receive any comments in response to this IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

2. Bringing digital opportunity to Americans living on the wrong side of the digital divide continues to be the Federal Communication Commission's top priority. It is imperative that the Commission take prompt and expeditious action to deliver on its goal of connecting all Americans, no matter where they live and work. Without access to broadband, rural communities cannot connect to the digital economy and the opportunities for better education, employment, healthcare, and civic and social engagement it provides.

3. In recent years, the Commission has made tremendous strides toward its goal of making broadband available to all Americans. But while the digital divide is closing, more work remains to be done. Therefore, in this Order, we adopt the framework for the Rural Digital Opportunity Fund. It builds on the successful model from 2018's Connect America Fund (CAF) Phase II auction, which allocated $1.488 billion to deploy networks serving more than 700,000 unserved rural homes and businesses across 45 states. The Rural Digital Opportunity Fund represents the Commission's single biggest step to close the digital divide by providing up to $20.4 billion to connect millions more rural homes and small businesses to high-speed broadband networks. It will ensure that networks stand the test of time by prioritizing higher network speeds and lower latency, so that those benefitting from these networks will be able to use tomorrow's Internet applications as well as today's.

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

4. There were no comments filed that specifically addressed the rules and policies proposed in the *Rural Digital Opportunity Fund NPRM*.

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,[4] which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

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

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[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-12 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Public Law No. 104-121, 110 Stat. 857 (1996).

[2] *Rural Digital Opportunity Fund et al.*, WC Docket Nos. 19-126, 10-90, Notice of Proposed Rulemaking, 34 FCC Rcd 6778 (2019).

[3] *See* 5 U.S.C. § 604.

[4] 5 U.S.C. § 604(a)(3).

D. Description and Estimate of the Number of Small Entities to which the Rules Would 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.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[7] 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.[8]

1. Total Small Entities

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.[9] 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.[10] These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.[11]

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."[12] 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).[13]

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[5] *See* 5 U.S.C. § 603(a)(3).

[6] *See* 5 U.S.C. § 601(6).

[7] *See* 5 U.S.C. § 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."

[8] *See* 15 U.S.C. § 632.

[9] *See* 5 U.S.C. § 601(3)-(6).

[10] *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).

[11] *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).

[12] 5 U.S.C. § 601(4).

[13] 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".

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."[14] U.S. Census Bureau data from the 2012 Census of Governments[15] indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[16] Of this number there were 37, 132 General purpose governments (county[17], municipal and town or township[18]) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts[19] and special districts[20]) 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.[21] Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."[22]

2. 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

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[14] 5 U.S.C. § 601(5).

[15] *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#.

[16] *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).

[17] *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.

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

[19] *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.

[20] *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.

[21] *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.

[22] *Id.*

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."[23] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[24] U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.[25] Of this total, 3,083 operated with fewer than 1,000 employees.[26] 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.[27] 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.[28] 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.[29] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[30] U.S. Census Bureau data indicate that 3,117 firms operated the entire year.[31] Of this total, 3,083 operated with fewer than 1,000 employees.[32] 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

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[23] *See* 13 CFR § 120.201. 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* U.S. Census Bureau, *2017 NAICS Definition*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017.

[24] *See* 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

[25] *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.

[26] *Id.*

[27] *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/cgibin/sssd/naics/naicsrch?code=517311&search=2017.

[28] *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.

[29] *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/cgibin/sssd/naics/naicsrch?code=517311&search=2017.

[30] *Id.*

[31] *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.

[32] *Id.*

incumbent local exchange service providers.[33] Of this total, an estimated 1,006 have 1,500 or fewer employees.[34] 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 above. Under that size standard, such a business is small if it has 1,500 or fewer employees.[35] 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.[36] 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."[37] 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.[38] 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.[39] The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[40] U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire

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[33] *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*).

[34] *Id*.

[35] 13 CFR § 121.201 (NAICS Code 517311).

[36] *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.

[37] 5 U.S.C. § 601(3).

[38] 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).

[39] *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.

[40] *Id*.

year.[41] Of that number, 3,083 operated with fewer than 1,000 employees.[42] According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[43] Of this total, an estimated 317 have 1,500 or fewer employees.[44] 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.[45] 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.[46] 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.[47] According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[48] Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.[49] 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.[50] 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 (except satellite) to businesses and households.[51] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.[52] Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.[53] U.S. Census Bureau data for 2012 show that 1,341

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[41] *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.

[42] *Id*.

[43] *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*).

[44] *Id*.

[45] 13 CFR § 121.201, NAICS code 517311.

[46] *Trends in Telephone Service*, tbl. 5.3.

[47] *See* 13 CFR § 121.201, NAICS code 517911.

[48] *See Trends in Telephone Service* at Table 5.3.

[49] *See id*.

[50] *See* 13 CFR § 121.201; NAICS Code 517911.

[51] 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.

[52] *Id*.

[53] 13 CFR § 121.201, NAICS code 517911.

firms provided resale services during that year.[54] Of that number, all operated with fewer than 1,000 employees.[55] 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.[56] Of these, an estimated 211 have 1,500 or fewer employees.[57] Consequently, the Commission estimates that the majority of Local Resellers are small entities.

20. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. 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 (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry.[58] The SBA has developed a small business size standard for the category of Telecommunications Resellers.[59] Under that size standard, such a business is small if it has 1,500 or fewer employees.[60] 2012 Census Bureau data show that 1,341 firms provided resale services during that year.[61] Of that number, 1,341 operated with fewer than 1,000 employees.[62] 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, 881 carriers have reported that they are engaged in the provision of toll resale services.[63] Of this total, an estimated 857 have 1,500 or fewer employees.[64] 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.[65] U.S. Census data for 2012 indicate that 3,117 firms operated during that

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[54] *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.

[55] *Id*.

[56] *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*).

[57] *Id*.

[58] U.S. Census Bureau, 2017 NAICS Definition, 517911 Telecommunications Resellers, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2017%20NAICS%20Search.

[59] 13 CFR § 121.201, NAICS code 517911.

[60] *Id*.

[61] *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* NAICS Code 517911, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517911.

[62] *Id*. Available census data does 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."

[63] *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*).

[64] *See id.*

[65] *See* 13 CFR § 121.201, NAICS code 517311.

year. Of that number, 3,083 operated with fewer than 1,000 employees.[66] According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[67] Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.[68] Consequently, the Commission estimates that most Other Toll Carriers are small.

22. *800 and 800-Like Service Subscribers*.[69] 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.[70] 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.[71] 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.[72] 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.

3. 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.[73] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[74] For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[75] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[76] Thus under this category and the

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

[67] *See Trends in Telephone Service* at Table 5.3.

[68] *See id*.

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

[70] *See* 13 CFR § 121.201, NAICS code 517911.

[71] *See Trends in Telephone Service* at Tables 18.7-18.10.

[72] *See id*.

[73] U.S. Census Bureau, 2012 NAICS Definitions, "517210 Wireless Telecommunications Carriers (Except Satellite)," *See* https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.517210.

[74] 13 CFR § 121.201, NAICS code 517210.

[75] 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. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

[76] *Id*. Available census data does 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."

associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

24. The Commission's own data—available in its Universal Licensing System—indicate that, as of August 31, 2018 there are 265 Cellular licensees that will be affected by our actions.[77] 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 (PCS), and Specialized Mobile Radio (SMR) Telephony services.[78] Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.[79] 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.[80] The SBA has approved these small business size standards.[81] In the Commission's auction for geographic area licenses in the WCS there were seven winning bidders that qualified as "very small business" entities, and one winning bidder that qualified as a "small business" entity.

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).[82] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[83] For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[84] Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more.[85] 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

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[77] *See* http://wireless.fcc.gov/uls. 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.

[78] *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.

[79] *See id*.

[80] *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).

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

[82] U.S. Census Bureau, 2012 NAICS Definitions, 517210 Wireless Telecommunications Carriers (Except Satellite), https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2012+NAICS+Search.

[83] 13 CFR § 121.201, NAICS code 517210.

[84] 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.

[85] *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."

telephony.[86] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[87] Therefore, more than half of these entities can be considered small.

4. Internet Service Providers (Broadband)

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.[88] 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.[89] The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.[90] U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.[91] Of this total, 3,083 operated with fewer than 1,000 employees.[92] Consequently, under this size standard the majority of firms in this industry can be considered small.

5. Satellite Telecommunications

28. 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."[93] Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $35 million or less in average annual receipts, under SBA rules.[94] 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.[95] Of this total, 299 firms had annual receipts of less than $25 million.[96] Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

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[86] *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.

[87] *Id*.

[88] *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

[89] *Id*.

[90] *Id*.

[91] *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 NAICS Code 517110 https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

[92] *Id*.

[93] 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.

[94] 13 CFR § 121.201, NAICS code 517410.

[95] 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.

[96] *Id*.

6. Electric Power Generators, Transmitters, and Distributors

29. *Electric Power Generators, Transmitters, and Distributors*. The Census Bureau defines an industry group comprised of "establishments, primarily engaged in generating, transmitting, and/or 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."[97] 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."[98] Census Bureau data for 2012 show that there were 1,1635 firms that operated for the entire year in this category.[99] Of these firms, 63 had 1,000 employees or more, and 1,572 had fewer than 1,000 employees.[100] Based on this data, a majority of these firms can be considered small.

7. All Other Telecommunications

30. *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.[101] 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.[102] Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[103] The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $35 million or less.[104] For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year.[105] Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49, 999,999.[106] Thus, the Commission estimates that the majority of "All Other Telecommunications" firms potentially affected by our action can be considered small.

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[97] 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).

[98] 13 CFR § 121.201, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122, n. 1.

[99] *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).

[100] *See id*.

[101] *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.

[102] *Id*.

[103] *Id*.

[104] *See* 13 CFR § 121.201, NAICS code 517919.

[105] 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.

[106] *Id*.

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

31. In the Order we adopt rules that will apply in the Rural Digital Opportunity Fund auction. We establish four technology-neutral tiers of bids available for bidding with varying broadband speed and usage allowances, and for each tier will differentiate between bids that would offer either lower or higher latency. Like all high-cost ETCs, we require that Rural Digital Opportunity Fund recipients offer standalone voice service and offer voice and broadband service meeting the relevant performance requirements at rates that are reasonably comparable to rates offered in urban areas. Rural Digital Opportunity Fund support recipients will also be subject to the same uniform framework for measuring speed and latency performance along with the accompanying compliance framework as all other recipients of high-cost support required to serve fixed locations.

32. In the Order, we adopt a 10-year support term for Rural Digital Opportunity Fund support recipients along with interim service milestones by which support recipients must offer the required voice and broadband service to a required number of locations. The final service milestones will differ based on whether the Wireline Competition Bureau determines that there are more or fewer locations than initially determined by the Connect America Cost Model. Rural Digital Opportunity Fund recipients must also offer service to newly built locations upon reasonable request.

33. For entities that are interested in participating in the Rural Digital Opportunity Fund, we adopted a two-step application process. We require applicants to submit a pre-auction short-form application that includes information regarding their ownership, technical and financial qualifications, the technologies they intend to use and the types of bids they intend to place, their operational history, and an acknowledgement of their responsibility to conduct due diligence. Commission staff will review the applications to determine if applicants are qualified to bid in the auction.

34. We also require winning bidders to submit a long-form application in which they will submit information about their qualifications, funding, and the networks they intend to use to meet their obligations. During the long-form application period, we will require long-form applicants to obtain an ETC designation from the state or the Commission as relevant that covers the eligible areas in their winning bids. Prior to being authorized to receive support, we will require long-form applicants to obtain an irrevocable stand-by letter of credit that meets our requirements from an eligible bank along with a bankruptcy opinion letter. The letter of credit would cover the support that has been disbursed and that will be disbursed in the coming year, subject to modest adjustments as support recipients substantially build out their networks, until the Commission and Universal Service Administrative Company verify that the applicant has met its service milestones for the location totals determined by the Connect America Cost Model. Commission staff will review the applications and submitted documentation to determine whether long-form applicants are qualified to be authorized to receive support. We will subject winning bidders or long-form applicants that default during the long-form application process to forfeiture.

35. To monitor the use of Rural Digital Opportunity Fund support to ensure that it is being used for its intended purposes, we will require support recipients to file location and technology data on an annual basis in the online High Cost Universal Broadband (HUBB) portal and to make certifications when they have met their service milestones. We also will require applicants to file certain information in their annual FCC Form 481 reports including information regarding the community anchor institutions they serve, the support they used for capital expenditures, and certifications regarding meeting the Commission's performance obligations and available funds. Support recipients will also be subject to the annual section 54.314 certifications, the same record retention and audit requirements, and the same support reductions for untimely filings as other high-cost ETCs.

36. For support recipients that do not meet their Rural Digital Opportunity Fund obligations, we will subject such support recipients to the framework for support reductions that is applicable to all high-cost ETCs that are required to meet defined service milestones and to the process the Commission adopted for drawing on letters of credit for the Connect America Fund (CAF) Phase II auction, subject to some modifications regarding the amount of support that will be recovered after the final 12-month grace

period. Additionally, if a Rural Digital Opportunity Fund support recipient believes it cannot meet the 40% service milestone, it must notify the Wireline Competition Bureau and provide information explaining this expected deficiency. If a support recipient has not made such a notification and has deployed to fewer than 20% of the required number of locations by the third year service milestone, we will find the recipient to be default rather than withholding the support and giving the support recipient an additional year to come into compliance. Support recipients may also seek waiver if as they are deploying their networks there are not enough locations to meet their interim milestones.

37. We also adopt specific support transition paths for census blocks served by price cap carriers receiving both legacy high-cost and model-based support, including delegating to the Wireline Competition Bureau the task of determining and implementing a mechanism that will enable price cap carriers to elect whether to receive an additional, seventh year of Phase II model-based support. Additionally, we clarify the continuing responsibilities of price cap carriers no longer receiving support to serve specific areas.

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

38. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its 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) an exemption from coverage of the rule, or any part thereof, for small entities."[107]

39. The Commission has considered the economic impact on small entities in reaching its final conclusions and taking action in this proceeding. The rules that we adopt in the Order will provide greater certainty and flexibility for all carriers, including small entities. For example, we adopt different performance standards for bidders to maximize the types of entities that can participate in the Rural Digital Opportunity Fund auction. Additionally, while we decline to adopt any bidding credits, we do incorporate into the reserve prices for Tribal areas a Tribal Broadband Factor to provide an incentive for service providers, including small entities, to bid on and serve Tribal lands.

40. We also expect that the minimum geographic area for bidding will be a census block group containing one or more eligible census blocks, but reserve the right to select census tracts when we finalize the auction design if necessary to limit the number of discrete biddable units. We find that this approach is preferable because it ensures that all interested bidders, including small entities, have flexibility to design a network that matches their business model and the technologies they intend to use. We decline to adopt census blocks as the minimum geographic unit because there are significantly more eligible census blocks, increasing the complexity of the bidding process both for bidders, including small entities, and the bidding system and minimizing the potential for broad coverage by winning bidders.

41. We decline to adopt resource-intensive challenge process and instead have decided to rely on Form 477 data and conduct a more streamlined challenge process to determine areas that are eligible for the Rural Digital Opportunity Fund auction. This means that service providers, including small entities, will only have to file a Form 477 as they are already required to do to ensure that the areas they serve are not overbuilt and may identify areas that have been served since they have submitted the most recent publicly available Form 477 data.

42. Based on lessons learned from the CAF Phase II auction, we also adopt a two-step application process that will allow entities interested in bidding to submit a short-form application to be qualified in the auction that we found to be an appropriate but not burdensome screen to ensure participation by qualified providers, including small entities. Only if an applicant becomes a winning

[107] 5 U.S.C. § 603(c)(1)-(c)(4).

bidder will it be required to submit a long-form application which requires a more thorough review of an applicant's qualifications to be authorized to receive support. Like the CAF Phase II auction, we provide two pathways for eligibility for the auction—both 1) for entities that have at least two years' experience providing a voice, broadband, and/or electric transmission or distribution service, and 2) for entities that have at least three years of audited financials and can obtain an acceptable letter of interest from an eligible bank. We expect that by proposing to adopt two pathways for eligibility and to permit experienced entities that do not audit their financial statements in the ordinary course of business to wait to submit audited financials until after they are announced as winning bidders, more small entities will be able to participate in the auction. We decline to collect less financial and technical information from experienced providers, finding that all existing service providers are not necessarily qualified to bid for additional universal service support and that the passage of time since our last review may impact qualifications. At the same time, we also decline to require more detailed technical and operational showings as suggested by some commenters because we found these proposals would provide significant barriers to entry for participation by interested entities, including small entities.

43. We also permit all long-form applicants, including small entities, to obtain their ETC designations after becoming winning bidders so that they do not have to go through the ETC designation process prior to finding out if they won support through the auction. We decline to adopt the alternatives to letters of credit that were suggested by commenters because letters of credit better achieve our objective of protecting the public's funds. But recognizing that some CAF Phase II auction participants, including small entities, have expressed concerns about the costs of obtaining and maintaining a letter of credit, we make a modification to our requirements to allow support recipients to further reduce the value of their letters of credit once they have met the 60 percent service milestone.

44. We decline to adopt additional performance requirements, like requiring specific subscription milestones, because we find that they are likely to discourage many bidders, including small entities, from participating in the auction because they would risk losing funding in areas with low subscribership rates. We also decline to adopt more aggressive service milestones and instead explain that entities with smaller projects have the opportunity to build-out faster than the service milestones.

45. The reporting requirements we adopt for all Rural Digital Opportunity Fund support recipients are tailored to ensuring that support is used for its intended purpose and so that we can monitor the progress of recipients in meeting their service milestones. We find that the importance of monitoring the use of the public's funds outweighs the burden of filing the required information on all entities, including small entities, particularly because much of the information that we require they report is information we expect they will already be collecting to ensure they comply with the terms and conditions of support and they will be able to submit their location data on a rolling basis to help minimize the burden of uploading a large number of locations at once.

G. Report to Congress.

46. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[108] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.[109]

[108] 5 U.S.C. § 801(a)(1)(A).

[109] *See id*. § 604(b).

APPENDIX C

Illustrative Form of Letter Of Credit

[Subject to Issuing Bank Requirements]
No. _____

[Name and Address of Issuing Bank]

[Date of Issuance]

[AMOUNT]

[EXPIRATION DATE]

BENEFICIARY
[USAC]

[Address]

LETTER OF CREDIT PROVIDER
[Winning Bidder Name]

[Address]

Ladies and Gentlemen:

We hereby establish, at the request and for the account of [Winning Bidder], in your favor, as required under the Order, adopted on January 30, 2020, issued by the Federal Communications Commission ("FCC") in the matter of [Rural Digital Opportunity Fund, WC Docket No. 19-126; Connect America Fund, WC Docket 10-90] (the "Order"), our Irrevocable Standby Letter of Credit No. _____, in the amount of [State amount of Letter of Credit in words and figures. NOTE: The amount of the Letter of Credit shall increase/additional letter(s) of credit shall be issued as additional funds are disbursed pursuant to the terms of the Order], expiring at the close of banking business at our office described in the following paragraph, on [the date which is ___ years from the date of issuance/ or the date which is one year from the date of issuance, provided the Issuing Bank includes an evergreen clause that provides for automatic renewal unless the Issuing Bank gives notice of non-renewal to USAC by a nationally recognized overnight delivery service, with a copy to the FCC, at least sixty days but not more than 90 days prior to the expiry thereof], or such earlier date as the Letter of Credit is terminated by [USAC] (the "Expiration Date"). Capitalized terms used herein but not defined herein shall have the meanings accorded such terms in the Order.

Funds under this Letter of Credit are available to you against your draft in the form attached hereto as Annex A, drawn on our office described below, and referring thereon to the number of this Letter of Credit, accompanied by your written and completed certificate signed by you substantially in the form of Annex B attached hereto. Such draft and certificates shall be dated the date of presentation or an earlier date, which presentation shall be made at our office located at [BANK ADDRESS] and shall be effected either by personal delivery or delivery by a nationally recognized overnight delivery service. We hereby commit and agree to accept such presentation at such office, and if such presentation of documents appears on its face to comply with the terms and conditions of this Letter of Credit, on or prior to the

Expiration Date, we will honor the same not later than the first banking day after presentation thereof in accordance with your payment instructions. Payment under this Letter of Credit shall be made by [check/wire transfer of Federal Reserve Bank of New York funds] to the payee and for the account you designate, in accordance with the instructions set forth in a draft presented in connection with a draw under this Letter of Credit.

Partial drawings are not permitted under this Letter of Credit. This Letter of Credit is not transferable or assignable in whole or in part.

This Letter of Credit shall be canceled and terminated upon receipt by us of the [USAC's] certificate purportedly signed by two authorized representatives of [USAC] in the form attached as Annex C.

This Letter of Credit sets forth in full the undertaking of the Issuer, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except only the certificates and the drafts referred to herein and the ISP (as defined below); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificates and such drafts and the ISP.

This Letter of Credit shall be subject to, governed by, and construed in accordance with, the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (the "ISP"), which is incorporated into the text of this Letter of Credit by this reference, and, to the extent not inconsistent therewith, the laws of the State of New York, including the Uniform Commercial Code as in effect in the State of New York. Communications with respect to this Letter of Credit shall be addressed to us at our address set forth below, specifically referring to the number of this Letter of Credit.

[NAME OF BANK]

[BANK SIGNATURE]

ANNEX A

Form of Draft

To: [Issuing Bank]

DRAWN ON LETTER OF CREDIT No: _____

AT SIGHT

PAY TO THE ORDER OF [USAC] BY [CHECK/WIRE TRANSFER OF FEDERAL RESERVE BANK OF NEW YORK]

FUNDS TO: _____

_____

_____

Account (_____)

AS [RURAL DIGITAL OPPORTUNITY FUND REPAYMENT]

[AMOUNT IN WORDS] DOLLARS AND NO/CENTS

$[AMOUNT IN NUMBERS]

Universal Service Administrative Company

By:_____
Name:
Title:

ANNEX B

Draw Certificate

The undersigned hereby certifies to [Name of Bank] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the "Letter of Credit") issued by the Bank in favor of the Universal Service Administrative Company ("USAC") and (b) [paragraph ___] of the Order, adopted on January 30, 2020, issued by the Federal Communications Commission in the matter of [Rural Digital Opportunity Fund, WC Docket No. 19-126; Connect America Fund, WC Docket 10-90] (the "Order"), pursuant to which [Name of Winning Bidder] (the "LC Provider") has provided the Letter of Credit (all capitalized terms used herein but not defined herein having the meaning stated in the Order), that:

[The [Name of Winning Bidder] has [describe the event that triggers the draw],and is evidenced by a letter signed by the Chief of the [Wireline Competition Bureau] or [his/her] designee, dated _ , 20__ , a true copy of which is attached hereto.] Accordingly, a draw of the entire amount of the Letter of Credit No. _____ is authorized.]

OR

[USAC certifies that given notice of non-renewal of Letter of Credit No. _____ and failure of the account party to obtain a satisfactory replacement thereof, pursuant to the Order, USAC is entitled to receive payment of $_____ representing the entire amount of Letter of Credit No. _____.]

IN WITNESS WHEREOF, the undersigned has executed this certificate as of [specify time of day] on the ____ day of _____, 20__.

Universal Service Administrative Company

By: _____
Name:
Title:

ANNEX C

Certificate Regarding Termination of Letter of Credit

The undersigned hereby certifies to [Name of Bank] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the "Letter of Credit") issued by the Bank in favor of the Universal Service Administrative Company ("USAC"), and (b) paragraph [____] of the Report and Order adopted on January 30, 2020, issued by the Federal Communications Commission ("FCC") in the matter of [Rural Digital Opportunity Fund, WC Docket No. 19-126; Connect America Fund, WC Docket 10-90] (the "Order"), (all capitalized terms used herein but not defined herein having the meaning stated or described in the Order), that:

(1) [include one of the following clauses, as applicable]

(a) The Order has been fulfilled in accordance with the provisions thereof; or

(b) [LC Provider/Winning Bidder] has provided a replacement letter of credit satisfactory to the FCC.

(2) By reason of the event or circumstance described in paragraph (1) of this certificate and effective upon the receipt by the Bank of this certificate (countersigned as set forth below), the Letter of Credit is terminated.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the ____ day of _____, 20__.

Universal Service Administrative Company

By:_____
Name:
Title:

By:_____
Name:
Title:

COUNTERSIGNED:

Federal Communications Commission

By: _____
Name:
Its Authorized Signatory